IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. FAO No. 3528 of 2015 (O&M)
Date of Decision : 08.05.2019

HC Rashpal Singh .....Appellant

Versus

Kuldeep Singh and others .....Respondents

2. FAO No. 3532 of 2016 (O&M)

Kuldeep Singh and others ....Appellants

Versus

HC Rashpal Singh and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Achin Gupta, Advocate
for the appellant in FAO-3528-2015 and
for respondent no. 1 in FAO-3532-2016.

Mr. P.K.S. Phoolka, Advocate
for appellants in FAO-3532-2016 and
for respondents no. 1, 1A, 4 to 8 in FAO-3528-2015.

Mr. Vinod Gupta, Advocate
for respondent no. 3 in both the appeals.

Surinder Gupta, J.

Motor Accident Claims Tribunal, Bathinda (later referred to as 'the Tribunal') vide award dated 14.01.2015, awarded compensation of ₹3,53,000/- for death of Robin Singh (later referred to as 'the deceased'), son of claimant-Kuldeep Singh (since deceased) now represented by his legal heirs (in FAO-3532-2016), in a motor vehicle accident on 12.12.2012 with Car bearing registration no. PB-03X-2904 (later referred to as 'the offending vehicle'). While HC Rashpal Singh, owner of the offending vehicle, has filed appeal bearing FAO-3528 of 2015 challenging the award whereby New India Assurance Co. Ltd., insurer of the offending vehicle, was allowed right to recover amount of compensation from him, claimant(s) have filed appeal (FAO-3532-2016) seeking enhancement of compensation allowed by the Tribunal.

FAO-3528-2015

This appeal has been filed by owner of the offending vehicle against the award passed by the Tribunal, whereby compensation of ₹3,53,000/- was awarded to claimants with the observation that respondent no. 3-New India Assurance Co. Ltd. will pay amount of compensation and shall have the right to recover this amount from the appellant, who was driver of the offending vehicle. The reason for allowing recovery rights are mentioned in para 19 of the award, which are reproduced as follows:-

> *"19. Now the next question before this Tribunal is from whom the claimant will claim the compensation. The respondents brought on file the driving license of respondent No.1 Rashpal Singh Ex. R1. On the other hand, respondent No.3 brought on file copy of verification of driving license of respondent No.1 Rashpal Singh Ex.RY which reflect that driving license of Rashpal Singh was renewed up to 5.2.2009. In this case accident took place on 12.12.2012. So driving license Ex.R1 of respondent No.1 Rashpal Singh was not valid at the time of accident. Since the offending vehicle i. e. Safari car bearing registration No. PB-03X-2904 was insured with respondent No.3 i. e. The New India Assurance Company, the Mall Bathinda. The copy of insurance policy is brought on the file as Ex. RY which was valid w.e.f. 5.1.2012 to 4.1.2013. So respondent No.3 insurance company is liable to make the payment*

> *of compensation first to claimant No.1 and thereafter insurance company is entitled to recover the same from respondent No.1 HC Rashpal Singh.................”*

Learned counsel for the appellant has argued that driving licence of the appellant was produced before the Tribunal, copy of which has been placed on file as Annexure R-1. Perusal of this driving licence shows that it was valid to drive LMV, LMV-GV vehicle in transport category upto 16.07.2016 and for non-transport vehicles upto 16.07.2018. Insurer of the offending vehicle has not produced any evidence to the effect that this was not a valid driving licence. The date of issue of the said driving licence is 21.07.1995, which shows that this licence was valid at the time of accident and the Tribunal has misread this document while observing that this licence was valid till 05.02.2009.

Learned counsel for the appellant has drawn my attention to copy of driving licence placed on file, which shows that original licence was issued on 26.06.1995 and was valid till 25.06.1998. Thereafter, it was revalidated upto 25.06.2001 and thereafter upto 05.02.2009 and then upto 17.06.2013.

