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

**204**

FAO-2217-1997
WITH XOBJ-11-CII-1998
Date of decision: 30.01.2024

Oriental Insurance Company Ltd. .....Appellant

Versus

Mohini Chitkara and others ..... Respondents

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

Present: Mr. D.P. Gupta and Mr. Shubham Gupta, Advocates for the appellant-Insurance Company.

Mr. Inderjeet Sharma, Advocate for respondent Nos. 1 to 4-claimants and claimant No.1/cross-objector.

Respondent No.5 died.

Mr. Ajit Kumar Sharma, Advocate for Mr. R.D. Yadav, Advocate for respondent No.6.

**AMAN CHAUDHARY, J.**

1. Challenge in the present appeal is to the award dated 28.08.1997 passed by the learned Motor Accidents Claims Tribunal, Hisar (for short ‘the Tribunal’), whereby a sum of Rs.2,51,800/- was awarded as compensation to respondent Nos. 1 to 4, on account of death of one Som Dutt Chitkara, in a road side accident and the appellant being the insurer of the offending vehicle was held liable to make the payment. Claimant-respondent Nos. 1 to 4 have also filed cross-objections seeking enhancement of the compensation awarded to them.

2. This is a reconstructed case, as the original file was burnt in the fire that broke out in the concerned branch in the year 2011. Since the case is pending for more than 27 years, the counsel for the parties have no objection, if the same is decided on the basis of the available record.

3. Learned counsel for the appellant contends that the Tribunal has committed an error while holding the Insurance Company liable to pay the compensation despite there being violation of the policy as the driver was not having a valid driving licence. To buttress this submission reliance is placed on the judgments of Hon'ble the Supreme Court in **New India Assurance Co. Ltd. vs. Suresh Chandra Aggarwal** (2009) AIR (SC) 2987 and **National Insurance Co. Ltd. vs. Vidhyadhar Mahariwala and others** (2008) 12 SCC 701. He also placed reliance on the judgment of this Court passed in **National Insurance Co. Ltd. vs. Harmesh Lal Arora and others**, FAO-953-1998, decided on 11.02.2014. Regarding cross-objection, he submits that just and appropriate compensation has already been awarded to the claimants-respondents.

4. Contrarily, the learned counsel appearing for respondent No.6 submits that he being the owner of the offending vehicle has employed the driver -respondent No.5 after taking due care and the vehicle was insured with the appellant, thus, the Tribunal has rightly held liable it to pay the compensation.

5. Learned counsel for the claimant-cross-objectors emphatically stated that the Som Dutt Chitkara was 50 years of age at the time of his death and he left behind his wife and three daughters. As per his last pay certificate, his monthly salary was Rs.7273/-. However, the Tribunal without appropriate multiplier, awarded a sum of Rs.2,44,800/- for loss of dependency, which is inadequate. Further, no amount for loss of consortium has been awarded.

6. Heard the learned counsel for the parties.

7. There is no dispute that the death of Som Dutt Chitkara occurred in a motor vehicular accident due to the negligence of respondent

No.5-driver of the Matador, thus not warranting further scrutiny. However, as regards the contention of there being no liability of the Insurance company on account of the fact that the driver was not holding a valid driving licence, the Tribunal recorded that “there was no evidence on the file to hold that respondent No.1 was not holding a valid driving licence at the time of accident.” Nothing has been shown that the above finding was contrary to or on account of misreading of evidence. The onus to prove the driving licence produced in the claim proceedings to be fake, lay heavily upon the insurer, as held in **Magma HDI General Insurance Co. Ltd. vs. Shinder Kaur @ Surjit Kaur and others** 2019(2) Law Herald 1339, which cannot be said to have been discharged on mere surmises and conjectures, in absence of any positive evidence, which was conspicuously missing in the case at hand. Further in **National Insurance Co. Ltd. vs. Laxmi Narain Dhut** (2007) 3 SCC 700, Hon’ble the Supreme Court held that, “Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicle by duly licenced driver or one who was not disqualify to drive at the relevant time….” On the aforesaid premise, this Court finds no force in the submission canvassed on behalf of the appellant.

