

(2019) 10 P&H CK 0243

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 4261 Of 2009, 2487 Of 2010 (O&M)

Ranjit Kaur And Ors

APPELLANT

Vs

Sukhdev Pal And Others

RESPONDENT

Date of Decision : 03-10-2019

Acts Referred:

Indian Penal Code, 1860 — Section 279, 304A, 337, 338, 427
Motor Vehicles Act, 1988 — Section 163A

Citation : (2020) 1 RCR (Civil) 778

Hon'ble Judges : Ritu Bahri, J

Bench : Single Bench

Advocate : Harsh Aggarwal, R.P. Verma, Aashish Gupta

Final Decision : Allowed

Judgement

“

Ritu Bahri, J",,,

1. The above mentioned two appeals, are being disposed of by this common judgment, having arisen out of the impugned award dated 11.04.2009",,,

passed by the learned Motor Accident Claims Tribunal, Hoshiarpur.",,,

Facts not in dispute,,

2. The facts which are not in dispute are that on 31.12.2006, Raghbir Singh (since deceased) along with his son Jasprit Singh and daughters Mandeep",,,

Kaur, Prabhjot Kaur and Ramanjit Kaur was coming from Jalandhar to Hoshiarpur on his maruti car bearing registration No. PB-08-T-3235. He was",,,

followed by Hardip Singh and his son Surjit Singh. When they reached near petrol pump situated in the area of village Piplanwala, a truck bearing",,,

registration No. PN-08-A-7705 driven by respondent No. 1 in a rash and

negligent manner came from opposite side and struck against the car driven,,
by Raghbir Singh. The occupants of the car received multiple injuries and were
taken to Civil Hospital, Hoshiarpur where Raghbir Singh and his minor",,
son were declared brought dead. F.I.R No. 104 dated 31.12.2006 under Sections
279/337/338/427/304-A IPC was registered against respondent No.,,
1 at P.S.Model Town, Hoshiarpur.",,

3. While assessing the compensation, the Tribunal awarded the lumpsum amount
of Rs.2,00,000 on account of death of minor Jasprit Singh (aged 12",,
years),,,

4.. In FAO No. 2487-2010, at the very outset, learned counsel for the appellant/
owners and driver has referred to judgment of this Court in a case of",,

National Insurance Co. Ltd v. Raj Rani and others, 2009 ACJ 1684 wherein truck
hit a motor cycle and motorcyclist sustained fatal injuries. The",,

Insurance Company was seeking to avoid its liability on the ground that truck
was being plied by the insured without any permit. However, the",,

Insurance company failed to produce any evidence to the effect that owner had
not obtained any permit or route permit which was required in the,,

State. The appeal of the Insurance Company was dismissed and the Insurance
company was held responsible to pay the compensation. The operative,,

part of the judgment has been reproduced as under:-,,

7. I have heard learned counsel for the appellant and perused the record.
However, I find no force in the contention raised by learned counsel for the",,

appellant. There is no dispute with the proposition of law as canvassed by
learned counsel for the appellant. However, in case in hand, the appellant",,

has failed to prove that the truck in question was being plied by the insured in
violation of the terms and conditions of the policy. The Tribunal has,,

recorded a finding that a specific issue was framed to the effect that whether
truck in question was being driven in violation of the terms and,,

conditions of the insurance policy and the onus to prove this issue was upon the
appellant and since the appellant has failed to produce any evidence to,,

prove this issue, the finding on this issue was held against the appellant.",,

5. The learned counsel for the claimants-appellants contends that the
compensation awarded by the learned Tribunal is on the lower side and has,,

referred to judgment of this Court in a case of Sunita Devi and another vs. Vijay
Pal and others, 2018 (2) Law Herald 1659 wherein this Court took",,

the notional income of the deceased (child) at Rs.50000/- and applied the multiplier of 15.,,

6. On the other hand, the learned counsel for the respondent-driver has vehemently opposed the present appeal.",,

7. Heard learned counsel for the parties,,

8. The appeal of the owners and driver deserves to be allowed. Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of,,

India in a case of National Insurance Company v. Swaran Singh, 2004(2) RCR Civil 114 wherein the Hon'ble Supreme Court has laid down that",,

breach of condition of a policy committed by the insured, like non-issuance of licence, has to be proved by the Insurance Company if it wishes to avoid",,

liability. In the summary of defences in para 110 of the judgment, their Lordships have observed in sub-paras (iii) and (iv) as under:-",,

(iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section",,

149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or",,

disqualification of 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 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 vehicles by duly licensed driver or one who was not disqualified to drive at the,,

relevant time.,,

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said",,

proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.,,

9. Thus, the appeal filed by the owners/driver is liable to be allowed as the onus was on the Insurance Company to lead evidence that the driver was",,

not having the route permit to ply the vehicle in State of Punjab. Since no evidence was led by the Insurance Company before the Tribunal, the",,

recovery rights have wrongly been given to the Insurance Company by observing that it was the owner who had to place on record the copy of route,,

permit to show that he was having a valid route permit.,,

10. Reference at this stage can be made to a judgment of Hon'ble the Supreme Court in a case of Kishan Gopal Vs. Lala and others 2013 AIR,,

SC (Civil) 2465 wherein in a case of death of child aged 10 years, Hon'ble the Supreme Court took the notional income of the deceased at,,

Rs.30,000/- and applied the multiplier of 15 and the compensation came to Rs.4.50 lacs, Rs,50,000/- was given towards loss of love and affection,,

funeral expenses, last rites etc. Hon'ble the Supreme Court while dealing with a case filed under Section 163-A of the Motor Vehicles Act laid criteria,,

for awarding the compensation in a case filed under Section 163-A of the Motor Vehicle Act. Hon'ble the Supreme Court in para 18 of the judgment,,

has held as under:-,,

18. For this purpose, it would be necessary for us to refer to Second Schedule under Section 163-A of the M.V. Act, at clause No.6 which refers,,

to notional income for compensation to those persons who had no income prior to accident. The relevant portion of clause No.6 states as under:,,

6. Notional income for compensation to those who had no income prior to accident: (a) Non-earning persons Rs.15,000/- p.a. The,,

aforsaid clause of the Second Schedule to Section 163-A of the M.V. Act, is considered by this Court in the case of Lata Wadhwa & Ors. v. State,,

of Bihar & Ors. 2001 (4) RCR (Civil) 673, 2001 (8) SCC 19 7while examining the tortuous liability of the tort-feasor has examined the criteria for,,

awarding compensation for death of children in accident between age group of 10 to 15 years and held in the above case that the compensation shall,,

be awarded taking the contribution of the children to the family at Rs.12,000/- p.a. and multiplier 11 has been applied taking the age of the father and,,

Sr. No.,Heads,Calculations

(i),Notional Income,Rs.40000/- per annum

(ii),"Compensation after multiplier of 15

is applied","Rs.40000 X 15= Rs.06,00,000/-

(v),"Conventional heads (Loss of estate

and funeral expenses)","Rs.30,000/-

(vi),Total Compensation awarded,"Rs.06,30,000/-

,Enhanced amount of compensation,"Rs.06,30,000-

Rs.02,00,000=Rs.4,30,000/-