IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

XOBJC-66-CII of 2016 (O&M)
in/and FAO-7288-2014 (O&M)

Date of decision: 23.08.2018

NATIONAL INSURANCE CO. LTD ... Appellant

Versus

PARMILA & ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. R.C. Gupta, Advocate
for the appellants.

Mr. Navmohit Singh,Advocate/Amicus Curiae
for respondents No.2 and 3.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.7288 of 2014 and cross objections No.66-CII of 2016 as these have emerged out of the same award dated 29.05.2014 passed by the Motor Accidents Claims Tribunal, Bhiwani whereby compensation has been assessed on account of death of Jaivir in a motor vehicular accident that took place on 19.05.2012.

FAO No.7288 of 2014 has been filed by the National Insurance Co. Ltd. (hereinafter to be referred as 'the insurance company') whereas the cross objections have been filed by the claimants.

Counsel for the insurance company would inform that the appeal has been preferred to assail quantum of compensation assessed by the Tribunal and findings of the Tribunal on issue No.5 rejecting plea of the insurance company that the driver was not possessing a valid licence at the time of occurrence.

The Tribunal has assessed compensation of Rs.15,83,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.6000/-
2. Addition in income for future prospects	50%
3. Multiplier	18
4. Deduction for personal expenses	1/4th
5. Loss of dependency	Rs.14,58,000/-
6. Expenses on funeral and transportation	Rs.25,000/-
7. Loss of consortium	Rs.1,00,000/-

Counsel for the claimants in the appeal would inform that in view of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**, there may be some reduction in compensation assessed by the Tribunal. The Tribunal has allowed addition in income for future prospects @ 50% as against 40% admissible in the circumstances of the present case. Income of the deceased, deduction for personal expenses and multiplier adopted by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.13,60,800/- [(Rs.6000 x 12 x 18) + (40% future prospects) – (1/4th deduction for personal expenses)].

Under conventional heads, compensation assessed by the Tribunal is restricted 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.14,30,800/- and compensation assessed by the Tribunal is reduced to the extent of Rs.1,52,200/- (15,83,000 - 14,30,800).

This brings the Court to the issue of driving licence possessed by Dhan Singh, driver of offending vehicle i.e. truck No.HR-61/8794. Counsel for the appellant would urge that the driving licence is marked as R4, therefore, the same cannot be read into evidence. Neither the driver nor the insured appeared in the witness box to prove the driving licence, therefore, the insurance company is entitled to be exonerated of liability to pay compensation or in the alternative right of recovery against the insured after payment of compensation to the claimants.

Counsel representing the claimants has supported findings of the Tribunal on issue No.5 whereby the insurance company has been held to be jointly and severally liable to pay compensation.

The licence possessed by Dhan Singh was produced on record and marked as R4. It is obligation of the insurance company to prove that licence possessed by the driver is not valid or effective on the day of occurrence. In order to substantiate its defence plea that the insured is guilty of violating the terms and conditions of the insurance policy, the insurance company examined Sita Ram Yadav RW1. The witness would state that driving licence No.10016 was not issued by their office in the name of Sh. Dhan Singh son of Sh. Nanu Ram. However, in cross examination by counsel for the claimants as well respondents No.1 and 2 before the Tribunal, he had admitted that records produced by him is not a register of drivers' driving licences but the same pertains to conductors' licences. The Tribunal has rightly held that testimony of Sita Ram Yadav RW1, in the given scenario, is not sufficient to discharge onus by the insurance company that licence mark R4 has not been issued by the concerned licensing authority or the insured is guilty of violating the terms and conditions of the policy. In this view of the matter, I find myself unable to accept contention of the insurance company that findings on issue No.5 suffer from an error much less illegality or the insurance company is entitled to press for right of recovery against the insured.

No other point has been raised.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms. As a natural corollary, cross objections filed by the claimants are dismissed, leaving the parties to bear their own costs. As the cross objections have been decided on merits, application for condonation of delay is of academic relevance only.

(REKHA MITTAL)
JUDGE

23.08.2018
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Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No