In the High Court of Punjab and Haryana at Chandigarh

FAO No. 8347 of 2017(O&M)
Date of Decision: 25.5.2018

ICICI Lombard General Insurance Company Limited

---Appellant

versus

Amarjit Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Ms. Vandana Malhotra, Advocate
for the appellant
Mr. S.K.Bawa, Advocate,
for respondents No. 1 and 2
Mr. A.S.Jawandha, Advocate
for respondents No. 3 and 4

***

Rekha Mittal, J.

The present appeal directs challenge against award dated 5.8.2017 passed by the Motor Accidents Claims Tribunal, Ludhiana whereby compensation has been awarded on account of death of Jatinder Singh in a motor vehicular accident that took place on 26.7.2014.

The Tribunal has awarded compensation to the tune of Rs.14,01,368/-, detailed hereunder:-

Monthly income of the deceased	Rs. 6647.75P.
Deduction for personal expenses	50%
Addition for future prospects	50%
Multiplier	16
Loss of dependency	Rs. 12,76,368/-
Loss of love and affection	Rs. 1,00,000/-
Funeral expenses	Rs. 25,000/-

Counsel for the appellant-insurance company would inform that the appeal has been preferred to assail quantum of compensation assessed by the Tribunal and findings on the question of driving licence possessed by Mukesh Kumar at the relevant time. To assail quantum of compensation, it is argued that though the Tribunal has held that 50% is to be deducted towards personal expenses but still calculated annual loss of dependency to the tune of Rs. 79,773/- and applied multiplier of 16. Another submission made by counsel is that compensation allowed under conventional heads needs to be restricted to Rs. 30,000/- in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270.**

Counsel would urge that driving licence possessed by Mukesh Kumar was not issued by the concerned Licensing Authority as per the information received under the RTI Act and the insurance company examined the Surveyor Sh. Ajay Kumar Jain RW1 and Amandeep Singh , Manager Legal of the insurance company RW2. It is further submitted that information received under the RTI Act can be acted upon by the Tribunal to decide the question of driving licence. In this context, she has placed reliance upon judgment of this court in **FAO- 598 of 2014 titled, Munshi Ram and another vs. Balkar Singh and others", decided on 18.2.2016.**

Counsel representing the claimants has prayed for enhancement of compensation by correct assessment of income of the deceased. It is argued that the deceased was driver on a heavy motor vehicle i.e. truck LP bearing No. PB-13-AF-9175, he falls under the category of highly skilled labour as per Notification No. S.O. 94/C.A. 11/1948/Ss. 3 and 5/2012 published in the Punjab Government Gazette (Extra) November 15, 2012.

Counsel representing the owner and driver of the offending vehicle has supported findings of the Tribunal recorded in para 22 of the award whereby it has been held that the insured is not guilty of violating the terms and conditions of insurance policy.

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

Jatinder Singh sustained injuries when he was beneath truck No. PB-13-AF-9175 and the said truck was struck by offending vehicle Tata-909 bearing No. PB-10CC-0351. Counsel for the insurance company has failed to point out any facts elicited in cross examination of Amarjit Singh PW1 that deceased was not working as driver on the aforesaid truck. As has been rightly argued by counsel for the claimants that as per the notification issued on 15.11.2012, driver of the truck, tempo, tractor, bus, bulldozer, crane operator, road roller and Harvester combine operator falls within the purview of highly skilled labour. As per the notification issued by Labour Commissioner, Punjab dated 12.4.2016, minimum wage of a highly skilled worker in July 2014 was Rs. 9176.67 PM. The Tribunal has rightly applied multiplier of 16 and deduction of 50% for computing loss of dependency. Claimants shall be entitled to addition in income for future prospects @ 40%. In this manner, loss of dependency is computed at Rs. 12,33,792/- [9180 x 12 x 16 = 17,62,560 + 7,05,024 (40%) = 24,67,584 -12,33,792(50%)].

Under conventional heads, claimants shall be entitled to Rs. 30,000/- i.e. Rs. 15,000/- on expenses on funeral and another Rs. 15,000/- for loss of estate**.**

Total compensation is Rs, 12,63,792/-. Compensation awarded by the Tribunal is reduced to the extent of Rs. 1,37,576/-. The amount found payable to the claimants shall carry interest @ 7.5% per annum from the date of petition till realization.

The insurance company examined the witnesses to prove the information purported to be received under the Right to Information Act, 2005 to substantiate its plea that licence possessed by Mukesh Kumar, driver of the offending vehicle was not issued by the licensing authority at Nagaland i.e. RTO Mokochung.

Indisputably, the insurance company did not examine a witness from the concerned licencing authority along with relevant records to establish that no such record in respect of the licence in question is available with the licencing authority, Mokochung. Perusal of the information would reveal that after scrutinizing office register, it has been found that there is no record in the office of Regional Transport Officer and PIO, Mokochung, Nagaland of such licence being issued to any person. However, there is no report that the stamp and initials appearing on the licence in question do not pertain to the concerned licencing authority or the same is the result of forgery. As the insurance company has not examined a witness from the office concerned, the insured has been deprived of a valuable right to cross examine the witness on relevant aspects and extract the truth.

The Division Bench of this Court in **Surjan Ram Vs. Anchal Singh (died), 1997(3) RCR (Civil) 670** has set aside the award passed by the Tribunal wherein it has been held that the driver did not have a valid driving licence. It was held by this Court that no person from the office of licensing authority was examined by the insurance company. It relied only on the report of its surveyor. Moreover, the Motor Accidents Claims

Tribunal itself has observed that there were entries on the licence showing that the driving licence was valid for driving heavy motor vehicles w.e.f June 21, 1991. The accident in question occurred on 11.03.1994. From the reading of finding of the Motor Accidents Claims Tribunal, the Court is of the view that the same is not well based and is not supported by the evidence. The surveyor's report by itself could not show that the driving licence was invalid. The onus could not be said to be discharged by the insurance company merely by producing the Surveyor, who is engaged by the company for making the survey. We are not satisfied that the finding regarding the invalid licence is well based. Rather, we are of the view that on this evidence as produced before the Motor Accidents Claims Tribunal, it could not be found as a fact that the driver of the truck did not hold the valid licence on the date of occurrence.

In view of the discussion made hereinbefore, when examined in the light of judgment in **Surjan Ram's case** (supra), I find it difficult to accept contention of the insurance company that driver of the offending vehicle was not possessing a valid licence or the insurance company is entitled to have right of recovery against the insured by contending that he has committed breach of the terms and conditions of the policy.

No other point has been raised.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

25.5.2018
PARAMJIT/GULATI

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No