IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-8343-2017 (O&M)

New India Assurance Company Ltd.

...Appellant

VERSUS

Kamlesh and others

...Respondents

(ii) FAO-5381-2018 (O&M)

Kamlesh and others

...Appellants

VERSUS

Dilbagh Singh and others

...Respondents

Date of Decision: January 14, 2025

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Rishab Jain, Advocate for Mr.Suman Jain, Advocate
for the appellant (in FAO-8343-2017) and
for respondent No.3 (in FAO-5381-2018).

Mr.Manu Sachdeva and Mr.Vikas Singh, Advocates for
Mr.Abhimanyu Singh, Advocate
for respondents No.1 to 3 (in FAO-8343-2017) and
for the appellants (in FAO-5381-2018).

Mr.C.P.Tiwana and Ms.Swati Tiwana, Advocates
for respondents No.4 and 5 (in FAO-8343-2017) and
for respondents No.1 and 2 (in FAO-5381-2018).

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ARCHANA PURI, J.

These are two cross appeals, filed at the instance of insurance company, insurer of the offending truck bearing registration No.HR-56A-9313 as well as the claimants, thereby, assailing the Award dated 28.07.2017, passed by learned Motor Accident Claims Tribunal, whereby, compensation was granted by learned Tribunal, on account of death of Titi Ram, in a motor vehicular accident, which took place on 06.11.2015.

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

Learned Tribunal, while considering deceased Titi Ram to be working as Clerk, in the Government High School, Charkhi Dadri and also taking his earnings to be Rs.36,942/- per month and while considering the deceased to be 49 years old, had worked upon the compensation, as herein given:-

Sr.No.	Heads	Calculation
(i)	Salary/income	₹36942/- per month
(ii)	After adding 30% of (i) above (to be added as future prospects).	₹36,942+11,082=48024/-
(iii)	After deducting 2/3th of (ii) (deducted as personal expenses of the deceased)	₹48024 x2/3 = 32,016/- per month i.e. 32,016 x 12= 3,84,192/- annually
(iv)	Compensation after multiplier of 13 is applied.	₹3,84,192 x 13= ₹49,94,496/-
(v)	Loss of consortium, love and affection, estate, care and guidance minor children	₹1,00,000/-
(vi)	Funeral and transportation expenses	₹25,000/-
(vii)	Total compensation calculated without taking into account the financial assistant amount of 28,84,560/- which is to be deducted	₹51,19,496/-
(viii)	After deducting the amount to be received by way of financial assistance from Government for a period of seven years	₹51,19,496-₹28,84,560/- equal to ₹22,34,936/-

The liability of the respondents i.e. driver, owner and insurer of the offending vehicle was held to be joint and several.

Feeling aggrieved, the insurance company as well as the claimants have filed the present appeals.

It is pertinent to mention that so far as the fact of the accident and the manner of taking place of the same is concerned, the same, as such, is not disputed by the insurance company as well as owner and driver of the offending vehicle, who are also making appearance in the present appeals. Even, the insurance company do not dispute about deceased to be working as Clerk in the Government High School, Charkhi Dadri, at the relevant time and monthly earnings of the deceased to be Rs.36,942/-, which also stands amply established from the testimony of PW-1 Sh.Suresh Sheoran. The date of birth of the deceased is established to be 02.04.1966 and as such, on the date of accident i.e. 06.11.2015, he is established to be 49 years old.

However, the insurance company had taken the plea that it was the categoric claim of the insurance company that respondent No.1-Dilbagh Singh was not having valid and effective driving licence, at the time of alleged accident and thus, he had violated the terms and conditions of the insurance company. Also, it is submitted that specific issue No.5 was framed to this effect, but however, the same, as such, has not been appropriately appraised. In fact, learned counsel for the insurance company submits that the driving licence of the respondent No.1-Dilbagh Singh, which has come on record, was issued from Nagaland and it was valid upto 20.10.2013, whereas, the accident had taken place on 06.11.2015. In fact, learned counsel for the insurance company made reference to the documents Annexures A-1 to A-3, which is verification report of the driving licence of Dilbagh Singh and also verification submitted by the Insurance Investigator, which is Annexure A-2, which states about this driving licence to have been issued on 21.10.2010 and was valid upto 20.10.2013, but not upto 20.10.2016. In the light of aforesaid documents, it is submitted that the insurance company, as such, cannot be fastened with the liability to pay the compensation.

