

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**FAO No.1082 of 2013 (O&M)
Date of Decision: 28.07.2017**

Bimla and others

..Appellant(s)

Versus

Dilbagh Singh and others

..Respondent(s)

with

FAO No.1377 of 2013 (O&M)

Parkash Singh Bhinder

..Appellant(s)

Versus

ICICI Lombard General Insurance Co. Ltd. and others

..Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Ram Bilas Gupta, Advocate
for the appellants in FAO-1082-2013.

Mr. Deepak Sabherwal, Advocate
for the appellant in FAO-1377-2013 and
for respondent no.2 in FAO-1082-2013.

Ms. Vandana Malhotra, Advocate
for the respondent-insurance company.

ANITA CHAUDHRY, J.

**CM No.15445-CII-2017in
FAO No. 1082 of 2013**

This is an application for impleading the LRs of deceased

Bimla. The application is allowed. The name of appellant no.1 is

deleted. As the remaining legal heirs of Kehar Singh are already on record. The appellants are the sons and daughters of Kehar Singh deceased. The widow has since died.

MAIN APPEALS:-

These are two appeals arising out of the award dated 08.11.2012, passed by the Motor Accident Claims Tribunal, Palwal. One appeal has been filed by the claimants seeking enhancement and the other by the owner against the recovery granted to the insurance company.

Kehar Singh was 40 years old and was stated to be running his business under the name and style of M/s. Chaudhary Kehar Singh Pehlwan and dealing in the business of fruits, vegetables and food-grains as Commission Agents in Sabji Mandi and New Anaj Mandi, Hodal. He was also stated to be running a liquor vend at Mundka Border, Mewat. His income was stated to be Rs.30,000/- per month. It was pleaded that he was income-tax assessee for the year 2003-2004. Kehar Singh died in the accident which occurred on 15.08.2008. The Tribunal on the basis of the oral statement and the documents which were produced held that the claimants had failed to prove the income and assumed the income to be Rs.3,500/- per month as that of a labourer and allowed 30% increase towards future prospects and made a deduction of 1/4th and applied the multiplier of 14 to assess the compensation at Rs.5,73,300/-. A sum of Rs.10,000/-

was added for loss of consortium, Rs.10,000/- was added for loss of estate and Rs.10,000/- was added for funeral expenses, raising the total to Rs.6,03,300/-.

On the issue of the driving licence, it noted that the driving licence Ex. R-2 was tendered by the driver, which was got verified by the insurance company and found to be fake and subsequently another driving licence was introduced by the owner. It referred to Section 6 of the Motor Vehicle Act and also noticed that respondent no.1 was not a resident of West Bengal and therefore, the second driving licence Ex.R-8 could not be considered and gave recovery rights to the insurance company.

Arguments had concluded on 4th July 2017. But thereafter, the counsel for the appellants-claimants mentioned that appellant no.1- Bimla and one more appellant had died and the case was adjourned to get the death certificates and file the amended memo of parties. The counsel for the claimants-appellants failed to file the amended memo of parties or the death certificates and sought more time and the case was adjourned to 26.07.2017. The appellants instead of filing the amended memo of parties has filed an application for additional evidence and to place on record the income-tax return for the year 2005-2006 and receipt/form J. Another application (CM No.15445-CII-2017) had been filed to implead the LRs of Bimla.

Counsel for the insurance company has stated that she would make oral submissions with respect to the prayer made for additional evidence and there is no provision for filing an application for additional evidence after the arguments have been led.

I have heard counsel of both the sides.

Beginning the arguments, the counsel for the claimants urged that Kehar Singh was a Commission Agent and his death was reported in the newspaper. The counsel had referred to Annexure P-3. Counsel further submitted that a liquor vend had been allotted to the deceased for the year 2008-2009 and this fact can be seen from the report made on the summons Ex.PX. The counsel also referred to the photograph Mark-A to show the signboard on a shop and Mark-B Form 45-A to show that there was a deposit of license fee. Counsel for the appellants further submitted that they could not produce the documents earlier and they may be permitted to tender Form J and the copy of the ITR submitted by Kehar Singh for the year 2005-2006.

