IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1910 of 2018 (O&M)
Date of Decision: April 26, 2018

The Oriental Insurance Company Ltd. ...Appellant

Versus

Shail Devi @ Shaili Devi and others ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Vinod Chaudhri, Advocate
for the appellant – Insurance Company.

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HARINDER SINGH SIDHU, J.

The insurer has filed the present appeal challenging the award dated 17.11.2017 of the Motor Accident Claims Tribunal, Hoshiarpur (for short 'the Tribunal').

Brief facts as disclosed in the claim petition are that on 6.3.2015 at about 9.00/9.30 am, Ramesh Ray alias Ramesh Yadav along with Sikander Yadav alias Sikindra Ray was going on motorcycle No.PB-21D-8616 (hereinafter referred to as 'the offending vehicle') from Dasuya to village Sundian. Sikander Yadav was driving the motorcycle and Ramesh Ray was the pillion rider. When they reached near Poultry Farm, an accident occurred, wherein, Sikander Yadav and Ramesh Ray suffered multiple injuries. Sikander Yadav died at the spot. Ramesh Ray was first shifted to Civil Hospital, Dasuya, from where, he was referred to PGIMER, Chandigarh, where he succumbed to the injuries on 9.3.2015. The accident was alleged to have been caused due to rash and negligent driving of the offending vehicle. FIR regarding the accident was also registered.

On a claim petition filed by the legal representatives (parents) of deceased Sikander Yadav, the Tribunal assessed the income of the deceased at Rs.8000/- per month, deducted ½ towards his personal expenses as he was a bachelor, granted addition of 40% towards future prospects, applied the multiplier of 17 (deceased aged 25 years). The loss of dependency was assessed at Rs.11,42,000/-. Sum of Rs.15,000/-, each towards 'funeral expenses' and 'loss of estate' was awarded. In all, compensation of Rs.11,72,000/- along with interest was awarded.

Challenging the Award, Ld. Counsel for the appellant–Insurer has argued that though the Tribunal treated the deceased as a labourer, but it erred in assessing his income at Rs.8,000/- per month, without any substantial evidence in that regard. He argued that the correct manner of assessment of income in the absence of proof of income ought to have been as per the minimum wages prevalent at the relevant time in the State. Secondly, he has argued that the Tribunal while applying the multiplier to compute the amount of compensation considered the age of the deceased, whereas, it should have considered the age of the claimants-parents and applied multiplier accordingly. Thirdly, it is argued that the driver of the offending vehicle was not holding a valid driving licence as he was resident of State of Punjab, but the licence held by him had been issued by a Licensing Authority in the State of Nagaland.

As per the website of the Labour Department, Government of Punjab, Minimum Wages per month in Punjab w.e.f., March 01, 2015 to

August 31, 2015 for un-skilled workers were Rs.6853.15 paise. Thus, the income of the deceased is assessed at Rs.6854/- per month (rounded off).

The matter regarding application of multiplier was examined by three Judges Bench of the Hon'ble Supreme Court in the case of **Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65**, in which **Smt.Sarla Verma and others v. Delhi Transport Corportaion and another, 2009(3) RCR (Civil) 77** was relied upon and it was held that multiplier as given in Smt.Sarla Verma's case (supra) has to be applied. In the said case, Supreme Court applied the multiplier as per age of the deceased. Therefore, the multiplier was correctly applied. In a recent judgement in **Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(6) SCC 347**, the Hon'ble Supreme Court has upheld the same view that multiplier is to be applied with reference to the age of the deceased and not age of dependents of deceased.

On the point of validity of the driving licence, learned counsel for the insurance company argued that the driver is a permanent resident of Punjab yet he has produced a licence which has been issued by a Licensing Authority of the State of Nagaland. Hence this licence cannot be considered to be valid because as per Section 9 of the Motor Vehicles Act, 1988 a person can apply for a licence only to the licensing authority where he ordinarily resides. The contention therefore is that a licence issued by a licensing authority of the place where the driver is not a permanent resident is invalid.

The argument of the Insurance Company cannot be accepted for more reasons than one.

First, it is well settled that the onus to prove that the driver was not having a valid driving licence is on the insurance company. That onus can only be discharged by examining an official of concerned licensing authority/getting the licence verified from that authority. That exercise has not been undertaken. The appellant–Insurer has led no evidence to prove the issue of validity of the driving licence before the Tribunal, as has been specifically recorded in the impugned award.

