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

**FAO-639-2017 (O&M)
Reserved on:01.05.2023
Date of decision:10.05.2023**

Royal Sunderam Alliance Insurance Company Ltd. ... Appellant

Vs.

Manjit Kaur & others ... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Dinesh Kumar Prajapati, Advocate for the appellant.

None for the respondents.

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SUKHVINDER KAUR, J.

1. By way of this appeal, appellant-Insurance Company seeks setting aside/modification of the award dated 06.09.2016 passed in CIS No.MACP/0000170/2013 – MACT Case No.5 dated 18.05.2013 vide which the Tribunal has granted a total compensation of Rs.32,59,664/- on account of death of Satnam Singh in the accident along with interest @ 6% per annum from the date of the award till realization.

2. Manjit Kaur widow of deceased Satnam Singh along with her sons Arundeep Singh and Jashandeep Singh jointly filed a petition invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 (for short 'the 1988 Act') claiming compensation with the averments that on 03.12.2012 deceased Satnam Singh and his son Arundeep Singh were heading towards their village Chohla Sahib from village Sarhali on their motorcycle bearing registration No.PB-47-C-7140. Deceased Satnam Singh was driving the

motorcycle whereas his son was the pillion rider. When they reached near bridge canal of village Billianwala and were going at the slow speed on Sarhali Chohla Sahib road, then offending car bearing registration No.PB-66-5800 being driven at a very high speed in a rash and negligent manner by its driver respondent No.1/Deepak Jindal hit into his motorcycle from the right side while coming on the wrong side of the road. Due to this impact, Satnam Singh along with his son fell down from the motorcycle. Satnam Singh received grievous bodily injuries. Thereafter, one Amrik Singh, Sarpanch of village Chohla Sahib arrived there and helped Arundeep Singh in taking seriously injured Satnam Singh to Civil Hospital, Sarhali. He was thereafter referred to Civil Hospital, Tarn Taran. His condition was serious and when he was being taken to Ajit Singh Randhawa Hospital, Amritsar, he succumbed to his injuries on the same day i.e. 03.12.2012 itself. It was further averred by the claimants that the accident was caused due to rash and negligent driving of respondent No.1/driver of the offending car owned by respondent No.2 Satish Kumar Garg. FIR bearing No.147 dated 04.12.2012 was registered under Sections 304-A/279/427 IPC.

It was further averred that deceased was healthy, teetotaler, active and hardworking person. He was a permanent driver working under the department of Punjab State Civil Supplies Corporation Limited (PUNSUP) and was drawing carry home salary of Rs.20,787/- per month. Besides this, he was running a dairy by rearing 5-6 buffaloes. Claimants were totally dependant upon the income of the deceased, who used to spend his entire income for meeting with the household expenses after retaining only a meagre amount as pocket money. Due to the untimely death of the deceased Satnam Singh, claimants have also suffered loss of love and affection and have also been exposed to pain and agony. It was further averred that the claimants do not have any other source of income for their survival. Therefore, it was prayed that compensation of Rs.20 lakhs be granted qua death of the deceased Satnam Singh.

3. Respondents No.1 and 2 (driver and owner of the offending vehicle) initially caused their appearance through their counsel but thereafter they were proceeded against ex parte by the Tribunal.

4. Respondent No.3/Insurance Company resisted the claim by taking a plea that at the time of the alleged accident, respondent No.1 was not holding a valid driving license and respective No.2 was not holding a valid registration certificate of the offending vehicle. It was also pleaded that there was clear violation of the terms and conditions of the insurance policy. Involvement of the offending vehicle in the accident in question was also denied. It was further pleaded that a false FIR has been registered by the police and other documents alleged to have been prepared by the hospital authorities, are also forged and fabricated. Rest of the claims of the petition were denied and the insurance company prayed for dismissal of the petition.

5. No replication was filed by the claimants. On the basis of the pleadings of the parties, issues were settled.

6. After considering the evidence available on record and submissions made on behalf of the parties, learned Tribunal allowed the claim petition and awarded a sum of Rs.32,59,664/- as compensation to the claimants along with interest @ 6% per annum from the date of the award till the realization. Respondents No.1, 2 and 3 were held jointly and

severally liable to pay the compensation.

7. Feeling dissatisfied with the award dated 06.09.2016, the appellant-Insurance Company has preferred the instant appeal. In the instant appeal, despite being served, none came present on behalf of the respondents.

