IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 07.12.2018

FAO No.4302 of 2013 (O&M)

The Oriental Insurance Company Ltd. ... Appellant

Versus

Smt. Jarnailo Devi and others ... Respondents

FAO No.5711 of 2013 (O&M)

Smt. Jarnailo Devi and others ... Appellants

Versus

Anand Singh and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ashwani Talwar, Advocate with
Mr. J.S. Chatrath, Advocate
for the insurance company.

Mr. Inderjeet Sharma, Advocate
for the claimants.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO No.4302 and 5711 of 2013 as these have emerged out of the same award dated 20.05.2013 passed by the Motor Accidents Claims Tribunal, Panchkula whereby compensation has been assessed on account of death of Jarnail Singh in a motor vehicular accident that took place on 18.01.2011.

FAO No.4302 of 2013 has been filed by the Oriental Insurance

Co. Ltd. whereas the other appeal has been preferred by the claimants seeking enhancement of compensation.

FAO No.4302 of 2013

The sole submission made by counsel for the insurance company is that as Anand Singh, driver of Mahindro Maximo Tempo/four wheeler bearing No.HR-37-C-3816 was not holding a valid licence in view of the report submitted by the Motor Accidents Claims Tribunal, Panchkula in pursuance of order dated 03.05.2017 passed by this Court, the insurance company should be given right of recovery against the insured after payment of compensation to the claimants. It is argued that the Tribunal has noticed that during investigation of criminal case registered against Anand Singh, licence No.6986 issued by an authority at Patiala was taken into possession and the said licence was renewed lastly from 29.04.2005 to 28.04.2008 but the occurrence in question took place on 18.01.2011. It is further argued that licence Ex.R1 purported to be issued by District Transport Officer, Phek, Nagaland does not bear endorsement of old licence and permanent address of the driver is of Maheshpur, District Panchkula (Haryana), sufficient to prove that licence Ex.R1 is fake.

Counsel representing the claimants would urge that though he has not much to say on the issue of driving licence which plea is required to be contested by the insured but still he would support findings of the Tribunal holding the insurance company jointly and severally liable to pay compensation. It is argued that despite an opportunity being provided to the insurance company to adduce evidence with regard to licence Ex.R1 issued by Licensing Authority, Nagaland in the year 2007, the insurance company did not examine any witness of the said authority to prove that licence Ex.R1 is not valid or the same was not issued by the authority concerned.

I have heard counsel for the parties, perused the paper book particularly the award and report submitted by the Tribunal in pursuance of order dated 03.05.2017 passed by this Court.

Be that as it may, it is undisputed position of the case that licence Ex.R1 bearing No.4305 was produced on record. The insurance company did not examine a witness to prove that the said licence has not been issued from the office of District Transport Officer, Phek, Nagaland. The mere fact that licence does not bear endorsement of old licence or permanent address of driver is of Maheshpur, District Panchkula ipso facto does not lead to construe that licence Ex.R1 is fake or has not been issued by the concerned licensing authority. The insurance company did not call upon driver of the offending vehicle to appear in the witness box and to explain as to under which circumstances he got licence issued from Nagaland despite his being permanent resident of District Panchkula (Haryana). Even the fact that driver was possessing two licences of same period would not amount to violation of policy conditions though it may be an offence under the Act. In this view of the matter, I find myself unable to accept contention of the insurance company that driver was not possessing a valid licence or the insurance company is entitle to have right of recovery after payment of compensation to the claimants.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

FAO No.5711 of 2013

The Tribunal has awarded compensation of Rs.9,54,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.4500/-
2. Addition in income for future prospects	30%
3. Multiplier	14
4. Deduction for personal expenses	1/6th
5. Loss of dependency	Rs.8,19,000/-
6. Expenses on funeral	Rs.25,000/-
7. Loss of estate	Rs.10,000/-
8. Loss of consortium	Rs.1,00,000/-

The Tribunal has assessed income of the deceased at Rs.4500/- per month by taking into consideration the minimum wage. The minimum wage at the relevant time is the same as has been assessed by the Tribunal. Claimants shall be entitle to addition in income for future prospects @ 25%. Multiplier and deduction for personal expenses applied by the Tribunal are affirmed. In this manner, loss of dependency is calculated at Rs.7,87,500/- [(4500 x 12 x 14) + (25% future prospects) – (1/6th deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.3,10,000/-, detailed hereunder:-

1. Loss of consortium to claimants No.1, 4 to 9 Rs.2,80,000/-

	(Rs.40,000/- each)
2. Expenses on last rites	Rs.15,000/-
3. Loss to estate	Rs.15,000/-

Total compensation is Rs.10,97,500/- and the additional amount is Rs.1,43,500/- (10,97,500 - 9,54,000), payable with interest @ 7.5% per annum from the date of petition till realization, to be paid to claimants No.6 to 9 in equal ratio, to be invested in fixed deposit till they attain the age of majority or for a period of three years, whichever is later.

The appeal is partly allowed in the aforesaid terms.

07.12.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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