Similar argument of the Insurance Company was repelled by this Court in **New India Assurance Company Limited Versus Vijay Kumar and Ors. 2015(8) R.C.R.(Civil) 596** :

> *"**13.** Learned counsel for the appellant has submitted that findings of the Tribunal on issue No.2 are wrong. Vijay Kumar was permanent resident of District Kurukshetra and he is alleged to have been issued licence from Nagaland. The said licence cannot be said to be a valid document. Normally, the licence is issued at a place where the driver ordinarily resides. The ordinary residence of Vijay Kumar driver was Village Niwarsi, Police Station Ladwa, District Kurukshetra and as such, the learned Tribunal has wrongly decided issue No.2 against the insurance company.*
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> ***14.*** *I have considered the said submission but do not find any force in that submission.*
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> ***15.*** *It is settled law that onus to prove that driver was not holding a valid driving licence lies on the insurance company. The driver has produced the driving licence. The insurance company has not summoned any one from Nagaland Transport Authority to prove that the said licence is invalid. The driver Vijay Kumar has also stated that he has been visiting and plying vehicle at Nagaland and as such there is no abnormality in issuing the licence by Nagaland Transport Authority. The fact remains that onus is on the insurance company to prove that Vijay Kumar was not having a valid driving licence and insurance company has failed to discharge the onus of that issue. So, the finding on issue No.2 stands affirmed. "*

Secondly, there is no pleading by the insurance company before the Tribunal that the licence is liable to be considered to be invalid on this ground. The driver thus did not have an opportunity to explain the circumstances in which the licence was obtained from Nagaland.

In **Jaipal Singh vs. Meena Devi and others FAO No. 1653 of 2014 decided on 6.9.2016** it was held :

> *"There cannot be any quarrel with the settled position in law that if the insurance company wants to avoid its liability to pay compensation in view of the defences available under Section 149(2) of the Act, it is enjoined upon the insurer to plead and prove violation of a condition envisaged under the said provision. Indisputably, the licence held by the appellant bearing No. 12414/MTR/07 has been verified to be issuedThere cannot be any quarrel with the settled position in law that if the insurance company wants to avoid its liability to pay compensation in view of the defences available under Section 149(2) of the Act, it is enjoined upon the insurer to plead and prove violation of a condition envisaged under the said provision. Indisputably, the licence held by the appellant bearing No. 12414/MTR/07 has been verified to be issued by the licensing authority at Mathura.*
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> *Counsel for the respondent has failed to invite my attention to any such fact brought on record either by way of pleadings or evidence that Jaipal Singh was not competent to submit an application to the licensing authority at Mathura as he is residing in village Gharonda as per his address given in the claim petition filed in the year 2011. In absence of the insurance company having raised such a plea, no such factual controversy can be entertained much less accepted without giving an opportunity to the appellant to explain his position as to under what circumstances, he submitted an application to the licensing authority at Mathura for obtaining a driving licence in the year 2007. That being so, the respondent cannot derive any advantage to its contention by invoking the provisions of Section 8 of the Act for the first time before the appellate court. As the appellant was holding a valid driving licence at the time of occurrence, the findings recorded by the learned Tribunal that the insured is guilty of violating the terms and conditions of policy or the insurance company is entitled to recover the amount of compensation from the owner cum driver of the vehicle cannot be allowed to sustain and accordingly set aside."*

Further, a licence issued by a licensing Authority would remain valid till it is revoked by the authority or nullified in any other appropriate proceedings.

Section 19 of the Motor Vehicles Act, 1988 empowers the licensing authority to disqualify the holder of the licence or to revoke the licence after giving opportunity of being heard. The fact that a licence has been obtained by misrepresentation or fraud is a ground for disqualifying or revoking the licence. But in the present case, there is no evidence to the effect that the licence has in fact been obtained by misrepresentation or fraud. Thus, the driving licence produced on record is to be treated as valid. Hence, the argument regarding the validity of driving licence does not sustain.

Accordingly, in view of the above and the decision of the Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others (2017) 16 SCC 680** the compensation is re-assessed as under:-

Sr.No.	Heads	Calculation (In Rs.)
(i)	Monthly Income	6854/-
(ii)	40% of above (i) to be added as future prospects (deceased aged 35 yrs.)	6854+(6854x40/100) = 9595.60
(iii)	Loss of income (½ of (ii) deducted as personal expenses of the deceased – a bachelor)	9595.60-(9595.60x1/2)= 4797.80 per month
(iv)	Loss of dependency after multiplier of 18 is applied	4797.8x12x18= 10,36,324.80 (rounded off at 10,36,400/-)
(v)	Loss of Estate	15,000/-
(vi)	Funeral Expenses	15,000/-
	Total	*10,66,400/-*

Hence, the appeal is partly allowed. The Award of the Tribunal is modified only to the extent that the claimants – respondents are held entitled to total compensation of Rs.10,66,400/- that is, Rs.1,06,000/- (1172400-1066400) less than the amount awarded by the Tribunal.

The appeal has been disposed of without notice to the respondents –claimants to avoid unnecessary delay and expenses. A copy of this order be conveyed to the claimants-respondents No.1 and 2. In the event of the said respondents having any objection, they may file application to that effect. On receipt of any such application, the same be listed for hearing.

It is made clear that this order has been passed on an appeal filed by the Insurance Company without hearing the claimants and is confined to the contentions raised herein. It is without prejudice to the rights of the claimants to separately agitate for enhancement on any other ground that may be available to them.

April 26, 2018 **(HARINDER SINGH SIDHU)**
gian **JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No