IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 08.05.2019

FAO No.2306 of 2016 (O&M)

United India Insurance Co. Ltd. ... Appellant

Versus

Sarabjit Kaur and others ... Respondents

FAO No.3687 of 2016 (O&M)

Sarabjit Kaur and another ... Appellants

Versus

Narinder Singh and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sanjiv Pabbi, Advocate for the insurance company.

Mr. Akshay K. Jindal, Advocate for the claimants.

Mr. Arnav Sood, Advocate for the driver.

None for the owner.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.2306 and 3687 of 2016 as these have emerged out of the same award dated 07.12.2015 passed by the Motor Accidents Claims Tribunal, Hoshiarpur whereby compensation has been assessed on account of death of Mohinder Singh in a motor vehicular accident that took place on 30.11.2014.

FAO No.2306 of 2016 has been filed by United India Insurance Co. Ltd. (hereinafter referred to as 'the insurance company'), whereas the other appeal has been filed by the claimants seeking enhancement of compensation.

Summons sent to respondent No.4 received back with the report “accepted the notice but refused to give signatures”. As such, respondent No.4 is deemed to be served in the case but failed to cause appearance.

Counsel for the insurance company would inform that the appeal has been preferred to assail findings of the Tribunal on the question of driving licence i.e. issue No.3.

The sole submission made by counsel for the insurance company is that a copy of driving licence (Annexue A2) was produced before the Tribunal and the same was issued by District Transport Officer, (Tuensang) Nagaland. The licence was issued in the year 2010 and it bears endorsement with regard to its renewal w.e.f 06.04.2015 to 01.11.2017. It is further argued that though a representative of the insured i.e. Hoshiarpur Azar Transport Pvt. Ltd. appeared in the witness box to say that driving licence of the driver was seen at the time of giving him employment but as the driving licence was not renewed to make it effective on the day of occurrence i.e. 30.11.2014, the driver was not possessing a licence on the day of accident and as such, the insurance company is entitle to have right of recovery against the insured after payment of compensation to the claimants.

Counsel representing respondent No.3, on the contrary, would urge that in the licence (Annexure A2), there is an endorsement with regard to MMV, HMV, PSV w.e.f 15.12.2011 and as such, it can be presumed that the driver was competent to drive the offending vehicle on the day of occurrence i.e. 30.11.2014.

Tarlochan Singh, Managing Director of the aforesaid transport company appeared in the witness box and tendered into evidence his affidavit Ex.RW2/A by way of examination in chief. A relevant extract from para 1 of his affidavit, reads as follows:-

> The respondent Narinder Singh son of Jaswant Singh, r/o village Bassi Umar Khan, PS Hariana, District Hoshiarpur was employed as a driver on the abovesaid bus. At the time of his appointment on 12.01.2013 his driving licence was duly checked and verified by the deponent. Respondent Narinder Singh produced his original driving licence which was issued by the Government of Nagaland and it was issued by the Transport Officer, Tuensang, Nagaland having driving licence No.20840TSG prof/10 which was valid for LMV, MMV, HMV and PSV. The said driving licence was having photograph of the respondent Narinder Singh as well as the seal and stamp of concerned licensing authority Nagaland. The said licence was found to be original by the deponent and the same was issued by the licensing authority on 02.11.2010. Besides that driving test of Narinder Singh was also taken by the deponent on the same type of bus and Narinder Singh was found to be a competent driver and thereafter after satisfying he was employed as a driver by the Hoshiarpur Azad Transport Co. Pvt. Ltd.

In the succeeding para (para 2), he has further stated to the following effect:-

> That at the time of alleged accident driving licence of Narinder Singh was misplaced and could not be found. Said Narinder Singh could not found his original driving licence which was misplaced at the time of accident and got prepared duplicate/reissued driving licence on the basis of original licence which was shown to the deponent. The above said driving licence duly covered the date of accident.

A copy of driving licence of said Narinder Singh was produced and the same is Ex.RW2/B. In the licence, there is no specific reference to its validity period from the date of its issuance in the year 2010. To be more precise, even the date and month of issuance of licence is not incorporated therein. There is an endorsement of its renewal upto 01.11.2017 w.e.f. 06.04.2015 and it is mentioned that it is valid upto 01.11.2017 for LMV, MMV, HMV, I/C, PSV only. There is another endorsement of MMV, HMV, PSV w.e.f 15.12.2011. The endorsement dated 15.12.2011 does not make reference with regard to its life upto a particular date, month and year. The second renewal is for a period less than two years w.e.f 06.04.2015 to 01.11.2017, therefore, it is difficult to presume in the given circumstances that endorsement w.e.f. 15.12.2011 would be effective for a period of 3 years covering the period of accident on 30.11.2014. In this view of the matter, the respondent/insured cannot derive advantage from the testimony of Tarlochan Singh in order to say that a valid and effective licence was shown at the time when Narinder Singh was employed as a driver on 12.01.2013. That being so, the insured cannot derive any advantage to its contentions from the judgment of Hon'ble the Supreme Court **Pepsu Road**

Transport Corporation Vs. National Insurance Co. Ltd., 2013(4) RCR (Civil) 273. As the driver did not possess an effective licence to drive a transport vehicle on 30.11.2014, the insured is guilty of breaching the terms and conditions of policy that constitutes a defence in favour of the insurer, as such, the insurance company shall have right of recovery against the insured after payment of compensation to the claimants. Accordingly, issue No.3 is answered in favour of the insurance company in the terms indicated above.

In view of what has been discussed hereinabove, the appeal is partly allowed.

FAO No.3687 of 2016

The Tribunal awarded Rs.7,53,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.8000/-
2. Multiplier	11
3. Deduction for personal expenses	50%
4. Loss of dependency	Rs.5,28,000/-
5. Expenses on funeral	Rs.25,000/-
6. Loss of estate	Rs.50,000/-
7. Loss of consortium	Rs.1,00,000/-
8. Loss of love and affection	Rs.50,000/-

The plea of claimants is that the deceased was working as mason. The Tribunal has assessed his income at Rs.8000/- per month. Taking a clue from notification issued by the State of Punjab fixing minimum wage at the relevant time, income of the deceased is assessed at Rs.8350/- per month. Claimants shall be entitle to addition in income for future prospects @ 10%.

The Tribunal has held that widow of deceased is the sole dependent upon his income. Even if it is so, admissible deduction for personal expenses would be 1/3rd. In this context, reference can be made to judgment of this Court **Balvir Kaur and others VS. Surender @ Surinder Singh and others, FAO No.8419 of 2015, decided on 27.03.2019**. The multiplier applied by the Tribunal is correct and affirmed. Accordingly, loss of dependency is calculated at Rs.8,08,280/- [(8350 x 12 x 11) + (10% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.8,78,280/- and the additional amount is Rs.1,25,280/- (8,78,280 - 7,53,000) payable with interest @ 7.5% per annum from the date of petition till realization, to widow of the deceased.

The appeal is partly allowed in the aforesaid terms.

08.05.2019 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No