

(2012) 10 P&H CK 0173
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 6019 of 2010 (O and M)

Rita Sharma and Another

APPELLANT

Vs

Ham Prabha Chaudhary and Others

RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:

Citation : (2012) 10 P&H CK 0173

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Sanjiv Pandit in FAO-6019-2010 and Ms. Vibha, for Mr. Ashwani Talwar in FAO-4300-2011, for the Appellant; Sanjiv Pandit, Advocate for Respondents 4 and 5 in FAO-4300-2011, Mr. Vijay Rana, Advocate, and Mr. D.K. Dogra, Advocate, in FAO-6019-2010, for the Respondent

Judgement

K. Kannan, J.—FAO No. 6019 of 2010 is at the instance of the owner and driver who challenge the issue of liability and seek for full indemnity from the insurer. FAO No. 4300 of 2011 is at the instance of the insurance company challenging the quantum of compensation pointing out to an alleged illegality in the order that does not make any provision for deduction for personal expenses and has adopted a multiplier more than what is permissible under law. As regards the liability, the Tribunal relied on the evidence of RW1 Amarjit Kaur who is a Clerk of the office of DTO, Hoshiarpur that spoke from the record relating to a copy of the driving licence produced by the driver. She gave evidence to the effect that the licence which was renewed has current in relation to an original issue of licence for licence No. 8518/P/1991-92. This licence had been issued in the name of one Rupinder Singh while the name of the driver that produced the renewed driving licence was one Mohinder Kumar. The renewals had been effected for 3 occasions from 1994 to 1997 to 2000 before the period of renewal licence. Since the first issuance was said to be in the name of a person who was other than the driver and since there was also a discrepancy regarding category of vehicle, namely, the original issue was said to be in respect of a motorcycle whereas the renewed licence was in respect of a HMV, the Court had exercised discretion to call for a

report to reconcile the discrepancy and in response to a call for verification to the DTO, district Hoshiarpur, the DTO, Hoshiarpur latter had responded with the following details:

Returned is original with the remarks that the DL No. 1954/R/06-07 for HMV only valid from 16-5-2006 to 15-5-2009 stands in the name Mohinder Kumar S/o Shankar Dass VPO Shankar Nagar HSP old No. 1972/R/03-04 Old No. 3679/R/00-01 old No. 3067/R/97-98 old No. 5611/R/94-95 old No. 11966/88-89 HSR as per office record. Sd/- DTO, Hoshiarpur

This verification shows that for the renewal licence No. 5611/R/94-95, the old licence was No. 11966/88-89 HSR. This shows as incorrect the evidence as given by the RW1 that the original issue of licence to renew a licence No. 5611 was licence No. 8518, but the original issue was licence No. 11966. When the Court was attempting to secure a scope for reconciling the discrepancy and it obtained a clarification from DTO Hoshiarpur, the Tribunal could not have made meaningless the verification obtained through the DTO. The verification shows that the original issue had been in the name of Mohinder Kumar himself. I would take the verification report from the Apex Authority of the DTO office as the document that ought to have been relied on by the Tribunal. There was, therefore, a valid driving licence at the time of accident and insurance company ought to have been made liable to indemnify the owner and the driver. The finding rendered by the Tribunal exonerating the insurance company is, therefore, set aside.

2. As regards the quantum of compensation determined, the evidence was that the deceased was 55 years and 7 months at the time of accident. The Tribunal took the income after deduction of income tax at Rs. 1,33,282/- per year and adopted a multiplier of 11. The tribunal has not provided for any deduction for personal expenses. The learned counsel appearing on behalf of the insurance company pleads that the appropriate multiplier must only be 9. While the learned counsel appearing on behalf of the claimants contends that multiplier of 9 would be adopted for the age group of 56 to 60. It is not too clear from the judgment of whether the age group referred to in the scale of compensation in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, applies to the completed age or the running age. If the Tribunal has adopted a multiplier of 11, taking that to include even a person who was completed the age prescribed in the formula but not attained to the higher age for which a different stipulation of multiplier was specified then, I will hold it in favour of the claimant himself, for, the Tribunal was making an understanding of the judgment of the Supreme Court which was not untenable. The insurance company is on an issue of quantum and it shall not be heard on any issue other than palpable legality or egregious error. However, there could not have been a determination of compensation without providing for 1/3rd deduction for personal expenses of the deceased when the claimants were widow and two children. I will, therefore, take the contribution to the family as Rs. 88,855/- per year and adopt a multiplier of 11 and find the loss

of dependency as Rs. 9,77,400/-. The Tribunal has provided for Rs. 10,000/- towards loss of consortium and Rs. 5,000/- for funeral expenses which I will retain. I will make a provision of Rs. 10,000/- towards loss to estate. The total compensation payable will be Rs. 10,02,400/- round off as to Rs. 10,02,500/-. The compensation shall stand reduced as above and the distribution of compensation shall be in the same proportion as already mentioned in the award. The liability, however, shall be on the insurance company in view of the finding rendered in FAO No. 6019 of 2010. FAO No. 6019 of 2010 is allowed. FAO No. 4300 of 2011 is partly allowed reducing and modifying the quantum of compensation determined as above.