In the High Court of Punjab and Haryana at Chandigarh

FAO- 1034 of 2016 (O&M)
Date of Decision: 2.9.2019

The New India Assurance Company Limited

---Appellant

versus

Sunita and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Rajneesh Malhotra, Advocate
for the appellant

Mr. Amandeep Singh Saini, Advocate,
for Mr. M.L.Saini, Advocate
for respondent No. 4

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Rekha Mittal, J.

Challenge in the present appeal has been directed against award dated 19.8.2015 passed by the Motor Accidents Claims Tribunal, Hoshiarpur (in short "the Tribunal") whereby compensation has been assessed on account of death of Malkiat Ram in a motor vehicular accident that took place on 18.11.2013.

Counsel for the insurance company would inform that appeal has been filed to assail findings of the Tribunal qua assessment of compensation and issue No. 3 pertaining to driving licence.

With regard to compensation, it is argued that the Tribunal has not deducted liability to pay income tax. Compensation allowed under conventional heads needs modification in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270.**

To assail findings of the Tribunal on issue No. 3, it is argued that insurance company examined Sampuran Singh, RW1 Junior Assistant, DTO, office Patiala. Though the witness had stated that driving licence bearing No. 48327/P/2001 was issued by his department on 5.1.2001 valid upto 4.1.2004 and the same was renewed from time to time but he has also deposed that renewal of licence with effect from 31.5.2010 to 30.5.2013 expired and thereafter the licence was renewed from 7.5.2015 to 4.2.2024 for non-transport and 7.5.2015 to 6.5.2018 for HMV. It is further argued that as the driver-cum-owner did not have licence with effect from 31.5.2013 till 7.5.2015 and the accident took place on 18.11.2013, the insured is guilty of violating the terms and conditions of policy constituting defence in favour of the insurer. It is further argued that the insurance company may be exonerated of liability to pay compensation or given right of recovery against the insured, after payment of compensation to the claimants.

Counsel for respondent No. 4 has supported findings of the Tribunal on issue No. 3 but has endorsed arguments of counsel for insurance company in respect of quantum of compensation.

Perusal of computation of compensation, represented in a tabulated form in para 23 of the award, would reveal that liability to pay income tax has not been deducted. Gross salary of the deceased is Rs. 33,473/- (Annexure PW3/A). After deducting income tax of Rs.18,173/-, net annual income is Rs. 3,83,503/- (4,01,676-18173). Addition in income for future prospects, deduction for personal expenses and multiplier applied are correct and affirmed. In this manner, loss of dependency is calculated at Rs.46,53,170/- [3,83,503 x14 = 53,69,042 + 16,10,713 (30%) = 69,80,282 – 23,26,585 (1/3rd)]

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs. 70,000/- in the light of judgments of Hon'ble the Supreme Court **Pranay Sethi and others' case (supra)** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034,** detailed hereunder:-

Loss of consortium	Rs. 40,000/-
Expenses on funeral	Rs. 15,000/-
Loss of estate	Rs. 15,000/-

Total compensation is Rs. 47,23,169/- and the additional amount is Rs. 9,50,050/- (47,23,169- 37,73,118), payable with interest @ Rs. 7.5% from the date of petition till realization, to minor daughter of the deceased, to be invested in fixed deposit till she attains the age of majority or for a period of three years, whichever is later. The interest accruing on the FDR shall be paid to her mother for meeting expenses on her education and living.

This brings the court to the question of driving licence possessed by Nirmal Singh, owner and driver of offending truck. Perusal of testimony of Sampuran Singh RW1 makes it evident that there was no driving licence with Nirmal Singh with effect from 31.5.2013 till 7.5.2015, therefore, Nirmal Singh did not possess any driving licence on the date of occurrence i.e. 18.11.2013. As such, Nirmal Singh being the insured is guilty of violating the terms and conditions of policy for want of being duly licensed on the date of occurrence and accordingly the insurance company shall be entitle to have right of recovery against the insured after payment of compensation to the claimants. In this view of the matter, findings of the Tribunal on issue No. 3 are accordingly modified.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

2.9.2019
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No