IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

101 **FAO-316-2017 (O&M)**

Date of decision: 26.07.2021

DHARAMBIR ...Appellant

Versus

ANITA & ORS ...Respondents

XOBJC-100-2019 (O&M) in/and FAO-6563-2017 (O&M)

GENERAL MANAGER HARYANA ROADWAYS ROHTAK
...Appellant

Versus

ANITA & ORS ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Lekh Raj Nandal, Advocate
for the appellant (FAO-316-2017).

Mr. Samarth Sagar, Addl. AG, Haryana.

Mr. Parminder Singh, Advocate for
Mr. Vikram Bali, Advocate for the claimant(s)
in FAO-6563-2017.

Mr. Vinod Gupta, Advocate for the insurance company.

****

ANIL KSHETARPAL, J. (Oral)

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

By this order, FAO-316-2017 and XOBJC-100-2019 (O&M) in/and FAO-6563-2017, shall stand disposed of.

These two separate appeals have been filed by the State of Haryana as well as Dharambir, the driver of the offending vehicle, assailing the correctness of the award passed by the Motor Accidents Claims Tribunal, Jhajjar, (in short 'the Tribunal') on 15.11.2016.

In a motor vehicular accident, Gaurav, aged about 18 years, lost his life on 26.09.2014. In a claim petition, filed under Section 166 of the Motor Vehicles Act, 1988, the Tribunal has awarded a sum of Rs.10,88,000/- along with an interest @ 7% per annum to the unfortunate parents. After recording a finding that the driver has failed to prove the validity of his driving licence, the State as well as the driver were jointly and severally held liable to pay the amount with an interest @7% per annum from the date of institution of the claim petition till its realisation.

In appeal, the driver filed an application under Order 41 Rule 27 CPC for permission to lead additional evidence in order to produce material from the Licensing Authority, Gohana, to prove that he was holding a valid driving licence. The aforesaid application was allowed and documents were taken on record.

The learned counsel representing the insurer submits that the driver is required to prove those documents in accordance with law while granting an opportunity to the insurer to cross examine the witness(es).

The learned State counsel as well as the learned counsel representing the driver have no quarrel with the aforesaid contention of the learned counsel for the insurer.

Arguments have also been heard in the cross objection filed by the claimants. The matter with regard to the claimants cannot be kept pending for a long time. The accident took place on 26.09.2014. Nearly 7 years have already elapsed. Therefore, this Bench considers it appropriate to hear the arguments in the cross objections also.

Learned counsel representing the claimants contends that while assessing the compensation, learned Tribunal has erred in not granting compensation on account of future prospects. He submits that the assessed income was required to be increased by 40% in view of the judgment passed by Five Judges Bench in **National Insurance Company Limited Vs. Pranay Sethi and Ors., (2017) 16 SCC 680.**

On the other hand, learned counsel representing the insurer has pointed out that the deceased was a bachelor therefore, the Tribunal ought to have deducted 50% of his income as personal expenses. He further contends that on account of conventional heads, the Tribunal has erred in awarding Rs.80,000/-, in place of Rs.15,000/- towards funeral expenses, Rs.40,000/- towards loss of consortium and Rs.15,000/- for loss of estate.

It is important to observe that as per the subsequent judgment passed by the Division Bench of the Hon'ble Supreme Court in **Magma**

General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram and others, 2018(4) RCR (Civil) 333, it is held that parents are entitled to Rs.40,000/- each towards loss of consortium.

Keeping in view the aforesaid facts, the amount of compensation is calculated as under:-

Income	7000
Future prospects	40%
Total income	Rs.9800/-
Deduction	50% (Rs.4900/-)
Multiplier	18 (4900 x 12 x 4900 = 10,58,400)
Loss of consortium	Rs.80,000/-
Last rites and loss of estate	Rs.30,000/-
Total	**Rs.11,68,400/-**

Accordingly, the claimants are entitled to an additional compensation of Rs.80,400/- (11,68,400 – 10,88,000) and the same shall be paid within a period of one month.

Both the appeals along with cross objection are disposed of with a direction to the Tribunal to decide about the validity of the driving licence within a period of three months from the date of receipt of a certified copy of the order.

Needless to observe that the Tribunal would grant an opportunity to the parties to lead evidence in support thereof. Since, prima facie the driving licence of the driver appears to be genuine, therefore, the insurance company shall pay the amount at the first instance. However, if the Tribunal comes to a conclusion that the licence is not genuine, the insurer shall be entitled to recover the amount.

The parties through their counsel are directed to appear before the Tribunal on 20.08.2021.

All the pending miscellaneous applications, if any, are also disposed of.

26.07.2021 **(ANIL KSHETARPAL)**
ashok **JUDGE**

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