IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO-5195-2016 (O&M)
Reserved on:01.05.2023/19.05.2023
Date of pronouncement:25.05.2023

Bhateri ....Appellant

Versus

Jaimal & others ....Respondents

2. FAO-7711-2016 (O&M)

Jagdish Chander & another ....Appellants

Versus

The United India Insurance Co. Ltd. & another ....Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Gaurav Khera, Advocate for the appellant,
in FAO-5195-2016.

Ms. Seemantika Jindal, Advocate for
Mr. Sachin Mittal, Advocate for the appellants,
in FAO-7711-2016.

Mr. Neeraj Khanna, Advocate for
Mr. R.N. Singal, Advocate,
for the respondent(s)/Insurance Company.

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SUKHVINDER KAUR, J.

This order shall dispose of **FAO-5195-2016 (Bhateri Versus Jaimal & others)** and **FAO-7711-2016 (Jagdish Chander & another Versus The United India Insurance Co. Ltd. & another)** as both the appeals have arisen from a common award dated 10.03.2016 passed by the Motor Accident Claims Tribunal, Rohtak in MACT Case No.76 of 2015.

2. FAO-5195-2016 has been filed by the appellant-claimant for

modification of award dated 10.03.2016 passed by the Motor Accident Claims Tribunal, Rohtak, whereby the claim petition filed by the appellant-claimant invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 (hereinafter to be referred to as 'the 1988 Act') was partly allowed and she was awarded a compensation of Rs.4,49,000/- along with interest @ 7.5% per annum from the date of filing of the claim petition till the date of realization, on account of death of her son, namely, Sonu in a motor vehicular accident that took place on 20.07.2015.

3. FAO-7711-2016 has been filed by the appellants (driver and owner respectively) of the offending vehicle seeking modification of the award dated 10.03.2016 and to absolve their liability by setting aside the award qua them.

4. The relevant facts are that Sonu (since deceased) son of the appellant/claimant-Bhateri was employed as Helper on a light transport vehicle bearing registration No.HR-46C/9092 make Tata Ace. On 20.07.2015, Sonu along with one Satish (owner of the vehicle bearing registration No.HR-46C/9092) were going to Meham from Hansi in the said vehicle. Satish was driving the vehicle and Sonu was seated by his side. At about 10:00 A.M. when they reached near Pipula bridge within the area of Police Station Narnaund, District Hisar, a truck bearing registration No.HR-55F/1965 (hereinafter to be referred to as 'the offending vehicle') being driven by its driver Jaimal/respondent No.1 at a high speed and in a rash and negligent manner, came from the opposite direction and hit their vehicle. Resultantly, Sonu and Satish sustained multiple grievous injuries and were taken to General Hospital Meham. Due to serious condition of Sonu, he was

then referred to PGIMS, Rohtak, where he succumbed to his injuries on the next day. It was pleaded that at the time of his death, Sonu was 27 years old and was earning Rs.15,000/- per month. His mother was dependant upon him. In view of these averments, an amount of Rs.40 lakhs as compensation was claimed by the claimant from respondents No.1 to 3 being driver, owner and insurer of the offending vehicle.

5. After notice, respondent Nos.1 and 2 appeared (owner and driver respectively) and filed joint written statement denying the factum of the accident and involvement of the offending vehicle in the accident in question and submitted that no accident was caused by respondent No.1 while driving the offending vehicle.

6. Respondent No.3/insurance company also denied the factum of accident and involvement of the offending vehicle in the accident and pleaded that no accident was caused by respondent No.1 while driving the offending vehicle. It was also pleaded that respondent No.1 was neither holding a valid and effective driving license at the time of the accident nor the vehicle in question was being driven in terms and conditions of the insurance policy.

7. On the basis of the pleadings of the parties, issues were settled. Both the parties adduced their respective evidence to discharge the onus behind the issues upon them.

8. After considering the evidence available on record and the submissions made on behalf of the parties, learned Tribunal has partly allowed the claim petition and awarded a sum of Rs.4,49,000/- as compensation to the claimant along with interest at the rate of 7.5% per

annum from the date of filing of the petition till realization. Respondent No.3/insurance company was held liable to pay the awarded amount and then to recover the same from respondents No.1 and 2 by initiating proceedings before the Executing Court.

9. Feeling dissatisfied with the award dated 10.03.2016, the appellant-Claimant has preferred **FAO-5195-2016** seeking modification/ enhancement of compensation and appellants/respondents No.1 and 2 have preferred FAO-7711-2016 being driver and owner of the offending vehicle seeking modification of the award dated 10.03.2016 and to absolve their liability by setting aside the award qua them.