On perusal of file, I find that driving licence of the appellant after issuance in the year 1995 was revalidated from time to time and at the time of accident he was having a valid driving licence. In the absence of any evidence produced by respondent no. 3-Insurance Company that the driving licence or renewal of the driving licence of appellant was not valid at the time of accident, the Tribunal has committed error while holding that the driving licence was valid only upto 05.02.2009.

Learned counsel for respondent no. 3-Insurance Company on perusal of record could not point out any evidence produced by insurer of the offending vehicle to show that driving licence of the appellant was not valid at the time of accident. Consequently, award of the Tribunal allowing right to recover amount of compensation from the appellant is not tenable in the eyes of law. The same is set aside and the award is modified to the extent that insurer of the offending vehicle shall have no right to recover amount of compensation from the appellant.

<u>FAO-3532-2016</u>

This is appeal filed by claimants seeking enhancement of compensation awarded by the Tribunal for death of the deceased in a motor vehicle accident.

Compensation of ₹3,53,000/- awarded by Tribunal was computed as follows:

Sr. No.	***Heads***	***Calculation***
(i)	Name of the deceased	Robin Singh
(ii)	Age of the deceased	16 years
(iii)	Notional income of the deceased	₹30000 per annum
(iv)	Compensation calculated after applying the multiplier of 11 as per age of mother of the deceased	(₹30000X11) = ₹330000
(v)	Compensation towards funeral expenses	₹10000
(vi)	Compensation towards loss of love and affection	₹10000
Total		₹353000

Relying on the observations of this Court in case of ***Reliance General Insurance Company Limited Vs. Krishan and others, FAO No.8142 of 2014 with cross-objections No.73-CII of 2015 decided on 15.01.2018***, learned counsel for the appellants has argued that the deceased in that case was 16 years old boy. The accident had also taken place in the year 2012 and income of the deceased was assessed as ₹4,500/- per month.

The compensation in that case was computed as per the observations in case of ***National Insurance Company Limited Vs. Pranay Sethi and others 2017(4) R.C.R. (Civil) 1009.***

Learned counsel for respondent-insurance company has argued that the deceased was a young boy of 16 years and a non-earning member of the family. The tribunal has rightly assessed his notional income as ₹30,000/- per annum. The compensation awarded by the tribunal is adequate and reasonable and call for no enhancement on this score.

In the case of ***Reliance General Insurance Company Limited Vs. Krishan and others (supra),*** the deceased was 16 years old boy and his monthly income was assessed by the tribunal as ₹4,500/- per month which was upheld in appeal. The compensation was then computed as per the law settled by Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others (supra)***. Relying on the ratio of judgment in that case, compensation, to which the claimants are entitled in this case, is re-assessed as follows:-

(i)	Name of the deceased	Robin
(ii)	Age of the deceased	16 years
(iii)	Monthly income of the deceased	₹4500
(iv)	40% of (iii) above to be added as future prospects	(₹4500+₹1800)= ₹6300 per month
(v)	1/2 of (iv) above deducted towards personal expenses	₹6300- ₹3150) = ₹3150 per month
(vi)	Compensation calculated after applying the multiplier of 18	(₹3150X12X18) = ₹680400 per annum
(vii)	Funeral expenses	₹15000
(viii)	Loss of estate	₹15000
Total		₹7,10,400

As a sequel of my discussion above, both the aforementioned appeals have merits and are accepted. Award of the Tribunal is modified and the compensation allowed to claimant-Surinder Kaur for death of Robin Singh is enhanced from ₹3,53,000/- to ₹7,10,400/- and insurer of the offending vehicle shall have no right to recover amount of compensation from appellant-owner of the offending vehicle. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the appeal till actual realization. She shall also be entitled to costs of this appeal. Insurer of the offending vehicle will deposit the share of claimant-Surinder Kaur in her bank accounts or pay the same through demand draft.

May 08, 2019 **(SURINDER GUPTA)**
jk/*Sachin M.* **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*