Furthermore, in the grounds of appeal, it is also asserted about the claimants, being the dependents of the deceased, having got financial assistance till superannuation of the deceased and therefore, no compensation, ought to have been awarded. Even after making deduction of the amount for a period of seven years, as done by learned Tribunal, the compensation awarded to the extent of Rs.22,34,936/- is still on a higher side.

On the contrary, learned counsel for the claimants as refuted the claim of the insurance company. In fact, it is submitted that by learned counsel that though financial assistance was granted to the claimants, on the basis of **Haryana Compassionate to the Dependents of Deceased Government Employees Rules, 2006**, but however, it was granted monthly, as stated by PW-1 Headmaster of Government High School, Charkhi Dadri, who had stepped into witness box as PW-1 and thus, erroneously, learned Tribunal, after working upon the compensation, has deducted the amount for a period of seven years and residue has been given to the extent of Rs.22,34,936/-. In fact, it is submitted that this bifurcation, as such, could not be made by learned Tribunal, as the amount not received could be deducted after passing of the Award.

In view of the submissions aforesaid, firstly, let us consider the claim for enhancement, as submitted by learned counsel for the claimants.

So far as, the fact of deceased working as Clerk in the Government High School, Charkhi Dadri and having monthly salary of Rs.36,942/- is concerned, the same, as such is not disputed. Even, on the basis of date of birth of the deceased, established to be 02.04.1966, it is also not disputed that the deceased was 49 years old, at the relevant time. Considering the number of dependents to be three in number, the deduction to the extent of 1/3rd, on the count of 'personal expenses' has also been correctly made by learned Tribunal. Even, the addition on the count of 'future prospects' to the extent of 30%, has been correctly made. However, the amount granted on the counts of 'loss of consortium, love and affection, estate, care and guidance etc.' to the extent of Rs.1,00,000/- is not called for as per the settled prevalent position. Thus, it is pertinent to mention that the salary taken, addition of 30% so made and total coming to be Rs.48,024/- and 2/3rd of the same, coming to be Rs.32,016/- per month and annual whereof, turns to be Rs.3,84,192/- is concerned, the same has been correctly done by learned Tribunal. Even, the application of multiplier of '13' is appropriate, as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***. Thus, total amount worked upon, till this stage is **Rs.49,94,496/-**.

Besides the aforesaid, as per ***'Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130'***, each of the claimants are entitled to 'parental', 'spousal' or 'filial' consortium, as required. As held in ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, the compensation payable, at present, on the count of 'loss of consortium is to the extent of Rs.48,400/- i.e. Rs.48,400x3=Rs.1,45,200/-. Likewise, on the counts of 'loss of estate' and 'funeral expenses', the compensation payable, comes to be **Rs.18,150/-**, on each count.

Considering the same, the compensation payable to appellants-claimants, on account of death of Titi Ram, is re-computed, as herein given:-

Loss of dependency	:	**Rs.49,94,496/-**
Loss of consortium	:	**Rs.1,45,200/-**
Loss of estate	:	**Rs.18,150/-**
Funeral expenses	:	**Rs.18,150/-**
Total	:	**Rs.51,75,996/-**

However, the deduction ought to be made, on account of compensation awarded to the claimants under the policy of **Haryana Compassionate to the Dependents of Deceased Government Employees Rules, 2006**. However, learned Tribunal had erroneously made the deduction, as PW-1 Sh.Suresh Sheoran, had stated that the family would be getting the monthly financial assistance, till 06.11.2022. Further, there is nothing, as such, coming on record, to establish, as to whether this amount was received by the claimants. In the given circumstances, the lumpsum amount received as financial assistance for a period of seven years i.e. till November 2022, as done by learned Tribunal, could not be deducted. In any case, the Award was passed on 28.07.2017 and even if, it was being paid monthly, this amount could not be deducted in anticipation of receipt of the amount, after the passing of the Award.

