

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

**FAO No.5327 of 2012 (O&M)
Date of Decision: April 29, 2019.**

Cholamandalam MS General Insurance Company

.....APPELLANT(s).

VERSUS

Gora Lal and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rajneesh Malhotra, Advocate
for the appellant (s).

Mr. Naveen Sharma, Advocate for
Mr. R.K. Shukla, Advocate
for respondents No.2 and 3.

SURINDER GUPTA, J.

This is appeal by insurer of Truck bearing registration No.HR-57-1927 (later referred to as the offending vehicle) against the award dated 06.06.2012 passed by Motor Accident Claims Tribunal, Patiala (later referred to as the tribunal) allowing compensation of ₹2,01,500/- for death of Smt. Chhoti (later referred to as the deceased) wife of claimant-respondent No.1 in an accident with truck bearing registration No.HR-57-1927 (later referred to as 'the offending vehicle').

As per the claimant, the accident took place on 03.02.2010 due to rash and negligent driving of the offending vehicle by its driver Gurjit Singh, resulting in death of Smt. Chhoti, who was working as labourer and domestic worker and thereby earning ₹3,200/- per month.

The tribunal computed the amount of compensation as follows:-

(i)	Name of the deceased	Smt. Chhoti
(ii)	Date of accident	03.02.2010
(iii)	Age of the deceased (assessed by the tribunal)	55 years
(iv)	Income of the deceased	₹3200 p.m. = ₹38400 p.a.
(v)	Deduction towards personal expenses	₹38400-12800=₹25600 p.a.
(vi)	Loss of dependency	₹192000
(vii)	Funeral expenses	₹2000
(viii)	Loss of consortium	₹5000
(ix)	Loss of estate	₹2500
<i>Total</i>		₹2,01,500/-

Learned counsel for the appellant has argued that as per identity card of the deceased, her age was mentioned as 54 years as on 01.01.1994. The accident took place on 03.02.2010, as such, she was 70 years of age at that time. The tribunal wrongly assessed her age as 55 years as mentioned in PMR, which is against the evidence on record. As per Schedule II, multiplier of 5 is applicable, while the tribunal has applied the multiplier of 7.5 while computing the amount of compensation.

The tribunal took the age of the deceased as 55 years with the observations that doctor, who prepared the post-mortem report, was competent technical person to describe the age. The above observation of the tribunal are without merits as from the physical appearance of the dead body, its age cannot be determined. There is nothing on record to show as to on what basis, doctor mentioned in post-mortem report, age of the deceased as 55 years. The claimant himself was 72 years of age but has described his age while appearing as 48 years. The tribunal has taken note of the fact that in the identity card prepared on 01.01.1994, the age of the

deceased was mentioned as 54 years. It means that at the time of accident, she was 70 years of age. In the absence of any other evidence, documentary evidence on record is required to be relied on.

The tribunal has taken income of the deceased as ₹3200/- per month. The fact to be kept in mind that the deceased was performing her domestic jobs besides taking care of her husband (claimant). Though the tribunal has taken note of minimum wages prescribed for unskilled worker, yet the income of deceased could only be assessed as a housewife. Income of the deceased as assessed by the tribunal is value of her services, she was rendering to the claimant and towards household jobs, as such, no deduction from this income could be made. On applying the multiplier of 5, the amount of compensation works out to ₹1,92,000/-. The tribunal has also allowed the above amount as compensation to the claimant towards loss of dependency on the deceased. On adding compensation for loss of consortium and funeral expenses, the compensation of ₹2,01,500/- does not call for any interference.

Learned counsel for the appellant has also argued that driving licence of driver of the offending vehicle, namely, Gurjit Singh was fake. In this regard he has referred to report of Licensing Authority, Mathura, wherein it has been stated that this driving licence was not issued in favour of Gurjit Singh. This report (Ex. R-3) was submitted on the requisition of the tribunal (Ex. R-4). Gurjit Singh while appearing as RW-1 has stated that he was issued driving licence by Licensing Authority, Mathura, which was later on renewed by Licensing Authority, Patiala and it was valid at the time of accident. Vide order dated 16.04.2012, Licensing Authority, Mathura

was directed to submit report regarding driving licence No. 5158/MTR/05 dated 11.07.2005. In pursuance of this order of Tribunal, requisition (Ex. R-4) was sent to Licensing Authority, Mathura and report (Ex. R-3) was received that driving licence has not been issued by Licensing Authority, Mathura.

The question, which arises for consideration is as to whether the report (Ex. R-3) submitted by Licensing Authority, Mathura is sufficient to hold that driving licence of Gurjit Singh was not valid. During his cross-examination Gurjit Singh was never suggested that driving licence (Ex. R-2) produced by him is fake one. The proper course available to Insurance Company after receipt of report (Ex. R-3) was to examine concerned official of Licensing Authority, Mathura but it took no step in this regard. It is quite possible that in case the concerned official had put in appearance, driver and owner of the offending vehicle could demonstrate by his cross-examination on the basis of record that his report was not correct.

In view of above facts, I am of the considered opinion that insurer of the offending vehicle has failed to prove that driving licence of driver of the offending vehicle was not valid on the date of accident. The finding of tribunal on issue no. 4 calls for no interference at this stage.

No other point has been argued.

As a sequel of my above discussion, this appeal has no merits.

Dismissed.

April 29, 2019.
Sachin M./jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No