**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

(1)

FAO No.1074 of 2013 (O&M)
Date of Decision: April 05, 2019.

Amira Devi and another

..........APPELLANT(s).

VERSUS

Lakhan Singh and others

........RESPONDENT(s).

(2)

FAO No.2282 of 2013 (O&M)

Narayan Singh and another

..........APPELLANT(s).

VERSUS

Amira Devi and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.K. Yadav, Advocate
for the appellants in FAO-1074-2013 and
for respondents No.1 and 2 in FAO-2282-2013.

Mr. Vikas Kumar, Advocate
for the appellants in FAO-2282-2013 and
for respondents No.1 and 2 in FAO-1074-2013.

Mr. Rajneesh Malhotra, Advocate
for respondent-insurance company in both appeals.

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SURINDER GUPTA, J.

Motor Accident Claim Tribunal, Faridabad (later referred to as the tribunal) vide award dated 09.11.2012, awarded a compensation of ₹5,44,200/- for the death of Dev Chandra Jha (later referred to as the deceased) in a motor vehicle accident with truck bearing registration No.HR-38C-9535 (later referred to as the offending vehicle).

Appellants Amira Devi and Prashant Jha have filed appeal against the award of the tribunal (FAO No.1074 of 2013) seeking enhancement of compensation, while the driver and owner of the offending vehicle have filed separate appeal bearing FAO No.2282 of 2013 against the recovery rights allowed to the insurer of the offending vehicle against them.

Detailed facts of the case are being skipped for the sake of brevity.

The compensation awarded by the tribunal was computed as follows:-

(i)	Name of the deceased	Dev Chandra Jha
(ii)	Date of accident	25.01.2012
(iii)	Age of the deceased	54 years
(iv)	Income of the deceased	₹4500 p.m.
(v)	30% addition in income of deceased towards loss of future prospects	₹4500+1350=₹5850
(vi)	Deduction towards personal expenses 1/3rd	₹5850-1950=₹3900 p.m. i.e. ₹46800/- p.a.
(vii)	Multiplier applied 11	₹46800X11 = ₹5,14,800/-
(viii)	Funeral expenses	₹5000
(ix)	Loss of consortium	₹5000
(x)	Loss of estate	₹5000
(xi)	For expenses of treatment of deceased	₹14400
	Total	₹5,44,200/-

The tribunal further held that the offending vehicle was a transport vehicle but the driver of the offending vehicle was not having a valid driving licence to driver transport vehicle, which amounts to violation of terms and conditions of the insurance policy, as such, the insurer of the offending vehicle shall have right to recover the amount of compensation paid to the claimants from owner of offending vehicle.

Firstly, I take the issue of income of the deceased as assessed by the tribunal. The claimants have alleged that the deceased was 54 years of age and was employed as Security Guard with Sunlight Security, YMCA Chowk, Faridabad. He was performing 12 hours duty daily and was earning ₹9,000/- per month. Keeping in view the age of the deceased, the tribunal has observed that a person of such age will not sit idle, however, his income was assessed as ₹4,500/- per month as plea of appellants that deceased was employed as Security Guard, was not accepted. To prove their plea, claimants have examined PW3 Jagdish, Senior Social Security Assistant, Office of Employee Provident Fund, Sector 15A Faridabad. He has produced record of the deceased, who was employed and was registered as employee No.10459 as per record of provident fund. He has stated that deceased was employee of M/s Continent Facility Service Private Limited. Total wages of the deceased as per employer sheet for the year 2011-12 was ₹25,435/-. Prashant Jha while appearing as PW4 has stated that his father was getting a monthly salary of ₹9,000/- per month.

A Security Guard is not an unskilled worker, rather falls in the category of skilled worker. In the year 2012, minimum wages for the skilled worker as notified by the Labour Commissioner, Haryana vide letter dated 21.02.2012, was ₹5,237.17p. It appears that the employer of the deceased was either showing only basic pay or lesser wages of deceased in his return to save his contribution in provident fund of deceased. Even otherwise, in the year 2012, a person cannot be believed to be working on the salary of around ₹4,500/- per month. Making the minimum wages notified by the State of Haryana as base, monthly income of the deceased can be assessed as ₹5500/- per month. As the deceased was around 54 years of age, 10% addition in his income towards loss of future prospects, could be allowed. As per 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 compensation of ₹70,000/- under the conventional heads besides a sum of ₹14,400/- allowed by the tribunal towards medical expenses.

As a sequel of my above discussion, the compensation to which the claimants are entitled, is reassessed as follows:-

Sl.No.	*Heads*	*Calculation*
(i)	Income of the deceased	₹5500 per month
(ii)	10% of above (i) to be added as loss of future prospects	(₹5500+₹550)= ₹6050 per month
(iii)	Deduction of $1/3^{rd}$ towards personal expenses of the deceased	(₹6050-₹2017)= ₹4033 per month
(iv)	Compensation after multiplier of 11 is applied	(₹4033X12X11)= ₹532356
(v)	Loss of consortium	₹40000
(vi)	Loss of estate	₹15000
(vii)	Funeral expenses	₹15000
(viii)	Expenses for medical treatment of deceased	₹14400
Total		₹6,16,756/-

The next question, which arise for consideration is as to whether the insurer is to be allowed right to recover the amount of compensation from the insured for breach of terms of the insurance policy. It is not disputed that the driver of the offending vehicle was possessing a valid driving licence to drive 'Heavy Motor Vehicle". The tribunal allowed the recovery right to the insurer on the ground that licence was not for driving “Transport Vehicle”.

Learned counsel for the appellants has argued that prior to amendment of provisions of Section 10(2) Motor Vehicles Act, categories of vehicle like 'Medium Goods Vehicle', 'Medium Passenger Motor Vehicle', 'Heavy Goods Vehicle' and 'Heavy Passenger Motor Vehicle' were merged in the category of 'Transport Vehicle'. Hon'ble Apex Court while taking note of the amendment incorporated vide Act No.54 of 1994, has observed in case of ***Mukund Dewangan Vs. Oriental Insurance Company Limited 2017 (14) SCC 663,*** as follows:-

> “14. The definition of ‘light motor vehicle’ makes it clear that for 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 7500 kgs. ‘Gross vehicle weight’ has been defined in section 2(15). The motor car or tractor or road roller, the unladen weight of any of which does not exceed 7500 kgs. as defined in section 2(48) of the Act, are also the light motor vehicle. No change has been made by Amendment Act of 54/94 in the provisions contained in sections 2(21) and 10(2)(d) relating to the light motor vehicle. The definition of ‘light motor vehicle’ has to be given full effect to and it has to be read with section 10(2)(d) which makes it abundantly clear that ‘light motor vehicle’ is also a ‘transport vehicle’, the gross vehicle weight or unladen weight of which does not exceed 7500 kgs. as specified in the provision. Thus, a driver is issued a licence as per the class of vehicle i.e. light motor vehicle, transport vehicle or omnibus or another vehicle of other categories as per gross vehicle weight or unladen weight as specified in section 2(21) of the Act. The provision of section 3 of

> the Act requires that a person in order to drive a 'transport vehicle' must have authorisation. Once a licence is issued to drive light motor vehicle, it would also mean specific authorisation to drive a transport vehicle or omnibus, the gross vehicle weight or motor car, road roller or tractor, the unladen weight of which, as the case may be, does not exceed 7500 kg. The insertion of 'transport vehicle' category in section 10(2) (e) has no effect of obliterating the already defined category of transport vehicles of the class of light motor vehicle."

Prior to amendment of Section 10(2) w.e.f. 14.11.1994, driving licence were being issued for separate categories like 'Medium Goods Vehicle', 'Medium Passenger Motor Vehicle', 'Heavy Goods Vehicle' and 'Heavy Passenger Motor Vehicle'. Now the word 'Transport Vehicle' replaced all these categories. The licence of appellant No.2, Lakhan Singh (FAO2282-2013) valid from 21.12.2009 to 09.12.2012 for driving 'LMV' and 'HMV' was also valid to drive the transport vehicle of that category.

Learned counsel for respondent-insurance company has though argued that there was no endorsement on the licence of driver of the offending vehicle that he was competent to drive transport vehicle, but has not disputed that the word 'Heavy Goods Vehicle' was replaced with the word 'Transport Vehicle' vide Act No.54 of 1994. Word 'Heavy Motor Vehicle' (HMV) has not been defined in the Motor Vehicles Act, however, it defines 'Heavy Goods Vehicle; and 'Heavy Passenger Motor Vehicle' as follows:-

> "(16) "***heavy goods vehicle***" means any goods carriage the gross vehicle weight of which, or a tractor or a road-

roller the unladen weight of either of which, exceeds 12,000 kilograms;

(17) "***heavy passenger motor vehicle***" means any public service vehicle or private service vehicle or educational institution bus or omnibus the gross vehicle weight of any of which, or a motor car the unladen weight of which, exceeds 12,000 kilograms."

The Word 'Transport Vehicle' has been defined under the Act as follows:-

"(47) "***transport vehicle***" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle."

From the above definition, it is evident that the transport vehicle also includes a goods carriage i.e. offending vehicle in this case.

As a sequel of my above discussion, both the aforementioned appeals are allowed. The award of the tribunal is modified to the extent that the compensation allowed to the claimants is enhanced from ₹5,44,200/- to ₹6,16,756/- and the right to recover the amount of compensation paid to the claimants, allowed to the insurer against the insured, is withdrawn. As such, liability to pay the amount of compensation shall be of insurance company. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the appeal till actual realisation. The amount of enhanced compensation shall be apportioned between the claimants as follows:-

(i)	Appellant-claimant No.1-widow	: 80%
(ii)	Appellants-claimants No.2 son	: 20%

Respondent-insurance company will deposit the shares of appellants-claimants in their bank accounts or pay the same through demand drafts. The claimants shall also be entitled to costs of this appeal.

In case of demise of any of above claimant(s) before his/her share of compensation is disbursed, the same shall be paid to surviving claimant.

(SURINDER GUPTA)
April 05, 2019. **JUDGE**
Sachin M.

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No