

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(i) FAO-3146-2013 (O&M)

Narinder Kaur and others
...Appellants

VERSUS

Jagmeet Singh and others
...Respondents

(ii) FAO-3147-2013 (O&M)

Jaswinder Kaur and others
...Appellants

VERSUS

Jagmeet Singh and others
...Respondents

(iii) FAO-3963-2013 (O&M)

New India Assurance Company Limited
...Appellant

VERSUS

Jaswinder Kaur and others
...Respondents

(iv) FAO-3964-2013 (O&M)

New India Assurance Company Limited
...Appellant

VERSUS

Narinder Kaur and others
...Respondents

Date of Decision: February 01, 2024

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr. Rishabh Gupta, Advocate
 for the appellants (in FAO-3146-2013 & FAO-3147 of 2013),
 for respondents No.1 to 5 (in FAO-3963-2013) and
 for respondents No.1 to 3 (in FAO-3964-2013).

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Mr. R.C.Gupta, Advocate
for appellant (in FAO-3963-2013 and FAO-3964-2013) and
for respondent No.3 (in FAO-3146-2013 & FAO-3147-2023).

None for respondent No.1
(in FAO-3146-2013 & FAO-3147-2013)
for respondent No.6 (in FAO-3963-2013) and
for respondent No.4 (in FAO-3964-2013).

None for respondent No.4 (in FAO-3147-2013) and
for respondent No.8 (in FAO-3963-2013).

Mr. Aman Bansal, Advocate for respondent No.2
(in FAO-3146-2013 & FAO No.3147-2023)
for respondent No.7 (in FAO-3963-2013) and
for respondent No.5 (in FAO-3964-2013).

Mr. Suvir Dewan, Advocate
for respondent No.5 (in FAO-3147-2013),
for respondent No.9 (in FAO-3963-2013) and
for respondent No.8 (in FAO-3964-2013).

ARCHANA PURI, J.

These are four appeals, filed to assail two Awards of even date
i.e. 19.03.2013, arising from the same accident, which took place on
04.01.2012, which resulted into death of two persons, namely Sewak Singh
and Karnail Singh.

M.A.C. No.9 of 01.05.2012 was filed by Narinder Kaur and
others, vis-a-vis death of Sewak Singh, in the accident in question, whereas,
M.A.C. No.14 of 03.05.2012 was filed by Jaswinder Kaur and others, vis-a-
vis, death of Karnail Singh, in the same accident.

On appraisal of the evidence on record, the compensation was
granted in both the aforesaid claim petitions.

Feeling aggrieved by the Award so passed, the claimants of
both the aforesaid claim petitions have filed the appeals for seeking

enhancement of the compensation.

FAO-3146-2013 relates to the death of Sewak Singh, whereas, **FAO-3147-2013** relates to the death of Karnail Singh.

FAO-3963-2013 and **FAO-3964-2013** have been filed by the Insurance Company to dispute about the factum of accident, involvement of the vehicle in question, as well as raising plea of contributory negligence and further also, on the count of liability, solely fastened upon the insurance company.

For the convenience of the discussion, the parties are referred to as making appearance before the Tribunal.

The facts germane to be noticed are as follows:-

That, on 04.01.2012, Sewak Singh along with Karnail Singh, while being occupants of car bearing registration No.PB-10CA-3813, were coming from Faridkot to Bathinda. The aforesaid car was driven by Sewak Singh on the extreme left side of the road. At about 2.00-2.15 p.m, when they crossed Baba Rode Shah Majar, Faridkot, a truck bearing registration No.HR-03GA-0469, being driven by respondent No.1-Jagmeet Singh, in a rash and negligent manner, came from the opposite side and struck against their car, as a result whereof, both the occupants of the aforesaid car, sustained multiple injuries, which proved fatal. Sewak Singh had died during the course of the day. Karnail Singh was got admitted in the hospital and succumbed to the injuries on 27.01.2012. The said accident was witnessed by Sukhpal Singh s/o Arjan Singh. Regarding the accident, FIR No.4 dated 05.01.2012 under Sections 304-A, 279, 337, 338 and 427 IPC was registered with Police Station Kotwali, Faridkot.