8. I have heard learned counsel for the appellant and have perused the relevant record minutely.

9. Learned counsel for the appellant has contended that the Tribunal has wrongly relied upon Ex.P1, the salary certificate to held that the deceased was drawing carry home salary of Rs.20,787/- per month, as this document was neither officially stamped nor bearing the signatures of the concerned official. PW3-Tarsem Lal, Store Keeper, PUNSUP also admitted that he had no knowledge regarding the accounts department and salary certificate and the record produced by him was neither prepared by him nor it was prepared in his presence. He has contended that as such Ex.P1 was a procured document which could not be read into the evidence. He has further contended that though as per the claimants deceased was working as a driver with PUNSUP, but no driving license of the deceased was produced on record to prove that he was working as a driver. The insurance company had produced Ex.RX/5, the driving license of the deceased, which had been renewed upto 19.01.2011 whereas the accident had taken place on 03.12.2012. As such deceased was not holding a valid and effective license and was not the driver as alleged, on the date of the accident. He has argued that as such, the Tribunal could have at the most taken the minimum wages into consideration to assess the income of the

deceased which were approximately Rs.52,00/- per month at that time. He has contended that the insurance company had also taken a specific plea that at the time of the accident, respondent No.4 driver of the offending vehicle was not having a valid driving license to drive the same. Both driver and owner of the offending vehicle were proceeded against ex-parte before the Tribunal and despite sending of the legal notices Ex.RX/1 and RX/2, no driving license of the driver of the offending vehicle was produced on record. He has urged that it is the duty of the owner and driver to produce the license of the driver before the Tribunal so that genuineness of the license could be proved and as such adverse inference is to be drawn against the respondents No.1 and 2. He has prayed that as such the present appeal is required to be accepted and the quantum of compensation should be suitably reduced and recovery rights be also granted to the insurance company.

10. By way of the present appeal, the accident in question has not been challenged. So it stands established that deceased has died as a result of injuries sustained in the accident in question. There is no dispute regarding finding of the Tribunal upon issue No.1 that the accident in question had taken place on account of rash and negligent driving of the offending vehicle by its driver.

11. Perusal of the award reveals that as per the salary certificate Ex.P1 that has been produced on record by PW3, Tarsem Lal, Store Keeper, Punsup, the Tribunal has held that deceased was drawing carry home salary as Rs.20,787/- per month. The Tribunal has taken the age of the deceased to be 48 years. Then by taking into consideration that the deceased was supposed to maintain three claimants i.e. his wife and two minor children,

1/3rd of his income has been deducted as personal living expenses. The monthly dependency has been taken as Rs.13,858/- (20787-6929). Thereafter, by considering the deceased as permanent government employee and taking into consideration that he was 48 years old, 30% of the carry home salary i.e. Rs.6,236/- has been added on account of the future prospects and the monthly dependency has been taken as Rs.20,094/- (13858+6236). Then by multiplying the same with 12, the annual dependency has been taken as Rs.2,41,128/-. Thereafter, by taking the age of the deceased to be 48 years, multiplier of 13 has been adopted and the total compensation has been assessed as Rs.31,34,664/-.

Besides that Rs.1 lakh have been granted as consortium to claimant No.1-Manjit Kaur and Rs.25,000/- have been granted as the funeral expenses and the total compensation of Rs.32,59,664/- (3134664+100000) has been granted.

12. I do not find substance in this contention of the learned counsel for the insurance company that salary of the deceased is not proved from salary certificate Ex.P1 and his income is to be taken as that of a daily wager. To substantiate their plea that deceased was working as a driver with PUNSUP and drawing salary of Rs.20,787/- per month, the claimants have examined PW3 Tarsem Lal, Store Keeper, PUNSUP. He has produced on record the salary certificate of the deceased Satnam Singh as Ex.P1 which had been duly issued by the District Manager, PUNSUP, Ferozepur. Thus, the salary certificate Ex.P1 has been produced by the witness, who is also an employee of the PUNSUP. There is no such material on record from which it can be made out that Ex.P1 is

a procured document. Perusal of his testimony further reveals that he has tendered into in his examination-in-chief his affidavit Ex.PW3/A, in which he has deposed that he had brought the Pay Salary Register of the deceased Satnam Singh, who was working as a driver in the department, which is Ex.P1. He had seen the photocopy of Pay Salary which is correct according to Register of Pay Salary. Even though, this salary certificate has not been prepared by him, yet it has been produced by him being an employee of the PUNSUP department and no evidence in rebuttal has been produced on record by the respondents to prove that the same was a procured document and was not genuine. Thus, from the salary certificate Ex.P1, it stands proved that deceased was drawing salary of Rs.20,787/- per month. If driving license of the deceased has not been produced on record then this does not lead to the inference that he was not employed as a driver with PUNSUP, when no contrary evidence to the evidence led by the claimants has been produced. Otherwise also, proof of driving license of the deceased was not required to prove his employment with PUNSUP as driver. So far as driving license of deceased Ex.PX/5 is concerned, which has been produced on record by insurance company to prove that it had expired on 19.01.2011, before the date of accident, there is nothing on record that it had not been renewed after 19.01.2011 till happening of the accident in question.

