

226

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

Date of Decision : 14.03.2019

1. FAO-4984-2016(O&M)

Oriental Insurance Company Ltd.

...Appellant

vs.

Dharambir and others

...Respondents

2. FAO-459-2017(O&M)

Dharambiri and others

...Appellants

vs.

Sher Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Lalit Garg, Advocate
for the appellant in FAO-4984-2016.
for respondent No.3 in FAO-459-2017.

Mr. Rajiv Saini, Advocate
for respondents No. 1 to 3 in FAO-4984-2016.
for the appellants in FAO-459-2017.

Mr. B.K.Bagri, Advocate
for respondent No. 5 in FAO-4984-2016.
for respondent No. 2 in FAO-459-2017.

Avneesh Jhingan, J. (Oral)

This order shall dispose of above mentioned two appeals.

Both the appeals are arising out of one accident and same award, hence,

these are being decided by a common order.

The award dated 31.05.2016 passed by Motor Accident Claims Tribunal, Karnal (for short 'the Tribunal') in MACT case No. 04/2015 has been assailed by the Insurer of Tractor Trolley bearing registration No. HR-05T-1096 (for short 'the offending vehicle') and by the claimants.

In the appeal filed by the Insurer, the grievances raised are: that the driver of the offending vehicle was having licence to drive heavy transport vehicle whereas he was driving tractor trolley which comes under the category of Light Motor Vehicle (LMV). The insurer is also aggrieved of the quantum of the compensation awarded by the Tribunal.

In the appeal filed by the claimants, they are seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The bare facts necessary for adjudication of both the appeals are that on 30.11.2014, Sushil Kumar (mentioned as Sunil Kumar in para No.1 of the Award, hereinafter referred to as Sushil Kumar) along with Rajender and Jitender was travelling in a Swift Car bearing registration No. HR-13C-0212 which was driven by Jitender. On their way, the offending vehicle and its over loaded trolley was going ahead of the car. The driver of the offending vehicle abruptly applied brakes, as a result, the car rammed into the back side of the trolley. Due to the impact, Sushil Kumar died at the spot. FIR No. 943 dated 01.12.2014 was registered at Police Station Civil Lines, Karnal.

The Tribunal after considering the facts and appreciating the

evidence adduced held that the accident was caused due to the rash and negligent driving of the offending vehicle. The owner, driver and the insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

A claim petition was filed and it was pleaded that the deceased was a fruit seller and was earning ₹ 20,000/- per month. The claimants failed to prove the occupation and earning of the deceased. The Tribunal assessed the monthly income of the deceased as ₹ 8,000/-, deduction of 10% of income tax was made, 30% future prospects were awarded, 1/4th deduction was made for self-expenses as the deceased was survived by four dependants and multiplier of '14' was applied by taking the age of the deceased as 45 years at the time of accident. Tribunal awarded a sum of ₹ 14,04,360/- along with interest @ 9% per annum. The amount awarded included ₹ 25,000/- on account of transportation and funeral expenses, ₹ 1,00,000/- each for loss of consortium and on account of love and affection.

Heard learned counsel for the parties and perused the record.

Learned counsel for the insurer raised four fold grievances. Firstly, that the deceased was merely a fruit seller and the income assessed by the Tribunal as ₹ 8000/- is on higher side. Secondly, the Tribunal erred in awarding 30% future prospects instead of 25%. Thirdly, the amounts awarded under the conventional heads are on higher side and no amount be awarded for love and affection. Lastly, that the driver of the offending vehicle was holding a licence valid to drive TRV Rigid

Chassis whereas he was driving tractor trolley which falls in the category of LMV.

Learned counsel for respondent-Owner of the offending vehicle defends the award and states that the driving licence held by the driver of the offending vehicle authorised him to drive LMV also. Learned counsel for the claimants contends that the Tribunal erred in deducting 10% income tax from the income of ₹ 8,000/-.