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Further, in the claim petition relating to death of Sewak Singh, it was averred that Sewak Singh was 52 years old. He had retired from Indian Army as Sub. Major and was drawing a monthly pension of Rs.15,768/- and thereafter, he was working as Welfare Worker at District Sainik Welfare Office, Bathinda and was drawing a monthly salary of Rs.23,000/-. The claimants were dependent upon the deceased.

In the claim petition relating to death of Karnail Singh, it was asserted that Karnail Singh was 52 years old. He had retired from Indian Army as Captain and was drawing a monthly pension of Rs.18,221/-. After retirement, he was working as Welfare Worker at District Sainik Welfare Office, Bathinda and was drawing a monthly salary of Rs.20,000/-. All the claimants were dependent upon the deceased.

In reply, respondents No.1 and 2 (driver and owner) had disputed the maintainability of the petition and also challenged the locus standi to file the claim petitions. Besides the same, it was also averred that no accident ever took place with their truck. They have been falsely involved in this case, in order to get compensation and false case has been registered against them. Thus, a prayer was made for dismissal of the claim petitions.

Respondent No.3-The New India Assurance Company in the separate reply alleged that driver of the truck bearing registration No.HR-03GA-0469 was not holding a valid and effective driving licence, at the time of alleged accident. In fact, respondent No.2 was not holding a valid registration certificate and route permit of the truck in question. As such, respondents No.1 and 2 have violated the terms and conditions of the

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insurance policy. Likewise, respondent No.5-National Insurance Company had raised the similar issues and asserted about there to be violation of terms and conditions of the policy and prayed for dismissal of the claim petition.

On appraisal of the evidence brought on record, both the claim petitions were allowed and the compensation was granted to the claimants, vis-a-vis, death of both Sewak Singh and Karnail Singh. In the respective Awards, even the liability was solely fastened upon respondent No.3-insurance company, whereas, respondents No.1 and 2 were exonerated from their liability.

Feeling aggrieved, the respective claimants and the insurance company of the offending truck bearing registration No.HR-03GA-0469 have filed the appeals, the particulars whereof, has been given, in the earlier portion of the judgment.

To substantiate the plea of accident, the claimants, in the respective claim petitions, have examined Sukhpal Singh, an eye witness to the accident in question. In his affidavit, he has categorically stated about having witnessed the accident, which had taken place on 04.01.2012. He categorically stated that Sewak Singh was driving the ill-fated car on the extreme left side of the road and when they crossed the Baba Rode Shah Majar, Faridkot, the truck bearing registration No.HR-03GA-0469, being driven by respondent No.1-Jagmeet Singh, in a rash and negligent manner, came from the opposite side and after coming on the wrong side of the road, struck against the ill-fated car, as a result whereof, Sewak Singh and Karnail Singh had sustained injuries. He also categorically deposed about Sewak Singh, to have died on the same day at Guru Gobind Singh Medical College

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and Hospital, Faridkot and Karnail Singh was shifted to Fortis Hospital, Mohali, where he had succumbed to injuries on 27.01.2012. This witness has categorically stated that the occurrence was witnessed by him. He also stated about registration of the FIR against respondent No.1-Jagmeet Singh, as the accident took place, due to sole negligence of respondent No.1 only. Besides the aforesaid witness, widows of both the deceased, in the respective claim petitions, had stepped into witness box and had deposed about death of their husbands, in the accident in question and they had further deposed about the manner of taking place of the accident in question. HC Bhupinder Singh has also been examined, who, on the basis of the record, brought by him, had deposed that challan was presented against the driver Jagmeet Singh.

In the light of the aforesaid evidence, it is pertinent to mention that Jagmeet Singh, who in the capacity of being driver of the offending truck, was the best person to depose about the plea of denial, as raised by respondents No.1 and 2, in their reply, has not stepped into the witness box. In fact, in the reply, there is total denial of the accident having taken place and involvement of the truck in question. Even though, challan in the criminal case was presented against Jagmeet Singh, but, there is total silence, on his part. No plea, as such, had been raised before the higher authorities of the police to assert about the false implication of the offending vehicle, as well as, respondent No.1-Jagmeet Singh, being nominated as driver of the truck in question. In view of the same, the plea of accident having not so taken place, does not stand established.

