In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 13.3.2019

FAO-1390 of 2016(O&M)

New India Assurance Company Limited

---Appellant

versus

Rajkala and others

---Respondents

FAO-5953 of 2016(O&M)

Rajkala and others

---Appellants

versus

State of Haryana and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Paul S.Saini, Advocate
and Mr. Vipul Sharma, Advocate
for the insurance company
None for the claimants
None for respondents No. 6 to 8

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Rekha Mittal, J.

This order will dispose of FAO No. 1390 and 5953 of 2016 as these have emerged out of the same award dated 26.11.2015 passed by the Motor Accidents Claims Tribunal, Bhiwani (in short "the Tribunal") whereby compensation has been assessed on account of death of Ravi Dutt in a motor vehicular accident that took place on 13.5.2013.

FAO No. 1390 of 2016 has been filed by the New India Assurance Company Limited (hereinafter referred to as "the insurance company") whereas the other appeal has been filed by the claimants seeking enhancement of compensation.

Counsel for the insurance company would inform that the appeal has been filed to challenge quantum of compensation and findings of the Tribunal in regard to driving licence possessed by Kartar Singh, driver of Bus No. HR-61-4450 of Haryana Roadways.

FAO No. 1390 of 2016

Counsel for the insurance company would argue that Kartar Singh appeared in the witness box and tendered into evidence his affidavit Ex. RW1/A by way of examination in chief and documents marked DA to DF. It is further argued that in cross examination by counsel for the insurance company, he has stated that he got issued his driving licence from Licensing Authority/RTA, Bhiwani. He has not brought copy of driving licence which was originally issued by Licensing Authority/RTA, Bhiwani but he got the driving licence in 1982 bearing No. 17406/82. It is further argued that the insurance company examined Anil Kumar, Nazir from the office of Sub Divisional Magistrate, Bhiwani and in his cross examination by counsel for respondents No. 1 and 3 before the Tribunal, he had stated that heavy driving licences are issued by RTA/DTO of the District and Licensing Authority, Bhiwani does not have power to issue LTV and HTV/HPV driving licence. It is further submitted that as the driver made a categoric statement that he got issued his licence from Licensing Authority/RTA, Bhiwani, the insurance company summoned the records from Licensing Authority/RTA, Bhiwani. He would pray that the matter may be remitted to the Tribunal for deciding the question of driving licence afresh with liberty to the insurance company to summon the records from the office of RTA and DTO of District Bhiwani in respect of licence No.

17406/82 purported to be issued in favour of Kartar Singh for driving a transport vehicle.

There is no representation on behalf of respondents No. 6 to 8 earlier being represented by different sets of counsel.

Perusal of statements of Kartar Singh and Anil Kumar, Nazir makes it evident that the picture was not clear if the licence in question stated to be issued in the year 1982 was issued by a licensing authority or RTA or DTO, Bhiwani. The insurance company summoned the records from Licensing Authority, Bhiwani on the basis of statement made by the driver who did not produce on record copy of driving licence issued way back in the year 1982. In order to get a clear cut picture if the original licence was validly issued by a competent authority to Sh. Kartar Singh, the matter requires remittance to the Tribunal for deciding the question of driving licence afresh on the basis of materials already on record and additional evidence to be adduced by the insurance company and evidence, if any, to be led by respondents No. 6 to 8 on this issue. Accordingly, the appeal is partly allowed. Findings of the Tribunal on the question of driving licence are set aside and matter is remitted to the Tribunal for deciding that issue afresh, in the terms indicated above.

So far as challenge to quantum of compensation, the same would be considered while deciding the appeal filed by the claimants seeking enhancement of compensation.

Parties are directed to appear before the Tribunal on 11.4.2019. The Tribunal shall decide the issue of driving licence only after hearing the insurance company and registered owner of the offending vehicle.

FAO No. 5953 of 2016

The Tribunal awarded Rs. 16,17,400/-, detailed hereunder:-

Monthly income of the deceased	Rs. 6420/-
Addition in income for future prospects	50%
Deduction for personal expenses	1/4th
Multiplier	16
Loss of dependency	Rs. 13,82,400/-
Expenses on transportation and cremation	Rs. 25,000/-
Loss of consortium	Rs. 1,00,000/-
Loss of love and affection to minor children	Rs. 1,00,000/- (Rs. 50,000/- each)
Loss of estate	Rs. 10,000/-

There is no representation on behalf of the claimants/appellants earlier being represented by a counsel

The occurrence in question took place on 13.5.2013. The plea of the claimants is that the deceased had been working on chemist shop at village Jhojhu-Kalan at salary of Rs. 20,000/- per month. He used to earn Rs. 10,000/- from agriculture and diary farming. Sanjeev Kumar PW3 had stated that Baba Medical Hall and Multispeciality Centre having DL No. 1209/1209, near State Bank of India Jhojhu Kalan, Tehsil Charkhi Dadri District Bhiwani is being run by him and Ravi Dutt was working as Assistant on the said medical shop at salary of Rs. 20,000/- per month. The Tribunal has noticed in para 29 that no document relating to salary of deceased Ravi Dutt has been produced. There is nothing on record to suggest that Sanjeev Kumar PW3 was running such a huge medical shop at Jhojhu-Kalan on which he employed Ravi Dutt on monthly salary of Rs. 20,000/-. Sanjeev Kumar in his cross examination has stated that he has not brought the registration certificate of the shop. He is not filing statement before the Sales Tax Authority in respect of value added tax. He is not getting the accounts audited from a chartered accountant. He is not filing any income tax returns. He did not know whether Ravi Dutt was having any account but he was paid salary in cash. He did not produce any document with regard to payment of salary in cash to Ravi Dutt. In the given scenario, the Tribunal has rightly discarded testimony of Sanjeev Kumar for the purpose of assessing income of the deceased. The claimants failed to adduce sufficient much less cogent evidence if the deceased was involved in agriculture or dairy farming activity. Ravi Dutt was just middle pass. He did not have any qualification to work on a chemist shop at a salary of Rs. 20,000/- per month. When the case is examined in the light of notification issued by the State of Haryana fixing minimum wage at the relevant time, there is no justification in allowing income more than what has been assessed by the Tribunal. The claimants shall be entitle to addition in income for future prospects @ 40%. Deduction for personal expenses and multiplier applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at **Rs. 12,94,272/-** [6420 x 12 x16 =12,32,640 + 4,93,056 (40%)= 17,25,696 – 4,31,424].

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 **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034,** detailed hereunder:-

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

Loss of estate Rs. 15,000/-

Total compensation is Rs. 13,64,272/- and compensation allowed by the Tribunal is reduced to the extent of **Rs. 2,52,728/-** (16,17,400 -13,64,272). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

For the foregoing reasons, the appeal filed by the insurance company is partly allowed in the aforesaid terms. As a natural consequence, appeal filed by the claimants is dismissed.

(Rekha Mittal)
Judge

13.3.2019
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No