
(2016) 03 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 5736 of 2009

Gurdeep Kaur and others

APPELLANT

Vs

Jaswinder Singh and others

RESPONDENT

Date of Decision : 30-03-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168, 173

Citation : (2016) 2 ACC 783 : (2017) ACJ 944 : (2016) 2 TAC 337

Hon'ble Judges : K. Kannan, J.

Bench : Single Bench

Advocate : Gulzar Mohd, Advocate, for the Appellant; D.R. Punia, Advocate and Vandana Malhotra, Advocate, for the Respondent

Final Decision : Allowed

Judgement

K. Kannan, J. (Oral) - The appeal is for enhancement of compensation by the claimant. The insurance company had been exonerated on the ground that there was no effective driving licence.

2. The deceased was said to be employee in Agro Farm and representative of the employer had been examined to say that he was being paid Rs.4000/- per month as salary. The Court discarded the documentary evidence as not sufficient for no proof of attendance or payment of salary by production of salary register before the Tribunal. I will not find any error in the approach of the Tribunal and affirm the finding already rendered that the income should be taken as Rs.3000/- per month. However, since he was an able bodied person being just 40 years of age, I will take his employment as reasonably stable that would allow for prospect of increase in future by 50%. I will rework the compensation and apply the multiplier suitable to the age of the deceased as suggested by the Supreme Court in Sarla Verma v. DTC (2009) 6 SCC 121. I will also provide for Rs.1 lac for loss of consortium and Rs.50,000/- to each one of the children and parent considering the fact that the provision for interest from the date of accident would itself make the claim available in the manner in which it is provided in

Rajesh v. Rajbir Singh (2013) 9 SCC 54. The several heads of claim are reworked and tabulated as under:-

FATAL ACCIDENT

Age

40 years

Occupation

Employee in Agro Farm

Claimants

Widow, 2 children and mother

Sl. No.

Heads of claim

Tribunal Amount (Rs.)

High Court Amount (Rs.)

1

Income

3000

3000

2

Add, % of increase 50%

4500

3

Less, Deduction

2000

3375

4

Multiplicand (annualized by multiplying 12)

40500

5

Multiplier

13

15

6

Loss of dependence

6,07,500

7

Medical Expenses and Transportation

8

Loss of Consortium

1,00,000

9

Loss of love and affection

1,50,000

10

Loss to estate

5000

11

Funeral expenses

10000

Total

3,14,000

8,72,500

3. There shall be a compensation of Rs.8,72,500/- and the additional amount of compensation will also attract interest @7.5% from the date of petition till the date of payment. The additional amount shall be distributed in the ratio of 2:2:2:1 amongst the wife, children and the mother respectively.

4. As regards the liability, if any violation of terms of policy was proved, the insurance company should have still been made liable and the issue that should have considered was whether the insurance company had proved the violation of terms of policy to allow for recoveries against the insured or not. The Supreme Court in New India Assurance Co., Shimla v. Kamla,(2001) 4 SCC 342 by reading of Section 149(4) proviso, has held that the insurer will always be liable even for violation of terms of policy. This has also been followed in several other judgments later.

5. The counsel appearing on behalf of the owner states that the insurance company has at all times to prove that the insured was guilty of negligence and failed to exercise reasonable care in the manner of fulfilling condition of policy regarding driving of vehicle by duly licensed driver. Absence of fake or valid driving licence or disqualification of driver are not defences available to insurer against the insured or third parties. This judgment in *Lal Chand v. Oriental Insurance Co. Ltd.* 2006(7) SCC 318, in my view, is wrongly understood by the counsel to state that the insurance company will have no defence at all even if it establishes that there had been a violation of terms of policy. In *Lal Chand's* case (*supra*), the Supreme Court was referring to the judgment in *United India Insurance Co. Ltd. v. Lehu* 2003(3) SCC 338 where the Court was holding that where the owner had satisfied himself that the driver had a licence, there could be no breach of Section 149(2) (a) (ii), if it turned out that the licence was fake. It is one thing for a person to believe that the driver had a valid driving licence when it turned out to be fake but quite another to state that the driving licence which he had, had already expired but still the owner believed that the licence must have been renewed. There can be no such benefit in a situation where he has not exercised an appropriate care to ensure that the driver had obtained renewal at the appropriate time. The judgment in *National Insurance Company Limited v. Swaran Singh* (2004) 3 SCC 297 which was relied in *Lal Chand's* case again was a case which accepted the proposition that the liability shall be against the insurer and if at all, a right of recovery alone would be obtained by the insurance company. The decision in *Swaran Singh's* case was anchored on the decision in *New India Assurance Co., Shimla v. Kamla* referred to above and this judgment was again referred to in *Lal Chand's* case. The judgment in *Lal Chand's* case ought not to have been wrongly understood as making possible a full indemnity to the owner when the driving licence had not been valid and the owner believed that the driver had a driving licence, when it had expired. There can be no belief which is against the statute.

6. It is a matter of fact which is an admitted situation that the licence had expired on 14.05.2007 and the renewal had been effective from 26.09.2007. The accident had taken place on 21.09.2007 and even the renewal licence did not provide for a renewal to take effect from the date when the accident had taken place. Indeed, no such renewal would have been possible.

7. The counsel for the owner states that he has already deposited the amount as awarded. For any unrealized portion of the award, the claimants shall be at liberty to exercise the right of recovery against the insurer and the insurer will in turn have a right to recover the same against the insured.

8. The appeal is allowed on the above terms.