IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. Date of Decision: 15.11.2017

FAO No.2155 of 2013 (O&M)

The New India Assurance Company Limited

...Appellant(s)

Versus

Harinder Kumar @ Seema Rani and others

...Respondent(s)

2. FAO No.3211 of 2013 (O&M)

Harinder Kumar @ Seema Rani and others

...Appellant(s)

Versus

Malkiat Singh and others

...Respondent(s)

CORAM:-HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. D.K. Prajapati, Advocate for
Mr. R.S. Madan, Advocate
for the appellant(s) (in FAO-2155-2013) and
for respondent No.3 (in FAO-3211-2013)

FAO-2155-2013 dismissed *qua* claimants/respondents No.1 to 5 (*vide order dated 21.11.2014).*

Mr. J.S. Cooner, Advocate
for the appellants/claimants (in FAO-3211-2013)

None for owner and driver.

<u>ANITA CHAUDHRY, J.</u>

These are two appeals one filed by the Insurance Company and the other filed by the claimants against award both dated

27.02.2013 passed by the Motor Accident Claims Tribunal, Tarn Taran.

The second appeal is by the claimants seeking enhancement in the compensation.

Hira Singh was a constable with Punjab Police. He met with an accident on 26.01.2008. His carry home salary of Rs.14,000/- was taken into account and after deducting the income tax of Rs.2800 and GIS of Rs.1500, the income was taken as Rs.9700/- and after applying a deduction of $1/4^{th}$ and multiplier of 15, the compensation was calculated at Rs.13,09,500/-. To this Rs.5000/- was added for loss of consortium, Rs.2,000/- for loss of funeral expenses and Rs.2500/- for loss of estate. The total claim of Rs.13,19,000/- was allowed.

The submission on behalf of the Insurance Company is that driver Malkiat Singh was a resident of Hoshiarpur and they had moved an application before the Tribunal for sending the licence for verification and the verification report (Ex.R-1) was received directly by the Court which was introduced in evidence but the Tribunal had failed to even refer to it when the report was clear that the licence was fake. It was urged that Section 9 of the Motor Vehicles Act requires that the licence should be obtained from the place of ordinary residence whereas the licence was obtained from Cuttack and there was no evidence that the driver had ever worked in Cuttack. It was urged that the Court gave no finding and it failed to even deal with this evidence and they were entitled to recovery rights.

The submission on behalf of the claimants is that the last pay certificate would show that the total income was Rs.18,526/- and since he was a permanent employee, an addition of 50% should have been made towards future prospects as the deceased was only 34 years old and the multiplier of 15 has been wrongly applied and the multiplier applicable should be 16.

No one has appeared for the owner or driver. There was no appearance even on the last of hearing.

The perusal of the record shows that an application had been filed by the Insurance Company urging the Court to call for the verification report regarding the genuineness of the driving licence from the DTO concerned. A letter was sent in response to that report (Ex.R1) was addressed to the Court and it was reported that no licence had been issued in the name of Malkiat Singh and licence bearing No.8640 had not been issued to anybody as the total number of licence issued in that year were only 5477 and the licence was fake.

The Tribunal completely ignored the evidence available on record. It had shut its eyes to the evidence led by the Insurance Company. It is the same officer who had called for the report but choose to ignore the same at the stage of final arguments.

The driving licence was fake, therefore, the Insurance Company was entitled to recovery rights from the owner-driver.

As regards the quantum, the last pay certificate given shows that the total salary was Rs.18,526/- and if an addition of 50% is made, the income would come to Rs.27,789 rounded to Rs.27,800/- making a deduction of 1/4th, the amount available for the family would be Rs.20,853/- and the total compensation would be Rs.20,853x12x16, the compensation would came to Rs.40,03,776/-. To this a sum of Rs.15,000/- for loss of estate, Rs.15,000/- for funeral expenses, Rs.40,000/- for loss of consortium are allowed. The total compensation would be Rs.40,73,776/- minus income tax.

The Tribunal had allowed Rs.13,19,000/- which would be deducted and the remaining amount would be payable with interest @ 6% by the Insurance Company and, thereafter, they can recover the same from the owner-driver.

The appeal filed by the Insurance Company is allowed.

The appeal filed by the claimants is partly allowed.

November 15, 2017 **(ANITA CHAUDHRY)**
ps-I **JUDGE**

Whether Reasoned/Speaking **Yes/No**

Whether Reportable **Yes/No**