

F.A.O. No. 4133 of 2012

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. F.A.O. No. 4133 of 2012

Pushpa Devi and othersAppellants

Versus

Ranbir Singh and othersRespondents

2. F.A.O. No. 3781 of 2012 (O&M)

Oriental Insurance Company Ltd.Appellant

Versus

Pushpa Devi and othersRespondents

DATE OF DECISION: 20.3.2017

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Madan Gopal Gupta, Advocate
for the appellants in FAO No. 4133 of 2012 and
for respondents No. 1 to 4 in FAO No. 3781 of 2012.

Mr. Jasbir Mor, Advocate
for respondents No.1 and 2 in FAO No. 4133 of 2012 and
for respondents No. 5 and 6 in FAO No. 3781 of 2012.

Mr. DP Gupta, Advocate
for respondent No.3 in FAO No. 4133 of 2012 and
for the appellant in FAO No. 3781 of 2012.

DAYA CHAUDHARY, J.

This judgment of mine shall dispose of FAO Nos. 4133 and 3781 of 2012 filed by claimants and Insurance Company, respectively, as the same have arisen out of the common award dated 2.5.2012 passed by Motor Accident Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal'). FAO No. 4133 of 2012 has been filed by the claimants for

enhancement of amount of compensation, whereas, FAO No. 3781 of 2012 has been filed by the Insurance Company for setting aside the award passed by the Tribunal. For the sake of convenience, facts are being extracted from FAO No. 4133 of 2012.

Briefly the facts of the case are that a claim petition was filed by the claimants under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'), who are widow, minor daughters and mother of the deceased, namely, Krishan Kumar, who was 43 years of age at the time of his death in the accident. On 18.4.2011 at around 6.00 pm, deceased Krishan Kumar was returning from his fields to his house on a motor cycle. On reaching near cremation ground road T point on Narwana-Hisar Highway, his motorcycle was hit by the offending bus bearing registration No. HR-56-1546, which was being driven in a rash and negligent manner. Resultantly, he fell down on the road and got crushed under its front driver's side wheel and died at the spot. The driver of the offending vehicle ran away from the spot by leaving the bus there. Postmortem of the dead body was got conducted in General Hospital, Narwana. A criminal case was registered under Sections 279, 304-A and 427 IPC vide FIR No. 73 dated 18.4.2011 at Police Station City Narwana against the driver of the offending vehicle. The offending bus was owned by the Luxmi Cooperative Transport Society, Khardwal, Tehsil Narwana, District Jind, respondent No.2 in the claim petition and was insured with the Oriental Insurance Company. As per claim petition, the deceased was Director of M/s Victory Marvel Seeds India Private Limited, Secundrabad and his monthly salary was ₹83,188/-. It was also mentioned that a sum of ₹50,000/- was spent on transportation of dead body, funeral and last rights.

Due to untimely death of the deceased, the dependant family members were deprived of his love and affection besides their livelihood. They also suffered great shock and mental agony. The claimants were fully dependent upon the deceased and were thus entitled for compensation. The claim petition was contested by the respondents by filing separate written statements.

The claim petition was allowed vide award dated 2.5.2012 and the claimants were held entitled for compensation to the tune of ₹26,10,000/- which was to be paid by the respondents i.e. driver, owner and insurer of the bus jointly and severally. The claimants were also held entitled to interest at the rate of 9% per annum from the date of institution of the petition till realization of the amount. Out of total amount awarded, a sum of ₹8,10,000/- was to be paid to the widow-Pushpa Devi and ₹8 lacs each to the minor children. An amount of ₹2 lacs was ordered to be paid to the mother of the deceased. Out of total share of widow and mother of the deceased, 25% was ordered to be paid in cash and the remaining 75% was ordered to be deposited in fixed deposit scheme fetching maximum rate of interest in a nationalised bank for a period of 10 years. However, they were also held entitled to receive periodical interest thereon. The amount, which was to be paid to the minors, was ordered to be deposited in the fixed deposit scheme and they were held entitled to withdraw the same on attaining the age of majority. The widow of the deceased-Pushpa Devi was held entitled to receive periodical interest on the amount to be paid to both the minors, which was to be spent for maintenance of the children.

