

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.297 of 1999 (O&M) &
Cross Objection No.69-CII of 2013
Date of decision:11.12.2018.

The New India Assurance Company Ltd.

...Appellant

Versus

Jasvir Kaur and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Deepak Suri, Advocate and
Mr. Neeraj Khanna, Advocate for the appellant.

Mr. D.S. Randhawa, Advocate for respondents No.1 and 2/Cross
Objectors.

Mr. Ashish Gupta, Advocate for respondents No.3 and 4 (i) to 4 (ii).

LISA GILL, J.

This order shall dispose of FAO No.297 of 1999 as well as Cross
Objection No.69-CII of 2013 filed by respondents No.1 and 2.

Insurance Company has filed this appeal challenging award dated
09.11.1998 passed by Motor Accident Claimants Tribunal, Patiala ('Tribunal' for
short).

Cross Objections, on the other hand, have been filed by the
claimants/cross objectors, seeking enhancement of the compensation awarded
to them by the learned Tribunal on account of death of Balwinder Singh in a
motor vehicle accident on 10.06.1997.

The claimants, who are wife and son of the deceased, filed a
petition under Section 166 of the Motor Vehicles Act, seeking compensation on
account of death of Balwinder Singh due to injuries received in a motor vehicle
accident which took place on 10.06.1997. It was pleaded that deceased was
going to Village Khanian on 10.06.1997 on his scooter bearing No.PB-08-D-

2770 in connection with talks about his sister's engagement. While returning, he was followed by his brother Man Mohan Singh and one Rattan Chand who were on a separate scooter No.PB-11-H-9037. It was stated that Balwinder Singh was driving his scooter on the left hand side at a normal speed on Bhadson-Nabha road. When he reached near Village Lohana Karmu, Tara Singh respondent No.1 came from the front side on a truck No.PCI-4328 in a very rash and negligent manner at a high speed. Without blowing any horn, he struck this truck straight in the scooter of Balwinder Singh, who died at the spot. That respondent stopped the truck away from the road and came to the place of occurrence and disclosed his name etc. and offered to take the injured to the hospital at Nabha. When he learnt that the deceased had already died, he slipped from the spot leaving the truck behind. FIR No.50 dated 10.06.1997 was registered at Police Station Sadar, Nabha, against respondent No.1. It was pleaded that the deceased at the time of his death was working as a Clerk in the Irrigation Department, getting Rs.3438/- per month. Compensation was, thus, prayed for.

Learned Tribunal concluded the deceased to be 30 years old at the time of his death and assessed his income as Rs.4200/- per month. Deduction of 1/3rd was effected towards personal expenses. Multiplier of 17 was applied. Thus, total dependency was assessed at Rs.5,71,200/- (2800x12x17). Another sum of Rs.2000/- and 2500/- was awarded towards funeral expenses and loss of estate respectively. Another sum of Rs.5000/- was awarded towards loss of consortium. Thus, the claimants were held entitled to a total compensation of Rs.5,80,700/-, which was rounded off to Rs.5,80,000/- along with interest @ 12% per annum from the date of filing of claim petition till realisation.

Insurance Company was held liable to pay the compensation.

Aggrieved therefrom, the present appeal has been filed by the Insurance Company.

Learned counsel for the appellant/Insurance Company vehemently argues that there is a clear breach of terms and conditions of the policy, as the driver of the offending truck did not have valid driving licence at the time of the accident, authorizing him to drive the offending vehicle i.e. truck bearing registration No.PCI-4328. This is so for the reason that the driving licence held by him was for a light transport vehicle and not for a heavy transport vehicle i.e. a truck. Learned counsel refers to the statement of RW1 Harinder Singh, Junior Assistant, DTO Office, Patiala and submits that as per the entry at Sr. No.14469/R dated 21.08.1996, driving licence of the respondent/driver was renewed for the light transport vehicle for the period from 21.08.1996 to 20.08.1999. In this view of the matter, it is submitted that the learned tribunal has erred in concluding that respondent/driver was holding an effective and valid driving licence at the time of accident.

Learned counsel for the owner and driver of the offending vehicle refute the said averments while submitting that a valid driving licence with an endorsement of the driver being authorized to drive a transport vehicle is proved on record. It is thus prayed that this appeal be dismissed.

