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

**FAO No.5576 of 2015 and
Cross-objection No.11-CII of 2016 (O&M)
Date of decision: 08.12.2017**

ICICI Lombard General Insurance Company Limited
….Appellant
Versus

Dharambir and others
….Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Mrigank Sharma, Advocate,
for the appellant-Insurance Company.

Mr. S.K. Hooda, Advocate,
for respondent Nos.1 & 2-cross objectors.

Mr. Rakesh Lathwal, Advocate,
for respondent Nos.3 & 4.

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RITU BAHRI J. (Oral)

CM No.1041-CII of 2016

In view of the averments mentioned in the application, same is allowed and delay of 27 days in filing of the cross-objections is condoned.

Main appeal and cross-objections

ICICI Lombard General Insurance Company Limited-appellant has filed this appeal (FAO No.5576 of 2015) against the award dated 09.02.2015 passed by the Motor Accident Claims Tribunal, Sonipat (hereinafter referred to as 'the Tribunal') whereby compensation of Rs.7,81,000/- has been awarded in favour of the claimants-respondent Nos. 1 & 2 on account of death of Sunil in a motor vehicular accident which took place on 10.03.2014. Respondent No. 1 is father and respondent No. 2 is sister of deceased Sunil.

On the other hand, cross objectors-respondent Nos.1 & 2 (claimants) have filed Cross Objection No.11-CII of 2016 seeking enhancement of compensation awarded by the Tribunal vide aforesaid award dated 09.02.2015.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 10.03.2014, Sunil (since deceased) along with Virender and Kasim was going from Sonipat to Gohana on a motorcycle bearing registration No. HR-10-Q-9181. The said motorcycle was being driven by Sunil. At about 11.30 A.M., when they reached on the canal bridge in the area of village Jolly-Lath on Sonipat-Gohana road, a TATA Ace bearing registration No. HR-69-B-4270 being driven by Randhir Singh-respondent No.3 (respondent No.1 in claim petition) in a rash and negligent manner, came from the opposite side and struck against the aforesaid motorcycle, as a result of which, Sunil and other two boys fell down on the road and received multiple grievous injuries. They were shifted to Medical College, Khanpur Kalan, from where Sunil was referred to PGIMS, Rohtak. He remained admitted in the there w.e.f. 10.03.2014 to 14.03.2014. Ultimately, during treatment, he succumbed to the injuries on 14.03.2014. With regard to the accident, FIR No.79 dated 10.03.2014, under Sections 279/337 IPC was registered at Police Station, Sadar, Gohana against respondent No.1. Consequently, claimants-respondent Nos. 1 & 2 filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had taken place on account of rash and negligent driving of the offending vehicle by its driver-respondent No.1 (respondent No.3 herein) and thus, returned finding on issue No.1 in favour of the claimants. This finding was rightly given on the basis of deposition of Virender (PW-2), who was eye witness of the accident and on whose statement, FIR Ex.P9 was recorded. Claimants had also proved on record copy of report under Section 173 Cr.P.C. Ex.P10, copy of rough site plan Ex.P11 and copy of charge sheet as Ex.P12.

Sunil (deceased) was a student of Civil Engineering Diploma (final year). In the absence of any direct evidence, income of the deceased was assessed at Rs.9000/- per month, out of which, 50% amount was deducted towards his personal expenses. The dependency of claimants, thus, came to Rs.4500/- per month i.e. Rs.54,000/- per annum. The deceased was 18 years of age at the time of accident/death and the multiplier of 14 was applied keeping in view the age of his father i.e. claimant No.1 (respondent No.1 herein). Thus, the claimants were found entitled to compensation of Rs.7,56,000/- (54,000 x 14). In addition to it, Rs.25,000/- were awarded towards funeral expenses. Hence, the claimants were found entitled to a total compensation of Rs.7,81,000/- along with interest @ 7.5% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the Insurance Company-appellant has preferred the present appeal.

During the pendency of appeal, claimants-respondent Nos. 1 & 2 have filed <u>Cross Objection No.No.11-CII of 2016</u> seeking enhancement of compensation awarded by the Tribunal.

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident.

The Insurance Company is not disputing the finding of Tribunal on issue No.1 that the accident had been caused on account of rash and negligent driving of the offending vehicle by its driver-Randhir Singh. The Insurance Company has challenged the impugned award on a short ground that driver of the offending vehicle was not holding a valid and effective driving license at the time of accident, therefore, applicant-insurance company was not liable to indemnify the insured. Learned counsel for the appellant has argued that driving licence Ex.R1 was issued for LMV only and there was no endorsement of commercial vehicle, whereas the TATA Ace vehicle, which was being driven by the driver at the time of accident, was goods carriage vehicle.

