

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

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Date of decision: 04.09.2017

FAO No. 7563 of 2014

Shinder Kaur and another*Appellants*

Versus

Baldev Singh and another*Respondents*

FAO No. 1453 of 2015 (O&M)

Shri Ram General Insurance Company Limited*Appellant*

Versus

Shinder Kaur and others*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Satbir Rathore, Advocate
for the claimants

Mr. Sanjeev Goyal, Advocate
for the insurance Company

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Rekha Mittal, J. (Oral)

This order will dispose of aforesaid appeals as these have emerged out of the same award dated 13.05.2014 passed by the Motor Accidents Claims Tribunal, Hoshiarpur (hereinafter to be referred as 'the Tribunal') whereby compensation has been awarded in regard to death of Kulwant Singh in a motor vehicular accident that took place on 09.02.2011.

The Tribunal assessed income of the deceased at Rs.4,000/- per month, added 30% for future prospects, deducted 1/3rd for personal expenses and applied multiplier of 15 to compute loss of dependency at Rs.6,24,000/-. In addition, an amount of Rs.1 lakh for loss of consortium to widow and Rs.25,000/- for funeral expenses has been awarded making total

compensation to Rs.7,49,000/-, payable with interest @ 6% per annum from the date of petition till realization.

For brevity, the parties shall be referred to as 'the company' and 'the claimants'.

Counsel for the claimants has submitted that as the deceased was working as a driver on a heavy transport vehicle, his income assessed at Rs.4,000/- per month is liable to be enhanced. To substantiate his contention, it is submitted that widow of the deceased appeared in the witness box, reiterated her version set up in the claim petition and produced on record driving licence Ex.A1 possessed by the deceased.

Another submission made by counsel is that the Tribunal has allowed additional income to the extent 30% but the same should be 50% as the deceased was less than 40 years of age having born on 14.11.1972. In addition, it is argued that compensation awarded under conventional heads needs re-look and enhancement.

Counsel representing the company, on the contrary, has supported assessment of compensation by the Tribunal with the submission that the entire compensation is not payable to claimants as the deceased is attributed negligence in causing the accident, therefore, guilty of contributory negligence. It has further been argued that though the Tribunal while deciding Issue No.4 “*whether the offending vehicle was not having registration certificate, route permit and fitness certificate at the time of alleged accident? OPR*” has noticed that route permit and fitness certificate of the vehicle have not been produced by respondent No.1 but did not confer recovery right in favour of the insurer after satisfying the award

towards the claimants. It is further submitted that the owner and driver of the offending vehicle filed reply to the claim application but later absented from the proceedings and did not produce on record fitness certificate and route permit which could possibly be verified by the company, had it been produced.

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

Shinder Kaur, widow of the deceased appeared in the witness box and tendered into evidence her duly sworn affidavit Ex.PW1/A alongwith documents FIR Mark A, copy of licence-Mark B, copy of Registration Certificate-Mark C and postmortem report-Mark D. In Para No.2 of the affidavit, she has deposed that her husband was about 37 years of age and earning Rs.10,000/- per month from his work as he was a professional heavy weight truck driver. Though the claimants has produced on record driving licence with endorsement of transport in the name of Kulwant Singh but nothing has been brought on record as to whose truck the deceased was driving at the time of death or at any time prior thereto. Under the circumstances, the claimants have failed to adduce tangible evidence on record that the deceased was a professional driver on a heavy goods vehicle/transport vehicle.

The Tribunal has rightly assessed income of the deceased at Rs.4,000/- per month on the basis of minimum wage fixed by the State Government and available at the relevant time. However, as the deceased was less than 40 years of age, addition of income for future prospects would be 50%. The mere fact that the matter with regard to future prospects is

pending consideration before a larger Bench of Hon'ble Supreme Court of India in view of reference made in *National Insurance Company Limited v. Pushpa* (SLP (c) No. 16735 of 2014, decided on 02.07.2014) and the observations made by the Apex Court in *Shashikala and others v. Gangalakshamma and another*, 2015 ACJ 1239 is not sufficient to deny benefit of future prospects till the judgment *Rajesh and others versus Rajbir Singh and others* 2013 (3) R.C.R. (Civil) 170 is varied or set aside.