10. I have heard learned counsel for the parties and have also perused the relevant record.

FAO-5195-2016:

11. Counsel for the appellant in FAO-5195-2016 has contended that the Tribunal has rightly decided issue no.1 in favour of the appellant to the effect that the accident had taken place due to rash and negligent driving of the offending vehicle by Jaimal Singh/respondent No.1, which resulted into death of Sonu, due to the injuries received by him in the said accident. But the Tribunal has erred in awarding the compensation on very lower side to the appellant. He has further contended that the deceased was 27 years old and was employed as a Helper on the Tata Ace vehicle involved in the accident and was earning Rs.15,000/- per month. But the wrong multiplier of 9 has been applied in the case. The age of the claimant and not the age of the deceased at the time of his death, has been taken into account. Dependency has been determined by the Tribunal on the basis of surmises and

conjectures by taking into consideration the age of the mother of the deceased as 57 years for the purpose of applying the multiplier of 9. While taking into consideration the income of the deceased, no future prospects have been added to the total income and has strongly argued that compensation deserves to be enhanced in the present case.

12. On the other hand, it has been contended by learned counsel for the respondents that a just compensation has been awarded by the Tribunal, which is not required to be enhanced. It has been contended that multiplier of 9 has also been rightly applied by the Tribunal by taking into account, the age of mother of the deceased in the age group of 56-60 years. He has submitted that no future prospects were to be added to the income of deceased and the appeal filed by the claimant/appellant is liable to be dismissed.

13. There is no dispute with regard to finding on issue No.1, regarding the manner of happening the accident in question as has been alleged by the claimant in which Sonu ,son of the claimant had died.

14. As per appellant/claimant, Bhateri, her deceased son Sonu was unmarried and was 27 years of age at the time of his death in the accident. He was employed as a Helper on the Tata Ace vehicle and was earning Rs.15,000/- per month and she being his mother was dependant upon him. The claimant herself has stepped into the witness box as PW1 and has tendered in her examination-in-chief her affidavit Ex.PW1/A deposing on oath all the averments as made in the claim petition.

15. The Tribunal has placed reliance on the copy of voter card of deceased Ex.P4 in which his date of birth has been recorded as 10.03.1988.

As per the claimant also, the mother of deceased, the deceased was 27 years old. Thus, the Tribunal has rightly held that deceased was about 27 years of age at the time of his death in the accident in question.

16. As per the claimant, her deceased son was employed as a Helper on the Tata Ace vehicle involved in accident and getting Rs.15,000/- per month. PW3 Satish, who has deposed that deceased was employed as a Helper on his vehicle on monthly salary of Rs.15,000/- per month, has admitted in his cross-examination that he was not having any documentary proof regarding employment and salary of the deceased. There was no such salary statement which showed the income of vehicle and salary of the deceased and further stated that deceased was helping him in his vegetable business. By way of filing of the present appeal also, the notional income of the deceased has not been challenged and the only contention that has been raised is that the wrong multiplier has been applied by the Tribunal, by taking into consideration the age of the mother and not the age of the deceased, at the time of his death in the accident. The Tribunal has thus rightly observed that as no document to that effect has been placed on record that he was getting Rs.15,000/- per month by working as a Helper on the said vehicle, so income of the deceased for the purpose of determination of compensation is to be taken as minimum wages of an unskilled worker fixed by the State Government. The Tribunal has rightly taken the notional income of the deceased for the purpose of compensation as Rs.6,000/- per month.

17. Again this fact is not disputed that deceased has left behind claimant/his mother, who was dependant upon him. So deduction of ½ of the income towards the personal expenses of the deceased has also been rightly

made by the Tribunal. So after deducting ½ of the total income of the deceased towards personal expenses, the annual income comes to Rs.36,000/- (3000 X 12).

18. As per ratio of law laid down by the Hon'ble Apex Court in **National Insurance Company Limited Vs. Pranay Sethi, 2017(4) RCR (Civil) 1009,** addition of 40% in the income of the deceased/Sonu was required to be made by the Tribunal which has not been done. So after making addition of 40%, the income of the deceased comes to Rs.50,400/- (36000 + 14400).

