**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO No.4911 of 2016 (O&M)
Date of decision: 20.03.2018**

United India Insurance Co. Ltd.

….Appellant

Versus

Smt. Baby and others

….Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Harsh Aggarwal, Advocate,
for the appellant-Insurance Company.

Ms. Monika Arora, Advocate/Amicus Curiae,
for respondent Nos.2 to 4.

Mr. Sansar Kundu, Advocate,
for respondent Nos.7 & 8.

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RITU BAHRI J. (Oral)

United India Insurance Company Limited-appellant has filed this appeal against the award dated 25.03.2016 passed by the Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as 'the Tribunal') whereby compensation of Rs.22,65,340/- has been awarded in favour of the claimants-respondent Nos. 1 to 6 on account of death of Ram Chander in a motor vehicular accident which took place on 12.01.2015. Respondent No. 1 is widow, respondent Nos. 2 to 4 are children and respondent Nos.5 & 6 are parents of deceased Ram Chander.

Brief facts of the case are that on 12.01.2015, Ram Chander (since deceased) was going from Fruit and Vegetable Market, Kurukshetra to the side of his village Barna as a pillion rider on motorcycle bearing registration No. HR-41-A-4832. The said motorcycle was being driven by Soma Ram. At about 05.30 A.M., when they reached near Bhakhra Canal on Kurukshetra-Dhand road, a Bolero Jeep bearing registration No.HR-64-9684 being driven by Happy-respondent No.7 (respondent No.1 in claim petition) in a rash and negligent manner came from behind and struck against the motorcycle, as a result of which, both the occupants of the motorcycle fell down and received multiple, serious and grievous injuries. They were shifted to LNJP Hospital, Kurukshetra, where Ram Chander succumbed to the injuries. With regard to the accident, FIR No.12 dated 12.01.2015, under Sections 279, 337 and 304-A IPC was registered at Police Station, Kurukshetra University, Kurukshetra. Consequently, claimants-respondent Nos. 1 to 6 filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident in question, resulting into the death of deceased, had taken place due to the rash and negligent driving of the offending vehicle by its driver-respondent No.7 (respondent No.1 in claim petition) and thus, returned finding on issue No.1 in favour of the claimants. This finding was rightly given on the basis of deposition of Soma Ram (PW-2), who was an eye witness of the accident. The claimants have further proved on record copy of report under Section 173 Cr.P.C. Ex.P1, site plan Ex.P2, charge sheet Ex.P4 and postmortem report Ex.P5.

In the absence of any direct evidence, income of the deceased was assessed at Rs.8100/- per month as that of an unskilled labourer. In this income, 50% addition was made on account of future prospects. Total income of the deceased came to Rs.12,150/- (Rs.8100/- + Rs.4050/-), out of which, 1/4th amount was deducted towards his personal expenses. The dependency of claimants, thus, came to Rs.9113/- per month i.e. Rs.1,09,356/- per annum. The deceased was 38 years of age at the time of accident/death and the multiplier of 15 was applied. Thus, the claimants were found entitled to compensation of Rs.16,40,340/- (Rs.1,09,356 x 15). In addition to it, Rs.25,000/- were awarded towards funeral expenses, Rs.1,00,000/- to claimant No.1 as loss of consortium, Rs.1,00,000/- as loss of estate, Rs.1,00,000/- each to claimant Nos.2 to 4 towards loss of love and affection and Rs.50,000/- each to claimant Nos.5 and 6 (parents) as loss of love and affection. Hence, the claimants were found entitled to a total compensation of Rs.22,65,340/- along with interest @ 9% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the Insurance Company-appellant has preferred the present appeal.

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident.

The Insurance Company is not disputing the finding of Tribunal on issue No.1 that the accident had taken place on account of rash and negligent driving of offending vehicle by its driver. The Insurance Company has challenged the finding given by Tribunal with respect to the validity of the driving licence of driver-respondent No.7 (respondent No.1 in claim petition).

A perusal of para No.34 of the impugned award shows that initially, the driving licence Ex.R3 had been issued by the DTO, Tuensang, Nagaland on 05.07.2010, which was valid upto 04.12.2016. As per the said licence, respondent No.7-driver was authorized to drive MC, LMV and LTV only. Thereafter, the driver had produced on record copy of driving licence Ex.R4, which was issued by the DTO, Kohima on 11.12.2015. This licence was valid upto 04.12.2033 and the driver was authorized to drive MCWG, LMV and Transport vehicle only. The subsequent driving licence Ex.R4 was issued on a smart card format with the same particulars in view of Government of Nagaland notification dated 01.08.2014. This cannot be made a ground to discard the driving licence of driver, which was issued on smart card on 11.12.2015, as this was a procedural delay in converting the booklet form of licence into smart card. Therefore, finding of the Tribunal with regard to validity of the driving licence does not require any interference.

However, amount of compensation awarded by the Tribunal requires to be modified/re-assessed in view of the latest law on this issue. Accordingly, in the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby reassessed in view of the judgments passed by Hon'ble the Supreme Court in ***Sarla Verma and others vs. Delhi Transport Corporation and another***, 2009 (3) RCR (Civil) Page 77 and ***National Insurance Company Limited Vs. Pranay Sethi and others***, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

Sr. No.	**HEADS**	**CALCULATIONS**
(i)	Income	Rs.8100/- per month
(ii)	40% of (i) above to be added as future prospects	8100 + 3240 = Rs.11,340/-
(iii)	1/4th of (ii) above is deducted as personal expenses of the deceased	11,340 – 2835 = Rs.8505/-

(iv)	Compensation after multiplier of 15 is applied	Rs.8505/- x 12 x 15 = Rs.15,30,900/-
(v)	Compensation under the conventional heads	Rs.70,000/-
(vi)	**TOTAL COMPENSATION AWARDED**	**Rs.16,00,900/-**

The re-assessed amount of compensation of **Rs.16,00,900/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The amount of compensation shall carry interest @ 7.5% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of "***Shri Nagar Mal and others vs. The Oriental Insurance Company Ltd. and others*,** Civil Appeal No.448 of 2018 (arising out of SLP (C) No.26853 of 2016) decided on 19.01.2018". Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

(RITU BAHRI)
JUDGE

20.03.2018
ajp

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