IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-1081-1997 (O&M)

The New India Assurance Company Limited

...Appellant

VERSUS

Surjit Kaur and others

...Respondents

(ii) FAO-1183-1997 (O&M)

Surjit Kaur and others

...Appellants

VERSUS

Charan Singh and others

...Respondents

Date of Decision: September 20, 2023

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Neeraj Khanna, Advocate,
for the appellant (in FAO-1081-1997) and
for respondent No.3 (in FAO-1183-1997).

Ms.Ekta Thakur, Advocate
for the appellants (in FAO-1183-1997) and
for respondents No.1 to 6-claimants (in FAO-1081-1997).

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ARCHANA PURI, J.

These are two rival appeals, filed to assail the Award dated 06.03.1997 passed by learned Motor Accident Claims Tribunal, thereby, granting compensation, on account of death of Nazir Singh, in a motor vehicular accident, which took place on 26.06.1995.

FAO-1081-1997 has been filed by The New Assurance Company Limited, thereby, disputing its liability to pay the compensation, as the driver of the offending truck bearing registration No.CHW-3905, was not holding a valid driving licence.

FAO-1183-1997 has been filed by the appellants-claimants Surjit Kaur and others, thereby, seeking enhancement of the compensation, so awarded by learned Tribunal.

The parties are referred to, as they had made appearance before learned Tribunal.

So far as, fact of accident and manner of taking place of the same, is concerned, none of the parties to the claim petition, have filed the appeal, to challenge the findings, so recorded by learned Tribunal. In the given circumstances, the findings, as such, qua fact of accident and manner of taking place of the same, has since attained finality.

Even though, in the claim petition, claimants had asserted about deceased Nazir Singh, to be working as Mason and having taken the age of the deceased to be 43 years, learned Tribunal had considered the deceased to be working as labourer and his earnings have been taken to be Rs.1250/- per month. After making deduction of 1/3rd, on account of personal expenses, the compensation, so worked upon, while taking dependency of the claimants to be Rs.850/- per month, which works to be Rs.10,200/- as annual dependency and while applying the multiplier of '15', considering the age of the deceased, the compensation was worked upon as Rs.1,53,000/-.

However, the compensation, so worked upon by learned Tribunal, calls for re-computation, on account of settled position of law, at present.

In this regard, it is pertinent to mention that it is the categoric claim of the claimants that deceased Nazir Singh was working as Mason and claimant No.1-Surjit Kaur, while in the witness box, has categorically, so deposed. It is a matter of common knowledge that in this kind of avocation, as so alleged to have been followed by the deceased, there is no documentary evidence available and some kind of guess work has to be made. Zora Singh, who has also been examined, also deposed about deceased to be working as Mason.

Considering the same and also considering the eventuality of a Mason not getting work on all days of the month, by making some guess work, in the modest estimate, the earnings of the deceased can appropriately be taken to be Rs.1,500/- per month. Taking it to be so, the deduction has to be made, on account of 'personal expenses'. Though, the deduction has been made by learned Tribunal, to the extent of 1/3rd, but however, as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, considering the number of dependents upon the deceased, who are claimants i.e. widow, two minor daughters and three minor son, who are total 6 in number, the deduction, ought to be to the extent of 1/4th. The age of the deceased is established to be 43 years. Considering it to be so, as per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, addition of 25% is to be made, on account of future prospects. Taking it to be so, the amount of earnings, comes to be Rs.1500+375(25%)= Rs.1875/- per month and after making deduction, to the extent of 1/4th, the loss of monthly dependency comes to be Rs.1875-468(1/4th)=Rs.1407/- and thus, annual dependency, comes to be

Rs.16,884/-.

The multiplier of '**15**' applied by learned Tribunal, is on the higher side. As per ***Sarla Verma's case (supra)***, considering the age of the deceased, the suitable multiplier to be applied is '**14**' and while applying the same, the compensation works out to be **Rs.2,36,376/-**.

No further compensation was granted by learned Tribunal, under the conventional heads.

