IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.9304 of 2014(O&M) and
Cross Objection No.6-C II of 2015
Date of decision : 04.04.2018

United India Insurance Company Limited
.... Appellant

versus

Baljit Kaur and others **........ Respondents**

CORAM : HON'BLE MRS. JUSTICE REKHA MITTAL

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Present: Mr. Ram Avtar, Advocate
for the appellant.

Mr.Rajan Bhargava, Advocate
for Mr. Vishal Aggarwal, Advocate
for respondent No.1 and cross objectors.

Mr.Munish Puri, Advocate for respondent No.2.

Mr.D.S.Kahlon, Advocate for respondent No.5.

REKHA MITTAL J. (Oral)

This order shall dispose of FAO No. 9304 of 2014 and Cross Objections No.6-CII of 2015, as these have emerged out of the same award dated 09.07.2014 passed by the Motor Accidents Claims Tribunal, Pathankot (in short 'the Tribunal') whereby compensation has been awarded on account of death of Gursewak Singh in a motor vehicular accident that took place on 08.01.2012.

FAO No. 9304 of 2014 has been filed by the United India Insurance Company Limited(hereinafter to be referred as 'the insurance company') whereas Cross Objections have been filed by the claimant seeking enhancement of compensation.

The Tribunal has assessed compensation of Rs. 5,57,000/- detailed hereunder:-

Monthly income of the deceased	Rs. 4000/-
Deductions for personal expenses	Rs. 50%
Multiplier	18
Loss of dependency	Rs. 4, 32,000/-
Funeral expenses	Rs. 25,000/-
Loss of love and affection	Rs. 1 lac

Counsel for the appellant-insurance company has challenged the award primarily on three counts. The first submission made by the counsel is that the accident occurred due to rash and negligent driving of the deceased himself, therefore, claimant is not entitled to compensation for death of the tortfeasor. To substantiate his contention, it is argued that initially FIR with regard to the occurrence was registered at the behest of one Vishal Kumar against deceased Gursewak Singh. In the FIR, it was specifically got recorded that accident was the result of head on collision between motor cycle driven by the deceased and motor cycle No. PB-21-C-8450 driven by Ramesh Kumar. It is argued with vehemence that even if exclusive negligence cannot be attributed to the deceased, he is to be attributed contributory negligence for causing the accident.

To assail quantum of compensation assessed by the Tribunal, it is argued that the Tribunal has allowed multiplier of 18 on the basis of age of the deceased in place of appropriate multiplier on the basis of age of mother of the deceased, the only claimant in the case. The third submission made by counsel is that as Ramesh Kumar, driver of the offending vehicle was not possessing a driving licence valid on the date of occurrence i.e. 08.01.2012, insurance company is entitled to be exonerated of its liability or in the alternative right of recovery against the insured after payment of compensation to the claimant.

Counsel representing the cross objector/claimant would urge that income of the deceased assessed by the Tribunal is on lower side and needs enhancement. The deceased was a student of B.Tech 5th Semester, therefore, his income is liable to be assessed at least ₹ 10,000/- per month. Claimant is entitled to benefit of future prospects at the rate of 40%.

Counsel representing driver of the offending vehicle would argue that as the insurance company did not examine a witness to prove the so called verification report, findings recorded by the Tribunal holding the insurance company jointly and severally liable to pay compensation are liable to be affirmed.

I have heard counsel for the parties, perused the paper book and the records.

Indisputably, Vishal author of FIR No. 16 dated 8.1.2012 did not appear in the witness box to prove the first version recorded by the police. It is also not denied that after due investigation of the aforesaid FIR, challan under Section 173 of the Code of Criminal Procedure was presented against Ramesh Kumar, driver of motor cycle NO. PB-21-C-8450 for offence under Sections 279, 304-A and 337 IPC for driving the motor cycle aforesaid in a rash and negligent manner so as to endanger human life and also having caused death of Gursewak Singh. The claimants examined Jaswinder Singh AW4 to prove that accident occurred because of rash and negligent driving of aforesaid motor cycle by Ramesh Kumar, an employee on a dhaba near Arni University Kathgarh. Testimony of Jaswinder Singh is duly corroborated by Inspector Joginder Singh AW2, investigating officer of case FIR No. 16 dated 8.1.2012. On the contrary, Ramesh Kumar did not appear in the witness box to counter case of the claimants particularly testimony of Jaswinder Singh AW4 and Inspector Joginder Singh

AW2. I have gone through findings of the Tribunal on issue No. 1 but find myself unable to differ with findings of the Tribunal merely on the ground that initially the FIR was got registered by one Vishal against Gursewak Singh (since deceased). In this view of the matter, contention raised by counsel for the insurance company to assail findings of the Tribunal on issue No. 1 is not meritorious and liable to be rejected.