Faced with the aforesaid conclusion, learned counsel for the insurance company has also raised the plea of contributory negligence, on

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the part of Sewak Singh, who was on driver seat of the car, involved in the accident. But however, this plea, is quite vague on the part of the insurance company. No evidence, as such, has been brought on record. It is simply submitted by learned counsel for the insurance company that since the offending vehicle came from the opposite side, therefore, both the drivers had contributed to the accident. However, this submission is bereft of merits. Simply because two vehicles came from different directions, do not *ipso facto* lead to the conclusion, about both the drivers, having contributed to the taking place of the accident. This is all the more essential to note, in view of the plea taken by respondents No.1 and 2 i.e. driver and owner of the offending vehicle, in the reply to the claim petitions. Therein, it is a case built of total denial and of false implication of the truck in the accident in question. In the given circumstances, the plea of contributory negligence being raised, more particularly, in view of the plea of total denial of the accident having taken place, in the reply and also considering Jagmeet Singh having not stepped into witness box, the said plea of contributory negligence, falls flat to the ground.

In the light of the aforesaid observations, learned Tribunal had rightly reached the conclusion about taking place of the accident, on account of rash and negligent driving of the offending truck, being driven by respondent No.1-Jagmeet Singh and the same having resulted into inflicting of the injuries on the person of Sewak Singh and Karnail Singh, which proved fatal. As such, findings on issue No.1, are affirmed.

Now, let us consider the extent of compensation, payable to the claimants.

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At the very outset, in view of the averments made by learned counsel for the insurance company, it is pertinent to mention that the claim petition, vis-a-vis death of Sewak Singh was filed by his widow Narinder Kaur, as well as her son, who was 30 years old and daughter, who was 28 years old. Likewise, the claim petition vis-a-vis death of Karnail Singh was filed by his widow Jaswinder Kaur, son, who is aged 29 years, daughter as well as both father and mother of the deceased. The compensation has been granted by learned Tribunal to all the claimants in the respective claim petitions.

It is submitted by learned counsel for the insurance company that since the sons are grown up children of the deceased and they ought to be settled in their lives and also, father of deceased Karnail Singh, ought to have his own source of livelihood, therefore, they are not dependent upon the earnings of the deceased and therefore, compensation, ought to be denied to them. However, the aforesaid submission is not tenable.

No doubt, the sons of both the deceased are major and even compensation has been sought, at the instance of Balbir Singh, father of deceased Karnail Singh, but however, outrightly, it cannot be concluded about them to be not dependent upon the deceased. It should be noticed that in the Indian society, the children as well as the parents remain dependent upon each other, at various stages of life. It is pertinent to mention that the word '**dependent**' has a different meaning in different connotation. Some may be dependent in terms of money and others may be dependent in terms of service.

Thus, dependency is a relative criteria to claim compensation for loss

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of dependency. It does not mean financial only. It also includes gratuitous service dependency, physical dependency, emotional dependency, psychological dependency, and so on and so forth, which can never be equated in terms of money. Thus, considering the same, even the major sons of both the deceased as well as father of deceased Karnail Singh, ought not to be deprived of the compensation, as submitted by learned counsel for the insurance company. However, at the same time, the extent of dependency, can be taken into consideration, looking at age of the claimants and relationship with the deceased and by virtue of having their own source of earning.

During the course of arguments, learned counsel for the appellants-claimants, in both the appeals, have submitted that while working upon the compensation, learned Tribunal had wrongly not taken into consideration the full pension amount and in fact, had erroneously made deduction of the family pension, received by the widows.

However, on the other hand, learned counsel for the insurance company submits that the deduction has been justly so made.

Useful reference, in this regard, is being made to '**Helen C. Rebello vs Maharashtra SRTC, reported as (1999) 1 SCC 90**', wherein, the Hon'ble Supreme Court has observed, as herein given:-

“Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event viz., accident which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of

the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which insured contributes in the form of premium. It is receivable even by the insured, if he lives till maturity after paying all the premiums, in the case of death insurer indemnifies to pay the sum to the heirs, again in terms of the contracts for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on insured's death. Death is only a step or contingency in terms of the contract, to receive the amount.”