Learned counsel for the appellant-claimants submits that the amount awarded by the Tribunal is less and the actual income being drawn

by the deceased at the time of accident has not been taken into consideration. Only an amount of ₹10,000/- has been awarded on account of consortium, transportation of dead body and last rites of deceased, which is on lower side, whereas, the claimants were entitled for ₹1 lac on account of consortium, transportation of dead body in view of ratio of judgment of **Rajesh and others Vs. Rajbir Singh and others** (Civil Appeal No. 3860 of 2013 arising out of S.L.P. (Civil) No. 24825 of 2010, decided on 12.4.2013). Learned counsel further submits that the deceased was M.Sc and Ph.D and was getting monthly salary of ₹83,188 and his carry home salary was ₹69,802/-, whereas, the learned Tribunal has assessed the annual income as ₹5,50,051 and further assessed it as ₹3 lacs while observing that he was working in multinational company, which is not a permanent job. Learned counsel also submits that a cut of 1/3rd was imposed on personal expenses and multiplier of 13 has been applied, whereas, as per ratio of Hon'ble the Apex Court in the case of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another** 2009 (3) RCR (Civil) 77, in case there were four dependants, the deduction should be 1/4th instead of 1/3rd. The deceased was 43 years of age and the multiplier should have been 14. Learned counsel also submits that nothing has been paid towards future prospects and love and affection. Learned counsel has also relied upon the judgments of Hon'ble the Apex Court in the cases of **Santosh Devi Vs. National Insurance Company Ltd. and others** 2012 (2) RCR (Civil) 882, **Sarla Verma's case (supra)** and **Rajesh's case (supra)**, in support of his arguments.

Learned counsel appearing for the insurance company submits

that an application was also filed under Section 170 of the Act by the appellant-Insurance Company, which was dismissed by the Tribunal vide order dated 6.12.2011. It was observed by the Tribunal that the owner and driver have contested the claim petition, whereas, it was not necessary for them to appear in the witness box as the proceedings before the Tribunal were summary in nature. Learned counsel further submits that the learned Tribunal has failed to appreciate that even in case of summary proceedings, the owner and driver of the offending vehicle are supposed to lead evidence and to appear as witness. Learned counsel also submits that owner and driver of the offending vehicle seem to be in collusion with the claimants and have not contested the claim petition, therefore, they have not appeared in the witness box to rebut the evidence. The learned Tribunal should have allowed the application filed by the Insurance Company under Section 170 of the Act. It is also the argument of learned counsel that the driver was driving the bus but he was holding a licence to drive heavy goods vehicle, whereas, as per Section 3 of the Act, it is mandatory for a driver to have an endorsement for driving a transport vehicle in case he is to drive a transport vehicle. Learned counsel also submits that the bus falls within the ambit of a transport vehicle, therefore, there was necessity of getting endorsement as required under Section 3 of the Act. The annual income of the deceased was assessed ₹3 lacs by relying upon Ex. P-1, whereas, that document was not duly proved. Even PW-3, who produced the said document has admitted in his cross-examination that the said document was not prepared and signed by him and it was prepared in his absence. There was no evidence on record to prove that the deceased was working as Director of Victory Marvel Seeds India Pvt. Ltd. At the end, learned counsel for the Insurance

Company submits that the claimants have miserably failed to prove that there was any negligence on the part of the driver of the bus. Only on the basis of lodging of the FIR against the driver, no presumption could be drawn that he was negligent. Learned counsel has also relied upon the judgments of Hon'ble the Apex Court in the case of **Chikkamma and another Vs. Parvathamma and another** (Civil Appeal No. 3409 of 2017 decided on 28.2.2017), of Madras High Court in the case of **The Oriental Insurance Co. Ltd., Tuticorin Vs. Petchi Muthu Asari and others** 2000 (1) ACC 156 and of Karnatka High Court in the case of **United India Insurance Co. Ltd. Vs. Dhanalakshmi and others** 1998 ACJ 715, in support of his contentions.

I have heard the arguments advanced by learned counsel for the parties and have also gone through the impugned award and other documents available on the file.

Facts relating to filing of claim petition and grant of compensation to the claimants to the tune of ₹26,10,000/- by the Tribunal are not disputed. Being aggrieved by the award passed by the Tribunal, the claimants as well as insurance Company have filed separate appeals. Learned counsel for the claimants-appellants submitted that the compensation awarded is inadequate as the same has not been awarded keeping in view the age, salary and deduction of the deceased. The compensation has not been awarded under different heads. The insurance Company has challenged the awarded passed by the Tribunal on the ground that the salary certificate and even the negligence on the part of the driver of the offending vehicle has not been proved. The driver of the offending vehicle was not possessing valid driving licence as there was no

endorsement of heavy transport vehicle.

