(Heard through Video Conferencing)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1261 of 2020 (O&M)
DATE OF DECISION: 07.04.2021

New India Assurance Company Limited

…Appellant

Versus

Gurmail Kaur&Ors.

…Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Vinod Gupta, Advocate
For the appellant.

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ARUN MONGA, J.

1. Appellant Insurance Company is before this Court impugning the award dated 27.11.2019 rendered by Motor Accident Claims Tribunal, Rupnagar(for brevity, Tribunal) alleging that the same is erroneous and based on mis-appreciation of evidence led by the parties.

2. Brief factual narrative first as noted by the Tribunal in the award impugned herein.

On the ill-fated day of 28.11.2018 Gurdeep Singh serving as Naik in the Indian Army along with Ravi Kumar was going on motor cycle bearing registration No. PB12-AD-4353. Gurdeep Singh was driving it while Ravi Kumar was pillion rider. When the duo reached near Guru Nanak Service Station, village Mataur, bus bearing registration No. PB32P-5781 came from back side, driven by its driver(respondent Yusuf) in a rash and negligent manner. The bus struck against the motor cycle of Gurdeep Singh. Resultantly, both the occupants of motor cycle fell down and sustained injuries. Gurdeep Singh succumbed to the injuries at the spot, while Ravi Kumar died on the way to hospital. The occurrence was witnessed by Babit Kumar. FIR was registered against the driver of the bus.

Parents of deceased Gurdeep Singh filed the claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.2 crores, arraying the driver, owner and insurer of the offending vehicle.

Respondents No.1 and 2 in their written statement denied the allegations and took the stand that the accident had been caused due to rash and negligent driving of the motor cycle by Gurdeep Singh deceased himself.

Insurance Company attempted to wriggle out of its liability by taking the stand that the driver of the offending bus was not having valid licence and there is breach of insurance policy. The relationship of claimants with deceased and his earning capacity were also denied.

3. On the basis of evidence adduced by parties, the learned Tribunal awarded an amount of Rs.60,41,806/- along with interest @ 7% per annum from the date of filing of the petition till actual payment, to be apportioned equally by the claimants. The learned Tribunal held all the respondents jointly and severally liable to pay the aforesaid amount of compensation. The appellant Insurance Company was to indemnify the claimants in the first instance and was given recovery rights against the driver and owner of the offending vehicle.

4. I have heard learned counsel for the appellant and with his able assistance gone through the impugned award and the paper book.

5. Learned counsel for the appellant, *inter alia¸* argued that not only the evidence has been mis-appreciated by the Tribunal, but it also erred in calculating the income of the victim after deducting income tax and arrived at resultant wrong figures. Learned counsel further argued that the victim was bachelor and in view thereof the claimants were not entitled to any compensation for loss of consortium and the Tribunal has erred in granting compensation on this score. Learned counsel for the appellant also argued though feebly that learned Tribunal failed to appreciate evidence on record to the effect that there was no valid license issued to the driver of the passenger bus on the date of accident which took place on 28.11.2018 as the license had expired on 06.07.2018 even though the same was renewed on 02.01.2019. He argued, thus, that on the date of accident the driver had no valid license.

6. The last argument is taken up first. Having perused the impugned award, I am of the opinion that the findings returned in the award qua the validity of license and the view taken qua the consequences of non-renewal of driving license within prescribed time do not require any interference by this Court. Same are based on correct reasoning and proper appreciation of evidence adduced by the parties. Relevant paras 38 to 41 and 46 of the Award are reproduced hereinbelow:-

> *"38. On the other hand, learned counsel for the respondents no.1 and 2 has argued that the license has been renewed, however, subsequently but it shall be considered as effective in continuity since 6.7.2018 as the same has been renewed without any objection and with regard to route permit, it has been argued that as the fee has been deposited but permit has not*

been issued by the State Government so there is no fault on the part of respondents No.1 and 2.