19. In the case of **Pranay Sethi (supra)**, it has been held by the Hon'ble Apex Court that age of the deceased should be the basis for applying the multiplier and the selection of multiplier shall be as indicated in a table in **Sarla Verma Vs. Delhi Transport Corporation & others, 2009 (6) SCC 121** read with paragraph 42 of that judgment. So the Tribunal has committed an error while taking into consideration the age of the claimant/the mother of the deceased for choosing the multiplier. So keeping in view the law laid down in the case supra and in view of the fact that age of the deceased to be 27 years, multiplier of 17 is to be applied in the present case, to assess the total loss of dependency. So by applying the multiplier of 17, total loss of dependency in this way comes to Rs.8,56,800/- (50400 X 17).

20. Besides that, the Tribunal has awarded Rs.25,000/- as funeral expenses and Rs.1 lakh on account of loss of love and affection. However, in view of the ratio of authority in **Pranay Sethi (supra),** claimant is entitled to get the compensation under the conventional head i.e. Rs.15,000/- on

account of loss of estate and Rs. 15,000/- as funeral expenses. So the total compensation that is to be granted comes to Rs.8,86,800/- (8,56,800 + 30000).

21. The rate of interest of 7.5% per annum, that has been awarded by the Tribunal appears to be reasonable and requires no interference. Thus, the claimant/Bhateri will be entitled to get compensation of Rs.8,86,800/- along with interest at the rate of 7.5% per annum, from the date of filing of the claim petition till its realization.

22. Accordingly, the instant appeal i.e. FAO-5195-2016 is partly allowed.

Pending applications, if any, shall also stand disposed of.

FAO-7711-2016:

CM-25939-CII-2016:

Learned counsel for the respondent states that he has no objection, in case the delay of 20 days in re-filing the appeal is condoned.

Keeping in view the grounds mentioned in the application as well as no objection from the counsel opposite and in the interest of justice, the delay of 20 days in re-filing the appeal is condoned.

Application stands disposed of.

Main appeal:

1. Counsel for the appellants/owner and driver has contended that the insurance company has been exonerated on the ground that the driver of the offending vehicle was not holding a valid driving license to drive the offending vehicle and it was held that it amounts to violation of terms and conditions of the insurance policy. So, respondent No.3 was not held liable

to indemnify the insured. The Tribunal has directed that the amount of compensation in the first instance is to be paid by the insurance company with a right to recover the same from respondents No.1 and 2 i.e. driver and owner of the offending vehicle respectively. He has contended that now the appellants have been able to lay hands on the verification of driving license of Jaimal Singh S/o Dariya Singh-appellant No.2, which reveals that this license was valid for the period, when the accident took place. The said verification of driving license of Jaimal Singh has been obtained from the concerned department and the same could not be produced earlier before the Tribunal, despite exercise of due diligence. He has contended that this document is very necessary to decide the *lis* for advancement of the substantial cause. He has submitted that keeping in view the verification of driving license of Jaimal Singh (Annexure A-1), the insurance company may be held liable to pay the compensation and the impugned award may be modified to absolve the appellants of their liability, by setting aside the award qua them.

2. On the other hand, it has been contended by counsel for the respondent/insurance company that driving license of respondent No.1, Ex.R4 has been proved to be fake on the basis of verification report Ex.R7. He has submitted that the driving license Ex.R6 has also been issued by the same authority. While relying upon **United India Insurance Company Vs. Kesar Devi & others, 2018 (4) RCR (Civil) 341**, he has contended that whenever more than one driving license is produced by the owner or the driver (with respect to the person driving at the time of the accident), the Tribunal must view the same with suspicion and call upon the person who

has produced the second driving license to prove its genuineness. He has contended that the driving license Ex.R6 has been made operative with retrospective date as it had been issued on 16.12.2015 and further as it had been issued for a period of six years, it is a procured driving license. He has contended that keeping in view this violation in terms and conditions of the insurance policy, the recovery rights have been rightly given to the insurance company and the present appeal is liable to be dismissed.

3. Perusal of the record reveals that respondents No.1 and 2, who are appellants in the present appeal, have placed on record before the Tribunal two driving licenses of respondent No.1 Jaimal Singh S/o Dariya Singh i.e. Ex.R4 and R6. Both these licenses have been issued by the Licensing Authority, Tuensang, Nagaland.

