IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

FAO-8967-2014(O&M)
Date of decision: 30.04.2018

Ram Kumar ....Appellant

versus

Mithu Devi and others ....Respondents

FAO-10468-2014(O&M)

Mithu Devi and others ....Appellants

versus

Ram Kumar and another ....Respondents

CORAM HON'BLE MRS. JUSTICE REKHA MITTAL

Present Mr.Nipun Vashist, Advocate for the appellant
in FAO-8967-2014 and
Mr. S.S.Khurana, Advocate
for the appellants in FAO-10468-2014.

Mr. Punit Jain, Advocate for respondent no.2
in FAO No. 10468-2014.

Ms. Vandana Malhotra, Advocate for respondent no.8
in FAO No. 8967-2014.
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REKHA MITTAL, J

This order will dispose of FAO Nos.8967 and 10468 of 2014 as these have emerged out of the same award dated 23.07.2014 passed by the Motor Accidents Claims Tribunal, Rewari (hereinafter referred to as 'the Tribunal') whereby compensation has been awarded on account of death of Birma Ram in a motor vehicular accident that took place on 24.09.2012.

FAO No.8967 of 2014 has been filed by the registered owner of offending vehicle, tractor No.HR-36N-1931 whereas FAO No.10468 of 2014 has been filed by the claimants seeking enhancement of compensation.

FAO No. 8967 of 2014

Counsel for the appellant would inform that the appeal has been filed to assail findings of the Tribunal on issue no.3 on the basis whereof, the Insurance Company has been exonerated of liability to pay compensation.

It is argued with vehemence that as Ram Kumar, driver-cum-owner of the offending vehicle was authorised to drive a motor cycle/scooter/car/jeep vide Driving Licence Ex.RW1/A, he was competent to drive the tractor because the tractor falls within the definition of light motor vehicle under Section 2(21) of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'). In support of his contention, he has relied upon judgment of this Court **National Insurance Co.Ltd. vs. Mam Kaur and others 2013(2) RCR(Civil) 653.** He has also sought to derive benefit from judgment of Hon'ble Supreme Court **Nagashetty vs. United India Insurance Co. Ltd. 2001(8) SCC 56.**

Counsel representing the Insurance Company has supported findings of the Tribunal by referring to the definition of Tractor under Section 2(44) of the Act and that of motor car under Section 2(26) thereof. It is argued with vehemence that in the definition of motor car, tractor has been specifically excluded,therefore, licence possessed by driver of the offending vehicle would not be sufficient to authorise him to drive the tractor attached with a trolly. She has relied upon judgment of this Court **Jai Bhagwan and another v. Koshalya and others, FAO No. 660 of 2010 decided on 29.04.2014**.

I have heard learned counsel for the parties, perused the paper book particularly the award.

Before adverting to submissions made by counsel for the parties, it is necessary to extract definitions of motor car and tractor under Sections 2(26) and 2(44) of the Act respectively, quoted thus:

> **Section 2(26) in The Motor Vehicles Act, 1988**
> "motor car" means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor cycle or invalid carriage;
> **Section 2(44) in The Motor Vehicles Act, 1988**
> "tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller;

Indisputably, both the motor car and tractor fall within the definition of Light Motor Vehicle under Section 2(21) of the Act,1988 that reads as follows:-

> **Section 2(21) in The Motor Vehicles Act, 1988**
>
> "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms

The Tribunal framed issue no.3 to the following effect.

> " *Whether the respondent no.1 was not holding a valid and effective driving licence on the date of alleged accident?OPR"*

The onus of this issue has been placed upon the Insurance Company as a plea in this regard was raised by the insurer.

