IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

FAO No.9360 of 2014 (O&M) with
XOBJC-70-CII of 2015.
Date of Decision: November 21, 2018.

ICICI Lombard General Insurance Co. Ltd.
..........APPELLANT(s).

VERSUS

Mesho Devi and others
........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Ms. Vandana Malhotra, Advocate
for the appellant (s).

Mr. S.S. Kharab, Advocate
for respondents No.1 to 4/cross-objectors.

Respondent No.6 proceeded ex parte vide
order dated 28.07.2015.

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SURINDER GUPTA, J.

Instant appeal has been filed by ICICI Lombard General Insurance Company against the award dated 09.07.2014 passed by Motor Accident Claims Tribunal, Panipat (later referred to as 'the tribunal'), vide which the tribunal has awarded a compensation of ₹5,97,000/- for death of Shiv Chand, husband of respondent No.1 and father of respondents No.2 to 4 in a motor vehicle accident, which took place on 21.02.2012 with tractor (attached with trolley) bearing registration No.HR-60D-4279 (later referred to as 'the offending vehicle') by its driver-respondent No.5.

Respondents No.1 to 4-claimants have also come up with cross-objections for enhancement of amount of compensation allowed by the tribunal.

Learned counsel for the appellant-insurance company has argued that the tribunal has committed error while denying the recovery rights to the insurer of the offending vehicle as its driver was not holding a valid driving licence. The licence issued to the driver was valid for driving tractor and not the tractor-trolley. The tractor attached with trolley also becomes a commercial vehicle and there is no endorsement on the licence that Balraj-respondent No.5 was authorised to driver tractor attached with trolley.

The above argument was also advanced before the tribunal and was discarded with observations as follows:-

> *"There is no force in the argument of learned counsel for respondent no.3. Driving licence of respondent no.1 Balraj is Mark-C. As proved by RW1 Mahender Pal, Licence Clerk, it was valid for driving a scooter, motorcycle, car, jeep and tractor for the period 1.1.2010 to 31.12.2029. When the licence was specifically valid for driving a tractor,it cannot be said that the tractor to which a trolley was attached could not be driven by the licence holder. Learned counsel could not refer to any provision/rule, according to which, a licence valid for driving a tractor was not enough for driving a tractor trolley. Thus, respondent no.3 having failed to prove violation of any term/condition of the insurance policy, is liable to indemnify the insured. Accordingly, respondent no.1 to 3 are held jointly and severally liable for payment of compensation to the petitioners and respondent no.3 will be liable to indemnify the insured."*

Perusal of driving licence of respondent No.5 shows that it was valid for driving, tractor, car, jeep, scooter and motorcycle. A person authorised to drive a tractor can drive it with attached trolley as well. Learned counsel for the appellant-insurance company has not been able to show me any provision under the Motor Vehicles Act that a separate licence or endorsement is required on the driving licence issued to drive tractor if the licence holder has to drive it with attached trolley. Learned Tribunal has rightly appreciated and discarded the argument put forth by learned counsel for insurer and I find no merit in submission of learned counsel for the appellant. Consequently, this appeal has no merits.

XOBJC-70-CII-2015

Learned counsel for cross-objectors/respondents No.1 to 4-claimants has argued that the deceased was Electrician by profession and was also running a milk dairy. The tribunal has taken his income as ₹4,500/-. Electrician can be compared with a worker in category of semi-skilled (lower) for which the State of Haryana had prescribed minimum wages as on 01.01.2012 as ₹5107/- per month. Even for the unskilled worker, minimum wages prescribed was ₹4847/- per month and there was no reason for the tribunal to assess income of the deceased as ₹4,500/- per month. As per the law settled by Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others 2017(4) R.C.R. (Civil) 1009,*** claimants are also entitled to 25% addition in the income of the deceased, who was 45 years of age, towards future prospects. Besides this, claimants are also entitled to grant of compensation of ₹70,000/- under the conventional heads.

Learned counsel for appellant-insurance company has, firstly, challenged the maintainability of the cross-objections on the ground that notice of motion was issued only to respondent No.6 and no notice was issued to the claimants in this appeal, as such, cross-objections filed by them are not maintainable. At the most, they could file separate appeal seeking enhancement of compensation.

Though the provisions of Civil Procedure Code (for short-CPC) are not strictly applicable to the proceedings in a claim petition filed under the Motor Vehicles Act, yet as per provisions of Order 41 Rule 22 CPC, a respondent, in an appeal, is competent to file cross-objections, which he could have taken by way of appeal provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as prescribed by the Appellate Court.

In this case, no notice has been issued upon respondents No.1 to 4. They came up with the cross-objections on the next date, notice was ordered to be issued to respondent No.6. Even if, contention of learned counsel for the appellant be believed, still cross-objections filed by respondents No.1 and 2 can be treated as appeal and decided on merits.

Keeping in view the above discussion, I am of the opinion that the submission of learned counsel for the appellant has no merits and is discarded.

Wife of deceased while appearing as PW1 and Jagbir as PW2, have stated that the deceased was Electrician by occupation and was also running a milk dairy. Though no documentary evidence regarding milk dairy business of the deceased has come on record, statements of PW1

Mesho Devi and PW2 Jagbir that deceased was Electrician by profession, is unrebutted. As per claimants, deceased was a private Electrician, who was not maintaining any account of his business, as such, non-production of any document in this regard is no reason to discard the statement of PW1 Mesho Devi and PW2 Jagbir.

Learned counsel for the cross-objectors has submitted that salary of Electrician be taken as equivalent to semi-skilled worker and I find no reason to discard his submission. State of Haryana had fixed wages for semi-skilled (lower) worker as ₹5107/- per month w.e.f. 01.01.2012, as such, salary of the deceased is taken as ₹5110/- per month. As per the law settled by Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others (supra),*** claimants/cross-objectors are entitled to 25% addition in the income of the deceased towards future prospects and ₹70,000/- under the conventional heads i.e. for loss of consortium, loss of estate and funeral expenses.

In view of my above discussion, compensation to which the claimants/cross-objectors are entitled, is reassessed as follows:-

Sl.No.	*Heads*	*Calculation*
(i)	Income of the deceased	₹5110 per month
(ii)	25% of above (i) to be added as future prospects	(₹5110+₹1278)= ₹6388 per month
(iii)	Deduction of 1/4th towards personal expenses of the deceased	(₹6388-₹1597)= ₹4791 per month
(iv)	Compensation after multiplier of 14 is applied	(₹4791X12X14)= ₹804888/-
(v)	Loss of consortium	₹40000
(vi)	Loss of estate	₹15000
(vii)	Funeral expenses	₹15000
Total		₹8,74,888/-

As a sequel of my above discussion, appeal filed by ICICI Lombard General Insurance Company has no merits and is dismissed.

However, cross-objections filed by respondents No.1 to 4-claimants are allowed. The award of the tribunal is modified and the compensation allowed to the claimants is enhanced from ₹5,97,000/- to ₹8,74,888/- for death of Shiv Chand. Liability to pay the amount of compensation shall be as per award. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of cross-objections till actual realisation. The amount of enhanced compensation shall be apportioned between the claimants as follows:-

(i)	Respondent-claimant No.1-widow	: 55%
(ii)	Respondents-claimants No.2 to 4	: 15% each.

Appellant-insurance company will deposit the shares of respondentsNo.1 to 4-claimants in their bank accounts or pay the same through demand drafts. In case of demise of any of above claimant(s) before his/her share of compensation is disbursed, the same shall be apportioned equally amongst other surviving claimants.

(SURINDER GUPTA)
JUDGE

November 21, 2018.
Sachin M.

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No