220 (i of ii)

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.882 of 2016 (O&M)
Date of Decision : 08.05.2019

United India Insurance Company Ltd.

Appellant

Versus

Jaswant Kaur and others

Respondents

FAO No.6185 of 2016

Jaswant Kaur and others

Appellants

Versus

Devender Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Paul S. Saini, Advocate
for the appellant [in FAO No.882 of 2016]
for respondent No.3 [in FAO No.6185 of 2016].

Mr. Sandeep Thaken, Advocate for
Mr. Harish Nain, Advocate
for the appellants [in FAO No.6185 of 2016]
for respondents No.1 to 4 [in FAO No.882 of 2016].

Mr. D.S. Bhinder, Advocate
for respondents No.1 and 2 [in FAO No.6185 of 2016]
for respondents No.5 and 6 [in FAO No.882 of 2016].

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AVNEESH JHINGAN, J (Oral)

The award dated 02.11.2015 passed by the Motor Accident Claims Tribunal, Jind [for brevity 'the Tribunal'] in Claim Petition No.133 of 29.10.2014 has been assailed by filing two cross-appeals, one by the insurer of XYLO Car bearing registration No.PB-01-8186 [hereinafter referred to as 'offending vehicle'] and another by the legal representatives of Lakhwinder Pal Singh (deceased).

The two-fold grievances raised by learned counsel for the insurer are as under :

(i) firstly, that recovery rights should have been granted as the Driving Licence was not having endorsement authorizing the driver to drive the commercial vehicle; and

(ii) secondly, that the quantum of compensation awarded is on the higher side.

The claimants have filed the appeal seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The factum of accident has not been disputed by the parties. A motor vehicular accident took place on 22.07.2011. The accident proved fatal for Lakhwinder Pal Singh, aged 39 years. The accident was result of the rash and negligent driving of the offending vehicle. FIR No.55, dated 22.07.2011 was registered at Police Station Garhi. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

The issue raised in the appeal filed by the insurer is that offending vehicle i.e. Xylo Car fell in the category of Light Motor Vehicles and was registered and insured as a Taxi. There is no challenge to the fact that the Driving Licence (Ex.R-1) produced before the Tribunal authorizes the driver of the offending vehicle to drive a Light Motor Vehicle. The only controversy is that there was no endorsement authorizing the driver to drive commercial vehicle. The issue raised is no longer *res integra.*

The Supreme Court in ***Mukund Dewangan Vs. Oriental Insurance Co. Limited, (2016) 4 SCC 298***, has held as under:-

> *"46. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles.*
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> *It was pre-amended position as well the post-amended position of Form 4 as amended on 28.3.2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in section 2(21) and the provisions of section 10 (2) (d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to*

exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section10(2)(e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed. Thus we answer the questions which are referred to us thus:

(i) 'Light motor vehicle' as defined in section 2 (21) of the Act would include a transport vehicle as per the weight prescribed in section 2(21) read with section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54/1994.

(ii) A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. And holder of a driving licence to drive class of "light motor vehicle" as provided in section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road roller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the

licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.

(iii) The effect of the amendment made by virtue of Act No.54/1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10(2) which contained "medium goods vehicle" in section 10(2)(e), medium passenger motor vehicle in section 10 (2)(f), heavy goods vehicle in section 10(2)(g) and "heavy passenger motor vehicle" in section 10(2)(h) with expression 'transport vehicle' as substituted in section 10(2) (e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10(2)(d) and section 2(41) of the Act i.e. light motor vehicle.

(iv) <u>The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light</u>

> *<u>motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.</u>"*
>
> *(emphasis supplied)*

In view of law laid down by the Supreme Court, the issue raised is decided against the insurer.

In the claim petition filed by the legal representatives of Lakhwinder Pal Singh, it was claimed that the deceased was 39 years old at the time of accident and he was doing the agricultural work and dairy farming. His earning was claimed as ₹20,000/- per month. The claimants failed to prove occupation and monthly earning of the deceased. The Tribunal assessed monthly earning of the deceased as ₹7,000/- per month; ¼ deduction for self-expenses was made and multiplier of '15' was applied. The Tribunal awarded compensation of ₹11,65,000/- alongwith interest @ 9% per annum. The amount awarded included ₹1,00,000/- each for loss of love & affection and loss of consortium. ₹20,000/- were awarded for funeral expenses.

Heard learned counsel for the parties and perused the relevant documents produced by them.

Learned counsel for the insurer contends that claimants failed to prove occupation and earning of the deceased. The income of the deceased assessed by the Tribunal is much more than the minimum wages prevalent for an unskilled labourer at the relevant time. He argues that 1/4th deduction for self-expenses has wrongly been made as the deceased was survived by widow, two minor children and father cannot be considered as a dependent. He further argues that amounts under the conventional heads be awarded as per decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157*** and no amount be awarded for loss of love and affection.

Learned counsel for the claimants submits that deceased was 39 years old at the time of accident. He was doing agricultural work and dairy farming. He defends the income assessed by the Tribunal. The grievance is that no future prospects have been awarded. Deduction of 1/4th made for self-expenses is defended by stating that the deceased was 39 years old at the time of accident which itself is an indicator that father of the deceased was old person and should be considered as a dependent.

The claimants had failed to prove occupation and earning of the deceased. Taking into consideration the minimum wages in the State of Haryana at the time of accident and in order to award just and equitable compensation, income of the deceased is assessed as ₹5,600/- per month.

As the deceased fell in the category of self-employed or having fixed wages, 40% future prospects are awarded in consonance with the decision of the Supreme Court in ***Pranay***

Sethi's case (supra) and ***Hem Raj Vs. Oriental Insurance Company Ltd. (2018) 2 PLR 480.*** The claimants shall also be entitled to ₹15,000/- each for funeral expenses and for loss of estate. ₹40,000/- are awarded to the widow for loss of consortium. No amount is awarded for loss of love and affection.

There is no challenge to the multiplier applied of '15'.

The deceased was 39 years old at the time of accident and it can be safely assumed that his father was 60 years plus. There is nothing on record to show that he was not dependent. The pleadings of the claimants that father was dependent was not rebutted before the Tribunal. Thus, 1/4th deduction for self-expenses has rightly been made in consonance with the decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21.***

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

Particulars	Amount (in ₹)
Monthly income of the deceased as assessed	5,600/-
40 % Future Prospects	2,240/-
Sub Total	7,840/-
¼ deduction for self expenses	1,960/-
Monthly Dependency	5,880/-
Annual Dependency	70,560/-
Applying multiplier of '15'	**10,58,400/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to the widow	**40,000/-**
Grand Total	**11,28,400/-**

It has been informed that the compensation awarded by the Tribunal has already been disbursed to the claimants. The deceased was survived by widow, two minor children and old father.

As the variation in the amount of compensation, inspite of re-recalculation, is minor, the amount awarded by the Tribunal is sustained as it is.

Both the appeals are disposed of accordingly.

[AVNEESH JHINGAN]
JUDGE

May 08, 2019

pankaj baweja

1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes