IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 23.05.2018

FAO No.2586 of 2016 (O&M)

Mahinder Pal Singh ... Appellant

Versus

New India Assurance Co. Ltd. and others ... Respondents

FAO No.4089 of 2016 (O&M)

Harbhajan Kaur and another ... Appellants

Versus

Mohinder Pal Singh and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Ms. Rajni Maurya, Advocate and
Mr. Naveen Batra, Advocate
for the appellant in FAO No.2586 of 2016 and
for respondent No.1 in FAO No.4089 of 2016.

Mr. A.S. Mehta, Advocate for
Mr. TVS Lehal, Advocate
for the appellants in FAO No.4089 of 2016 and
for respondent Nos.2 and 3 in FAO No.2586 of 2016.

Mr. R.S. Sharma, Advocate
for Insurance Co.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.2586 and 4089 of 2016 as these have emerged out of the same award dated 08.01.2016 passed by the

Motor Accidents Claims Tribunal, Rupnagar whereby compensation has been awarded on account of death of Ajaib Singh in a motor vehicular accident that took place on 19.02.2015 but the insurance company has given recovery right against owner and driver of the offending vehicle i.e. truck No.HP-12-2589.

FAO No.2586 of 2016 has been filed by Mahinder Pal Singh to challenge the recovery right given in favour of the insurance company whereas FAO No.4089 of 2016 has been filed by the claimants seeking enhancement of compensation.

FAO No.2586 of 2016

The Tribunal framed issue No.3 to the following effect:-

> Whether respondent No.1-driver of the offending vehicle was not holding a valid driving licence at the time of alleged accident? If so, its effect?OPR

The Tribunal had taken up issues No.3 and 4 together for discussion and decision. With regard to issue No.3, it has been held that as per the verification report qua driving licence Ex.R5, no record was available in the office of District Transport Officer, Wokha, Nagaland and as such, there is breach of policy condition and the insurance company is entitled to recover compensation from the insured after payment to the claimants.

Counsel for the appellant would urge that the insurance company failed to discharge onus of issue No.3 as it did not examine a witness to prove the alleged verification report, in accordance with law and by providing an opportunity to the insured to cross examine the witness on the basis of records. It is argued with vehemence that the Tribunal failed to appreciate that verification report cannot form the basis to record a finding that licence possessed by the driver is not a valid one.

Counsel for respondent No.2 has supported findings on issue No.3.

I have heard counsel for the parties, perused the paper book particularly findings of the Tribunal on issue No.3 taken up jointly with issue No.4.

A casual reading of paras 11 and 12 of the award leaves no manner of doubt that the Tribunal has condemned the driver for not possessing a valid licence merely on the basis of verification report that has not been proved in accordance with law. In this view of the matter, I find merit in contention of the appellant that findings of the Tribunal on issue No.3 cannot be allowed to sustain and liable to be set aside. As a natural corollary, insurance company shall be jointly and severally liable to pay compensation to the claimants, without any recovery right.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

FAO No.4089 of 2016

The Tribunal has awarded compensation of Rs.7,72,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.6500/-
2. Multiplier	18
3. Deduction for personal expenses	50%
4. Loss of dependency	Rs.7,02,000/-
5. Expenses on funeral	Rs.20,000/-
6. Loss of love and affection	Rs.50,000/-

The deceased was 25 years old unmarried son of the claimants. They shall be entitled to benefit of future prospects @ 40%. Deduction for personal expenses and multiplier adopted by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs.9,82,800/- [(Rs.6500 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses)].

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that claimants shall be entitled to Rs.30,000/-, i.e. Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate.

Total compensation is Rs.10,12,800/- and the additional amount of Rs.2,40,800/- (10,12,800 – 7,72,000) shall be payable with interest @7.5% per annum from the date of petition till realization, to mother of the deceased .

The appeal is partly allowed in the aforesaid terms.

(REKHA MITTAL)
JUDGE

23.05.2018
ashok

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