In the proceedings before the Tribunal, the claimants failed to establish the monthly earning and occupation of the deceased, in such circumstances, one of the fact to be considered is minimum wages prevalent at the relevant time. Considering the fact that the deceased was survived by two minor daughters, widow aged 33 years and an old mother, itself, is a indicator that he would be working hard to make two ends meet. In the present case, the Tribunal after assessing the monthly income as ₹ 8000/- deducted 10% as income tax. The said deduction cannot be upheld as the income assessed would be less than the taxable limits.

Considering the fact as per the pleading, the deceased was a fruit seller, it would not be appropriate to restrict the income merely on the minimum wages. The income tax could not be deducted but the effect is that for all practical purposes, the income assessed comes to ₹ 7,200/- and calls for no interference.

Having due regard to the decisions of the Supreme Court in

National Insurance Company Limited Vs. Pranay Sethi and others AIR

2017 SC 5157 and Hem Raj Vs. Oriental Insurance Company Ltd.

2018 (2) PLR 480, as the deceased was in the age group of 40-50 years and would come in the category of self-employed or having fixed wages, 25% future prospects are awarded.

As per the the decision of the Supreme Court in **Pranay Sethi's case (supra)**, the claimants are entitled to ₹ 15,000/- each for funeral expenses and for loss of estate. ₹ 40,000/- are awarded to the widow on account of loss of consortium. No amount is awarded for loss of love and affection.

In view of the above discussion, the compensation is re-calculated as under:-

<i>Particulars</i>	<i>Amount (in ₹)</i>
Monthly income of the deceased as assessed	7200/-
25% Future Prospects	1800/-
Sub Total	9000/-
1/4 th deduction for self expenses	2,250/-
Applying multiplier of '14'	11,34,000/-
Funeral Expenses	15,000/-
Loss of Estate	15,000/-
Loss of consortium	40,000/-
Grand Total	12,04,000/-

The claimants shall be entitled to the said amount alongwith interest as awarded by the Tribunal.

The contention raised by the learned counsel for the Insurer that driver was not authorised to drive LMV, hence recovery rights be awarded, is not well founded.

The issue involved in the present appeal is whether a driver holding a licence for Heavy Motor Vehicle is authorised to drive LMV or

not?

Before dealing with the issue, it would be relevant to quote Section 7 of the Act, which reads as under:-

“7. Restrictions on the granting of learner's licences for certain vehicles – (1) No person shall be granted a learner's licence to drive a transport vehicle unless he has held a driving licence to drive a light motor vehicle for at least one year. Provided that nothing contained in this subsection shall apply to an e-cart or e-rickshaw. (2) No person under the age of eighteen years shall be granted a learner's licence to drive a motor cycle without gear except with the consent in writing of the person having the care of the person desiring the learner's licence.”

Section 7 of the Act imposes a restriction that a learner's licence to drive a transport vehicle shall not be issued unless the driver has held a driving licence to drive a light motor vehicle for at least one year. The said section itself ensures that the driver had held a licence to drive LMV before getting a learner's licence for transport vehicle.

This Court in the case of ***National Insurance Company Limited vs. Parkashi and others, 2017(1) PLR 361***, taking into consideration the earlier decision of this Court in ***Harsewak Singh vs. Lajo Devi, 2013(2) PLR 809*** and considering the decision of Delhi High Court in ***The United India Insurance Co. Ltd. vs. Deepak Goel and others, MAC. APP. No. 750/2006, decided on 24.01.2014*** and decision of Jammu & Kashmir High Court in ***National Insurance Co. Ltd. vs. Gh. Rasool Baba, 2011 (2) J.K.L. 357***, held that possession of a driving licence valid to drive HTV must be seen as sufficient qualification for a person to drive a LMV also. More so, when the mechanism to drive both

the categories of vehicles was the same. Thus, the contention of learned counsel for the insurer cannot be sustained and no shadow can be cast upon the finding recorded by the Tribunal regarding liability to pay.

The appeal filed by the insurer is partly accepted and appeal of the claimant is dismissed.

14th March, 2019
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(AVNEESH JHINGAN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>