However, there is no evidence, as such, coming on record to establish about the extent of amount received, whether it is on monthly basis or lumpsum amount. Anyhow, learned counsel for the claimants has referred to Ex.P7, which is passbook in the name of Kamlesh and states that amount received as Rs.34,340/- per month. However, the entries to which the reference has been made, are multiple entries of this amount and few of the entries are of 18.05.2016. Without further record or by way of examination of the witness, these entries, as such, do not stand connected to the compensation amount. But in any case, the claimants are entitled to receipt of the compensation under the aforesaid Rules. Considering the same, the bifurcation, as such, could not be made, of the period, which was to be paid till November 2022, as per the version of PW-1 also.

In the light of the same, before disbursement of the compensation worked upon aforesaid, learned Tribunal shall verify about the fact of receipt of extent of amount by the claimants, being beneficiaries under the policy of **Haryana Compassionate to the Dependents of Deceased Government Employees Rules, 2006**, by way of taking of the affidavit of all the claimants and verify the same, at its own level. Upon such verification, the amount so received under the aforesaid Rules, shall be deducted from the compensation, as now worked upon.

The claimants shall be entitled to the interest, at the rate of 6% per annum, on the total compensation, as now worked upon, from the date of filing of the claim petition, till realization of the enhanced amount of compensation. However, learned Tribunal, as ordered aforesaid, shall work upon the amount so received by the claimants under the requisite Rules and deduct the same with proportionate interest and disburse the residue to the claimants, as ordered vide impugned Award.

Now, coming to the liability fastened upon the insurance company. Very true, as submitted by learned counsel for the insurance company that in the reply, categoric stand had been taken about respondent No.1-Dilbagh Singh, driver of the offending vehicle, to be not holding valid and effective driving licence. Also, it is evident that specific issue No.5 was framed, which reads as under:-

> *"5. Whether the respondent no.1 was not holding a valid and effective driving license on the date and time of alleged accident and thus the respondent no.2-insured has violated the terms and conditions of the insurance policy? OPR-3."*

However, it is pertinent to mention that onus to prove this issue was upon the insurance company. No such evidence has been led by the insurance company to substantiate this plea. In fact, only insurance policy Ex.R1 was tendered into evidence by counsel for the insurance company before learned Tribunal and thereupon, the evidence was closed.

However, counsel for the owner and driver of the offending vehicle, had tendered into evidence documents Mark R-1 to R-4 and had closed the evidence. The driving licence of Dilbagh Singh has come on record as Mark R-1, which was appraised by learned Tribunal and it was held that driving licence of respondent No.1 is valid from 15.03.2011 to 20.10.2016. This observation was made, on the basis of recitals of the driving licence.

Furthermore, also reference was made to the registration certificate and insurance policy, which reveals that it also covered the date of accident and on this basis, issue No.5 was decided against the insurance company.

No evidence, as such, was led before Tribunal, to show about the recitals of driving licence Mark R-1, to be wrong. Though, during the course of arguments, learned counsel for the insurance company has made reference to the report of the Insurance Investigator, copy whereof is Annexure A-2 and states that this driving licence is though valid, but the period of validity stated therein is not correct. In fact, it was issued on 21.10.2010 and was valid upto 20.10.2013. However, no evidence, as such, was led by the insurance company, as additional evidence also. The documents were simply placed on record.

In this regard, it is also pertinent to mention that learned counsel for the claimants has also placed on record the RTI report, under the signatures of District Transport Officer-Public Information Officer, Phek, Nagaland, which states about the date of issuance of driving licence to be 21.10.2010 and it was valid upto 20.10.2016. Thus, it covers the date of accident also.

Without any further evidence, the plea of insurance company, as such, do not stand established, despite the said documents also put forth, by way of additional evidence. Hence, the insurance company had failed to discharge its onus and thus, the findings on issue No.5, are hereby affirmed and the liability of the driver, owner and insurer of the offending vehicle is held to be joint and several, to pay the compensation.

In the light of the aforesaid observations, **FAO-8343-2017**, filed by appellant-insurance company stands dismissed, whereas, **FAO-5381-2018**, filed by the appellants-claimants, stands allowed.

January 14, 2025 **(ARCHANA PURI)**
Vgulati **JUDGE**

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