Gursewak Singh was 21 years old at the time of death. Baljit Kaur is the mother and only claimant in the case. The Tribunal has rightly applied multiplier of 18 for computing loss of dependency. In this context, reference can be made to judgments of Hon'ble the Supreme Court **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009 (3)RCR (Civil) 77**, **Munna Lal Jain vs. Vipin Kumar Sharma 2015(3) RCR(Civil) 447** and **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270**.

The Tribunal has assessed income of the deceased at Rs. 4000/- per month. Baljit Kaur claimant appeared in the witness box and tendered into evidence her duly sworn affidavit Ex. AW3/A. She has deposed that at the time of accident, Gursewak was a student of B.Tech in Arni University, Kathgarh (Indora) and was in Vth Semester. He was a brilliant student. Gursewak Singh was to complete his course by doing 8 semesters and thereafter he would have got job at a monthly salary of Rs. 50,000/-. Admittedly, the claimant did not produce any document with regard to educational qualification of the deceased much less he being a student of Vth Semester in B.Tech in Arni University, Kathgarh. However, there is nothing on record suggestive of the fact that deceased had any disability to impair his capacity to work and earn livelihood for his family. The deceased was the only son of claimant Baljit Kaur. Taking a clue from minimum wage available at the relevant time, income of the deceased is assessed at Rs. 5000/- per month. Claimant shall be entitled to addition in income for future prospects @ 40%. Deduction for personal expenses and multiplier applied by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs. 5000 x12 x18 =10,80,000 + 4,32,000 (40%)= 15,12,000 – 7,56,000 (50%)= **Rs. 7,56,000/-.**

The Tribunal has awarded an amount of Rs. 1.25 lakhs under conventional heads. In the light of judgment in **Pranay Sethi and others' case (supra),** claimant shall be entitled to **Rs. 30,000/-** under conventional heads namely Rs. 15,000/- for loss of estate and Rs. 15,000/- for expenses on funeral.

Total compensation comes to **Rs. 7,86,000/-** and the additional amount is **Rs. 2,29,000/-** (7,86,000 – 5,57,000), payable with interest @ 7.5% per annum from the date of petition till realization.

This brings the Court to question of driving licence possessed by Ramesh Kumar.

The Tribunal framed issue No. 3, reads thus:-

> "Whether respondent No. 1 was not having a valid driving licence at the time of accident? OPR"

This issue was decided against the insurance company in view of findings of the Tribunal in para 15 of the award. It has been held that the insurance company has proved on record verification report Ex. R3 shown to have been issued by Licensing Authority, Pithoragarh according to which driving licence No. UK0520120007714 was issued to respondent No. 1 Ramesh Kumar only on 21.7.2012 whereas the accident took place on 8.1.2012 but there is no evidence produced by the insurance company that earlier to issuance of such driving licence to Ramesh Kumar, he was not holding any other driving licence. Further held that the report has not been proved in accordance with law of evidence.

Perusal of copy of the driving licence available on record makes it evident that neither in the column dealing with date of issuance of driving licence nor in the validity period, it is very clear to the naked eye as to the date on which the licence was issued. However, with the help of magnifying glass, it is almost certain that licence in question was issued on 1.1.2012 and the same was valid till the year 2032. The insurance company produced on record report Ex. R-3. Perusal of the report would reveal that there is overwriting in the date and month of issuance of licence. Indisputably, the insurance company did not examine an official of the concerned licensing authority alongwith relevant record to prove correctness of the report Ex. R3 and thus providing an opportunity to the driver and insured of the vehicle to challenge correctness of the report. Report Ex. R3 is not per se admissible in evidence. Under the circumstances, it can be safely held that the insurance company has failed to discharge onus of issue No. 3 that Ramesh Kumar was not having a valid licence on the date of accident. That being so, findings of the Tribunal on issue No. 3 are ordered to be affirmed.

No other point has been raised.

For the foregoing reasons, the appeal filed by the insurance company fails and is accordingly dismissed. However, cross objections filed by the claimant are partly allowed in the aforesaid terms.

(REKHA MITTAL)
JUDGE

April 04, 2018
sunita/paramjit

Whether speaking/reasoned Yes

Whether Reportable Yes/No