IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 27.10.2017

1. FAO No.3934 of 2013 (O&M)

Ranjana Devi & others ...Appellants

Versus

Jaspinder Singh and others ...Respondents

2. FAO No.1088 of 2013 (O&M)

Jaspinder Singh and another ... Appellants

Versus

Bharti AXA General Insurance Co. Ltd. and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Mohit Kakkar, Advocate Advocate for the appellants in FAO No.3934 of 2013
and private respondents in FAO No.1088 of 2013

Mr.Bhupinder Ghai, Advocate for respondents no.1 and 2 in FAO No.3934 and appellants in FAO No.1088 of 2013

Mr.Sanjeev Goyal, Advocate for respondent-Insurance Company

<u>RAJIV NARAIN RAINA, J.</u>

1. This order will dispose of FAO Nos.3934 and 1088 of 2013 as the same arise out of a common award dated 15th December, 2012 passed by the Motor Accident Claims Tribunal, Ambala.

2. FAO No.3934 of 2013 has been filed by the claimants/appellants seeking enhancement in the compensation awarded by the Tribunal. The

claimants/appellants in this appeal are the widow, two daughters and one son of late Kewal Krishan who died on the spot in a fatal road accident. FAO No.1088 of 2013 has been filed by the Jaspinder Singh, driver and Haneet Jakhar, owner of the offending vehicle for setting aside the award passed by the Tribunal.

3. A few facts may be noticed. Deceased Krishan Kumar alongwith his younger brother was on way towards Baldev Nagar on foot on the left side of the road towards their house in village Mandhaur. When they reached near a Seat Cover factory on the Ambala-Chandigarh highway, a Toyota Innova bearing Registration No.CH-03U-0477 driven by Jaspinder Singh at highway speed came from the side of Chandigarh and crushed Krishan Kumar veering towards him perilously. Hit by the offending vehicle on the road, he fell down and suffered multiple simple and grievous injuries and succumbed to them on the spot. FIR was registered at Police Station Baldev Nagar. Deceased Krishan Kumar was aged about 43 years at the time of death.

4. The claim petition was brought and on service of summons was contested by the respondents. Respondents, driver and owner of the offending vehicle denied the occurrence of the accident involving the aforesaid Toyota Innova Car. However, they pleaded in the alternative that the Insurance Company is liable to pay the compensation, in any case.

5. The Tribunal, after appreciating the evidence on record, allowed the claim petition in favour of the claimants and against the driver and the owner of the offending vehicle.

6. The Tribunal assessed the income of the deceased at ₹ 4500/- per month and calculated the annual contribution of the deceased towards the claimants at ₹ 40,500/- and accordingly a multiplier of 13 was applied. The Tribunal awarded total compensation to both claimants/appellants at ₹ 5,26,500/-

to the claimants/appellants as also father of the deceased who is not appellant in this appeal. Additionally, a sum of ₹ 10,000/- was awarded towards transportation of the dead body and funeral expenses. And in addition a sum of ₹ 10,000/- was awarded to claimant no.1 towards loss of consortium and ₹ 10,000 towards loss of estate and ₹ 10,000/- towards non-pecuniary damages. Total amount of compensation awarded by the Tribunal came to ₹ 5,66,500/-, out of which amount of ₹ 2,66,500/- was ordered to be paid to claimant/appellant no.1 and an amount of ₹ 75,000/- each was ordered to be paid to the claimants no.2 to 4 and 6

7. I have heard learned counsel for the parties and have with their assistance perused the paper-book. The factum of accident is admitted and proven by evidence. The deceased died as a result of the accident. In the facts and circumstances of this case, in order to serve the ends of justice, the compensation is hereby re-assessed, in view of the judgments of <u>Asha Verma and others v. Maharaj Singh and others</u>, 2015 (2) RCR (Civil) 520, <u>Sarla Verma and others v. Delhi Transport Corporation and another</u>, 2009 (3) RCR (Civil) 77, <u>Munna Lal Jain and another v. Vipin Kumar Sharma and others</u>, 2015 (3) Recent Apex Judgments 459, <u>Kalpanaraj and others vs. Tamil Nadu State Transport Corporation</u>, (2015) 2 SCC 764 and <u>Sandhya Rani Debbarma and others vs. National Insurance Company Ltd. & Anr</u>., 2016 (4) RCR (Civil) 465. Learned counsel for the appellants/claimants has produced a chart reproduced below. On a due consideration of the matter, the compensation is re-assessed as under:-