Learned counsel for the cross objectors/claimants submits that no increase in income on account of future prospects has been afforded. Moreover, meagre compensation has been awarded under the conventional heads, which needs to be enhanced as per the judgment of the Hon'ble Supreme Court in Magma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram and others, in Civil Appeal No.9581 of 2018 decided on 18.09.2018. It is, thus, prayed that cross objections be allowed and compensation awarded to the claimants be enhanced.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is a matter of record that the licence held by the respondent/driver carries an endorsement of the driver being authorized to drive heavy transport vehicle. To hold otherwise, merely on the statement of RW1 Harinder Singh to the effect that the entry to this effect at Sr. No.14469/R is missing is not justified in any manner. This entry pertains to renewal of the driving licence from 21.08.1996 to 20.08.1999. Original licence was issued as per entry No.628 dated 23.07.1990. However, record pertaining to the original licence could not be produced before the Tribunal as it was mentioned by RW1, that the same had been damaged in the floods which had occurred in the year 1993. RW1 has admitted that there is a cutting of some word(s) before LTV in the entry of the register at Sr. No.14469 and that cutting was not initialed by the officer. The original driving licence, which was available on the police file (challan No.256 dated 19.07.1997 titled State Vs. Tara Singh pending in the court of SDJM, Nabha) was duly summoned. It is specifically observed by the learned Tribunal that the original licence as well as certified copy thereof Ex.R1 categorically reflects that the licence was issued for heavy transport vehicle as well.

Furthermore, RW2 Sohan Lal, Junior Assistant, DTO, Patiala identified the original driving licence of the respondent/driver in the summoned file. Sohan Lal, RW2 testified that the said licence was prepared by him when he was posted as Junior Assistant in the office of DTO, Patiala. He also identified the signatures of the then DTO, Patiala over the original licence. It is specifically denied by RW2 that the said licence was issued only for LTV and the words 'HTV' were entered subsequently. Moreover, Sher Singh, RW3, owner of the offending vehicle, specifically testified that respondent/driver was

holding a valid driving licence, vide which he was authorized to drive heavy transport vehicles as well. He is stated to be a good driver never having caused any accident earlier. RW3 further stated that the truck was regularly insured with the Insurance Company and each time the truck was insured, driving licence of the respondent/driver was produced before the company officials. Owner of the offending vehicle clearly exercised due care and caution before engaging the services of the driver. Therefore, keeping in view the facts and circumstances mentioned above, it is concluded that the learned Tribunal has rightly decided this issue. Finding of the learned Tribunal that respondent/driver was holding a valid driving licence, is upheld. Insurance Company cannot be absolved of its liability to indemnify the insured in this case.

No other point has been urged by learned counsel for the Insurance Company.

Learned counsel for the appellant is unable to point out any ground whatsoever to interfere in the impugned award at the instance of the Insurance Company.

In respect to the plea for enhancement of compensation awarded to the claimants, it is not in dispute that the deceased aged about 30 years was serving as Canal Patwari in the Irrigation Department in the State of Punjab, receiving a salary of Rs.3906/- per month. In view of the judgment of Hon'ble the Supreme Court in National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009, 50% increase in income has to be afforded on account of future prospects. Deduction of 1/3rd has been rightly effected. Multiplier of 17 has rightly been applied. In view of the judgment of Hon'ble the Supreme Court in the case of Magma General Insurance Company Ltd. (supra), claimants/respondents No.1 and 2 are entitled to a sum of Rs.40,000/- each towards spousal and parental consortium respectively. The claimants are

indeed entitled to a sum of Rs.15,000/- each instead of Rs.2500/- and 2000/- awarded towards for loss of estate and funeral expenses.

Appellants are, thus, entitled to compensation, which is re-worked as under:-

Sr.No.	Heads of Claim	Rupees
1.	Income	4200 p.m. i.e., 50,400/- per annum
2.	Total income after addition at the rate of 50% on account of future prospects	50,400+25,200 (50,400x50%) = 75,600/-
3.	Income after deduction of 1/3 rd on account of personal expenses	75,600–25,200 (75,600/3) = 50,400/-
4.	Total dependency after applying a multiplier of 17	(50,400 x17) =8,56,800/-
5.	Loss of estate	15,000/-
6.	Funeral expenses	15,000/-
7.	Loss of consortium to claimants @ 40,000/-, Rs.80,000/- (40,000x2)	80,000/-
Grand Total		9,66,800/-

The amount of compensation already awarded to the claimants, needless to say, shall stand deducted from the amount calculated as above. Claimants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

With the abovesaid modification in the award dated 09.11.1998, cross objections are disposed of and the appeal filed by the Insurance Company is dismissed.

(LISA GILL)
JUDGE

11.12.2018
Ishwar Whether speaking/reasoned:- Yes/No
 Whether reportable:- Yes/No