The submission on behalf of the insurance company is that photocopies of Form J have been appended along with the application which does not even give the parentage of the person who had sold the goods to a Commission Agent and it is contrary to the plea taken by the claimants as on one hand their plea is that the deceased was a Commission Agent whereas photocopies of Form J are being produced to show that Kehar Singh was selling goods with a

commission agent. The counsel further submits that the claimants had mentioned in their claim petition that income tax return had been filed and there is no explanation why they could not produce the relevant record or summon the record from the income-tax office to prove the income and the photocopy of the ITR placed on record did not bear the stamp of the income-tax office nor it was certified and could not be considered. The counsel further submits that if the income of a labourer was taken there could be no addition towards future prospects and the income which the Tribunal had taken can be taken to be the income which is higher than the minimum wages.

It would be appropriate to deal with the appeal **(FAO-1082-2013)** filed by the claimants first. The claimants are seeking a higher compensation and their plea is that the income assessed was on the lower side. The age of the deceased was mentioned as 40 years and he was stated to be earning Rs.30,000/- per month. To prove the income, the claimants produced a newspaper reporting to show that the deceased was President of the Commission Agents and a report made on the back of summons. The record keeper of the Excise & Taxation Office was summoned with the record relating to a liquor vend which was stated to have been allotted to Kehar Singh for the year 2008-2009. It appears that the claimants did not examine any witness and were only relying upon a report made on the back of the summons which says that a liquor vend was allotted to Kehar Singh. The third

piece of evidence was a photograph Mark-A, which has a signboard over a shop saying that he (Kehar Singh) was a commission agent and lastly Mark-B a photocopy of the challan Form No.45-A. Neither the news item in a local newspaper nor the report made on the back of the summons or the photographs can be used as a evidence. Two documents were marked which could not be considered. Even if we consider Mark-B, a perusal thereof would show that some amount has been deposited on 19 September 2008 i.e. after the death of Kehar Singh and it is not clear whether this relates to him or some other Kehar Singh as the report on the back of the summons does not give the parentage. Since Kehar Singh had died, therefore, the license would have been cancelled and could not have been allotted to him. So the documents are suspicious or report was managed. The appellants had moved an application after the arguments had concluded and they want to place a copy of the ITR for the year 2005-2006. It is a un-certified photocopy and it is not clear whether it was ever filed, therefore, it cannot be considered. With respect to J Forms produced by the appellants, they entirely demolish the case set up by the claimants. On one hand it was pleaded that he was a Commission Agent and the J Forms show that one Kehar Singh had been selling goods to the Commission Agents. If the J forms relate to him, it would also mean that he owned land. These documents contradict the stand of the claimants.

There is no explanation at all as to why these documents could not be filed before the Tribunal. The appellants did not even file an application for additional evidence, though the appeal was pending for the last nine years. It is only after the arguments had concluded an adjournment was sought to verify the death of one of the appellants then this application had been moved. The case does not fall under any of the conditions provided in Order 41 Rule 27 CPC, therefore, the documents cannot be accepted, firstly they are not authenticated and secondly they do not appear to be genuine and are in contradiction to the stand of the claimants. The application is dismissed.

The Tribunal had taken the income of the deceased as Rs.3,500/- per month, which was the minimum wages. It allowed an increase of 30% towards future prospects. In the case of a self-employed or even where the person was a labourer, there could be no addition towards future prospects. The matter is pending before the Larger Bench. After the addition of 30% the income was taken as Rs.4,550/-. In July 2008 the minimum wages stood at Rs.3,668/- per month instead of Rs.3,500/- per month. There is no appeal by the insurance company so the amount is not being changed. If the actual minimum wages are taken and after adding the increase of 30%, the income would be Rs.4,768/- and after making a deduction of 1/4th the income can be taken as Rs.3,576/- and the compensation would be $\text{Rs.}3,576 \times 12 \times 14 = 6,00,768/-$. The widow of Kehar Singh has since died, the claimants are the major sons and daughters, therefore, there

can be no addition for loss of consortium. A sum of Rs.25,000/- is added for funeral expenses and Rs.25,000/- is added for loss of estate, which raises the total to Rs.6,50,768/-, which would be payable to the appellants in equal share.

