IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

232 FAO-5575-2016 (O&M)

Date of decision: 08.07.2019

UNITED INDIA INSURANCE CO LTD ... Appellant

Versus

SARABJIT KAUR & ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sanjiv Pabbi, Advocate for the appellant.
Mr. Rohit Kapoor, Advocate for respondent No.1.
Mr. Ayush Goyal, Advocate for
Mr. Vishal Aggarwal, Advocate for respondent No.2.
****

REKHA MITTAL, J. (Oral)

CM No.19093-CII of 2016

Heard.

Allowed as prayed for. Delay of 09 days in re-filing the appeal stands condoned.

Main Case

The present appeal directs challenge against award dated 25.04.2016 passed by the Motor Accidents Claims Tribunal, SAS Nagar, Mohali whereby compensation has been assessed on account of death of Malkit Singh in a motor vehicular accident that took place on 18.08.2013.

Counsel for the insurance company would inform that the appeal has been preferred to assail quantum of compensation and for pressing recovery right against the owner/insured of the offending vehicle.

With regard to quantum of compensation, it is argued that the deceased was 60 years old and the Tribunal has allowed addition in income for future prospects @ 15% but while making calculations, 50% has been added towards future prospects. The second submission made by counsel is that since driver of the offending car was not holding valid licence at the time of accident, the insured is guilty of breaching the terms and conditions of policy constituting a defence in favour of the insurer, therefore, the insurance company is entitle to right of recovery against the insured.

Counsel representing the claimant has not disputed that the

Tribunal while making calculations has wrongly added future prospects @ 50%.

Counsel representing respondent No.2 would argue that as respondent No.2 had ensured that the driver was possessing a valid licence, he cannot be held guilty of breaching the terms and conditions of policy and as such, the insurance company cannot press for right of recovery against the insured.

The plea of claimant is that deceased was working as Turner with M/s Quality Promoters and on the basis of certificate Ex.PX, his income was assessed at Rs.6500/- per month. As the deceased was 60 years of age, admissible increase of future prospects would be 10%. Deduction for personal expenses allowed by the Tribunal is correct and affirmed. In this context, reference can be made to judgment of this Court **Balvir Kaur and others VS Surender alias Surinder Singh and others, FAO 8419 of 2015, decided on 27.03.2019**. Similarly, multiplier applied by the Tribunal is correct and affirmed. In this manner, loss of dependency is calculated at Rs.5,14,800/- [(6500 x 12 x 9) + (10% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that respondent/claimant 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.5,84,800/- and compensation assessed by the Tribunal is reduced to the extent of Rs.2,42,200/- (8,27,000 - 5,84,800). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

This brings the Court to the question of driving licence possessed by Davinder Singh, driver of offending vehicle. Deepak Mittal, registered owner of the vehicle appeared in the witness box and tendered into evidence his affidavit by way of examination in chief. In para 3 of the affidavit, he has deposed that factum of non-genuineness of licence of respondent No.2 was never in the knowledge of the applicant. In the succeeding para, he has stated that respondent No.2 was kept as driver by the deponent and at that time the driver/respondent No.2 assured the deponent that he has valid and genuine driving licence. Contrary to his stand in his examination in chief, he had stated in cross examination that respondent No.2 was kept as driver by his grandfather. His grandfather kept respondent No.2 as driver after taking his driving test but he was not present at the spot when he was kept as driver by his grandfather and no driving test was taken in his presence. He had further stated that neither he nor his grandfather had got the licence Ex.R1 verified from the concerned licensing authority. The grandfather of Deepak Mittal did not appear in the witness box to say on oath with regard to his having taken driving test or seen the driving licence possessed by the driver. In the given circumstances, testimony of Deepak Mittal is not sufficient to derive benefit of what has been held by Hon'ble the Supreme Court in **Pepsu Road Transport Corporation Vs. National Insurance Co. Ltd., 2013(4) RCR (Civil) 273.** As driving licence possessed by the driver was found to be invalid, the insured is guilty of violating the terms and conditions of insurance policy on the basis whereof the insurance company has right of recovery against the insured after payment of compensation to the claimant. However, right of recovery given against the driver cannot be allowed to sustain for want of privity of contract between the insurer and driver.

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

08.07.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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