Furthermore, the Hon’ble Supreme Court in ‘*Lal Dei and others vs Himachal Road Transport*’, (2007) 8 SCC 319’, while making reference to Helen’s case (supra), had observed, as herein given:-

“4. It is contended by the learned counsel for the appellant that while calculating the dependency, the Motor Accidents Claims Tribunal as well as the High Court committed an error in deducting the family pension amount. We find that the submission made by the counsel for the appellant is correct. The Motor Accident Claims Tribunal as well as the High Court could not have deducted the amount of family pension given to the family while calculating the dependency of the claimants. In Helen C. Rebello v. Maharashtra SRTC, this Court has specifically dealt with this question and said that the family pension is earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. There is no correlation between the two and therefore, the family pension amount paid to the family cannot be deducted while calculating the compensation awarded to the claimants. In view of this, the appeal is allowed. The order of deduction of the family pension is set aside.”

The aforesaid case law has been relied upon in catena of decisions, whereby, deduction on the count of family pension was denied. Thus, the position becomes very clear that pension/family pension ought not to be deducted, while working upon the loss of dependency and the

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compensation to be granted to the claimants.

In the given circumstances and also considering the nominal amount having been paid under the conventional heads, the compensation, so worked upon by learned Tribunal, in the aforesaid claim petitions, calls for intervention by reappraisal of the work out for the compensation. Besides the same also, on the count of 'future prospects' addition ought to be made.

In this backdrop, let us deal with the compensation, vis-a-vis, death of Sewak Singh.

At the very outset, it is pertinent to mention that deceased, in the claim petition was asserted to be 52 years old and his date of birth was 07.01.1959. Narinder Kaur widow, in her affidavit Ex.CW6/A had stated the age of the deceased to be 52 years and she specifically stated about his date of birth to be 07.01.1959. In the post-mortem report also, the deceased was stated to be about 52 years old. The driving licence of deceased Sewak Singh has been proved as Ex.C1, which also states the date of birth of deceased to be 07.01.1959. So calculating, at the relevant time of accident, which took place on 04.01.2012, the deceased is established to be about 53 years. Relating to the vocation followed by the deceased, it is the claim put forth that deceased Sewak Singh had retired from Indian Army as Sub. Major and was drawing a monthly pension of Rs.15,768/- and after retirement, he was working as Welfare Worker at District Sainik Welfare Office, Bathinda and drawing monthly salary of Rs.23,000/-.

Besides the claimant, CW-5 Gurmail Singh, Welfare Worker of District Sainik Welfare Office, Bathinda has been examined, who, as per the

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record, has deposed that Sewak Singh was Welfare Worker in their office and he joined the office on 10.02.2006. His salary statement is Ex.C7 and salary chart is Ex.C8. As per the aforesaid record, his monthly salary was Rs.19,871/-. So far as, pension part is concerned, it has been correctly observed by learned Tribunal that no PPO of the deceased has been placed on record to show that he was drawing a monthly pension of Rs.15,768/-, but any how, copy of passbook of account of Sewak Singh, maintained with SBI, has been proved as Ex.C11 and reliance has been placed upon the same, which contains the receipt of pension @ Rs.14,930/-, which was for the month of July 2011 and August 2011. Considering, the Motor Vehicles Act to be a welfare and benevolent piece of legislation, it has been appropriately considered by learned Tribunal. Thus, taking into consideration, the monthly salary of Rs.19,871/- and pension of Rs.14,930/-, the total earnings of the deceased is worked upon as Rs.34,801/-.

Considering the deceased to be falling in the age group of 51-55 years, as per *Pranay Sethi's case*, addition of 15% ought to be made, on the count of 'future prospects'. Making it to be so, the income of the deceased is worked upon as Rs.34801+Rs.5220(15%)=Rs.40,021/-.

Considering the number of dependents of the deceased, as per *Sarla Verma's case*, the deduction to the extent of 1/3rd has to be made, on the count of 'personal expenses'. Thus, making this deduction of 1/3rd, the loss of dependency comes to be Rs.40021-13340=Rs.26,681/-, annual whereof, comes to be Rs.26681x12=Rs.3,20,172/-.

Considering the age of the deceased, as per *Sarla Verma's case*,

National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009

Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77

appropriate and suitable multiplier, to be applied is ‘11’ and by applying the same, the loss of dependency, works out to be Rs.320172x11= Rs.35,21,892/-.

