IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5751 of 2015 (O&M)
Date of decision: 20.08.2018

MEENA KUMARI & ANR ... Appellants

Versus

BIHARI LAL & ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Akshay K. Jindal, Advocate with
Mr. Janya Sirohi, Advocate
for the appellants.

Mr. Varun Baanth, Advocate for
Mr. Kanwar Sanjiv Kumar, Advocate
for respondents No.1 and 2.

Mr. Suvir Dewan, Advocate
for respondent No.3.

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REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking enhancement of compensation on account of death of Amandeep Singh in a motor vehicular accident that took place on 04.04.2013.

The Tribunal has awarded compensation of Rs.6,79,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.6000/-
2. Multiplier	18
3. Deduction for personal expenses	50%
4. Loss of dependency	Rs.6,48,000/-

5. Expenses on funeral Rs.25,000/-
6. Loss of estate Rs.6000/-

The insurance company has been held liable to pay compensation to the claimants but was allowed right of recovery against the driver and owner of the offending vehicle, in view of findings recorded in paras 26 and 27 of the award.

Counsel for the appellants would urge that the deceased was a student of three years Diploma Course in Mechanical Engineering from GES Polytechnic College, Village Lohar Kangna, District Hoshiarpur. The claimants have placed on record certificates with regard to educational qualification and performance of the deceased in studies, sufficient to show that he had a bright future being a brilliant student. It is further argued that income of the deceased assessed by the Tribunal is on lower side and needs enhancement. Claimants are entitled to benefit of increase in income for future prospects and adequate compensation under conventional heads.

Counsel representing respondents No.1 and 2 has supported assessment of compensation made by the Tribunal but would state that findings of the Tribunal qua driving licence on the basis whereof right of recovery has been given to the insurance company are liable to be set aside as respondent No.2 before the Tribunal (owner of truck bearing No.HP-69A-0642) appeared in the witness box and stated that he had seen the driving licence possessed by the driver at the time of giving him employment. It is argued that once the insured had seen the driving licence possessed by Bihari Lal before he engaged him as a driver, the insured cannot be held guilty of intentionally violating the terms and conditions of the policy. 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 has supported the award.

Indisputably, the deceased was a student of 4th semester of Diploma Course in Mechanical Engineering in the aforesaid college. Taking a clue from the minimum wage available at the relevant time coupled with the educational qualification of the deceased, interest of justice would be served, if income of the deceased is assessed at Rs.10,000/- per month. Claimants shall be entitled to addition in income for future prospects @ 40%. Deduction for personal expenses and multiplier adopted by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.15,12,000/- [(Rs.10,000 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is slightly more than what is permissible in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**, accordingly, the same is affirmed.

Total compensation is Rs.15,43,000/- and the additional amount is Rs.8,64,000/- (15,43,000 - 6,79,000), payable with interest @7.5% per annum from the date of petition till realization, to mother of the deceased.

This brings the Court to the issue of driving licence possessed by Bihari Lal, driver of the offending vehicle. As per the report Ex.R8 produced by Amolak Singh, Advocate RW5 appointed as Local Commissioner by the Tribunal, the licence possessed by Bihari Lal was found to be fake. However, the registered owner of the vehicle appeared in the witness box and tendered into evidence his duly sworn affidavit Ex.R4. In his cross examination by counsel for the insurance company before the Tribunal, he has deposed to the following effect:-

> *"I had seen the driving licence of Bihari Lal at the time of his employment with me as driver. The same was issued from Licensing Authority, Fatehgarh (UP). I am not in possession of any verification report obtained by me from the Licensing Authority, Fatehgarh (UP)."*

Admittedly, Bihari Lal was possessing a driving licence issued by Licensing Authority, Fatehgarh (UP). There is nothing on record suggestive of the fact that insurance company ever sent an intimation to the insured that licence possessed by Bihari Lal is not valid or the same needs verification from the concerned licensing authority. Taking into consideration the facts elicited in cross examination of Sukhlal Sharma, registered owner of the vehicle, I find myself unable to sustain findings of the Tribunal that the insured is guilty of violating the terms and conditions of insurance, constituting a valid defence in favour of the insurer under Section 149(2) of the Motor Vehicles Act, 1988. The controversy in this regard is squarely covered in favour of the insured by judgments of Hon'ble the Supreme Court, relied upon by counsel for the insured. In this view of the matter, findings of the Tribunal giving right of recovery in favour of the insurance company cannot be allowed to sustain and accordingly set aside. Moreover, the right of recovery given against the driver is otherwise illegal as there is no privity of contract between the insurer and driver, therefore, no plea of the insurance company is tenable that the driver is guilty of violating the terms and conditions of insurance.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms. The claimants shall be entitled to recover the compensation assessed by the Tribunal and additional amount allowed by this Court from the respondents before the Tribunal who shall be jointly and severally liable to pay compensation and the insurance company shall not be entitled to right of recovery.

20.08.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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