4. As per driving license Ex.R4, which was issued on 03.11.2010 respondent No.1 was initially authorized to drive motorcycle and light motor vehicles for the period 03.11.2010 to 02.11.2014 and later on, he was authorized to drive the medium motor-vehicles and heavy motor-vehicles for the period from 14.12.2011 to 02.11.2017. Respondent No.3 has placed on record the verification report Ex.R7, pertaining to the driving license Ex.R4. This report was obtained by Sh. Suraj Kamboj, Advocate, District Court, Hisar by moving an application under the Right to Information Act, 2005 for getting the verification of said driving license and this application was returned in original with remarks that “no record had been found/available in respect of Driving license No.23522/TSG/Prof in the name of Jaimal Singh in the office of undersigned”. On the basis of this verification report Ex.R7, it has been held by the Tribunal that Ex.R4 was a fake driving license. Thus,

verification report Ex.R7 was simply produced on record by the insurance company. No official of the office of the concerned Licensing Authority along with record was produced to prove the said report. As such, the verification report Ex.R7 cannot be said to have been properly proved on record as per law.

5. The other driving License No.NL0320090006474 Ex.R6 has also been issued in the name of respondent No.1 Jaimal Singh S/o Dariya Singh which was valid upto 31.12.2019 for non-transport vehicles and till 19.01.2017 for transport vehicles and the driver was authorized to drive MC, LMV, TRANS and as per the endorsement TRANS on 20.01.2014. It has also been issued by the District Transport Officer, Tuensang, Nagaland. Ex.R6 is a Smart Card format and date of issue has been mentioned as 16.12.2015.

6. It has been held by the Tribunal, that it is borne out from facts and circumstances that when it was found by respondent No.1 that the driving license copy of which has been placed on the file as Ex.R4 was fake, he got issued another driving license, copy of which has been placed on record as Ex.R6, in collusion with the Licensing Authority. It has been further observed that when driving license Ex.R6 was issued on 16.12.2015, then how it could be made operative with retrospective date and it had been issued for a period of six years, whereas driving license for transport vehicles is issued for a period of three years and Tribunal has exonerated the insurance company to indemnify the insured and has granted the recovery rights to the insurance company.

7. Thus, from the evidence on record, it transpires that absolutely

no evidence has been led by the insurance company to prove that driving license Ex.R6 was fake and was not a genuine driving license. As per settled proposition of law, it is for the insurance company to discharge the onus that the insured is guilty of violating the terms and conditions of the insurance policy, constituting a defence in favour of the insurer. But nothing has been brought on record by the insurance company, in order to prove that Ex.R6 was fake and was not a valid driving license, so as to result in violation of terms and conditions of the insurance policy.

8. Along with the appeal, the appellants have also filed an application under Order 41 Rule 27 CPC for placing on record Annexure A-1 the verification report, of driving license Ex.R6, alleging therein that they could not produce the same earlier before the Tribunal despite exercising due diligence. The perusal of Annexure A-1 reveals that it is containing the same license number as Ex.R6. The dates of validity for transport and non-transport vehicles are also the same. The date of issuance has been mentioned as 27.05.2009. So, I find substance in this contention of learned counsel for the appellants that the date of issuance, that has been mentioned on Ex.R6 as 16.12.2015, is infact the date, upon which, this license which was earlier in the booklet form, was converted into smart card form. So this observation of Tribunal is not correct that it had been made operative with retrospective date. If date of issuance of this license is taken as 27.05.2009 (Annexure A-1), then this observation of the Tribunal is also incorrect, that this license had been issued in collusion with the Licensing Authority after the license Ex.R4 was found fake, as Ex.R4 had been issued on 03.11.2010 and as such the date of issuing of this license was later to

Ex.R6. Even in the absence of Annexure A-1, when not even an iota of evidence has been produced by the insurance company that license Ex.R6 was not genuine, then Ex.R6 cannot be held to be a fake driving license. Moreover, both the driving licenses Ex.R4 and Ex.R6 were tendered into evidence before the Tribunal on the same date i.e. 19.01.2016. At that time, respondent No.3/insurance company was yet to produce on record the verification report Ex.R7, which was produced before the Tribunal on 10.02.2016. So this observation made by the Tribunal does not appear to be correct, that Ex.R6 was obtained by the respondents after the driving license Ex.R4 was found to be fake one. So when it has not been proved that driving license Ex.R6 was fake, then it cannot be said that terms and conditions of the insurance policy had been violated by respondents No.1 and 2. So finding of the Tribunal whereby the insurance company has been exonerated and the liability has been fastened upon respondents No.1 and 2 is set aside and it is held that the liability of all the respondents to pay the compensation shall be joint and several and no recovery rights will be available to respondent No.3/insurance company.

9. Accordingly, the instant appeal i.e. FAO-7711-2016 is partly allowed.

Pending applications, if any, shall also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

25.05.2023
harjeet

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