Counsel for the Insurance Company, in response to a query, is not in a position to say that mechanism of a motor car and that of a tractor is different in order to say that a person having licence to drive a car or jeep is not competent to drive the tractor. This Court in **Mam Kaur's case (supra)** has held in para 2, reads thus:

> " *The main issue which arises in the appeal is as to whether the person authorized to drive the*

> *scooter/motor cycle/car/jeep could also drive the tractor without obtaining appropriate endorsement on his driving licence from the concerned authority. It may be apt to refer to Rule 6 of the Central Motor Vehicles Rules which provides for grant of licence in respect of Light Motor Vehicle or the transport vehicle amongst other categories. There is no specific entry for issuance of licence for driving a tractor. Under Section 2(44) of the Motor Vehicles Act, 'tractor' by definition is a Light Motor Vehicle. If the driver of the tractor has a licence to drive any category of vehicle that falls within the definition of Light Motor Vehicle, he has to be taken to be duly licensed to drive a tractor as well. Under these circumstances, the Insurance Company cannot avoid liability fastened upon it by the Tribunal."*

Counsel for the Insurance Company has failed to cite any contrary judgment. **Jai Bhagwan and another's case (supra)** referred to by counsel for the Insurance Company does not deal with the controversy raised in the present appeal, therefore, the Insurance Company cannot derive any advantage to its contention from the referred authority.

There is nothing on record suggestive of the fact that gross vehicle weight of tractor attached with the trolly is more than 7500 kgs in order to disqualify a driver holding licence to drive a car/jeep to drive a tractor. In this view of the matter, it can be safely held that the Insurance Company has failed to discharge onus of issue no.3 that driver was not possessing a valid and effective licence on the date of accident. That being so, findings recorded by the Tribunal on issue no.3 cannot be allowed to sustain and accordingly set aside. As a natural corollary, findings of the Tribunal exonerating Insurance Company of liability to pay the compensation are liable to be set aside. This apart, even if plea of the insurer is accepted that driver was not possessing a valid and effective licence, Insurance Company cannot escape liability to pay compensation to the claimants and the insurer, at best, can pray for right of recovery against the insured. In this context, reference can be made to latest judgment of Hon'ble the Supreme Court **Pappu v. Vinod Kumar Lamba AIR 2018 SC 592.**

In view of the above, findings on issue no.3 are set aside and issue no.3 is determined in favour of the claimant/appellant and against the Insurance Company.

For the foregoing reasons, the appeal is allowed. The Insurance Company shall be jointly and severally liable to pay the compensation to the claimants.

No order as to costs.

FAO No.10468-2014

The Tribunal has assessed compensation of ₹10,46,600/-, detailed hereunder:-

1.	Monthly income	₹6,000/- per month
2.	Deduction for personal expenses	$1/5^{th}$
3.	Multiplier of	16
4.	Loss for dependency	₹9,21,600/-
5.	Funeral expenses	₹25,000/-
6.	Loss of consortium	₹1,00,000/-

However, only 50% of compensation i.e ₹5,23,300/- has been allowed to be paid to the claimants as 50% negligence in causing the accident has been attributed to the deceased.

Counsel for the claimants has challenged findings of the Tribunal on issue no.1 whereby deceased has been attributed negligence in causing the accident and that too to the extent of 50%. It is argued with vehemence that the claimants examined Sohan, an eye witness to the accident being pillion rider of motor cycle no. RJ-23M-1918 driven by Birma Ram, since deceased but no such fact has been elicited in his cross examination that negligence in causing the accident can be attributed to the deceased. In addition, it is argued that driver of offending vehicle did not appear in the witness box to counter testimony of Sohan PW2. It has been proved on record that on due investigation of FIR No.176 dated 25.09.2012 registered with Police Station Kasola, report under Section 173 Cr.P.C was presented in the criminal Court against Ram Kumar and he was charge sheeted for committing offence punishable under Sections 283 and 304-A IPC. According to counsel, in view of materials on record, entire negligence for the accident is to be attributed to driver of the offending vehicle, who parked the tractor-trolly in middle of the road without any indicator/reflector etc. It is further argued that Sohan has explained as to the circumstances under which the deceased could not notice the parked tractor-trolly because of lights of the vehicles coming from opposite direction, therefore, hit on the back side of trolly attached with the tractor.

To justify enhancement of compensation, it is argued that the Tribunal has not allowed benefit of increase in income for future prospects @ 40%. The Tribunal has assessed age of the deceased between 30-32 years. Taking into consideration the legislative intent behind the provisions providing for compensation, age should be taken as 30 and admissible multiplier of 17.

Counsel representing the Insurance Company has supported findings of the Tribunal on issue no.1 attributing 50% negligence to the deceased. He has further submitted that Tribunal has assessed income of the deceased at ₹6,000/- per month but the minimum wage at the relevant time was approximately ₹5,000/- per month. The Tribunal has allowed deduction for personal expenses to the tune of 1/5th. As father of the deceased aged 59 years cannot be held to be dependent upon his earnings, admissible deduction should be 1/4th.