The issues for consideration before this Court are firstly; as to whether the driver of the offending vehicle was possessing valid driving licence or not and secondly; whether the claimants were entitled for compensation by applying the multiplier as has been laid down in **Sarla Verma's case (supra)** and that the amount of consortium, future prospects and love and affection should be enhanced as per ratio of judgment of **Rajesh's case (supra)** or not.

The driving licence possessed by the driver of the offending vehicle was proved as Ex. R3 for driving HGV (Heavy Goods Vehicle) only whereas, argument of learned counsel for Insurance Company is that the bus was having gross vehicle weight of 14860 Kg and was a HTV (Heavy Transport Vehicle) and, therefore, the driver was not competent and authorised to drive the bus in question as per terms and conditions of the insurance policy Ex. R5.

Before proceeding further, it would be relevant to mention the relevant provisions of Act.

Section 2 (15) “**gross vehicle weight**” means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permission for that vehicle.

Section 2 (16) “**heavy goods vehicle**” means any goods carriage the gross vehicle weight of which or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms;

Section 2 (17) “**heavy passenger motor vehicle**” means any

public service vehicle or private vehicle or educational institution bus or omnibus the gross vehicle weight of any of which, or a motor car the unladen weight of which, exceeds 12,000 kilograms.

Section 2 (35) “**public service vehicle**” means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage;

Section 2 (47) “**transport vehicle**” means a public service vehicle, a goods carriage, education institution bus or a private service vehicle.

Sub Section 10 of Section 2 of the Act has described the definition of expression “**driving licence**”, which is as under:-

“(10) '**driving licence**' means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than a learner, a motor vehicle or a motor vehicle of any specified class or description.”

In order to resolve the controversy in hand, the definition of driver is also necessary to be described as defined under sub section 9 of Section 2 of the Act, which is reproduced as under:-

“ '**driver**' includes, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle.”

On conjoint reading of aforesaid two definitions, it could be noticed that the driver would include a steersman of the vehicle but the driving licence is to mean as obtained by him and issued by the competent

authority under Chapter II authorising the persons specified therein other than a learner to drive a motor vehicle of any specified class. Chapter II of the Act refers to licensing to drivers of motor vehicles. Under Section 3 of the Act, it is mandatory that before a motor vehicle can be driven, the driver must have a driving licence. The driving licence has to be with respect of the particular type of vehicle, which is to be driven. It is clear from the expression, occurring under Section 3 which states 'authorising him to drive the vehicle'. Section 3 in this regard is reproduced as under:-

“Necessity for driving licence – (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle' and no person shall so drive a transport vehicle (other than a motor cab or motor cycle hired for his own use or rented under any scheme made under sub Section (2) of Section 75) unless his driving licence specifically entitles him to do so.

(2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.

The conclusion as could be drawn from the reading of the aforesaid provisions is that the licence has to be with respect to drive a specified vehicle of any specified class or description.

Notwithstanding the aforesaid provisions entitling the authorities to provide a licence for a specified vehicle but it is often seen that the drivers are either authorized to drive different types of vehicles are also issued licences authorizing the drivers to drive light motor vehicles,

medium motor vehicles or heavy motor vehicles. The licences are divided into three categories i.e. one light motor vehicle, second heavy motor vehicle and third medium Motor vehicle. The light motor vehicle was defined as transport vehicle or omnibus, the gross vehicle weight of either of which or a motor car or tractor or road roller does not exceed 7,500 kilograms. Thus, the light motor vehicle included both motorcycle, car or a tractor . As such, it includes light transport vehicle also. In nutshell it can be concluded that if driving method and mechanism of the vehicle which he was driving is the same as that of which he was holding a valid driving licence then the validity of such licence for the former vehicle cannot be challenged. Similar question came up for consideration before the Full Bench of this High Court in case ***National Insurance Company Limited vs. Parveen Kumar 2005ACJ 1178 (P&H)*** wherein their lordships while dealing with the similar controversy had observed as under:-

“We may, however, hasten to add that the insurance company cannot be absolved of its liability to pay the compensation by simply pleading that the licence granted to the driver being for one class or description of vehicle but the vehicle involved in the accident was of different class or description, unless it is proved that the cause of the accident was the licence granted to the driver being for one class or description of vehicle but the vehicle involved in the accident was of different class or description. The observations made by the Supreme Court presuppose that if the driver was driving a vehicle, of which he might not be holding licence as such, but was holding a driving licence of a different description of vehicle and the driving

method of both the vehicles, for which licence was obtained and the one which was being driven, was the same and when even the mechanism of the vehicle is also same, the defence projected by insurance company with regard to the driver not possessing requisite type of licence could be of no avail to it.”