Reference, at this stage, can be made to a verdict given by Hon'ble the Supreme Court in ***Mukund Dewangan vs Oriental Insurance Compay Limited,*** 2017 SCC OnLine SC 788, whereby the matter had been referred to the Larger Bench of the Hon'ble Supreme Court to examine, whether a driver having a light motor vehicle, would not require to have an endorsement to drive a transport vehicle. The term 'transport vehicle' would mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. As per Section 2 (35) of the Act, '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 motor cab, contract carriage, and stage carriage. Under Section 2 (14) of the Act, 'goods carriage' means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. A driver, who is holding a license to drive light motor vehicle for private use, would not be required to have an endorsement to drive a transport vehicle. As per Section 10 of the Act, it requires the driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. By virtue of the amendment made vide Act 54/1994 w.e.f. 14.11.1994, clauses (e) to (h) of Section 10 (2) of the Act have been substituted, which used to contain medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle and heavy passenger motor vehicle by one word i.e. "transport vehicle." Once, amendment has been made in the Act, all the above said vehicles have to be treated as transport vehicles.

Applying the ratio of the aforesaid judgment to the facts of the present case, a driver, who is holding license to drive light motor vehicle and heavy motor vehicle, would not require a separate endorsement to drive heavy goods vehicle, heavy passenger vehicle, as they belong to the same class of transport vehicle. In para 63 of the aforesaid judgment, it has been abundantly clarified as under:-

> "46. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28.3.2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in section 2(21) and the provisions of section 10(2)(d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions.

Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section 10 (2) (e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed. Thus we answer the questions which are referred to us thus:

(i) 'Light motor vehicle' as defined in section 2 (21) of the Act would include a transport vehicle as per the weight prescribed in section 2 (21) read with section 2 (15) and 2 (48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54/1994.

(ii) A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. and holder of a driving licence to drive class of "light motor vehicle" as provided in section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under section 10 (2) (d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.

(iii) The effect of the amendment made by virtue of Act No.54/1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10(2) which contained "medium goods vehicle" in section 10(2)(e), medium passenger motor vehicle in section 10(2)(f), heavy goods vehicle in section 10(2)(g) and "heavy passenger motor vehicle" in section 10(2)(h) with expression 'transport vehicle' as substituted in section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10(2)(d) and section 2 (41)of the Act i.e. light motor vehicle.

(iv) The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain

> separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect."

In the above judgment, Hon'ble the Supreme Court has clarified that in one class of vehicles, there can be different kind of vehicles and all of those will fall in the same class of vehicle and no separate endorsement was required for that purpose.

The present case is squarely covered by the judgment given in ***Mukund Dewangan's*** case (supra). Therefore, the findings given by the Tribunal on issue Nos.2 and 3 are not required to be interfered with. In this view of the matter, argument raised by learned counsel for the appellant is rejected.

Resultantly, finding no merits, present appeal (FAO No.5576 of 2015) filed by the Insurance Company-appellant is **dismissed** and Cross Objection No.11-CII of 2016 filed by the claimants-respondent Nos. 1 & 2 is **allowed**.

In the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby reassessed in view of the judgments passed by Hon'ble the Supreme Court in ***Sarla Verma and others vs. Delhi Transport Corporation and another***, 2009 (3) RCR (Civil) Page 77 and ***National Insurance Company Limited Vs. Pranay Sethi and others***, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

Sr. No.	**HEADS**	**CALCULATIONS**
(i)	Income	Rs.12,000/- per month
(ii)	40% of (i) above to be added as future prospects	12,000 + 4800 = Rs.16,800/-

(iii)	50% of (ii) above is deducted as personal expenses of the deceased	16,800 – 8400 = Rs.8400/-
(iv)	Compensation after multiplier of 18 is applied	Rs.8400/- x 12 x 18 = Rs.18,14,400/-
(v)	Compensation under conventional heads (funeral expenses etc.)	Rs.30,000/-
(vi)	**TOTAL COMPENSATION AWARDED**	**Rs.18,44,400/-**
(vii)	**Enhanced amount of compensation**	**Rs.18,44,400 – 7,81,000 = Rs.10,63,400/-**

The enhanced amount of compensation of **Rs.10,63,400/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of "***Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others",*** **2015(1) SCC 539**. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent.

(RITU BAHRI)
JUDGE

08.12.2017
ajp

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