Compensation awarded under conventional heads is liable to be restricted to ₹70,000/- in the light of judgment of Hon'ble the Supreme Court ***National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270.***

The plea of the claimants is that the deceased was working as driver but the Tribunal has noticed in para 15 that the claimants have not produced driving licence of deceased nor proved his income by leading cogent and convincing evidence. The Tribunal has assessed his income at ₹6,000/- per month. The deceased left behind family consisting of his widow, four minor children and parents. Even if father of the deceased is not held to be dependent upon his earning, six claimants were dependent upon him. As per the settled position in law, in absence of any evidence qua income of the deceased, the Tribunal can get a clue from minimum wage available at the relevant time but in every case it is not incumbent to fix income equal to minimum wage. Taking into consideration that the deceased left behind his widow, mother and four minor children, income of the deceased assessed by the Tribunal is affirmed. Claimants shall be entitled to benefit of increase in income for future prospects @ 40%. The Tribunal has allowed deduction for personal expenses to the tune of 1/5th. As father of deceased cannot be held to be dependent upon earning of the deceased, admissible deduction would be 1/4th.

As in the postmortem report, age of the deceased is recorded to be 30 to 32 years and the claimants have failed to produce any document with regard to his exact date of birth, Tribunal has rightly applied multiplier of 16 for computing loss of dependency. In this manner, loss of dependency comes to Rs.12,09,600/- [(₹6,000/- x 12 x 16) + (40% future prospects) - (1/4th deduction for personal expenses)].

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that the claimants shall be entitled to ₹70,000/-, in the light of judgment in **Pranay Sethi's case** (supra), detailed hereinbelow:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation comes to Rs.12,79,600/-.

This brings the Court to the question of contributory negligence attributed to the deceased.

Sohan, an eye witness to the occurrence tendered into evidence his affidavit Ex.PW2/A by way of examination-in-chief, relevant extract from his testimony reads as follows:

> " That on dated 24.09.2012, I along with Birma Ram, was going from Sikkar to Bhiwari at his in-law's house on the motor cycle bearing registration No. RJ-23-2M/1918. Birma Ram was driving the said motor cycle. At about 8:00/9:00 pm when we reached near Roodh Bridge on NH-8, near Banipur Chowk, Bawal. The offending Eicher Tractor attached with trolley

> bearing registration no.HR-36-N-1931 was lying parked in the middle of the road without indicator or signal and nor any tone etc. on account of the dazzling light of the incoming vehicles from the opposite direction, the said tractor trolley could not be visible, as a result of which the motor cycle rammed into the rear portion the tractor trolley. Due to this impact we fell down on the road and Birma Ram sustained head and fatal injuries on the vital parts of his body. I have also sustained normal injuries."

The witness was subject to cross examination at length but nothing tangible and material has been brought on record to shatter evidential value of his testimony with regard to his presence at the spot and an eye witness to the occurrence. However, perusal of examination in chief and cross examination of the witness would reveal that nothing has been stated by him as to what was the speed of motor cycle driven by the deceased. He is conspicuously silent as to what care was taken by the deceased to avoid collision even when they reached just close to the tractor trolly parked in middle of the road.

On due consideration of statement of Sohan, findings of the Tribunal attributing contributory negligence to the deceased cannot be faulted with. Nevertheless, in view of the facts elicited in examination and cross examination of Sohan, only 20% negligence is attributed to the deceased and accordingly findings of the Tribunal on issue no.1 are modified to that extent.

The claimants shall be entitled to 80% of the amount assessed by this Court i.e. Rs.12,79,600 x 80% = Rs.10,23,680/-. The amount already paid to the claimants in view of the award by the Tribunal shall be liable to adjustment. The additional amount payable to the claimants shall carry interest @ 7.5% per annum from the date of petition till realization, to be paid to minor children of the deceased in equal ratio, to be invested in fixed deposits for a period of three years or payable on their attaining age of majority, whichever is later.

The appeal is partly allowed in the aforesaid terms.

30.04.2018 **(REKHA MITTAL)**
mamta **JUDGE**

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