39. As far as the objection of the insurance Company with regard to not having valid driving license is concerned, the careful perusal of the record reflects that the date of accident is 28.11.2018 where the license of respondent No.1 had already expired on 6.7.2018 and the same has been renewed on 2.1.2019 meaning thereby the same has not been renewed within one month from the date of its expiry.

40. In Smt. Santha&Ors.(supra), Hon'ble Kerala High Court has been pleased to hold that in a case where the date of accident was 21.11.2008, the license expired on 17.9.2008 but the same was renewed on 15.12.2008 that the license has not been renewed within one month so when the license has been renewed after three months from the date of expiry, the renewal would be applicable only from that day.

41. In the case in hand, the date of renewal is 2.1.2019 which is beyond one month from its expiry dated 6.7.2018 and date of accident is 28.11.2018 meaning thereby that the respondent no.1 was not having a valid license at the time of accident for plying the vehicle in question with him in view of laid down in Smt. Santha&Ors.(supra).

Xxx xxxx xxxx

46. Thus, it is clear that the respondent No. 3 Insurance has been able to prove on record that there was breach of policy condition as respondent No. 1 was not having a valid driving license at the time when accident took place and respondents No. 1 and 2 were not having permit when the accident took place. It is no more res integra that in the even of any breach of term of the policy, the claimants are entitled to receive the compensation amount from the insurance company and the insurance company can be allowed recovery rights to recover the amount of compensation paid by it from the owner of the offending vehicle i.e. the insured and the driver. As such, the insurance company respondent No. 3 can be directed to make the payment of compensation to the claimants, however, respondent No. 3 insurance company can be granted recovery rights against respondent No. 1 and 2 i.e. driver and owner of the offending vehicle, this issue is accordingly decided in favour of respondent No. 3."

7. Perusal of the above would show that the evidence has been properly appreciated and a correct view has been taken by the learned Tribunal, giving cogent reasons. There is no illegality or material irregularity in the findings recorded and the view taken by the learned Tribunal, warranting any interference by this Court.

8. The contention of the learned counsel for appellant for disentitlement of the claimant/parents of the victim to filial consortium is also equally insipid. It is no argument that since the victim was bachelor, therefore, his parents are not entitled to seek filial consortium. In this connection, reference may be had to **Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram &Ors.** [1]wherein reliance was placed on **National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680.** In Nanu Ram's case supra, an amount of L 40,000 each was awarded to the father and sister of the deceased, for loss of filial consortium. On that analogy, **the claimant/p**arents having lost their only son are entitled to compensation of Rs. 40,000/- each for the loss of consortium and also Rs. 15,000/- for loss of estate and Rs. 15,000/- for funeral expenses.

9. Qua the future prospects, learned Tribunal rightly observed that victim being an employee in Army (Government Service), an addition of 50% to the income of the deceased towards future prospects had to be allowed since victim was below 40 years of age.

[1] 2018(4) RCR(Civil) 333(SC)

10. There is error of calculations/figures in the awardThe correct calculations/figures are as follows:

S No	Heads & figures	Calculations	Amount
1	Gross annual income of the deceased	36863x12=442356	442356
2	Annual income Tax liability after standard deduction of Rs. 40000	442356-40000=402356	7923
3	Net annual income after income tax	442356-7923= 434433	434433
4	Net monthly income after income tax	434433 divided by 12=36203	36203
5	Net monthly income by adding 50% of 36203 for	36203 multiplied by 3 divided by 2 = 54305	54305

	future prospects		
6	Deduct 50% for personal expenses	54305-27152=27152	27152
7	Claimants' monthly dependency	54305-27152=27153	27153
8	Total dependency with multiplier of 18	27153x12x18=5865048	5865048
9	Loss of estate		15000
10	Funeral expenses		15000
11	Loss of consortium for two claimants	40000x2=80000	80000
12	Total payable compensation	5865048+ 15000+15000+ 80000=5975,048. (Rupees fifty nine lakhs, seventy five thousand and forty eight only).	5975048

11. The erroneous calculations/figures in the award are corrected accordingly as above and except for that, the appeal is dismissed.

(ARUN MONGA)
JUDGE

07.04.2021
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No