IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. **FAO No. 435 of 2015 (O&M)**
Date of Decision : 20.04.2018

Jyoti and others ....Appellants

Versus

Rajesh Kumar and others .....Respondents

2. **FAO No. 1537 of 2015 O&M)**

Rajesh Kumar and another ....Appellants

Versus

Smt. Jyoti and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vinod K. Kanwal, Advocate
for Mr. Ashit Malik, Advocate
for the appellants in FAO No. 435 of 2015 and
for respondents no. 1 to 3 in FAO No. 1537 of 2015.

Mr. Anil Rathee, Advocate
for Mr. Pawan Attri, Advocate
for appellants in FAO No. 1537 of 2015 and
for respondents no. 1 and 2.

Mr. Paul S. Saini, Advocate
for respondent no. 3 and 4 (Insurance Company) in both the appeals

<u>Surinder Gupta, J.</u>

Both the above captioned appeals have been taken up together as these arise out of same award dated 25.11.2014 passed by Motor Accident Claims Tribunal, Sonipat (later referred to as 'the Tribunal').

2. Claimants have filed FAO No. 435 of 2015 seeking enhancement of compensation as awarded by the Tribunal for death of Ashok Kumar (later referred to as 'the deceased') in a motor vehicle accident with Cruiser Jeep bearing registration no. HR-69-8119 (later referred to as 'the offending vehicle') while driver and owner of the offending vehicle have

filed FAO No. 1537 of 2015 challenging the award whereby the Tribunal while exonerating the insurer (New India Assurance Company Ltd.) of the offending vehicle from its liability to pay amount of compensation, directed appellants to pay the same with observations that driving licence possessed by appellant no. 1-Rajesh Kumar on the date of accident was not valid for driving the jeep, which was being used as a passenger vehicle.

3. As in both the above captioned appeals, the points in issue involved are validity of driving licence and quantum of compensation awarded by the Tribunal, detailed facts of the case are being skipped for the sake of brevity.

4. Firstly I take **FAO No. 1537 of 2015** filed by driver and owner of the offending vehicle.

5. Learned counsel for appellants has argued that appellant no. 1-Rajesh Kumar, who was driver of the offending vehicle at the time of accident was possessing a driving licence, which was valid upto 30.04.2019. The driving licence authorized him to drive tractor (NT)/Scooter/ Motorcycle/Car/Jeep. As per law settled by Hon'ble Apex Court in case of ***Mukund Dewangan* vs. *Oriental Insurance Company Ltd.*, 2017 (7) Scale 731,** driving licence of appellant no. 1 was valid for diving the transport vehicle as well.

6. Learned counsel for Insurance Company has argued that appellant no. 1 was not having licence to drive light motor vehicle, as such, he was not authorized to drive transport vehicle. The licence to drive car or jeep does not authorize a person to drive car or jeep, which is being used for transport purposes.

7. Hon'ble Apex Court in case of ***Mukund Dewangan (supra)***

while discussing the validity of licence to drive the vehicle has observed in para 45 as follows:-

> *"45 ....It was also rightly contended that there are several vehicles which can be used for private use as well as for carrying passengers for hire or reward. When a driver is authorised to drive a vehicle, he can drive it irrespective of the fact whether it is used for a private purpose or for purpose of hire or reward or for carrying the goods in the said vehicle. It is what is intended by the provision of the Act, and the Amendment Act 54/1994."*

8. It was further observed by Hon'ble Apex Court in aforesaid case that "Section 10 of the Motor Vehicle Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kind of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles."

9. From above observations, it is clear that a person holding the driving licence to drive a car is competent to drive car/jeep, which is being used for private purposes as well as car/jeep being used for commercial purposes.

10. The Tribunal while observing that licence of appellant no. 1 was not valid has taken note of the fact that driving licence (Ex. R-2) did not authorize him to drive a transport vehicle. In view of law settled by Hon'ble Apex Court in case of ***Mukund Dewangan (supra)***, appellant no. 1 was competent to drive the jeep being used for carrying the passengers and his

licence was valid. Consequently, findings of the Tribunal to this effect are reversed. Respondent no. 4-New India Assurance Co. Ltd. in this appeal **(FAO-1537-2015)** being insurer of the offending vehicle is held liable to pay the amount of compensation.

FAO No. 435 of 2015

11. Learned counsel for claimants-appellants has argued that deceased-Ashok Kumar was 30 years of age and was working as an electrician. He was a skilled person and was earning ₹10,000/- per month but the Tribunal has assessed his income as ₹6000/- per month, which is on lower side. Claimants are also entitled to addition in income of the deceased towards future prospects alongwith compensation under the conventional heads as per law settled by Hon'ble Apex Court in case of ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009***. After the accident, the deceased was taken to hospital, where he died on the next day. While appearing as PW-2, Smt. Jyoti, wife of the deceased, has stated that she spent ₹80,000/- on treatment, medicines, conveyance and funeral expenses of her husband but the Tribunal awarded no compensation on this score.

12. Learned counsel for Insurance Company has argued that in the absence of any evidence regarding income of the deceased, the Tribunal has rightly taken income of the deceased as ₹6000/- per month. On the issue of grant of future prospects he has argued that the same is not admissible as the deceased was not having established income. About hospital expenses, he has argued that the same were not allowed for want of any evidence on record.

13. Deceased-Ashok Kumar was 30 years of age. Claimants have alleged that he was electrician by profession but have not produced any evidence to prove his income. Even by taking him as a skilled worker,

income of the deceased as assessed by the Tribunal calls for no interference as in the year 2012, minimum wages prescribed by Labour Commissioner, Haryana for skilled worker were ₹5367/- per month.

14. In India most of the persons are employed in unorganized sectors and a person, who is self-employed usually keeps no record of his income. It is on the basis of evidence on record that their income is assessed. The income so assessed by the Tribunal falls in the definition of established income of the deceased, as such, income of ₹6000/- as assessed by the Tribunal is established income and calls for no interference. As per law settled by Hon'ble Apex Court in case of ***Pranay Sethi (supra)***, claimants are entitled to 40% addition in income of the deceased towards future prospects. They are also entitled to compensation of ₹40,000/- towards loss of consortium, ₹15,000/- towards loss of estate and ₹15,000/- for funeral expenses.

15. The deceased had met with accident on 10.04.2012 and was immediately shifted to hospital, where he died the next day. Though, no documentary evidence has come on record regarding medical/hospital expenses, still the Tribunal by using guess work could assess such expenses, which claimants would have suffered towards purchase of medicines, expenses of hospitalization, attendant charges, transportation expenses etc. The claimants were trying to avail medical facilities to save the life of deceased and provide him all possible medical help for which they had to spend. The expenses on this score are assessed as ₹10,000/-.

16. In view of my above discussion, compensation to which claimants-appellants are entitled, is computed as follows:-

(i)	Monthly income of the deceased as assessed by the Tribunal	₹6000 per month

(ii)	40% of (i) above added towards future prospects	(₹6000+₹2400)= ₹8400/- per month
(iii)	1/3rd of (ii) above deducted towards personal expenses	(₹8400-₹2800) = ₹5600 per month
(iv)	Compensation calculated after applying the multiplier of 17	(₹5600X12X17) = ₹1142400
(v)	Compensation towards loss of consortium	₹40000
(vi)	Compensation towards loss of estate	₹15000
(vii)	Compensation towards funeral expenses	₹15000
(viii)	Medical expenses	₹10000
Total		**₹1222400**

17. As a sequel of my above discussion, the appeal **(FAO-1537-2015)** filed by driver and owner of the offending vehicle is allowed and the award passed by the Tribunal directing appellants to pay the entire amount of compensation is set aside. New India Assurance Company Ltd. being insurer of the offending vehicle is directed to pay entire amount of compensation to claimants.

18. The appeal **(FAO No. 435 of 2015)** has merit and the same is also accepted. Award of the Tribunal is modified and the compensation allowed to claimants for death of Ashok Kumar is enhanced from ₹9,41,000/- to ₹12,22,400/-. Liability to pay the amount of compensation shall be of respondent no. 3-New India Assurance Company Limited. The enhanced amount of compensation will carry interest @ 7% per annum from the date of filing of instant appeal till actual realization. Claimants will share the enhanced amount of compensation as follows:-

(i) Claimant no. 1 (wife) : 50%
(ii) Claimant no. 2 (son) : 25%
(iii) Claimant no. 3 (mother) : 25%

19. Respondent no. 3-New India Assurance Company being insurer of the offending vehicle will deposit the share of claimants no. 1 and 3 in

their bank accounts or pay the same through demand drafts. The share of claimant-respondent No. 2, who is minor, will be deposited in some nationalized bank as fixed deposit till the period she attains majority. It is, however, made clear that the bank may take the documents regarding age of minor as required at the time of deposit of the amount and she shall not be asked to bring fresh order from the Tribunal to get the payment of the amount deposited in her name after the date of her attaining majority. The above direction has been issued to save claimant from unnecessary harassment caused due to directions, the bank usually give to bring the order of Tribunal to get the payment even after minor claimant has attained age of majority. Claimant no. 1-Smt. Jyoti, being mother and natural guardian of minor claimant shall be entitled to get interest on the share of minor deposited with bank, on monthly, quarterly, half yearly or annual basis, as per her convenience to meet expenses of her brought up.

20. In the event of demise of any of the claimants before or after disposal of this appeal, compensation of his/her share shall be paid to surviving claimants.

April 20, 2018 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No