Besides the same, the amounts are to be paid under the conventional heads, such like, loss of consortium, loss of estate and funeral expenses as held in *Pranay Sethi's case (supra)*. However, 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 were entitled to compensation, on the count of ‘parental’, ‘spousal’ and ‘filial’ consortium.

In consonance with the observations made in *Pranay Sethi's case (supra)*, as per clause of addition of 10% under the heads of ‘loss of consortium’, ‘loss of estate’ and ‘funeral expenses’, after every three years from the passing of the judgment, at present, the amount payable, on the count of ‘**loss of consortium**’ comes to be **Rs.48,400/-** to each of the appellant-claimant and for the ‘**loss of estate**’ as well as ‘**funeral expenses**’, it is **Rs.18,150/-**, on each count.

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

Loss of dependency	:	Rs.35,21,892/-
Loss of consortium	:	Rs.1,45,200/-
Loss of estate	:	Rs.18,150/-
Funeral expenses	:	Rs.18,150/-
Total	:	Rs.37,03,392/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.37,03,392-**

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20,00,000=Rs.17,03,392/-. Out of the enhanced amount of Rs.17,03,392/-, a sum of Rs.5 lakh each, is granted to appellants-claimants No.2 and 3, namely, Paramjit Singh and Swaranjit Kaur and the residue amount of Rs.7,03,392/- is granted to appellant-claimant No.1-Narinder Kaur.

On the enhanced amount of the compensation i.e. Rs.17,03,392/-, 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.

Now, let us deal with the compensation, vis-a-vis, death of Karnail Singh.

In the claim petition, it is asserted that deceased Karnail Singh was 52 years old, at the relevant time and his date of birth is 15.01.1959. Jaswinder Kaur, wife of the deceased, in her affidavit Ex.CW5/A, has also deposed about her husband Karnail Singh to be about 52 years of age, at the time of accident and asserted his date of birth to be 15.01.1959. As such, the deceased is considered to be about 53 years.

So far as the vocation of the deceased is concerned, it is averred in the claim petition that deceased had retired from Indian Army as Captain and was drawing a monthly pension of Rs.18,221/-. After his retirement, he was working as Welfare Worker at District Sainik Welfare Office, Bathinda and was drawing a monthly salary of Rs.20,000/-. To so substantiate the vocation, besides Jaswinder Kaur, widow, stepping into witness box, the claimants have also examined Gurmail Singh, Welfare Worker, District Sainik Welfare Office, as CW-4, who had brought the service record of Karnail Singh. The pay bill for the month of January 2012 has been proved

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as Ex.C8 and the salary detail certificate is Ex.C9. In the salary detail for the month of December 2011, the net salary has been mentioned as Rs.19,303/-. However, no PPO of deceased Karnail Singh has come on record, to establish about the receipt of pension of Rs.18,221/-, but copy of the passbook of Karnail Singh, maintained with SBI has come on record Ex.C34, which contains the recital of receipt of pension to the extent of Rs.18,221/- in January 2012. As held in the case of Sewak Singh, this amount ought to be taken into consideration, for working upon the compensation. Thus, total earnings of the deceased has been appropriately taken as Rs.37,524/- (Rs.19,303+Rs.18,221). Moreover, as observed aforesaid, no amount is to be deducted, on the count of family pension (if received by the widow of the deceased). Thus, the total earnings of the deceased is worked upon as Rs.37,524/-.

Considering the deceased to be falling in the age group of 51-55 years, as per *Pranay Sethi's case*, addition of 15% ought to be made, on the count of 'future prospects'. Making it to be so, the income of the deceased is worked upon as $\text{Rs.}37524 + \text{Rs.}5628(15\%) = \text{Rs.}43,152/-$.

Considering the number of dependents of the deceased, as per *Sarla Verma's case*, the deduction to the extent of 1/4th has to be made, on the count of 'personal expenses'. Thus, making this deduction of 1/4th, the loss of dependency comes to be $\text{Rs.}43152 - 10788 = \text{Rs.}32,364/-$, annual whereof, comes to be $\text{Rs.}32364 \times 12 = \text{Rs.}3,88,368/-$.