This apart, the deceased was less than 40 years of age and had a family to look after. There is nothing on record suggestive of the fact that he was suffering from any disability affecting his capability to work and earn livelihood for himself and his family. The deceased would not have stagnated at income of Rs.4,000/- per month, had he remained alive. I stand fortified in my observations from the fact that the State Governments revise minimum wages at short intervals. Under the circumstances, the claimants cannot be denied benefit of increase in income to the extent of 50%. The deduction qua personal expenses of the deceased and multiplier applied by the Tribunal are affirmed. In this manner, loss of dependency comes to **Rs.7,20,000.00** ($4000 \times 12 \times 15 + 3,60,000$ (50% future prospects) – 3,60,000 (1/3rd deduction).

Under conventional heads, Rs.1,00,000.00 for loss of consortium to widow and Rs.25,000.00 for funeral expenses awarded by the Tribunal is affirmed. The minor daughter of the deceased shall be entitled to Rs.1,00,000.00 for loss of love, affection, care and guidance of her father. Another Rs.25,000.00 is awarded for loss of estate.

In view of the above, total compensation comes to

Rs.9,70,000.00 (7,20,000 + 1,00,000 + 25,000 + 1,00,000 + 25,000) and the additional amount is Rs.2,21,000.00 (9,70,000-7,49,000), payable with interest at the rate of 7.5 % per annum from the date of petition till payment.

So far as plea of the company that the deceased himself was a wrong doer in causing the accident, counsel has not pointed out any materials on record to substantiate his contention in this regard. Smt. Shinder Kaur who was travelling on pillion of the motor cycle driven by the deceased, therefore, an eye-witness to the occurrence appeared in the dock and tendered into evidence her duly sworn evidence PW-1/A. In Para No.3 of the affidavit, she has given a detailed account of the accident being the result of rash and negligent driving of Truck bearing No. PB 10-BC-9076 which came from the opposite direction and hit against motor cycle of the deceased, on wrong side of the road. As has been noticed here-in-before, counsel for the company has failed to point out any materials so as to attribute negligence to the deceased to any extent whatever. Hence, contention of the Company that the deceased was responsible for the accident is not meritorious and accordingly rejected.

Counsel for the company has pressed its claim for recovery right against the insured for want of producing the route permit and fitness certificate by owner of the vehicle. There is nothing on record suggestive of the fact that the company filed an application before the Tribunal calling upon Baldev Singh respondent No.1 (therein) to produce the fitness certificate and route permit much less examining him as a witness to know about status of the documents. However, the company has exhibited on record two documents Ex.R1 and R2. No witness was examined by the

company to prove document Ex.R1, a legal notice purported to be issued by Shri Brij Thakur, Advocate to the insured calling upon him to produce route permit under Order 12 Rule 8 of the Code of Civil Procedure. This apart, as per legal notice, the insured was not called upon to produce the fitness certificate and only asked to produce the route permit. Assuming that there was no route permit of the vehicle or there was deviation from the route permit, it does not amount to violation of terms and conditions of contract of insurance nor does it constitute a valid defence under Section 149 of the Motor Vehicles Act, 1988. The mere fact that the Company has raised an objection in the aforesaid regard or an issue was framed by the Tribunal is not sufficient to return any findings on this aspect qua issue No. 4 in favour of the company. The company altogether failed to discharge onus of issue No. 4 that the offending vehicle was being plied without the fitness certificate. In this view of the matter, the insurance company cannot press for right of recovery against the insured.

For the foregoing reasons, the appeal filed by the claimants (FAO No. 7563 of 2014) is partly allowed in the aforesaid terms. However, appeal preferred by the insurance Company (FAO 1453 of 2015) is dismissed. Statutory amount of Rs.25,000.00, deposited in the registry is ordered to be remitted to the Tribunal for payment to the claimants.

No orders as to costs.

(Rekha Mittal)
Judge

04.09.2017

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