IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 24.08.2018

FAO No.2694 of 1998 (O&M)

Charan Singh ... Appellant

Versus

Narinder Kaur and others ... Respondents

FAO No.2535 of 1998 (O&M)

Narinder Kaur and others ... Appellants

Versus

Charan Singh and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. P.S. Chahal, Advocate for
Mr. G.S. Nagra, Advocate for the driver.

None for the claimants.

Mr. Paul S. Saini, Advocate with
Mr. Vipul Sharma, Advocate for the insurance company.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.2535 and 2694 of 1998 as these have emerged out of the same award dated 08.09.1998 passed by the Motor Accidents Claims Tribunal, Kapurthala whereby compensation has been assessed on account of death of Avtar Singh in a motor vehicular accident that took place on 29.04.1994.

The Tribunal has awarded compensation of Rs.3,10,000/- and driver and owner of the offending vehicle have been held to be jointly and severally liable to pay compensation whereas the insurance company has been exonerated in view of findings recorded on issue No.3 that the driver was possessing learner's licence.

FAO No.2694 of 1998 has been filed by Charan Singh, driver of matador bearing No.DNH-0787 (offending vehicle) whereas the other appeal has been filed by the claimants seeking enhancement of compensation.

FAO No.2694 of 1998

Counsel for the appellant would urge that even if driver of the offending vehicle was not possessing a valid or effective licence on the day of occurrence, insurance company cannot escape liability to pay compensation to the claimants and, at best, can press for right of recovery against the insured after satisfying the award. In this context, reference has been made to judgments of Hon'ble the Supreme Court **National Insurance Co. Ltd. Vs. Swaran Singh and others, 2004(3) SCC 297** and **Pappu and others Vs. Vinod Kumar Lamba and another, 2018(1) PLR 425.**

Counsel representing the insurance company is not in a position to refute contention of the appellant, in the light of what has been held by Hon'ble the Supreme Court in the judgments cited at bar.

Taking into consideration the ratio of the judgments aforesaid, the insurance company cannot escape liability to pay compensation to the claimants. At the same time, as driver of offending vehicle was not possessing an effective licence at the time of occurrence, insurance company shall be entitled to recover compensation from the insured after satisfying the award towards the claimants. The insurance company cannot have right of recovery against driver of the vehicle for want of privity of contract between the insurer and the driver.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

FAO No.2535 of 1998

The Tribunal has awarded compensation of Rs.3,10,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.2470/-
2. Monthly loss of dependency	Rs.1600/-
3. Multiplier	16
4. Loss of dependency	Rs.3,07,200/-
5. Expenses on last rites	Rs.2800/-

The Tribunal has assessed income of the deceased on the basis of certificate Ex.A1, proved by Subedar Om Parkash AW3 and the same is affirmed. The deceased was less than 30 years of age, therefore, claimants shall be entitled to benefit of addition in income for future prospects @ 50%. As per the postmortem report, deceased was 28 years old at the time of occurrence. Accordingly, admissible multiplier would be 17. The application for compensation was filed by the widow, two minor children and mother of the deceased and accordingly deduction for personal expenses would be $1/4^{th}$. In this manner, loss of dependency is calculated at

Rs.5,66,865/- [(Rs.2470 x 12 x 17) + (50% future prospects) – (1/4th deduction for personal expenses)].

Under conventional heads, claimants shall be entitled to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium Rs.40,000/-
2. Loss of estate Rs.15,000/-
3. Funeral expenses Rs.15,000/-

Total compensation is Rs.6,36,865/- and the additional amount is Rs.3,26,865/- (6,36,865 - 3,10,000), payable with interest @ 7.5% per annum from the date of petition till realization, to be shared by the widow and children of the deceased in the ratio 70:15:15. The driver, owner and insurer shall be jointly and severally liable to pay compensation to the claimants but the insurance company shall have right of recovery against the insured, in terms of order of even date passed in FAO No.2694 of 1998.

Disposed of accordingly.

The Registry is directed to send a copy of this order to the claimants.

(REKHA MITTAL)
JUDGE

24.08.2018
ashok

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