8. Thus, in the present case, the appellant having not been able to prove beyond doubt that the driver did not possess a valid driving licence or that the insured was negligent in any manner or intentionally handed over to a driver not holding any valid licence to drive such a vehicle or that his

attention having been invited to the licence issued to the driver employed by him being fake, he did not get it verified from the licencing authority. As a fallout of the above discussion, the appeal is found to be sans merit.

9. The judgments relied upon by the learned counsel for the appellant being distinguishable on facts, are thus not applicable.

10. Now coming down to the plea raised for enhancement of compensation by the cross-objector- claimant- respondent Nos. 1 to 4, a profitable reference can be made to the dictum laid down in n **Sarla Verma vs. DTC,** (2009) 6 SCC 121, involving an accident with a bus belonging to the Delhi Transport Corporation, on 18.04.1988, causing the death of a Scientist, working in the Indian Council of Agricultural Research, and vide award dated 06.08.1993, Motor Accidents Claims Tribunal, New Delhi partly allowed the claim and granted compensation of Rs. 5,79,000/-, which, when challenged before the High Court was enhanced to Rs. 7,19,624/- in a judgment dated 15.02.2007. Being not satisfied therefrom, when the claimants approached Hon'ble the Supreme Court, which after considering a catena of judgments, increased the same to Rs. 8,84,870/- and observed that an objective approach should be adopted for arriving at just compensation and elaborating thereupon it was held that there should be a uniformity while calculating the same, relating to increase in future prospects, deduction towards personal expenses of the deceased, multiplier to be applied and also grant of lump sum amount under the heads of (a) loss of estate, (b) loss of consortium and (c) funeral expenses. In **Janabai vs. ICICI Lambord Insurance Co. Ltd.,** (2022) 10 SCC 512, an accident occurred on 01.06.2007, causing the death of the deceased, who was riding a motorcycle and got struck by a car, the Tribunal awarded the claimants compensation amounting to Rs.8,90,000/-, which was challenged by the

Insurance company, and the claim was dismissed. However, on approaching Hon'ble the Supreme Court, the judgment was set aside and they were granted Rs. 11,63,000/- as enhanced compensation in view of **National Insurance Co. Ltd. vs. Pranay Sethi,** (2017) 16 SCC 680, wherein it had been additionally held that, "Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

11. Consequentially, the claimants-appellants are entitled to enhancement of compensation by granting them future prospects to the extent of 30%, being govt. employee and also for the compensation under the conventional heads i.e. Rs.36,000/- for funeral expenses and loss of estate; Rs.1,44,000/- (48,000 x 3) for filial consortium to the children and Rs.48,000/- for loss of consortium to wife. The deceased being 50 years, the multiplier of 13 should be applied. Further the wife was granted ex-gratia compassionate appointment, the Tribunal while deducting the salary of her from the last pay drawn by the deceased, has taken the dependency to be Rs.1700/- per month, which is correct.

12. Accordingly, the total compensation comes to Rs.4,57,200/- (1700 (monthly income) + 30% (towards future prospects) x12 x 13 (multiplier) + Rs.1,92,000/- (conventional head). Thus, the enhanced compensation of Rs.2,05,400/-, over and above the amount of Rs.2,51,800/- already awarded by the Tribunal, alongwith interest at the rate of 7.5% per annum, in view of the judgment in **Dharampal vs. U.P. SRTC**, (2008) 12 SCC 208, from the date of the passing of the award, till its realization, shall be deposited, as ordered by the Tribunal, within a period of 2 months from the date of receipt of a certified copy of this judgment, failing which, it shall

accrue an interest as awarded by the Tribunal.

13. The said amount be kept in FDR, earning the maximum rate of interest till its disbursal to the claimant-appellants

14. The Tribunal is directed to make earnest efforts to release the amount to the claimant-appellants at the earliest, in accordance with law.

15. Accordingly, the appeal filed by the insurance company deserves to be and is hereby dismissed. However, the cross-objections of the claimant-respondent Nos.1 to 4 are partly allowed and the award passed by the Tribunal stands accordingly modified to the extent aforesaid.

30.01.2024 **(AMAN CHAUDHARY)**
Hemant **JUDGE**

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