

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

FAO-1746-2003 (O&M)  
Date of decision : 04.05.2022

**Rajinder Singh and another**

**..... Appellants**

**versus**

**Kala Ram and others**

**..... Respondents**

**CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Ajaivir Singh, Advocate  
for the appellants.

Mr. Harsh Aggarwal, Advocate  
for respondent No.3-Insurance Company.

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**PANKAJ JAIN, J. (Oral)**

Claimants are in appeal. Challenge has been laid to the award dated 09.12.2002 passed by learned Motor Accident Claims Tribunal, Patiala (hereinafter referred to as 'Tribunal'), whereby an amount of Rs.25,000/- being 1/2 of the amount payable under no fault liability compensation has been awarded alongwith interest to be calculated @ 9% per annum from the date of award till recovery in case the payment is not made within two months from the date of award.

2. Primary challenge raised by learned counsel for the appellants is to the finding recorded by the Tribunal with respect to driving licence of the deceased Kirpal Singh Ex.A-4. He submits that the same has been wrongly discarded holding that date of birth of the deceased was 06.09.1984 and not 01.04.1982.

3. Per contra, learned counsel for respondent No.3-Insurance Company submits that the driving licence has been rightly discarded by the learned Tribunal. Matriculation certificate of the deceased having come on record, as per which the date of birth of the deceased was recorded as 06.09.1984, the deceased being a minor even on the date of accident was not eligible to hold valid driving licence.

4. I have heard learned counsel for the parties and with their able assistance gone through the record as well.

5. Arguments raised by learned counsel for the appellants that the Motor Vehicles Act, 1988 (hereinafter referred to as '1988 Act') being a benevolent provision, the document issued under the provisions thereof i.e. the driving licence ought to have been considered and matriculation certificate should have been discarded sans merit.

6. Admittedly, driving licence Ex.A-4 of the deceased carries his date of birth as 01.04.1982, whereas the matriculation certificate carries the date of birth as 06.09.1984. Claimants are the propounders of both the documents. Learned Tribunal has rightly taken the date of birth of the deceased to be 06.09.1984 i.e. as per the matriculation certificate.

7. Duty was casted upon the appellants to show as to why the date of birth as mentioned in the matriculation certificate should not be relied upon by the Tribunal which they failed to do so. From the record, it is clear that no evidence was led by the claimants/appellants to show as to why the matriculation certificate of the deceased should be disbelieved and the driving licence be believed with respect to date of birth of the deceased.

8. Consequently, this Court finds no ground to interfere in the finding recorded by the Tribunal so far as the date of birth of the deceased is concerned. Thus, the finding with respect to driving licence of deceased being not valid is maintained.

9. Faced with the situation, learned counsel for the appellants claims that no fault liability compensation payable to the appellants ought not have been apportioned even if the deceased is held to be contributed to the negligence leading to the accident in question. In support of his contention, learned counsel for the

appellants relies upon Section 140(4) of the 1988 Act which reads as under:-

*“A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.”*

10. Learned counsel for respondent No.3 very fairly concedes to the legal plea and does not dispute that the amount of Rs.50,000/- payable on account of no fault liability compensation ought not have been apportioned and the claimants are entitled for the same in toto.

11. As a sequel of the discussion hereinabove, the award is modified to the extent that the appellants shall be entitled for Rs.50,000/- on account of no fault liability compensation. They shall be entitled for interest @ 9% per annum in case the amount is not paid within one month from today. Needless to say any amount already paid shall be set off and adjusted.

12. Appeal stands partly allowed.

13. Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed off.

**(PANKAJ JAIN)**

**JUDGE**

**04.05.2022**

Dinesh

Whether speaking/reasoned

Yes

Whether Reportable :

No