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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2680-2010 (O&M)
Date of decision : 01.09.2017

Gurdeep Kaur and others

... Appellant(s)

Versus

Jaspal Singh @ Jaspal Kaur and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Anurag Arora, Advocate
for the appellants.

Mr. Subhash Goyal, Advocate
for the Insurance Company.

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AMIT RAWAL, J. (ORAL)

The present appeal has been preferred by the LRs of the deceased, namely, Nirmal Singh, against the award of the Motor Accident Claims Tribunal (in short 'the Tribunal'), whereby the compensation of ₹ 3,88,000/- has been granted.

Learned counsel for the appellants-claimants submits that Nirmal Singh aged 58 years was, unfortunately, died in a road accident occurred on 13.11.2007. At the time of accident, according to the counsel for the appellant/claimant, he was employed in Punjab Agro Food-grains Corporation Limited, Sangrur. He left behind widow, minor son and parents. His income was ₹18530/-, whereas it has been taken as ₹ 17530/- after deduction of income tax. The Tribunal deducted an amount of ½ instead of 1/3rd and wrongly applied the multiplier of 7 instead of 9.

Even the future prospects were also required to be granted as the retirement age in the aforementioned department was 60 years, thus, the award of the Tribunal is liable to modified.

It is also argued that the Scooter bearing Registration No.PB-13-P-8054 owned by respondent Nos.2 and 3 was insured by respondent No.4/Bajaj Allianz General Insurance Company Ltd., represented by Mr. Subhash Goyal. Though, there was a breach of the terms and conditions of the Policy as the scooter was driven by a minor, namely, Jaspal Singh/respondent No.1, but the Insurance Company cannot be absolved in the first instance as recovery rights were required to be given.

On the contrary, Mr. Subhash Goyal, learned counsel appearing on behalf of respondent No.4/Insurance Company submits that once there was an apparent breach of terms and conditions of the policy as well as of the Motor Vehicles Act as the owner had not taken preventive and effective measures in letting the minor child to drive the scooter, who was not competent to drive the same, rightly so, the Insurance Company has been absolved from the indemnification.

I have heard the learned counsel for the parties and appraised the paper book.

As regards the enhancement of compensation, I am of the view that the amount of compensation has not been assessed correctly and accordingly, I will take the income of the deceased as ₹ 18530/- and apply a deduction of 1/3rd instead of ½. I will adopt a multiplier of 9 instead of 7 and provide ₹ 1 lac for loss of consortium to the wife, ₹ 1 Lac to the minor son and ₹ 50,000/- each to the parents for loss of love and affection and ₹ 25,000/- for funeral expenses. The various heads of claim are tabulated as under:-

FATAL ACCIDENT		
Age	58 years	
Occupation	Punjab Agro Food-grain Corporation	
Claimants	Wife, one minor son and parents	
	Heads of claim	**High Court**
Sr. No.		Amount (₹)
1	Income	18530
2	Add, % of increase 30% / 50%	
3	Less Deduction (1/3rd)	12354
4	Multiplicand (annualized by multiplying 12)	1,48,248
5	Multiplier	9
6	Loss of dependence	13,34,232
7	Medical Expenses & Transportation	
8	Loss of Consortium	1,00,000
9	Loss of love and affection @ 1,00,000/- to child & ₹ 50,000 each to mother and father	2,00,000-/
10	Loss to estate	
11	Funeral expenses	25,000
	Total	**16,59,232**

The total compensation payable shall be ₹ 16,59,232/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @ 6% from the date of filing of the appeal till the date of realization. The Insurance Company shall pay the amount of compensation to the appellants-claimants.

No doubt, the owner had been careless in permitting the minor child to ply the scooter, who did not have the valid and effective licence, thus, *prima facie* there was a breach of the terms and conditions of the policy, therefore, viz-a-viz the recovery rights given to the Insurance Company, I am also in agreement with the submissions of Mr. Arora as the

Insurance Company can always recover the amount from the owner, even if, there is a breach of terms and conditions of the policy. In the matter of invalid and not effective driving licence, the Insurance Company is in law required to make firstly payment of the compensation to the third party and later on, recover from the insured. Similar view would also be applicable in the instant case.

Accordingly, the recovery rights are given to the Insurance Company to recover the amount of compensation from the insured in accordance with law.

The award passed by the Tribunal is modified and the appeal is allowed to the above extent.

(AMIT RAWAL)
JUDGE

01.09.2017
Yogesh Sharma

Whether speaking/reasoned **[✓ Yes]/ No**

Whether Reportable **Yes/ [✓ No]**