The question now arises as to who has to pay the amount. The counsel appearing for the appellant in **FAO-1377-2013** placed implicit reliance upon ***Sant Baba Labh Singh Vs. Santto 2008(3) RCR (Civil) 210*** and the counsel had referred to the judgments referred therein and had urged that the employer had stepped into the witness box and had made a statement that while acquiring the services of the driver he had satisfied himself and had seen the licence and had taken the driving test to his satisfaction and he was not expected to get the driving licence verified and the in-validity of the licence would not be a breach of the policy condition and it is the insurance company who has to satisfy the award. It was urged that a valid license Ex.R8 was tendered in evidence by the owner and there is no report that it was fake.

The counsel appearing for the insurance company urges that a fraud has been played not only with them but also on the Court. The counsel submitted that the driver himself through his counsel had tendered in evidence licence Ex.R2. The counsel has referred to the statement of the counsel which is available on the record of the trial Court and pointed out that thereafter, they sent the licence for

verification and examined Anal Bihari Sahay RW-1 on 03.05.2012.

The counsel submitted that the licence Ex.R2 was tendered by the counsel representing both the owner and driver on 24.11.2011 and after verification the Licensing Clerk, Mathura had deposed that the licence which stood at the number which is given in Ex.R2 is in the name of Ritu Srivastav and not Dilbag Singh. The counsel submitted that thereafter, the owner stepped into the witness box and produced another licence and a verification and official inspection certificate but in the cross-examination he contradicted himself. The counsel submitted that the licence which was produced by the owner was issued about a month prior to the accident and it is issued from West Bengal and Dilbag Singh had never resided in West Bengal and the transport vehicle is never issued for six years. The counsel submits that a person cannot have two driving licences and the second licence had been managed. Reliance was placed upon ***Paramjit Kaur and others Vs. Nahar Singh and others FAO-8848-2014 D/d. 21.2.2017 (P&H).***

The accident had taken place on 15.08.2008. The counsel representing the owner and driver tendered in evidence driving licence Ex.R2 on 24.11.2011. The insurance company got that driving licence verified and summoned the Licensing Clerk from Mathura and evidence was clear that the driving licence was fake as the driving licence issued by the Authority was in the name of Ritu Srivastav,

resident of Mathura. The driver Dilbag Singh is a resident of Gwalior, Madhya Pradesh. The statement of the Licensing Clerk was recorded on 03.05.2012. Thereafter, the owner stepped into the witness box and submitted another driving licence Ex.R8, which was issued on 16.07.2008 from West Bengal, showing the residence of Dilbag Singh to be at Barasat, West Bengal. According to it the driver could drive a medium goods vehicle, a heavy goods vehicle and a transport vehicle. The owner also stated in the cross-examination that he had appointed the driver in the year 2007. According to him he had verified the licence which was produced by the driver but it is clearly a case where the owner has made a false statement. If the driver was engaged in the year 2007 the driver could not have shown him a licence which was issued in July 2008. The owner then improved his statement when he realized that he was caught and in the later part of the statement he stated that he appointed the driver 20 – 25 days before the accident. It is also relevant to note here that though the evidence of respondents no.1 & 2 had been closed by the counsel but the witness appeared and made a statement only after an application for additional evidence was moved. It is clearly a case of cover-up. The driver had already produced his driving licence and finding the same to be fake, the owner stepped in and produced another driving licence which was never owned up by the driver. Section 6(1) of the Motor Vehicle Act, 1988 provides that no person can hold more than one licence. The

language is clear. It appears that the second licence was procured to wriggle out of the liability which was coming upon them. The Court cannot accept such malpractices and it has to be dealt with a strong hand. The driver did not have a valid driving licence. The licence which was presented was fake, therefore, the insurance company was rightly given recovery rights. There is no reason to differ with the finding. The appeal filed by the owner **(FAO-1377-2013)** is dismissed. The appeal filed by the claimants **(FAO-1082-2013)** is partly allowed and is modified to the extent noted above.

July 28, 2017

sunil

**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No