IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.6554 of 2017 (O&M)

Date of decision : 21st September, 2022

Reliance General Insurance Co. Ltd.

… Appellant

Versus

Harvinder Kaur & others

… Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Sanjeev Kodan, Advocate for the appellant.

Mr. Manvinder S. Sidhu, Advocate for respondents No.1 to 7.

None for respondent No.8.

Mr. Dheeraj Narula, Advocate for respondent No.9.

MANJARI NEHRU KAUL, J.

The Insurance Company is in appeal before this Court to impugn the Award passed by learned Motor Accident Claims Tribunal, Sirsa, wherein following compensation was awarded to the claimant/respondents No.1 to 7 on account of the death of Kuldeep Singh (since deceased) in a motor vehicular accident which took place on 29.12.2009:

Sr. No.	Head	Amount
1.	Annual income	₹ 1,31,500/-
2.	Deduction towards personal expenses @ 1/5	₹ 26,300/-
3.	Annual dependency	₹ 1,05,200/-
4.	Multiplier	14
5.	Total amount	₹ 14,70,000/-

6.	Loss of consortium	₹ 1,00,000/-
7.	Funeral expenses	₹ 25,000/-
8.	Loss of love and affection	₹ 50,000/-
	Total compensation	**₹ 16,45,000/-**

The appellant/Insurance Company has challenged the impugned Award primarily on the following grounds:-

(i) That the involvement of the offending vehicle was highly suspect. Learned counsel for the appellant submits that in the FIR the offending vehicle was mentioned as a 'utility vehicle' whereas in the charge-sheet it was stated to be a 'pick-up van' hence, it left no manner of doubt that the offending vehicle was not involved in the accident in question and had been later-on planted by the claimants after colluding with the authorities concerned. He has further submitted that the Tribunal also failed to appreciate that though Harvinder Kaur, widow of the deceased, was stated to be travelling with the deceased at the time of the accident in question and had also allegedly received injuries, however, strangely there was no medico-legal report of Harvinder Kaur placed on record by the claimants in support thereof, which further created a big question mark about the authenticity of allegations levelled by her, both in the FIR as well as in the claim petition. Thus, presence of Harvinder Kaur at the time of accident in question stood not proved.

(ii) The next challenge by the Insurance Company is qua the driving license of the driver of the offending vehicle/respondent No.8 not being valid and effective at the time of the accident. Learned counsel submitted that the Tribunal failed to appreciate that in the report Ex.RH/2 submitted by RW-1 Harish Kumar Khatri, official of RTO Agra, it was specifically submitted that the driving license of the respondent No.8 had not been issued by the RTO office of Agra. Still, the Tribunal went ahead and fastened the entire liability on the insurance company to indemnify the insurer.

(iii) That the compensation awarded was exorbitant and not in consonance with the settled law. It was argued that the Tribunal erred in assessing the income of the deceased as ₹ 1,31,500/- per annum by including not only his salary of ₹ 87,600/- per annum but also his income from agriculture and dairy farming. Learned counsel submitted that no evidence whatsoever was led by the claimants in support of the deceased earning any income from agriculture and dairy farming and hence, the income assessed of the deceased required to be re-assessed and scaled down accordingly.

Learned counsel appearing for the claimants vehemently opposed the submissions made by the counsel opposite. It was submitted that merely because there was no medico-legal report of the claimant Harvinder Kaur on record, could not be a ground to discard her testimony and doubt her presence at the time of accident in question. It was further submitted that the FIR in question was lodged promptly by the widow of the deceased, who was travelling with him at the time of accident in question and merely because she had mentioned the vehicle to be a 'utility vehicle' instead of 'pick-up van', would not in any manner cast a shadow of doubt qua her presence at the spot. It was still further submitted that the Tribunal has rightly assessed the income of the deceased, which does not warrant any interference, rather the Tribunal erred in not awarding future prospects and even the compensation for loss of consortium was on the lower side.

Learned counsel for respondent No.9 submitted that as far as the driving license was concerned, it had come in the testimony of RW-1 Harish Kumar Khatri that there were certain other registers including register of renewal, which had not been brought by him nor any mention had been made to those registers and hence, only on the basis of one odd register, it could not be said that the driving license of respondent No.8 was invalid and ineffective. It was also submitted that the owner while employing respondent No.8 had satisfied himself qua his driving skills and the driving license which was in the possession of respondent No.8 and which had been shown to him at the time of employment. The owner could not have been expected to conduct a roving inquiry qua the authenticity of the driving license so shown to him by respondent No.8 at the time of his employment.

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

This Court does not find any merit in the submissions made by learned counsel for the Insurance Company with respect to the involvement of the offending vehicle being suspect in the accident in question. Merely because Harvinder Kaur i.e. the author of the FIR as well as widow of the deceased, mentioned the offending vehicle as 'utility vehicle' instead of 'pick-up van', would not be a sufficient ground to discard her claim. It would not be out of context to observe here that a lay person cannot be expected to know the difference between a pick-up van and a utility vehicle. In the case in hand, admittedly the claimant widow Harvinder Kaur was travelling with her husband when the accident in question occurred. It could not have been expected of her to have given the details of the offending vehicle, more so, when her husband had died at the spot in front of her own eyes in the accident in question. The mental condition of the claimant widow could not have been such to give out the minute details of the offending vehicle as she would have definitely been in a shock. This Court also does not find any merit in the submission made by the learned counsel for the Insurance Company that in the absence of any medico-legal report of Harvinder Kaur, a shadow of doubt could be cast qua her presence at the time of the alleged accident.

The submission made by learned counsel for the appellant Company qua the driving license of respondent No.8 being invalid is meritless. In order to prove the invalidity of the driving license of respondent No.8, the appellant Company examined an official from the RTO office (PW-1), however the said witness did not specifically depose qua the non-issuance of driving license in question by their authority. Even otherwise, respondent No.9 had taken a categoric stand before the Tribunal that he had engaged respondent No.8 as a driver after proper verification of the validity of the driving license and his ability to drive the vehicle was also duly tested. This Court concurs with the submissions made by learned counsel for the respondent No.9 that the owner of the vehicle was not expected to conduct a roving inquiry qua authenticity of the driving license of the respondent No.8. Therefore, in these circumstances, the appellant Company cannot be exonerated from its liability when there had been no violation of the insurance policy.

This Court, however, finds merit in the submission made by the Insurance Company that the Tribunal erred in assessing the annual income of the deceased in the sum of ₹ 1,31,500/- by taking into account the fact that he was doing agriculture and dairy farming. Admittedly, no cogent evidence was led by the claimants in respect of income earned by the deceased from agriculture and dairy farming. However, at the same time, a perusal of the compensation which has been awarded and which has been reproduced in the preceding paragraph of this judgment, the Tribunal has erred in not granting compensation for loss of parental consortium to the claimants i.e. children of the deceased. The Tribunal has also fallen into error by not granting compensation to the extent of 25% with respect to future prospects as the deceased was 45 years of age at the time of accident in question. The claimants would be entitled to compensation for loss of estate and funeral expenses in the sum of ₹ 15,000/- each. Still further, in view of the settled position of law laid down by Hon'ble the Supreme Court, the claimants would be entitled to 10% enhancement after every three years qua loss of estate, funeral expenses and loss of parental consortium.

As a sequel to the above, the compensation awarded by the Tribunal is reassessed as under:

Sr. No.	Head	Amount
1.	Annual income	₹ 87,600/-
2.	Future prospects @ 25%	₹ 21,900/-
3.	Total income	₹ 1,09,500/-
4.	Deduction towards personal expenses @ 1/5	₹ 21,900/-
5.	Annual dependency	₹ 87,600/-
6.	Multiplier	14
7.	Total amount	₹ 12,26,400/-
8.	Loss of consortium (44000 x 7)	₹ 3,08,000/-

9.	Loss of estate	₹ 16,500/-
10.	Funeral expenses	₹ 16,500/-
11.	**Total compensation**	**₹ 15,67,400/-**

The claimant/respondents No.1 to 7 are therefore entitled to a total compensation of ₹ 15,67,400/- along with interest @ 9% per annum from the date of filing of the claim petition till realization of the amount which would be disbursed in the same ratio as directed by the learned Tribunal.

With these modifications, the instant appeal stands disposed off.

(MANJARI NEHRU KAUL)
JUDGE

September 21, 2022
rps

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