In the aforesaid Full Bench judgment, this court has also followed the ratio of a judgment of Hon'ble Supreme Court rendered in **National Insurance Co. Ltd. v. Swaran Singh and others AIR 2004 SC 1531**, wherein the Supreme Court while considering various objections raised by the company in support of violations qua driving licences, observed as under:

“That the cases may also arise where holder of driving licence for 'light motor vehicle' is found to be driving a 'maxicab' 'motorcab' or 'omnibus' for which he has no licence. In each case on evidence led before the Claims Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.”

In the present case, the driver of the offending vehicle was holding a driving licence for driving HTV. The mechanism of driving

heavy goods vehicle and heavy passenger motor vehicle i.e. the bus in the present case is the same. In absence of any endorsement to drive heavy transport vehicle i.e. bus on the driving licence Ex. R3 of driver of the offending vehicle, the insurance company cannot be exonerated from its liability. Similar view was taken by this Court in the case of **The New India Assurance Company Limited Vs. Mahender Singh and others** 2010 (1) RCR (Civil) 934 and Full Bench of this Court in case of **National Insurance Company Limited Vs. Parveen Kumar and others** 2005 (1) RCR (Civil) 485. In another judgment in the case of **National Insurance Company Ltd. Vs. Shankarlal and another** 2005 (1) RCR (Civil) 550, Madhya Pradesh High Court (Indore Bench) while following the observations made by Hon'ble the Apex Court in the case of **National Insurance Company Limited Vs. Swaran Singh** 2004 (2) RCR (Civil) 114 (SC) has held that a person holding a licence to drive "light motor vehicles" as defined under Section 2 (21) has the authority to drive a transport vehicle of the description given therein meaning thereby that any person, who is having a licence under Section 10 of the Act to drive the light motor vehicle would be deemed to have the authority to drive transport vehicle not exceeding 7500 kgs in weight. Such a transport vehicle can also be a public service vehicle as defined in Section 2 (35) of the Act. The insurance company cannot be exonerated from its liability under Section 149 (2) (a) merely on the ground that the licence does not bear the endorsement required by the later part of Section 3 of the Act. It would not be a breach of the condition specified in Section 149 (2) (a) (ii). It was also held that lack of the endorsement on the licence would not render the person holding a valid licence as a person who is not duly licensed.

In the present case also, the driver of the offending vehicle was holding driving licence for HGV (Heavy Goods Vehicle), whereas, he was driving the Heavy Transport Vehicle i.e. bus and it would be considered as a valid driving licence.

Relating to second issue, it is to be seen as to whether the multiplier has rightly been applied or not. The deceased was 43 years of age as mentioned in pan card Mark C, driving licence Mark D. The claimants have also produced Form Nos. 2 D Exs. P9 and P10, wherein also, date of birth of the deceased was mentioned as 23.1.1968. An objection was raised by counsel for the Insurance Company that the age of the deceased was 40 years as mentioned in the post mortem report. Learned Tribunal finding no rebuttal to the evidence of the claimants regarding age considered the age of the deceased to be 43 years at the time of accident. As per award passed by the Tribunal, the multiplier of 13 has been applied, whereas, as per ratio of judgment in **Sarla Verma's case (supra)**, for the age group of 41 to 45 years, the multiplier of 14 should have been applied. The claimants were held entitled for a sum of ₹10,000/- towards consortium, transportation of dead body and last rights of the deceased, whereas, as per ratio of judgment in **Rajesh's case (supra)**, the claimants are held entitled for an amount of ₹1 lac toward consortium, ₹25,000/- towards funeral expenses and ₹1 lac towards love and affection and care for children.

However, keeping in view the submissions made by learned counsel for Insurance Company and the fact that the salary certificate of the deceased was not proved and moreover that adequate compensation has been awarded under different heads, no inference is required towards future prospects. Accordingly, the appeal filed by the Insurance Company is

dismissed. The appeal filed by the claimants is allowed by modifying the award passed by the Tribunal to the extent that a multiplier of 14 should be applied instead of 13. The claimants are held entitled for an amount of ₹1 lac toward consortium, ₹25,000/- towards funeral expenses and ₹1 lac towards love and affection and care for children.

The insurance company is directed to release the enhanced amount of compensation to the claimants within a period of two months from the date of receipt of certified copy of the order. In case the enhanced amount is not released to the claimants within the specified period, the claimants shall be entitled for interest at the rate of 9% per annum on the enhanced amount.

20.3. 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes