In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 16.2.2018

FAO No. 5092 of 2012 and
Cross Objection No. 56-CII of 2014

Reliance General Insurance Company Limited

---Appellant

versus

Amarveer Kaur and others

---Respondents

FAO No. 5265 of 2012 and
Cross Objection No. 134-CII of 2014

Amarveer Kaur and others

---Appellants

versus

Mohinder Singh and others

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Arun Sharma, Advocate
for the Reliance General Insurance Company-appellant

Mr. J.P.Bhatt, Advocate,
for the cross objectors

Mr. L.S.Sidhu, Advocate
for the appellants in FAO-5265 of 2012
for the respondents in FAO-5092 of 2012

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Rekha Mittal, J.

This order will dispose of FAO Nos. 5092 & 5265 of 2012 and cross objections No. 56 & 134 of 2014 as these have emerged out of the same award dated 9.6.2012 passed by the Motor Accidents Claims Tribunal, Patiala (in short "the Tribunal") whereby compensation has been awarded in regard to death of Gurdeep Singh son of Hari Chand in a motor vehicular accident that took place on 22.10.2010.

CM No.4955-CII of 2014 in Cross objection No. 56-C of 2014

Prayer in this application is for condoning delay of 149 days in filing the cross objections.

Allowed as prayed for.

Delay of 149 days in filing the cross objections stands condoned.

Disposed of accordingly.

Main cases

FAO No. 5092 of 2012 has been preferred by the Reliance General Insurance Company Limited whereas FAO No. 5265 of 2012 has been filed by the claimants seeking enhancement of compensation. The cross objections in both the appeals have been filed by Maha Singh, registered owner/insured of offending vehicle Eicher/Canter No. HR-56A 7120.

The Tribunal has awarded compensation of Rs. 23,15,000/-, detailed hereunder:-

Monthly income of the deceased	Rs. 15,000/-
Multiplier	17
Deduction for personal expenses	1/4th
Loss of dependency	1,35,000 x 17= Rs. 22,95,000/-
Funeral expenses	Rs. 5000/-
Loss of estate	Rs. 5,000/-
Loss of consortium	Rs. 10,000/-

The insurance company is given right of recovery against the owner after indemnifying the claimants.

For the sake of convenience, the parties shall be referred to as the insurance company, claimants, cross objector and the driver.

FAO Nos. 5092 & 5265 of 2012 and
Cross objections Nos. 56 & 134 of 2014

Counsel for the insurance company would urge that income of the deceased assessed by the Tribunal is on higher side and liable to be reduced. It is argued with vehemence that claimants failed to adduce satisfactory much less cogent evidence to establish that deceased was working as an accountant with M/s Ganesh Rice Mills, Dhabi Gujran at a salary of Rs. 15,000/- per month. It is argued that Jagdish Rai PW3 proprietor of M/s Ganesh Rice Mills appeared in the witness box but failed to produce any documents much less account books of the said concern to prove employment and salary of deceased Gurdeep Singh. In addition, it is argued that there is no material on record to prove educational qualification of Gurdeep Singh in order to show that he was well equipped to work as an accountant in a rice mill. It is strenuously argued that Jagdish Rai was introduced as a witness by the claimants to support their cause for getting compensation at enhanced rate.

Counsel representing the claimants has supported assessment of loss of dependency but claimed that adequate compensation may be allowed under conventional heads.

Counsel representing the cross objectors has assailed findings of the Tribunal on issue No. 3 whereby the Tribunal has accepted plea of the insurance company that Mohinder Singh son of Ram Karan, driver of the offending vehicle was not possessing a valid licence and on the basis thereof, the insurance company has been given recovery right against the owner after indemnifying the claimants. It is argued that the insurance company has wrongly been given recovery right as licence possessed by Mohinder Singh does not appear to be forged on the face of it, therefore, it cannot be held that owner had deliberately caused breach of policy conditions. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court of India **United India Insurance Company Limited vs. Lehru and others, 2003 (2)RCR (Civil) 278.** Further reference has been made to judgment of the Madhya Pradesh High Court (Indore Bench) **Rajmal and others vs. Sanjay and others 2011 ACJ 2686.**

Counsel representing driver of the offending vehicle has also assailed findings of the Tribunal on issue No. 3 on the premise that he has filed an application under Order 41 Rule 27 of the Code of Civil Procedure for placing on record copy of driving licence (Annexure R-1) which was renewed by the Licensing Authority, Mathura and valid upto 3.9.2026 for non-transport and for transport upto 29.6.2017. According to counsel, proceedings before the Tribunal are summary in nature and the Tribunal is competent to prescribe its own procedure.

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

The Tribunal has assessed income of the deceased at Rs. 15,000/- per month on the basis of testimony of Jagdish Rai PW3. Jagdish Rai tendered into evidence his affidavit Ex. PW3/A. A relevant extract therefrom reads as follows:-

> "That I am sole proprietor of Firm M/s Ganesh Rice Mill, Dhabi Gujran (Patran) and Gurdeep Singh son of Sh. Hari Chand of Khanauri Mandi was working as Accountant with my firm till his death and he was earning Rs. 15,000/- per month from me. He died about 11 months back in road side accident."

In his cross examination, he has stated that he has not maintained any account books of his business. Again said that he has maintained the accounts and other expenses of service but he has not brought any record with regard to expenses today in the court. He has further deposed that he makes payment of PF to employees working in his firm but no PF of Gurdeep Singh was deposited by him. The very fact that Jagdish Rai did not deposit any PF for Gurdeep Singh despite having deposited PF of other employees is more than sufficient to hold that testimony of Jagdish Rai cannot form the basis to record a finding that Gurdeep Singh was working as an accountant with Ganesh Rice Mills much less at a salary of Rs. 15,000/- per month. Counsel for the claimants has fairly conceded that there is no evidence on record qua educational qualification of Gurdeep Singh. Under the circumstances, income of the deceased is to be assessed by taking a clue from minimum wage fixed by the State of Punjab for an unskilled worker and available at the relevant time. Accordingly, income of the deceased is assessed at Rs. 3700/- per month.

