In the High Court of Punjab and Haryana at Chandigarh

FAO No. 1164 of 2014(O&M)
Cross Objections No. 19-CII of 2015
Date of Decision: 21.9.2018

National Insurance Company Limited

---Appellant

versus

Asha Rani and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.S.S.Sidhu, Advocate
for the appellant

Mr. H.K.Araura, Advocate,
for respondents No. 1 to 5/ cross objectors

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Rekha Mittal, J.

CM No. 2641-CII of 2015 in Cross Objections No. 19-CII of 2015

Prayer in this application is for condoning delay of 37 days in filing the cross objections

Heard.

Allowed as prayed for. Delay of 37 days in filing the cross objections stands condoned.

Disposed of accordingly.

FAO No. 1164 of 2014 and Cross Objections No. 19-CII of 2015

This order will dispose of FAO No. 1164 of 2014 and Cross Objections No. 19-CII of 2015 as these have emerged out of the same award dated 19.12.2013 passed by the Motor Accidents Claims Tribunal, Hoshiarpur whereby compensation has been assessed on account of death of Jaswant Singh in a motor vehicular accident that took place on 29.10.2011.

The appeal has been preferred by the National Insurance Company Limited (hereinafter to be referred to as "the insurance company") whereas cross objections were filed by the claimants seeking enhancement of compensation.

The Tribunal has awarded compensation of Rs. 3,86,000/-, detailed hereunder:-

Monthly income of the deceased	Rs. 3000/-
Deduction for personal expenses	1/4th
Multiplier	13
Loss of dependency	Rs. 3,51,000/-
Expenses on funeral and last rites	Rs. 15,000/-
Loss of consortium	Rs. 10,000/-
Loss of estate	Rs. 10,000/-

Counsel for the insurance company has challenged the award primarily on two counts. It is argued that compensation assessed by the Tribunal is more than what can be allowed in view of parameters laid down in the 2nd Schedule appended to Section 163-A of the Motor Vehicles Act, 1988 (in short "the Act").

Another submission made by counsel is that Jaswinder Singh, driver of the offending vehicle in question was not holding a valid licence as per testimony of Dalip Chand, Junior Assistant, District Transport Office, Hoshiarpur RW1, therefore, the insurance company is entitle to have right of recovery against the insured after payment of compensation to the claimants.

Counsel representing the claimants would state that income of the deceased is liable to be assessed at Rs. 3300/- per month. He has supported findings of the Tribunal on issue No. 3 with regard to driving licence.

Taking into consideration plea of the claimants and minimum wage available at the relevant time, income of the deceased is assessed at Rs. 3300/- per month. The Tribunal has rightly applied multiplier of 13 as the deceased was 48 years old at the time of accident. However, deduction for personal expenses would be 1/3rd in view of structured formula. Accordingly, loss of dependency is calculated at Rs. 3,43,200/-[3300 x12x13=5,14,800 – 1,71,600(1/3rd)].

Under conventional heads, claimants shall be entitled to Rs.9500/-, detailed hereunder:-

Loss of consortium	Rs. 5000/-
Loss of estate	Rs. 2500/-
Funeral expenses	Rs. 2000/-

Total compensation is Rs. 3,52,700/- and compensation allowed by the Tribunal is reduced to the extent of Rs.33,300/-. The insurance company shall be at liberty to recover the excess amount, if already paid.

This brings the Court to the issue whether Jaswinder Singh was possessing a valid licence. The insurance company examined Dalip Chand RW1 from the office of District Transport, Hoshiarpur. He has produced the register with regard to renewal of the licence in question from time to time. The last renewal was made on the basis of old driving licence No. 7221/R/92-93. As per entry in the register, said driving licence

7221/R/92-93 is in the name of V.K.Mittal son of P.C.Mittal resident of Oswal Sugar Mill Limited, Mukerian and is not in the name of Jaswinder Singh meaning thereby that the original licence on the basis whereof, various renewals were made from time to time was not issued in the name of Jaswinder Singh, driver of the offending vehicle. As per the settled position in law, if the original licence is invalid/fake, renewal thereof is not sufficient to do away with the illegality. That being so, findings of the Tribunal that Jaswinder Singh was holding a valid licence cannot be allowed to sustain and accordingly set aside. As Jaswinder Singh was not holding a valid licence, the insurance company shall have right of recovery against the insured after payment of compensation to the claimants.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms. As a natural corollary, cross objections filed by the claimants are disposed of leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

21.9.2018
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No