IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4183 of 2013 (O&M)
Date of decision: 29.09.2017

Mahal Singh ...Appellant

Versus

Bhim Singh @ Bhima and others ...Respondents

FAO No.5315 of 2012 (O&M)

Bhim Singh @ Bhima and others ...Appellants

Versus

Jagtar Singh and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ashok Goel, Advocate
for the appellant in FAO No.4183 of 2013 and
for respondent No.2 in FAO No.5315 of 2012.

Mr. Saurabh Garg, Advocate
for the appellants in FAO No.5315 of 2012 and
for respondents No.1 to 4 in FAO No.4183 of 2013.

Mr. Hardeep S. Dhillon, Advocate for
Mr. Baldev S. Dhillon, Advocate
for respondent No.1 in FAO No.5315 of 2012 and
for respondent No.5 in FAO No.4183 of 2013.

Mr. Suman Jain, Advocate
for respondent No.6 in FAO No.4183 of 2013 and
for respondent No.3 in FAO No.5315 of 2012.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.5315 of 2012 and 4183 of

2013 as these have emerged out of the same award dated 18.11.2011 passed by the Motor Accidents Claims Tribunal, Kaithal.

FAO No.5315 of 2012 has been filed by the claimants seeking enhancement of compensation whereas FAO No.4183 of 2013 has been filed by Mahal Singh, owner of Tempo/Canter No.HR-46A-3524 (hereinafter to be referred as 'the offending vehicle'). The parties shall be referred to as the claimants, owner and insurance company, for facility of reference.

FAO No.4183 of 2013

The owner of the offending vehicle has filed the appeal on the limited issue qua findings on driving licence possessed by Jagtar Singh, driver of the offending vehicle on the basis whereof, the insurance company has been given right of recovery after satisfying the award towards the claimants.

Counsel for the owner would submit that the Tribunal has relied upon verification report Ex.R7 in order to arrive at the conclusion that Jagtar Singh was not possessing valid licence to drive the vehicle in question at the relevant time. He has assailed findings of the Tribunal primarily on two grounds. The first submission made by counsel is that the Tribunal has altogether ignored report Ex.R6 issued by licensing authority Mathura whereby vide letter dated 12.10.2010, the said authority issued no objection certificate for renewal of driving licence No.12368/MTR/03 on 01.09.2003. In addition, it is argued that particulars of driving licence given in the report Ex.R6 exactly tally with the driving licence Ex.R1 possessed by Jagtar Singh. Another submission made by counsel is that the report Ex.R7 relied upon by the insurance company has not been proved in accordance with law either by examining the surveyor and loss assessor who has addressed this letter to the Senior Branch Manager, The National Insurance Company Ltd., Mathura much less examining a witness from the said authority on the basis of record that licence in question was not issued in the name of Jagtar Singh son of Bahadur Chand.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal in view of observations recorded in Para No.21 of the award.

I have heard counsel for the parties, perused the paper book and the records.

It is undisputed position of the case that the insurance company has not examined any witness to prove the report Ex.R7. Counsel representing the insurance company tendered into evidence copy of investigation Ex.R7 and certificate of licensing authority Mathura Ex.R8 and policy Ex.R9 but Ex.R7 and Ex.R8 were specifically objected to by the opposite counsel. The learned Tribunal recorded its finding in Para No.21 of the award by totally ignoring the document Ex.R6 and further placing reliance upon copy of investigation Ex.R7 which was objected to by the opposite counsel. The insurance company neither examined a representative from the concerned licensing authority nor the investigator to prove report Ex.R7 with an opportunity to the claimants and owner of the vehicle to cross examine the witness. Under the circumstances, it can be safely held that the insurance company failed to discharge the onus that driver of the offending vehicle was not possessing a valid driving licence at the time of occurrence, constituting a defence under Section 149 (2) of the Motor Vehicles Act, 1988. In this view of the matter, findings recorded by the Tribunal on issue No.3 in favour of the insurance company cannot be allowed to sustain and accordingly set aside. The insurance company shall be liable to pay compensation to the claimants in order to indemnify the insured, in terms of policy Ex.R9.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

FAO No.5315 of 2012

The Tribunal assessed compensation of Rs.1,69,800/- with regard to death of Sunehari Devi in a motor vehicular accident that took place on 21.05.2009, detailed hereunder:-

Income of the deceased	Rs.1575/- per month
Deduction for personal expenses	1/3rd (1575 – 525 = 1050)
Multiplier	13
Loss of dependency	Rs.12,600/- (1050 x 12) x 13 = Rs.1,63,800/-
Expenses on last rites	Rs.6,000/-
Total	Rs.1,69,800/-

Counsel for the claimants has submitted that compensation awarded by the Tribunal both qua loss of dependency as well as under conventional heads needs enhancement. It is argued that the deceased was working as a part time sweeper in Government Primary School, Bhuna, at a salary of Rs.1890/- per month but the salary was payable for a period of 10 months out of one year. It is further argued that as the deceased was a part time sweeper only, she was rendering services to her family as a house maker, therefore, loss of dependency is liable to be computed by taking into consideration her earning as a part time sweeper as well as value of her services as a house maker. The Tribunal has not awarded any compensation for loss of consortium to the husband and love and affection for children of the deceased.

Counsel representing the insurance company has supported the assessment of compensation made by the Tribunal.

I have heard counsel for the parties and perused the records.

The assessment made by the Tribunal with regard to loss of dependency on the basis of earning of the deceased is liable to be enhanced by adopting an appropriate multiplier of 13 as the deceased was less than 50 years of age. Accordingly, loss of dependency on the basis of loss of earning of the deceased as a part time sweeper comes to Rs.12600 x 13 = Rs.1,63,800/-.

The deceased was working as a part time sweeper in a school. This Court cannot overlook that ordinarily the schools get closed by 1.00 or 2.00 pm. The duty hours of a sweeper would be either before the school opens or after the school gets closed or both times. The deceased left behind a family consisting of her husband, one son and two daughters.

Taking into consideration financial status of family of the deceased coupled with that she was working part time in a school, value of her services as a house maker is assessed at Rs.2000/- per month. No deduction is to be made for personal expenses in view of Division Bench judgment of this Court **Paramjit Singh and another Vs. Dilbagh Singh @ Bagga and others, 2013(3) Law Herald 2730.** Loss of dependency with regard to services of deceased as a house maker is computed at Rs.2000 x 12 x 13 = Rs.3,12,000/-. In view of the above, total loss of dependency comes to Rs.4,75,800/-.

Under conventional heads, the claimants shall be entitled to following compensation:-

Loss of consortium	Rs.1,00,000/-
Loss of love and affection for the children	Rs.1.5 lakh (to be shared equally)
Expenses on funeral, transportation and last rites	Rs.25,000/-
Total	Rs.2,75,000/-

The total compensation comes to Rs.7,50,800/- and the additional amount Rs.5,81,000/- (7,50,800 – 1,69,800) shall carry interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

29.09.2017 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No