The Tribunal has rightly applied multiplier of 17 and deduction of 1/4th for computing loss of dependency. Claimants shall be entitled to increase in income for future prospects @ 40%. In this manner, loss of dependency comes to Rs. 3700 x 12 x 17=7,54,800 + 3,01,920=10,56,720 -2,64,180=**Rs.7,92,540/-**.

Under conventional heads, claimants shall be entitled to following compensation in the light of judgment of Hon'ble the Supreme Court of India **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270**:-

Loss of consortium to widow	**Rs. 40,000/-**
Expenses on funeral	**Rs. 15,000/-**
Loss of estate	**Rs. 15,000/-**

The total compensation comes to Rs. 8,62,540/- and compensation is reduced to the extent of Rs.14,52,460/- (23,15,000-8,62,540). The insurance company shall be at liberty to recover the excess amount, if already paid by filing an application before the Tribunal.

This brings the court to contentions raised by counsel for the cross objector and driver to assail findings of the Tribunal on issue No. 3.

The insurance company examined Dharampal Singh, Clerk

Licensing Authority, Mathura. A relevant extract from his testimony in Punjabi but translated into English, reads as follows:-

> "I have seen driving licence of Mohinder Singh son of Ram Karan on the Court file . This licence has not been issued by our office. Our office had issued Licence No. 10482 to Jatinder Kumar. I have seen licence on judicial file which is fake and has not been issued by our office. Attested copies of the aforesaid entries are Exs. RX and RY which I produce.

The witness was cross examined by counsel for the claimants before the Tribunal but there was no cross examination by counsel representing the driver and insured before the court below. Counsel for the cross objector and driver has failed to point out any materials elicited in cross examination of Dharampal Singh to contend that his testimony is not worthy of reliance and credence. In view of facts deposed by Dharampal Singh on the basis of record maintained in the office of Licencing Authority, Mathura, there was no option with the Tribunal except to uphold plea of the insurance company that Mohinder Singh was not possessing a valid licence on the date of occurrence i.e. 22.10.2010.

Indisputably, owner of the vehicle in question did not appear in the witness box to say something about driving licence or driving skills of the driver. It has been proved on record that licence possessed by the driver is not valid. **In Lehru and others' case (supra),** licence was not proved to be fake, as noticed in para 5 of the judgment. It is not clear if owner of the vehicle appeared in the witness box to prove that he had seen the driving licence at the time of engaging the driver and considered it to be genuine.

However, Honble the Apex Court has discussed in detail earlier judgment of the court **Sohan Lal Passi vs. P. Sesh Reddy and others 1996 (5) SCC 21** and **New India Insurance Company Shimla vs. Kamla and others (2001) 4 SCC 342.** In **Sohan Lal Passi's case (supra)** bus was driven by the cleaner, an employee of the owner at the time of accident. In **New India Insurance Company Shimla 's case (supra),** it has been held that the insurer has to pay to third party on account of the fact that a policy of insurance has been issued in respect of the vehicle. The insurer may be entitled to recover such sum from the insured if the insurer was not otherwise liable to pay such sum to the insured by virtue of the contract of insurance. The question as to whether or not the insured would be protected if he had made all enquiries was left open. In view of the above, the cross objector cannot derive any advantage to his contention from the judgment in **Lehru and others' case (supra).** Similarly, the judgment in **Rajmal's case (supra)** has no bearing on the facts of the case in hand because in the referred authority, owner of the vehicle appeared in the witness box and deposed that he had seen driving licence when hired the driver and driving licence contained the seal of RTO. He has made an inquiry from the previous employers, Pradeep Bus, Agarwal bus etc. and he was informed by them that Juwan Singh was an experienced and good driver. In the circumstances, the High Court extended benefit of **Lehru and others' case (supra)** to owner of the vehicle by negating plea of the insurance company that the insured is guilty of committing breach of terms and conditions of contract of insurance or the insurance company is entitled to have recovery right against the insured. In this view of the matter, findings recorded by the Tribunal giving recovery right in favour of the insurance company for want of a valid licence with the driver cannot be faulted with and ordered to be affirmed.

The driver of the offending vehicle has filed application for additional evidence to place on record driving licence Annexure R-1, renewed by the Licensing Authority, Mathura. Even if plea of driver is accepted that licence was renewed by the authority by whom the original licence was purported to be issued but otherwise found to be fake in the light of testimony of Dharampal Singh, Clerk, Licensing Authority Mathura, renewal of his fake licence will not obliterate the illegality that original licence was not issued by the authority concerned. In this view of the matter, driver cannot derive any advantage from the factum of renewal of licence to seek reversal of findings of the Tribunal on issue No. 3.

For the foregoing reasons, the appeals are disposed of in the aforesaid terms. However, cross objections are dismissed.

Before parting with this order, it is pertinent to note that licence in question was not issued by the Licensing Authority, Mathura as deposed by Dharampal Singh RW-3. It is surprising that the said licence has been renewed by the same Licensing Authority at Mathura. A copy of the judgment alongwith copy of driving licence (Annexure R-1) be sent to the Licensing Authority, Mathura to examine as to if the said licence was renewed by the authority at Mathura and if so, under what circumstances. The concerned Licensing authority after conducting an enquiry to be concluded within three months from the date of receipt of copy of the order shall send a report to this Court.

(Rekha Mittal)
Judge

16.2.2018
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No