IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

XOBJ.-9-CII-2009 in/and
F.A.O. No.2144 of 2000 (O&M)
Date of Decision: 29.01.2018

M/s United India Insurance Company Limited, Chandigarh

....Appellant (s)

Versus

Parsin Kaur & others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Vinod Chaudhri, Advocate
for the appellant.

Mr. Manpreet Sindh Sidhu, Advocate
for respondent nos.1 to 5/cross objectors.

Mr. P.S. Bawa, Advocate
for respondent no.7.
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HARI PAL VERMA, J. (Oral)

CM-11806-CII-2000:

Prayer made in this application filed under section 151 CPC is for condoning the delay of 19 days in refiling the present appeal.

For the reasons stated in the application, the same is allowed. Delay of 19 days in refiling the present appeal is condoned.

CM-4065-CII-2009:

Prayer made in this application filed under Order 22 Rule 4 read with Section 151 CPC is to bring on record the legal representative of respondent no.5, who had expired on 8.9.2003.

For the reasons stated in the application, the same is allowed. Respondent no.1, who is mother of respondent no.5, is ordered to be brought on record as his legal representative.

F.A.O. No.2144 of 2000 (O&M) & Cross Objections No.9-CII-2009:

This order shall dispose of FAO No.2144-2000 as well as Cross Objections No.9-CII-2009. However, the facts are being noticed from the appeal.

The appellant-United Insurance Company Limited has filed the present appeal against award dated 06.03.2000 passed by Motor Accident Claims Tribunal, Mansa (hereinafter referred to as "the Tribunal"), whereby the claim petition filed by the respondent-claimants under Section 166 of the Motor Vehicles Act, 1988 was allowed and the Tribunal has awarded compensation for an amount of Rs.1,49,000/- along with interest @ 12% per annum from the date of filing the claim petition till its realization.

Briefly stated, claimant-appellants no.1 to 5 had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 with the averments that on 11.10.1997, deceased Gurdip Singh was travelling in jeep No.RJ-136-0484 along with Bahadur Singh son of Puran Singh of Vill. Boha, Bawa Singh of Vill. Lalluabwali and Birja Singh son Pannu Singh of Vill. Boha. The jeep was being driven by Gurjant Singh @ Kati son of Gurdev Singh of Gadar Patti, Boha. While returning from Vill. Dariapur, when their vehicle reached near the house of Surjit Singh, Jathedar, ahead of the Bus Stand, Boha, it was hit by bus No.PB-31-2581 of Laddi Bus Service, which was being driven by Jasmail Singh in a rash and negligent manner. Gurdip Singh received injuries in the accident and died on the spot. The respondent-claimants being legal heirs of Gurdip Singh filed a claim petition before the Tribunal.

The Tribunal while taking into consideration the monthly income of deceased Gurdip Singh as Rs.1,500/- and his age as 39 years, applied the multiplier of '12' and by making 1/3rd deduction, awarded compensation for an amount of Rs.1,49,000/- plus Rs.5,000/- towards performing of last rites of the deceased.

Learned counsel for the appellant has argued that at the time of accident, neither the driver of the jeep, in which Gurdip Singh was travelling, nor the driver of the bus Jasmail Singh were holding valid driving licences. The driver of the offending vehicle is a resident of Mansa whereas the licence possessed by him was issued by the Licencing Authority, Ajmer (Rajasthan) and therefore, in view of Section 9 of the Motor Vehicles Act, he not being a resident of Ajmer, the licence so possessed by him was liable to be discarded. As such, for all intents and purposes, he was not holding a valid driving licence. He has further argued that even if his licence was renewed at two different occasions, it does not prove its validity.

Mr. P.S. Bawa, learned counsel for respondent no.7-owner has argued that the owner had taken all possible measures to verify the validity of the licence possessed by the Jasmail Singh, the driver. Jasmail Singh, who was employed by respondent no.7 was holding a valid licence which was renewed on two different occasions by DTO Bathinda and therefore, respondent no.7 is absolved of its liability. He refers to paragraph 9 of the award and has argued that the insurance company could have absolved of its liability to pay compensation only if it succeeds in proving the factum that the owner of the offending vehicle had knowledge with regard to fakeness of the licence at the time of employment of the driver.

On the other hand, learned counsel for the respondents-claimants, who have filed cross-objections in the case, has argued that the Tribunal has awarded a very meager amount of compensation. The deceased was about 39 years of age and the Tribunal was required to apply the multiplier of '15' instead of '12'. He further submits that taking into consideration the fact that the deceased was married and had five legal representatives, $1/4^{th}$ deduction was required to be made instead of $1/3^{rd}$ deduction towards 'personal expenses' of the deceased, in view of law laid down by Hon'ble the Apex Court in the case of ***National Insurance Co. Ltd vs. Pranay Sethi 2017(4) RCR (Civil) 1009***. Similarly, the claimants are also entitled for compensation under the head 'future prospects' @ 40%.

I have heard learned counsel for the parties and perused the impugned award.