The amounts are to be paid under the conventional heads, namely, loss of consortium, loss of estate and funeral expenses as held in ***Pranay Sethi's case (supra)***. In ***'Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130'***, the concept of consortium, has been dilated in detail and the dependents are entitled to compensation, on the count of 'parental', 'spousal' and 'filial' consortium, which view, has been further endorsed in ***Harpreet Kaur and others vs. Mohinder Yadav and others, 2023(1) RCR (Civil) 327***, wherein, the Hon'ble Supreme Court, while relying upon ***Magma's case (supra)***, had concluded about the children and mother of the deceased, all to be entitled to Rs.40,000/- each towards filial and parental consortium. Also, reference is made to ***Janabai and others vs. M/s I.C.I.C.I. Lambord Insurance Company Ltd., 2022(4) RCR (Civil) 85***, wherein also, the Hon'ble Supreme Court had held the claimants of that case, each to be entitled to compensation, on the count of 'spousal consortium' for wife and 'parental consortium' for two children.

In consonance with the observations made in ***Pranay Sethi's case (supra)***, after making addition of 10%, after three years from the passing of the judgment, which has since passed by, the amount payable, on the count of '**loss of consortium**' is to extent of **Rs.44,000/-** to each of the claimant and for the '**loss of estate**' as well as '**funeral expenses**', it is **Rs.16,500/-**, on each count.

Considering the same, the compensation payable to dependents, on account of death of Nazir Singh, is re-computated, as herein given:-

Loss of dependency	:	**Rs.2,36,376/-**
Loss of consortium	:	**Rs.2,64,000/-**
Loss of estate	:	**Rs.16,500/-**
Funeral expenses	:	**Rs.16,500/-**
Total	:	**Rs.5,33,376/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.5,33,376-1,53,000=Rs.3,80,376/-**.

Out of the enhanced compensation, as now awarded, claimant No.1-Surjit Kaur is held entitled to Rs.1,80,376/- and claimants No.2 to 6 are held entitled to Rs.40,000/- each.

On the enhanced amount of the compensation i.e. **Rs.3,80,376/-**, the appellants-claimants shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation.

Faced with the aforesaid conclusion, the next string to the bow, attempted to be struck by the Insurance Company is that the driver of the offending vehicle namely, Charan Singh, was not having a valid driving licence and there was violation of terms and conditions of the insurance policy. It is submitted that even though, the driving licence Ex.R1 had come on record, but as per the certificate issued by Licencing Authority, RTO at Cuttack, no such licence was issued, in favour of Charan Singh and hence, the licence was fake. Once it is a fake licence, as such, the insurance company, cannot be made liable to pay the compensation. However, the aforesaid submission is not tenable.

Perusal of the original record reveals that no such evidence has been led by the insurance company, to establish the driving licence, produced by the driver, to be fake one. In this regard, it is pertinent to mention that the driving licence has come on record as Ex.R1. No evidence, as such, is there to so substantiate the plea about this driving licence to be fake one. Perusal of the record reveals that during the pendency of the claim petition before learned Tribunal, an application was filed by the insurance company for appointment of a Local Commissioner for verification of the driving licence, issued in favour of Charan Singh @ Gurcharan Singh, by the Licencing Authority, Cuttack, but however, the same was dismissed by the Tribunal vide order dated 03.03.1997.

However, the aforesaid order of dismissal of the application, as such, has not been challenged by the insurance company, any further. Besides the same, no other evidence, relating to the recitals of certificate issued by Licencing Authority, Cuttack, has come on record. Rather, perusal of the licence, itself reveals about the Licencing Authority to have lastly renewed the driving licence upto 20.07.1995. In the given circumstances, the insurance company, as such, has failed to prove about the driver of the offending vehicle, to be not possessing valid driving licence, at the relevant time of accident.

In the given circumstances, the insurance company, as such, now cannot avoid its obligation under the insurance policy to indemnify the insured for the awarded amount.

In the light of the aforesaid observations, the appeal filed by the insurance company i.e. FAO-1081-1997 stands dismissed, whereas, appeal filed by the claimants i.e. FAO-1183-1997 stands allowed, in terms of modification of the compensation, as detailed above.

September 20, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

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