Considering the age of the deceased, as per *Sarla Verma's case*, appropriate and suitable multiplier, to be applied is '11' and by applying the same, the loss of dependency, works out to be $\text{Rs.}388368 \times 11 =$

Rs.42,72,048/-.

Besides the same, the amounts are to be paid under the conventional heads, such like, loss of consortium, loss of estate and funeral expenses as held in *Pranay Sethi's case (supra)*. However, 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 were entitled to compensation, on the count of 'parental', 'spousal' and 'filial' consortium.

In consonance with the observations made in *Pranay Sethi's case (supra)*, as per clause of addition of 10% under the heads of 'loss of consortium', 'loss of estate' and 'funeral expenses', after every three years from the passing of the judgment, at present, the amount payable, on the count of '**loss of consortium**' comes to be **Rs.48,400/-** to each of the appellant-claimant and for the '**loss of estate**' as well as '**funeral expenses**', it is **Rs.18,150/-**, on each count.

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

Loss of dependency	:	Rs.42,72,048/-
Loss of consortium	:	Rs.2,42,000/-
Loss of estate	:	Rs.18,150/-
Funeral expenses	:	Rs.18,150/-
Total	:	Rs.45,50,348/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.45,50,348-20,00,000=Rs.25,50,348/-**. Out of the enhanced amount of **Rs.25,50,348/-**, a sum of **Rs.5 lakh** each, is granted to appellants-claimants No.2 and 3,

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namely, Bhupinder Singh @ Bhupi Mann and Amrit Pal Kaur, **Rs.1.5 lakh** each is granted to appellants-claimants No.4 and 5, namely Jasveer Kaur and Balvir Singh and the residue amount of **Rs.12,50,348/-** is granted to appellant-claimant No.1-Narinder Kaur.

On the enhanced amount of the compensation i.e. **Rs.25,50,348/-**, 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.

Now, let us consider the liability of the respondents to pay the aforesaid compensation. Learned counsel for respondent No.3-insurance company has submitted that driver of the vehicle, namely Jagmeet Singh was not having valid and effective driving licence, at the time of accident. The driving licence of Jagmeet Singh has been proved as Ex.R1. During the course of arguments, reference has been made to the testimony of RW-1 Neeraj Kumar, Clerk, DTO Office, Sri Muktsar Sahib, who, on the basis of the record, has deposed that the driving licence, the number whereof was specified by him, was given to Jagmeet Singh for LTV and LMV non transport only, firstly for the period 27.03.2006 to 26.03.2009 and thereafter, endorsement for LMV non transport was made for the period from 27.03.2006 to 26.03.2026. Thereafter, endorsement for LMV transport/HMV/goods vehicle was effected from 03.05.2012 to 02.05.2015. He proved the report relating to the aforesaid recitals, qua the driving licence in question, which is Ex.RW1/A. The verification report of the said licence is Ex.RW1/B.

However, it should be noted that this witness, at the tail end of his

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examination-in-chief had stated that he cannot say if Jagmeet Singh was holding licence for HTV for the period from 27.03.2009 to 02.05.2012. The verification report of the licencing authority, Gidderbaha, with regard to the aforesaid period is Ex.RX, which states about the driving licence to have been renewed for 17.03.2009, which had validity upto 16.03.2012 for LTV/HTV. As such, this period covers the date of accident.

In view of the same, Jagmeet Singh-respondent No.1 is concluded to be having a valid and effective driving licence, at the time of accident.

Furthermore, it has been submitted by learned counsel for the insurance company that the truck in question was having a permit only for the area of State of Haryana, but at the relevant time, the truck in question was being plied in the State of Punjab and therefore, there was violation of terms and conditions of the insurance policy, for which reason, the insurance company, as such, cannot be made liable. In this regard, it is pertinent to mention that Section 66 of the Motor Vehicles Act, deals with the aspect of necessity of permit and sets out, various terms of permit and one of the term is that, the vehicle could traverse, only within the area allowed in the permit. However, the language used in Section 149 that sets out the permissible defences, employs the expression of user of the vehicle "for a purpose not allowed by the permit". The purpose of the permit is not the same thing as condition in the permit. The legislature has employed a language restricting it only to violation of the purpose of permit. The Motor Vehicles Act, being a beneficial legislation, the issue of liability should be interpreted to the benefit of claimants and to the extent to which the owner obtains indemnity.

