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

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**FAO-3825-2003(O&M)
Date of decision: 08.09.2022**

VARINDER KUMAR AND ANR. ..Appellants

Versus

ANOKH SINGH AND ORS. ..Respondents

XOBJC-40-CII-2008(O&M)

VARINDER KUMAR AND ANR. ..Appellants

Versus

ANOKH SINGH AND ORS. ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rakesh Kumar, Advocate
for the appellants.

Mr. Puneet Sharma, Advocate
for cross-objector/respondent No.2.

Mr. Sanjeev K. Arora, Advocate
for respondent No.3.

ANIL KSHETARPAL, J(Oral)

This order shall dispose of the claimants appeal for modification of the award passed by the Motor Accident Claims Tribunal (hereinafter referred to as 'the Tribunal') and a cross-objection filed by the owner of the offending vehicle involved in the accident. The correctness of findings of the fact arrived at by the Tribunal with regard to the accident and the rash & negligent driving of Sh. Anokh Singh in causing the accident are not in dispute.

This Bench proceeds to examine the cross-objection first. The offending vehicle i.e. a Truck bearing No.PB-08-N-4833 was owned by Sh. Dwarka Dass Khosla. At the relevant time, it was being driven by Sh. Anokh Singh. The Insurance Company claims that the driving licence issued in favour of Sh. Anokh Singh was fake though it was subsequently renewed by the Licensing Authority at Jalandhar.

The learned counsel representing the cross-objector submits that the entire responsibility to prove that the licence was fake is on the Insurance Company and the Tribunal erred in permitting the Insurance Company to recover the amount from respondent No1 and 2. He relies upon the judgment passed in ***National Insurance Company Vs. Swaran Singh (2004)3 SCC 297***.

On the request of the Insurance Company, the Licensing Authority sent a report to the Court that as claimed, no licence was issued in favour of Sh. Anokh Singh.

This Court has carefully read the judgment passed by the Supreme Court ***National Insurance Company's case (supra)***. Undoubtedly, the initial onus is on the Insurance Company to prove that the licence was fake. However, once a report of the driving licence being fake has been received by the Court from the Issuing Authority, the onus shifts to the owner to prove that he was not guilty of violation of the terms and conditions of the policy. However, the owner has never appeared in evidence. Keeping in view the aforesaid facts, there is no substance in the cross-objection.

In the present case, Sh. Opneet Kumar Chatrath, a young man of 24 years died in an automobile accident on 08.12.1999. At the relevant time, he was studying Diploma in Pharmacy (D. Pharmacy). The Court has awarded Rs.1,50,000/- only towards the compensation. The claimants are his father and younger sister. The Court has awarded a lump sum amount without making any calculation or considering the separate amount under different heads. When the father of the deceased appeared in evidence, he claimed that Sh. Opneet Kumar Chatrath apart from studying, was also selling medicines. At the relevant time, Sh. Opneet Kumar Chatrath was driving a scooter, whereas, Sh. Anokh Singh rashly and negligently drove the truck resulting in death of late Sh. Opneet Kumar Chatrath. Though, no documentary evidence in support of his regular income was produced, however, the Tribunal itself has held that after completing his course, he was entitled to work as a Pharmacist. The accident took place in the year 1999. Though, the father claims that his son was earning Rs.5,000/-, however, in absence of evidence, the same cannot be accepted on its face value. In such circumstances, the Court is required to apply some guess work.

Keeping in view the aforesaid facts of the case particularly when late Sh. Opneet Kumar Chatrath was studying in a professional course which would have entitled him to work as a Pharmacist, his income has been assessed at Rs.2,000/- per month. Since, he was unmarried, therefore, dependency shall be at the rate of Rs.1,000/- i.e. ½. The yearly dependency comes to Rs.12,000/-. He was barely 24 years old. Hence, the yearly dependency is liable to be multiplied by 18.

The income is required to be increased by 40% on account of future prospects as per the judgment passed by the Five Judge Bench in ***National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC Online SC 1270***.

Qua the loss of consortium, filial, spousal and parental, each claimant is entitled to Rs.40,000/- in view of the judgment passed passed by the Hon'ble Supreme Court in ***Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram and others, 2018(4) RCR (Civil) 333*** which has been reiterated by another Division Bench in ***New India Assurance Co. Ltd. vs. Somwati and others, Civil Appeal No.3093 No.2020, decided on 07.09.2020***, and by a three Judge Bench in ***United India Insurance Company Ltd. Vs. Satinder Kaur @ Satwinder Kaur and others, (2020) SCC Online 410,*** in which it has been approved that each parent is entitled to Rs.40,000/- as consortium.

Apart from that, the claimants shall be entitled to Rs.30,000/- towards loss of estate and last rites i.e funeral expenses.

Hence, the amount of compensation is re-calculated as under:-

Heads	Amount awarded by the High Court
Annual income	Rs.24,000/-
Future prospects	(40%) Rs.9,600/- Rs.24,000/- + Rs.9,600/- = Rs.33,600/-
Dependency	(½) Rs.16,800/- Rs.33,600/- – Rs.16,800/- = Rs.16,800/-
Annual income X Multiplier	Rs.16,800/- X 18 = Rs.3,02,400/-
Loss of estate	Rs.15,000/-
Funeral expenses	Rs.15,000/-
Parental/Spousal/Filial consortium	Rs.80,000/- (Rs.40,000 X 2)
Total amount awarded (Award)	Rs.4,12,400/-

The enhanced compensation of Rs.2,62,400 (Rs.4,12,400/- – Rs.1,50,000/-) shall be payable along with the interest at the rate of 8% from the date of filing of the claim petition till its realization.

With all these observations, the appeal as well as the cross-objection are disposed of.

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

September 08th, 2022 **(ANIL KSHETARPAL)**
Ay **JUDGE**

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