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

**FAO No.6635 of 2016 (O&M)
Date of decision: 01.12.2017**

The New India Assurance Company Limited.
….Appellant
Versus

Smt. Surasti @ Saraswati and others
….Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.C. Gupta, Advocate,
for the appellant.

Mr. Ashwani Arora, Advocate,
for respondent Nos.1 to 5 (claimants).

None for respondent Nos.6 and 7 (driver and owner).

RITU BAHRI J. (Oral)

CM No.22901-CII of 2016

In view of the averments mentioned in the application, same is allowed and delay of 09 days in filing of the appeal is condoned.

FAO No. 6635 of 2016

The New India Assurance Company Limited-appellant has come up in appeal against the awarded dated 16.07.2016 passed by the Motor Accident Claims Tribunal, SAS Nagar, Mohali (hereinafter referred to as 'the Tribunal'), whereby compensation of Rs.17,44,904/- has been awarded in favour of claimants-respondent Nos. 1 to 5 on account of death of Babloo @ Bablu in a motor vehicular accident which took place on 22.03.2015. Respondent No. 1 is widow, respondent Nos.2 and 3 are sons and respondent Nos.4 and 5 are parents of deceased Babloo @ Bablu.

Brief facts of the case are that on 22.03.2015, at about 7.30 P.M., Babloo @ Bablu (since deceased) along with one Ashok Kumar was going on the road leading from Kharar to Landran on a motorcycle. When they reached near Verma Sheller, Landran Road, Kharar, a truck bearing registration No.HR-37-C-8237 being driven by Amarjit Singh-respondent No.6 (respondent No.1 in claim petition) in a rash and negligent manner, came from behind and hit the motorcycle of Babloo @ Bablu, as a result of which, Ashok Kumar fell on his left side, whereas Babloo @ Bablu fell down to his right side. Right shoulder of Babloo was crushed by the wheel of the truck. Thereafter, he was taken to PGI, Chandigarh, where he died during treatment. With regard to the accident, FIR Ex.P5 was registered against the driver of offending vehicle. Consequently, the claimants (respondent Nos. 1 to 5 herein) filed a claim petition before the Tribunal.

Upon notice, respondent Nos.1 & 2 (respondent No.6 & 7 herein) filed joint written statement and denied the happening of any such accident with the aforesaid truck. It was stated that the accident had taken place due to rash and negligent driving of motorcycle by deceased Babloo @ Bablu.

Respondent No.3-Insurance Company (appellant herein) filed a separate written statement taking preliminary objections regarding maintainability, cause ofaction etc. It was stated that the accident had occurred due to rash and negligent driving by the deceased. The truck in question was not having valid pemit to ply the same in State of Punjab.

From the pleadings of the parties, following issues were framed:-

1. Whether deceased Babloo alias Bablu died in a road side accident caused by respondent No.1 while driving Truck No. HR-37-C-8237 in a rash and negligent manner? OPC
2. Whether the claim petition is not maintainable? OPR
3. Whether the claimants are entitled to receive compensation as prayed for, if so, to what extent and from whom? OPC
4. Whether the respondent No.1 being driver of the above said vehicle was not holding valid and effective driving licence, route permit at the time of accident/ OPR3
5. Whether the respondent No.2 had committed breach of terms and conditions of the insurance policy, if so, its effect? OPR-3
6. Relief.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident in question had taken place due to rash and negligent driving of offending truck bearing registration No. HR-37-C-8237 by Amarjit Singh-respondent No.1 (respondent No.6 herein) and thus, returned the finding on issue no.1 in favour of the claimants-respondent Nos. 1 to 5. This finding is rightly given on the basis of deposition of Pardeep Kumar (PW-2), who was an eye witness of the accident and on whose statement, FIR Ex.P5 was recorded.

In the absence of any documentary proof, income of the deceased was assessed as Rs.7500/- per month being a labourer and the compensation has been assessed as under:-

Sr. No.	Heads	Calculation
(i)	Monthly income- assessed	Rs.7500/-

(ii)	An addition of 50% of (i) actual salary to be added towards future prospects	Rs.7500 + 3750 = Rs.11,250/-
(iii)	¼ of (ii) deducted towards personal expenses	Rs.11,250 – 2813 = Rs.8437/- per month
(iv)	Compensation after multiplier of 16 is applied	Rs.8437 x 12 x 16 = Rs.16,99,904/-
(v)	Loss of consortium (claimant No.1)	Rs.1,00,000/-
(vi)	Funeral expenses	Rs.25,000/-
	Total compensation awarded	Rs.17,44,904/-

Ultimately, the claim petition was accepted and a sum of Rs.17,44,904/- was awarded as compensation in favour of the claimants. Feeling dissatisfied with the impugned award, the appellant-insurance company has preferred the present appeal.

Learned counsel for insurance company-appellant is challenging the award on the ground that the driving licence (Annexure R-1) of Amarjit Singh was not a valid driving licence. He has further argued that Amarjit Singh was resident of village Sodhi, District Kurukshetra (Haryana), whereas he has got the driving licence issued from Dimapur, Nagaland. This itself shows that it was a fake licence.

I have heard learned counsel for the appellant 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 argument advanced by learned counsel for the appellant is liable to be rejected on the ground that the insurance company had ample opportunity before the Tribunal to get verification of the said driving licence from Nagaland Government. Moreover, the Nagaland Government had issued instructions way back in the year 2009 to convert the booklet type licence into smart, which are to be made effective w.e.f. 01.07.2015. The insurance company has not made any effort to get this verification done. Hence, findings given by the Tribunal on issue nos. 4 and 5 are not required to be interfered with.

However, modification in the quantum of compensation can be made. The Tribunal has granted addition of 50% in the income of the deceased on account of future prospects. This seems to be on the higher side. Rather, 40% addition should have been granted on this account.

Accordingly, 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.7500/- per month
(ii)	40% of (i) above to be added as future prospects	7500 + 3000 = Rs.10,500/-
(iii)	1/4th of (ii) above is deducted as personal expenses of the deceased	10,500 – 2625 = Rs.7875/-
(iv)	Compensation after multiplier of 16 is applied	Rs.7875/- x 12 x 16 = Rs.15,12,000/-
(v)	Compensation under all other heads	Rs.70,000/-
(vi)	**TOTAL COMPENSATION AWARDED**	**Rs.15,82,000/-**

The amount of compensation of **Rs.15,82,000/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The 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 and the present appeal is partly allowed.

(RITU BAHRI)
JUDGE

01.12.2017
ajp

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