IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 06.02.2018

FAO No.5755 of 2013 (O&M)

Sunita and others ... Appellants

Versus

Raj Kumar @ Pappu and others ... Respondents

FAO No.857 of 2014 (O&M)

Bachint Singh ... Appellant

Versus

Sunita and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. I.S. Cooner, Advocate
for the appellants in FAO No.5755 of 2013 and
for respondents No.1 to 5 in FAO No.857 of 2014.

Mr. Arihant Goyal, Advocate
for the appellant in FAO No.857 of 2014 and
for respondent No.2 in FAO No.5755 of 2013.

Mr. Vishal Aggarwal, Advocate
for the insurance company.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.5755 of 2013 and 857 of 2014 as these have emerged out of the same award dated 06.08.2013 passed by the Motor Accidents Claims Tribunal, Ambala whereby compensation has been awarded in regard to death of Jagdeep Singh in a motor vehicular accident that took place on intervening night of 15/16.08.2011.

FAO No.5755 of 2013 has been filed by the claimants seeking enhancement of compensation whereas FAO No.857 of 2014 has been filed by Bachint Singh, registered owner of the vehicle to assail recovery right given in favour of the insurance company.

FAO No.5755 of 2013

The Tribunal has awarded compensation to the tune of Rs.7,60,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.5000/-
2. Multiplier	16
3. Deduction for personal expenses	1/4th
4. Loss of dependency	Rs.7,20,000/-
5. Expenses on funeral	Rs.10,000/-
6. Loss of consortium	Rs.10,000/-
7. Loss of estate	Rs.10,000/-
8. Non-pecuniary damages	Rs.10,000/-

Counsel for the claimants has prayed for enhancement of compensation primarily on two counts. It is argued that the deceased was 32 years old and claimants are entitled to increase in income for future prospects @ 40%, in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270.** Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company has supported assessment made by the Tribunal with the submission that adequate compensation has been allowed.

There is no challenge to findings of the Tribunal that deceased was 32 years old and accordingly multiplier of 16 has been applied for computing loss of dependency. The deceased left behind family consisting of his widow, two minor children and parents. Claimants shall be entitled to increase in income for future prospects @40%. Deduction for personal expenses allowed by the Tribunal is affirmed. In this manner, loss of dependency is calculated at Rs.10,08,000/- (Rs.5000 x 12 x 16) + (40% future prospects) – (1/4th deduction for personal expenses).

Under conventional heads, award is modified to the extent that the 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.10,78,000/- and the additional amount is Rs.3,18,000/- (10,78,000 – 7,60,000), payable with interest @7.5% per annum from the date of petition till realization, in terms of the award passed by the Tribunal.

The appeal is partly allowed in the aforesaid terms.

FAO No.857 of 2014

Counsel for the appellant would argue that Raj Kumar, driver of Mahindra Pick-up HR-68-3971 was possessing two driving licences Exs.R1 and R5. Licence Ex.R1 was purportedly issued by the Licensing

Authority, Raipur (Chhattishgarh) and found to be fake on the basis of report Ex.R8 and letter dated 03.07.2013 Mark-RD. However, another licence Ex.R5 issued by the District Transport Officer, Gurdaspur authorising the driver to drive scooter, car, tractor/LTV issued on 08.01.2010 and valid upto 07.01.2013 was found to be genuine. It is argued with vehemence that by holding two driving licences, a driver may invite some action, if rules so permit but that does not constitute violation of terms and conditions of contract of insurance or constitute a defence in favour of the insurer under Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act').

Another submission made by counsel is that Bachint Singh-appellant appeared in the witness box and tendered into evidence his duly sworn affidavit Ex.RW1/A. In para 1 of the affidavit, he has categorically deposed that he got the vehicle insured with respondent No.3 (insurance company) and had shown to insurance company the original driving licence of driver Raj Kumar bearing No.9269/HPC for scooter/car/tractor/LTV issued on 08.01.2010 by District Transport Officer, Gurdaspur and photocopy was produced as Ex.R5. According to counsel, as Bachint Singh gave employment to the driver on the basis of driving licence Ex.R5 which was also shown to the insurance company at the time of getting policy, plea of the insurance company that the insured is guilty of breach of terms and conditions of the contract of insurance is not tenable and liable to be rejected. In support of his contention, he has relied upon judgments of

Hon'ble the Supreme Court **United India Insurance Co. Ltd. Vs. Lehru, 2003(2) RCR (Civil) 278** and **Pepsu Road Transport Corporation Vs. National Insurance Co. Ltd., 2013(4) RCR (Civil) 273.**

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal upholding plea of the insurer that driver did not possess a valid licence, that amounts to breach of terms and conditions of policy by the insured, entitling the insurance company to escape its liability to pay compensation or in the alternative press for recovery right against the insured. In addition, it is argued that Raj Kumar driver of the offending vehicle is a resident of Ambala but licence Ex.R5 has been issued by the District Transport Officer, Gurdaspur. It is further argued that under Section 9 of the Act, driving licence can be obtained from the authority in whose jurisdiction the applicant resides or carries on business, therefore, licence Ex.R5 cannot be said to be valid.

Be that as it may, it is undisputed position of the case that there are two driving licences in the name of Raj Kumar driver of the vehicle, available on record. Licence Ex.R1 was found to be fake on the basis of report Ex.R8. The other licence Ex.R5 issued by the Licensing Authority, Gurdaspur was found to be valid. Firstly, possessing of two driving licences by a driver may invite some action against the driver, if the rules so permit but that does not constitute a defence in favour of the insurer under Section 149 (2) of the Act.

So far as plea of the insurance company that driver is the resident of Ambala but the licence has been issued by the Transport Authority at Gurdaspur, the insurance company did not examine the driver to know his stand as to how he obtained licence from Gurdaspur. As per the settled position in law, it is the obligation of the insurance company to establish breach on the part of insured to prove a defence under Section 149(2) of the Act. Under the circumstances, the insurance company cannot derive any advantage to its contention from the factum of issuance of driving licence Ex.R5 by the Licensing Authority, Gurdaspur. This apart, Bachint Singh in his cross-examination has deposed that earlier the driver was residing at Gurdaspur, therefore, contention raised by counsel for the insurance company is otherwise misconceived and liable to be rejected.

This brings the Court to testimony of Bachint Singh with regard to driving licence Ex.R5. As has been rightly pointed out by counsel for the appellant, Bachit Singh has deposed with regard to his having got the vehicle insured by showing the driving licence Ex.R5 to the insurance company. When the facts elicited in his examination are examined in the light of judgments of Hon'ble the Supreme Court **Lehru's case** (supra) and **Pepsu Road Transport Corporation's case** (supra), it is difficult to accept contention of the insurance company that the insured is guilty of breach of terms and conditions of contract of insurance or the insurance company is entitled to recovery right against the insured. That being so, findings recorded by the Tribunal that either the driver did not possess a valid licence or the insurer is entitled to recovery right against the insured are incorrect and ordered to be set aside.

No other point has been raised.

For the foregoing reasons, the appeal is partly allowed. The insurance company shall be jointly and severally liable to pay compensation without any recovery right.

No order as to costs.

06.02.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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