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

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FAO 762 of 2012 (O&M)
Date of decision: 28.02.2018

*Anita and another* ........ *Appellants*

*Versus*

*Vishal Sharma and others* .......*Respondents*

**Coram:** **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Munish Bhardwaj, Advocate
for the appellants

Mr. Suvir Dewan, Advocate
for respondent No. 3

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**Rekha Mittal, J.** (Oral)

The claimants are in appeal seeking enhancement of compensation on account of death of Amar minor son of the claimants aged about 9 years in a motor vehicular accident that took place on 06.03.2008.

Counsel for the appellants would state that as respondents No. 1 and 2 were ex parte before the Tribunal, their service may be dispensed with.

Ordered accordingly.

The Tribunal has assessed compensation of Rs.1,22,000.00 to be paid by the driver and owner of offending vehicle DCM Toyota bearing No. PB-02-C-9413 whereas the insurance company has been exonerated of its liability to pay compensation.

The first submission made by Counsel for the appellants is that even if the driver and owner of the offending vehicle have failed to produce on record driving licence, the insurance company cannot be altogether exonerated of its liability to pay compensation and, at best, can be allowed recovery right against the insured.

To justify enhancement of compensation, it is argued that the Tribunal has assessed loss of dependency by applying multiplier of 5 in place of appropriate multiplier of 15 as the deceased was 9 years old. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company has supported findings of the Tribunal whereby the insurance company has been exonerated of its liability to pay compensation for failure of driver (respondent No. 1 therein) to file response to the application for production of documents who later was proceeded against ex parte on 23.01.2010. He has also supported assessment of compensation made by the Tribunal.

The insurance company filed application for production of driving licence on 17.04.2009. In para 18 of the award, it has been noticed by the Tribunal that sufficient opportunities were given to Vishal Sharma-respondent No. 1 to file reply but he neither filed reply to the application nor produced document and eventually absented from proceedings and was proceeded against ex parte on 23.01.2010. Under the circumstances, the Tribunal has rightly drawn an adverse inference against owner and driver of the offending vehicle that driver did not possess licence to drive the vehicle in question. However, even if the driver was not possessing a licence, the insurance company cannot escape its liability to pay compensation to a third party for whose benefit the law has mandated an insurance policy to be obtained by the insured under Section 147 of the Motor Vehicles Act, 1988 before the vehicle is brought at a public place. In this view of the matter, I find merit in contention of the appellants that the insurance company is liable to pay compensation to the claimants. As the driver did not produce driving licence and registered owner opted to be ex parte before the Tribunal, the insured is guilty of committing breach of terms and conditions of the contract of insurance by giving a vehicle for driving to a person who was not possessing a driving licence, therefore, the insurance company shall be entitled to recover the amount of compensation from the insured after payment to the claimants.

The Tribunal has awarded compensation of Rs.1,22,000.00, detailed hereunder:-

| | |
|---|---|
| Notional income of the deceased | Rs.3,000.00 |
| Deduction for personal expenses | 1/3rd |
| Multiplier | 5 |
| Loss of dependency | Rs.1,20,000.00 |
| Funeral expenses | Rs.2,000.00 |

Hon'ble the Supreme Court in ***Reshma Kumari and others v. Madan Mohan and another 2013(2) R.C.R.(Civil) 660*** has held that if the deceased happens to be less than 15 years of age, multiplier of 15 is to be adopted. Under the circumstances, loss of dependency comes to Rs.3,60,000.00 (24,000x15). The claimants shall be entitled to Rs.15,000.00 towards expenses of funeral and last rites. Total compensation is Rs.3,75,000.00 (Rs.3,60,000.00 + Rs.15,000.00) and additional amount is Rs.2,53,000.00 (Rs.3,75,000.00 - Rs.1,22,000.00) payable with interest at the rate of 7.5% per annum from the date of petition till realization. The respondents shall be liable to pay compensation to the claimants. However, the insurance company shall be entitled to recover the amount of compensation from the insured after payment to the claimants, by filing an appropriate application before the Tribunal. The entire compensation shall be deposited by the insurance company with the Tribunal within a period of three months from the date of receipt of certified copy of the order.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

28.02.2018
mohan bimbra

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