Sr. No.	Heads	Calculations
1.	Income	₹ 4500/- per month
2.	After 30% increase	₹ 5850/- per month.
3.	After ¼ deduction	₹ 5850-1463= 4387

4.	Compensation	₹ 4387 x 12 x 13= 6,82,968
5.	Loss of Consortium	₹ 1,00,000/-
6	Loss of Estate	₹ 1,00,000
7.	Loss of Love and affection to all the three children	₹ 1,00,000 x 3= 3,00,000/-
8.	Loss of love and affection to mother	₹ 50,000
9.	Non-pecuniary damages	₹ 25,000/-
10.	Funeral expenses	₹ 25,000
	Total compensation	₹ 12,82,968
	Compensation already awarded to the claimants by the Tribunal	₹ 5,66,500
	Total Enhanced compensation payable to the claimants	₹ 12,82,968 - 5,66,500= ₹ 7,16,468

8. The enhanced amount of compensation of ₹ 7,16,468/- shall be deposited before the learned Tribunal within three months from the date of receipt of a certified copy of this order and thereafter within fifteen days, the same will be paid to the claimants. The enhanced amount of compensation excluding the amount on funeral expenses shall also carry interest @ 8 % per annum from the date of filing of claim petition till its realization, in view of judgment of this Court in the case of Jasvir Kaur and Another Versus Budh Singh and Others, 2015 (3) RCR (Civil) 235. Respondent-Insurance Company is

directed to first pay the enhanced amount to the claimants and then recover the same from the respondent driver and owner of the offending vehicle.

9. So far as the appeal filed by the driver and owner of the offending vehicle is concerned, the Tribunal has rightly observed against them that the driver was not holding a valid and effective driving licence authorizing him to drive a Toyota Innova at the time of the accident. The owner of the vehicle was held by the Tribunal, to have committed breach of the terms and conditions of the Insurance policy by allowing the vehicle to be driven by the driver without license. However, the offending vehicle was insured with the respondent-Insurance Company. The only contention raised by the appellants, i.e. the driver and owner of the offending vehicle is that the driver held two valid driving licences at the time of the accident. The Tribunal has dealt with this issue in detail. The Tribunal observed that the driver was possessed two driving licences. Driving licence Ex.R3 was for motor cycle without gear/motor cycle scooter/car/jeep/tractor and driving licence Ex.R2 was with regard to MCWG and LMV. At the time of accident, the driver was found to be in possession of driving licence Ex.R3 which was taken into possession by the police at the time of arrest of the driver. The Tribunal having placed reliance on a number of the judgments, observed that the first driving licence of the driver authorising him to drive motor cycle without gear/motor cycle/scooter/car/jeep/tractor cannot be said to be valid for driving of offending vehicle i.e. Toyota Innova. The Tribunal having quoted the provisions of Section 6 (1) and Section 9 (7) of the Motor Vehicles Act, 1988 held that only one driving licence can be possessed by a driver and the provisions of the Act provide the manner in which the licence has to be upgraded from a light motor vehicle to heavy transport vehicle. The Tribunal found the contentions of the driver and owner of the offending vehicle untenable. The Tribunal held the second driving licence (Ex.R2) possessed by the

driver having been issued subsequently after issuance of driving licence Ex.R3, as illegal and invalid for all practical purposes. Thus, the driver was not with a valid and effective driving licence authorizing him to drive the Toyota Innova at the time of the accident and accordingly the owner was held to have committed breach of the terms and conditions of the policy by handing over the vehicle to the driver who was not armed with valid and effective driving licence. In these circumstances, I find no merit in the appeal filed by the driver and the owner of the offending vehicle.

10. Consequently, FAO No.3934 of 2013 filed by the claimants is partly allowed and the impugned award stands modified to the above extent. However, FAO No.1088 of 2013 filed by the driver and owner of the offending vehicle stands dismissed.

(RAJIV NARAIN RAINA)
JUDGE

27.10.2017
MFK

Whether speaking/reasoned *Yes*

Whether Reportable *No*