It makes possible the prospect of recovery so much easier.

In *Future General Insurance Co. Ltd. Vs. Smt. Surjo Devi and others 2013(2) RCR (Civil) 564*, this Court had laid down that a violation of any other term, than the purpose for which the permit was to operate, will not be a defence, which will be available in the scheme of the Motor Vehicles Act. Likewise, in *National Insurance Company Ltd. Vs. Rajinder Giri and others 2012(2) RCR (Civil) 183*, the vehicle had a valid route permit for being plied in State of Rajasthan. The accident took place, when the vehicle was being operated in the State of Haryana. It was thus observed by the Court, as herein given:-

“It would be said that the vehicle had a valid route permit for being plied in the State of Rajasthan but not in Haryana State. The Transport Authority of Rajasthan State had found the vehicle fit for being plied as goods carriage. Therefore, it cannot be said that the vehicle was being plied without a route permit. The violation of bringing the vehicle to the area of State of Haryana without a valid route permit for plying the same in the said State would not amount to violation of the conditions of the insurance policy and would not give the insurer a defence under Section 149(2) of the Act. The case before me is not a case where there is no route permit at all. Therefore, the ratio of the decision in National Insurance Co. Ltd.'s case (supra) would not stand attracted to the facts of this case.”

Furthermore, in *Banshidhar vs. Smt. Krishna and others, 2018(1) PLR 415*, while taking into consideration the fact that there was no dispute between the parties to the lis, about the insured vehicle, having the permit to transporting the passengers, but however, the only allegation being that permit was given to the owner, with respect to plying the vehicle in the

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territory of State of Rajasthan, whereas, it was found to be plying in the State of Haryana, it was observed in the given circumstances that such violation of the permit, can only entail penalty. The purpose for which the vehicle was being used, remains the same. The permit granted to the insured was for plying and carrying passengers and at the time of accident, the vehicle was being used for carrying passengers only.

This Court, also made a distinction from the observations made by the Hon'ble Supreme in case titled as *National Insurance Co. Ltd. vs. Chella Bharathamma, 2004(4) RCR (Civil) 399*, wherein, the Court was dealing with the situation, where a vehicle was being plied, without a permit and in that context, it was held that the vehicle cannot be placed at a better pedestal, vis-a-vis, the one who has a permit. Section 66 of the Motor Vehicles Act, only deals with the purpose of which the vehicle was plied. Considering the same, the appeal filed to challenge the recovery rights given to the insurance company was allowed and the finding, to the extent of grant of recovery rights, given to the insurance company was set aside.

A permit is issued on so many terms and conditions. The violation of terms and conditions mentioned in the permit does not allow the insurance company to avoid liability. It is only for the user of the vehicle for the purpose, not allowed by the permit, which would enable the insurance company to defend the action, to satisfy the Award, in a motor accident.

In this context, now reverting to the case in hand, it is pertinent to mention that the permit, coming on record, relates for plying of the truck in question in State of Haryana and there was nothing carried in the same, at the relevant time, for which, it could be concluded about the said truck to be

used for the purpose, other than allowed by the permit. In the given circumstances, the insurance company, as such, cannot shy away from its liability under the contract of insurance.

Further, it is pertinent to mention that learned Tribunal had fastened the liability upon the insurance company solely, to pay the compensation, so worked upon and had exonerated respondents No.1 and 2, who are driver and owner of the offending vehicle. However, the finding so recorded is erroneous. Under the Motor Vehicles Act, on account of contract of insurance, on the obtaining of insurance policy, the insurance company can be made liable, only to clear off the liability of the owner of the vehicle, as well as, driver of the vehicle in question. In the light of the same, to pay off the compensation to the claimants, the driver and owner, as such, cannot be exonerated and the liability, as such, cannot be fastened solely upon the insurance company. In view of the same, respondents No.1 to 3 i.e. driver, owner and insurer of the offending vehicle, are held jointly and severally liable to pay the compensation to the claimants.

Consequently, FAO-3146-2013 and FAO-3147-2013 filed by the appellants-claimants, stand allowed, whereas, FAO-3963-2013 and FAO-3964-2013 filed by the appellant-insurance company stands partly allowed, in view of the aforesaid terms.

February 01, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No