13. So as per the salary certificate Ex.P1 produced on record, the salary of the deceased is taken as Rs.20,787/- per month (by making it a round figure as Rs.20,790/- per month). Age of the deceased has been rightly taken as 48 years by the Tribunal, at the time of his death in the

accident. Keeping in view the future prospects and considering the age of the deceased as 48 years, 30% of addition in the actual salary is to be made as per the law laid down by the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi, 2017(4) RCR (Civil) 1009** which comes to Rs.27,027/- per month (20790+6237).

As deceased left behind two children and widow so deduction of 1/3rd of his income towards personal living expenses has been rightly made by the Tribunal. So after deducting 1/3rd of the total income of the deceased, the monthly income comes to Rs.18,018/- (27027-9009) and in this manner the annual dependency comes to Rs.2,16,216/- (18018 X 12).

As deceased was 48 years old at the time of his death in the accident, so keeping in view the ratio of law laid down in the case of **Pranay Sethi (supra),** the Tribunal has rightly applied the multiplier of 13 in the present case and by applying the multiplier of 13, the total dependency is worked out as Rs.28,10,808/- (216216 X 13).

14. The Tribunal has granted Rs.1 lakh as consortium to claimant No.1 and Rs.25,000/- as funeral charges, under the conventional heads but in view of the ratio of law laid down by the Hon'ble Apex Court in the case of **Pranay Sethi (supra),** claimant is entitled to get compensation under the conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses. As such, the claimants are held entitled to Rs.70,000/- under these conventional heads.

15. The Tribunal has rightly observed that there is no restriction on the Tribunal that it can award only upto the amount claimed by the

claimants, rather it is the duty of the Tribunal to award just and proper compensation and while granting the compensation has rightly held that the Tribunal was not bound by the prayer clause put in by the claimants seeking compensation of Rs.20 lakhs.

Thus the claimants are held entitled to a total compensation of Rs.28,80,808/- (2810808 + 70000) along with interest granted by the Tribunal at the rate of 6% per annum from the date of award till realization. The compensation in this case will be shared by the claimants in the same proportion as has been held in the award by the Tribunal.

16. Perusal of the relevant record reveals that in this case the driver and owner of the offending vehicle initially appeared in the claim petition but subsequently they had been proceeded against as ex-parte before the Tribunal when they failed to put appearance. Respondent No.3/insurance company has relied upon carbon copies of legal notices (Ex.RX/1 and Ex.RX/2) along with receipts (Ex.RX/3 and RX/4) served upon respondents No.1 and 2 (driver and owner) asking them to produce on record the driving license of respondent No.1 Deepak Jindal, who was driver of offending vehicle so that the genuineness of the same could be ascertained. But despite that the driving license of driver of the offending vehicle has not been produced on record.

17. In this context the appellant/insurance company has relied upon decisions of Coordinate Benches of this Court in **Anita & another Vs. Vishal Sharma & others, 2018 (3) PLR 77, Oriental Insurance Company Limited Vs. Niranjab Singh & others, 2010 (33) RCR (Civil) 105** and **Rajinder Puri Vs. Sandeep Singh (minor) & others, 2014 (39)**

RCR (Civil) 241 and has stressed that adverse inference is to be drawn against respondents No.1 and 2 and recovery rights are to be given to the insurance company. In the decision of Coordinate Bench in **National Insurance Company Vs. Jai Lasie & others, 2015 (1) LJR 201,** it has been held that once the driving license was not forthcoming, it would be imprudent to expect insurance company to lead further evidence to show that there was no valid and effective license held by the driver of the offending vehicle.

18. In the instant case also the driver and owner though initially appeared before the Tribunal but thereafter opted to be proceeded against ex-parte and did not appear before the Tribunal. Then, despite service of the legal notices upon respondents No.1 and 2, they failed to produce on record the driving license of respondent No.1. So, the adverse inference is to be drawn against respondents No.1 and 2 that respondent No.1 was not holding the effective and valid driving license at the time of the happening of the accident. As such, in the instant case, the finding of the Tribunal in this respect is erroneous and it cannot be sustained. The insurance company has duly discharged its burden and adverse inference has to be drawn against respondents No.1 and 2 for not producing the driving license of respondent No.1, the driver of the offending vehicle. So, the present appeal is allowed to the extent that insurance company is liable to satisfy the award but is entitled to recover the awarded amount from the owner insured.

19. Accordingly, the instant appeal i.e. FAO-639-2017 is partly allowed.

Pending application(s), if any, shall also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

10.05.2023
harjeet

1. Whether speaking/reasoned? Yes/No
2. Whether reportable? Yes/No