IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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(1) **FAO-4302-2011 (O&M)**
Date of decision: 11.10.2022

Jagtar Singh .....Appellant

Versus

IFFCO TOKIO General Insurance Co. Ltd. and Ors .....Respondents

(2) **FAO-4929-2011 (O&M)**

Babli Devi and others .....Appellants

Versus

Jagtar Singh and another .....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. S.S. Antal, Advocate
for the appellant in FAO-4302-2011 and
for respondent No.1 in FAO-4929-2011.

Mr. Ashwani Arora, Advocate
for respondents No.2 to 5 in FAO-4302-2011 and
for the appellants in FAO-4929-2011.

Mr. T.K. Joshi, Advocate
for the respondent-insurance company in FAO-4302-2011.

Mr. Neeraj Khanna, Advocate
for the respondent-insurance company in FAO-4929-2011

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<u>MANJARI NEHRU KAUL, J. (ORAL)</u>

The above referred appeals are being disposed of by this common order as they arise out of the same accident and impugned award dated 20.05.2011 passed by learned Motor Accidents Claims Tribunal, Ambala (for short, 'the Tribunal'). FAO-4302-2011 has been preferred by the owner/driver of the offending vehicle while FAO-4929-2011 has been preferred by the claimants for enhancement of the compensation.

For the sake of convenience, the facts are being taken from

FAO-4302-2011.

The appellant is the driver and owner of the offending vehicle i.e. motorcycle bearing registration No.HR-01T-3915. As per the pleaded case of the claimants, on 01.11.2009 when Tejpal (hereinafter referred to as 'the deceased') was going from Binjalpur to Sadhaura on his motorcycle, the offending vehicle came in a rash and negligent manner from the opposite side driven by the appellant and struck the motorcycle of the deceased. On account of the collision the deceased fell down on the road and received serious injuries. Though he was removed to the hospital, however, he succumbed to the injuries received in the accident in question. Thereafter, FIR No.156 dated 01.11.2009 was lodged at Police Station Mullana against the appellant. On the basis of the material on record and evidence led, the Tribunal absolved the respondent-insurance company of its liability to indemnify the insured as it was found that the appellant driver was holding two driving licences on the date of the accident in question. The Tribunal while fastening the entire liability on the appellant, directed the appellant to pay the following compensation to the claimants:-

Sr. No.	Head	Amount
1.	Monthly Income	Rs.4,000/-
2.	Annual income	Rs.48,000/-
3.	Deductions towards personal expenses (1/4th)	Rs.12,000/-
4.	Loss of dependency to the claimants	Rs.36,000/-
5.	Compensation after applying the multiplier of '15'	Rs.5,40,000/-
6.	Loss of estate	Rs.5,000/-
7.	Funeral expenses	Rs.5,000/-

8.	Loss of consortium to claimant No.1	Rs.10,000/-
9.	Medical bills	Rs.12,000/-
	Total compensation	Rs.5,72,000/-

Claimant No.1 was held entitled to an amount of Rs.2,00,000/- while claimants No.2 to 4 were held entitled to the amount in equal shares out of the remaining amount of Rs.3,72,000/-. The appellant in FAO-4302-2011 being owner and driver of the offending vehicle was held liable to pay the amount of compensation.

Learned counsel for the appellant (owner/driver) in FAO-4302-2011 has vehemently argued that the Tribunal gravely erred in exonerating the respondent-insurance company and fastening the entire liability on him to pay the compensation for holding the alleged fake driving licence (Ex.R3). Learned counsel submits that in fact the appellant was the holder of a valid driving licence which was duly exhibited as R1, but was ignored by the Tribunal. He submits that even assuming for the sake of arguments that the alleged driving licence (Ex.R3) was a fake driving licence, however, the factum of the appellant holding another driving licence (Ex.R1) which was valid, went un-controverted and the insurance company did not even muster the courage to get it verified from the licensing authority. He submits that the observation of the Tribunal that since a person could not possess two driving licences simultaneously and on account thereof the appellant was liable to compensate the claimants was patently erroneous and against the settled law.

Per contra, learned counsel for the claimants submits that the compensation awarded is not in consonance with the settled law as the Tribunal did not award any interest to the claimants on the compensation awarded. Besides this, it has also been urged that no compensation was awarded with respect to future prospects and even under the other conventional heads, the compensation awarded was inadequate and against the settled law.