The argument put forward by learned counsel for the appellant-insurance company that the driver of the offending vehicle namely Jasmail Singh was not holding a valid driving licence cannot be accepted for the reason that the owner of the bus had taken due care at the time of employment of the driver. The licence so possessed by Jasmail Singh, driver, at the time of his employment was duly checked and the said licence was renewed on two different occasions by the DTO Bathinda and therefore, no doubt can be raised with regard to the validity of the driving licnece so possessed by him at the time of his employment. Therefore, as held in paragraph 9 of the impugned award, the insurance company cannot take any benefit of the fact that Jasmail Singh, the driver, was not holding a valid driving licence. The findings recoded by the Tribunal in paragraph 9 of the impugned award reads as under:-

> *"9. The next question, that arises for consideration is, as to whether, all the respondents, are jointly or severally liable to pay the compensation or not. The counsel for respondent no.3, submitted that since the licence was found to be fake and forged one, the Insurance Company, was absolved of its liability. Davinder Kumar, Junior Assistant appeared as R.W.2, and stated that their office never renewed licence No.41075 vide renewal No.20878. Gurbachan Singh, Managing Partner of the bus, appeared as R.W.3, and stated that Jasmail Singh son of Bhag Singh was the driver of Bus No.PB-31-2581 on 11.10.1997, on route Mansa, Boha and Budhlada. He further stated that before he was employed as a driver, the licence possessed by him was thoroughly checked by him. He further stated that the same had been issued by the DTO Bathinda. He further stated that at that time, the licence had been renewed twice. He further stated that Mark A, is the copy of verification of the licence. The Insurance Company could absolve of its liability, to pay the compensation, only after the proof of the factum, that the owner of the offending vehicle, had knowledge with regard to the fakeness of the licence, at the time, he employed the driver. Had there been any intentional default on the part of the insured in properly verifying the licence of the driver, the matter would have been different. In the*

instant case, Gurbachan Singh, Managing Partner of Laddi Bus Service, appeared in the court, as his witness and stated that he thoroughly checked licence of Jasmail Singh, respondent no.1, at the time of employing him as driver. He further stated that this licence had been renewed twice. Under these circumstances, Gurbachan Singh could not entertain any doubt regarding the genuineness of the licence, which was possessed by respondent no.1 at the time, he was employed. No prudent man could also dispute the genuineness of such a licence. Under these circumstances, there was no willful or intentional default of the owner of the bus in employing respondent no.1 as driver of the offending bus, by seeing his licence, which was renewed twice. The insured bonafidely believed the licence of respondent no.1, to be genuine. Since there was no intentional and willful breach of the terms and conditions of the insurance policy by the insured, the Insurance Company, could not absolve itself of its liability. The same principle of law, was laid down in SHANDIA INSURANCE CO. LTD.Versus KOKILABEN CHANDER VADANAND OTHERS (AIR 1987 SC 1184). Under these circumstances, all the respondents are jointly as well as severally liable to pay the amount of compensation."

In view of the findings so recorded by the Tribunal and the observations made hereinabove, it is held that the owner of the offending bus had taken all possible care to verify the driving licence so possessed by the driver of the bus and therefore, for all intents and purposes, it cannot be held that he was not holding a valid driving licence. So far as cross-objections filed by the respondent-cross objectors are concerned, having regard to judgment of Hon'ble the Apex Court in the case of ***National Insurance Co. Ltd vs. Pranay Sethi*** (*Supra)*, this Court finds that the deceased Gurdip Singh was 39 years of age and as per the notification issued by the Punjab Government, at the relevant time, the minimum wages were held to be Rs.1500/- per month. The deceased left five dependent-claimants after his death and therefore, this Court finds that the Tribunal should have applied $1/4^{th}$ deduction instead $1/3^{rd}$ deduction towards 'personal expenses' of the deceased. Similarly, the claimants are also entitled for compensation @ 40% towards 'future prospects'. Moreover, in view of judgment of Hon'ble the Apex Court in the case of ***Sarla Verma & Ors vs Delhi Transport Corp and another (2009) 6 SCC 121,*** since the deceased was 39 years of age, the multiplier of '15' should have been applied instead of '12'.

Accordingly, this Court finds that the claimant-respondents are entitled for compensation as under:-

Head		***Calculation***
Monthly income		*Rs.1,500.00*
Future prospects (40%)		*Rs.600.00*
Total monthly income (monthly income + future prospects)		*Rs.2,100.00*
Annual income (Total monthly income x 12)		*Rs.25,200.00*
Deductions (Towards personal expenses of deceased)		
Annual dependency ($1/4^{th}$)		*Rs.18,900.00*
Multiplier (15)		
Total loss of dependency (Annual dependency x		*Rs.2,83,500.00*

multiplier)		
<u>Conventional heads</u>		
Loss of Estate		*Rs.15,000.00*
Funeral expenses		*Rs.15,000.00*
Loss of consortium		*Rs.40,000.00*
Total amount of compensation		*Rs.3,53,500.00*
Amount already awarded		*Rs.1,49,000.00*
Enhancement		***Rs.2,04,500.00***

However, keeping in view the judgment passed by Hon'ble the Apex Court in the case of ***<u>National Insurance Co. Ltd vs. Pranay Sethi</u>*** (*Supra)* and the present rate of interest for fixed deposits in banks, the claimants shall be entitled to compensation along with interest @ 7.5% per annum from the date of filing of the claim petition till its realization.

With the above observations, the appeal is dismissed and the cross-objections are allowed.

January 29, 2018 **(HARI PAL VERMA)**
AK **JUDGE**

Whether speaking / reasoned? Yes / No

Whether reportable? Yes / No