Learned counsel appearing for the insurance company have vehemently opposed the submissions made by the counsel opposite by contending that the driving licence (Ex.R3) was produced by the appellant himself after the accident in question which was found to be fake. Learned counsel argued that Ex.R1 had been fabricated by him for escaping the liability to compensate the claimants. In the circumstances, it was clear that the appellant had committed a penal offence as well as a fundamental breach of insurance policy and as such the Tribunal had rightly exonerated the insurance company. A prayer was thus made by the insurance company for upholding the award passed by the Tribunal and dismissing the instant appeal of the driver/owner.

Learned counsel for the insurance company while opposing the submission made by the claimants has argued that since the claimants had not prayed for any enhancement of the compensation awarded in their appeal, they were not entitled to enhancement as was being sought now.

I have heard learned counsel for the parties and perused the relevant material on record.

It needs to be emphasized that the Motor Vehicles Act, 1988 (for short, 'the Act') is a beneficial and social welfare legislation and, therefore, the strict rules of pleadings cannot be applied. It is trite to mention that the very purpose of the Act is to provide just and adequate compensation to the claimants under the Act. Hence, the contention of the learned counsel for the insurance company that the claimants are not entitled to enhancement of compensation because it was not prayed for, is without force. On a perusal of the compensation awarded, this Court has no hesitation in holding that the compensation awarded to the claimants is inadequate and not in consonance with the settled law. The deceased was 37 years of age on the date of the accident, therefore, the claimants would be entitled to future prospects to the extent of 40%. The claimants are his widow and three minor children. Since no interest has been awarded to the claimants on the compensation amount, they would be entitled to interest @ 8% per annum on the same. The Hon'ble Supreme Court in ***National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270*** has quantified the amount in the sum of Rs.15,000/- each for loss of estate and funeral expenses in addition to Rs.40,000/- each for loss of consortium. Still further, it has been held by the Hon'ble Supreme Court that the aforesaid amounts would be subject to 10% enhancement after every three years. Therefore, the claimants would be entitled to 10% enhancement *qua* the above-mentioned conventional heads as per the ratio laid down in ***National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270***. Hence, the amount of compensation under the conventional heads stands modified to Rs.16,500/- each for loss of estate and funeral expenses. Besides this, the claimants are entitled to Rs.44,000/- each, for loss of consortium. The compensation thus payable to the claimants would be as follows:-

Sr. No.	Head	Amount
1.	Monthly Income	Rs.4,000/-
2.	Annual Income	Rs.4,000/- x 12 = Rs.48,000/-
3.	Future prospects (40%)	Rs.48,000/- x 40% = Rs.19,200/-
4.	Total Annual Income after adding future prospects	Rs.48,000/- + Rs.19,200/- = Rs.67,200/-
5.	Deductions towards personal expenses (1/4th)	Rs.67,200/- (/) 4 = Rs.16,800/-
6.	Loss of annual future earnings	Rs.67,200/- (-) Rs.16,800/- = Rs.50,400/-
9.	Multiplier	15
10.	Loss of future earnings	Rs.50,400/- x 15 = Rs.7,56,000/-
11.	Loss of consortium	Rs.44,000/- x 4 = Rs.1,76,000/-
12.	Funeral expenses	Rs.16,500/-
13.	Loss of estate	Rs.16,500/
14.	Medical Bills	Rs.12,000/-
	Total compensation	Rs.9,77,000/-

This Court finds merit in the submissions made by the learned counsel for the appellant owner/driver that the Tribunal had erred in fastening the entire liability on him. Though the learned counsel for the insurance company has vehemently argued that the appellant was in possession of two driving licences i.e. driving licence (Ex.R-3) said to have been issued by the Licensing Authority, Dimapur and second driving licence (Ex.R1) alleged to have been fabricated lateron, however, no evidence has been led by the insurance company qua Ex.R1 being a fabricated licence. It needs to be emphasized that as long as one of the alleged driving licences is genuine and valid, the insurance company cannot evade its liability to indemnify the insured.

A person being in possession of two driving licences simultaneously can be prosecuted under the penal laws of the land, however, it cannot be made a ground to fasten the liability on the appellant instead of the insurance company to compensate the claimants.

Accordingly, the appeal filed by the appellant owner/driver i.e. FAO-4302-2011 is allowed and the appeal filed by the claimants i.e. FAO-4929-2011 is disposed of. The amount of compensation as assessed hereinbefore be disbursed to the claimants by the insurance company along with interest @ 8% per annum from the date of filing of the claim petition till realization which shall be apportioned to the claimants in the same ratio as directed by the Tribunal.

11.10.2022 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

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