(2002) 02 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Smt. Manjit Kaur and Others — APPELLANT

Vs

Avtar Singh and Others — RESPONDENT

Date of Decision : 01-02-2002

Acts Referred:

Citation : (2003) 2 ACC 10

Hon'ble Judges : N.K. Sud, J

Bench : Single Bench

Judgement

N.K. Sud, J.—This judgment will dispose of two appeals i.e. F.A.O. No. 658 of 1987 and F.A.O. No. 960 of 1987 and Cross Objections No. 23-CII of 1988, arising out of the same award of the Motor Accident Claims Tribunal, Karnal dated 17.4.1987.

F.A.O. 960 of 1987 and Cross Objections No. 23-CII of 1988.

2. The claimants in this appeal pray that the compensation of Rs. 1,53,600/- awarded by the Tribunal on account of death of Manjit Singh in a road accident on 28.10.1985, be enhanced. The Tribunal, while determining the compensation, noticed that the deceased was 30 years of age at the time of death and was a mechanic. It further observed that the income of the deceased at the relevant time, who was a mechanic, could not be less than Rs. 40/- per day. On that basis, the Tribunal determined the income at Rs. 1,200/- per month, i.e. Rs. 14,000/- per annum. Taking the dependency at 2/3rd i.e. Rs. 9,600/- the compensation was determined by applying the multiplier of 16.

3. After hearing the Counsel far the parties, I am satisfied that the estimate of income of the deceased is on the lower side. In the year 1985, a mechanic could not be earning less than Rs. 1,800/- per month. On that basis, the compensation as per the formula adopted by the Tribunal would work out as under:

Annual income Rs. 21,600/-. Dependency at 2/3rd Rs. 14,400/-. Compensation 14400 x 16 = Rs. 2,30,400/-.

4. Thus, the claimants are held to be entitled to compensation of Rs. 2,30,400/- against Rs. 1,53,600/- determined by the Tribunal, the Tribunal had awarded interest at the rate of 12% on the compensation of Rs. 1,53,600/-. On the additional compensation, the claimants shall be entitled to interest at the rate of 9% from the date of filing the claim petition till the date of payment. The award of the Tribunal is modified to that extent. The Insurance Company shall deposit the entire amount within six weeks from today for onward disbursement to the claimants.

5. The appeal of the claimants is accordingly allowed to the above extent and the cross-objections filed by respondent Nos. 1, 2 and 4 stand dismissed.

F.A.O. No. 658 of 1987.

6. The only ground agitated by the Insurance Company is that the liability for compensation has been wrongly fixed on it. It has been pleaded that the driver of the offending vehicle was not holding a valid driving licence and, therefore, the same was being driven in violation of the terms and conditions of the policy. On the pleadings of the Insurance Company, issue No. 5 had been framed by the Tribunal as under:

Whether the respondent No. 1 was not possessed of a valid driving licence at the time of accident, as alleged and if so, to what effect? OPR 3

7. This issue was disposed of by the Tribunal as under:

Issue Nos. 3, 4 and 5:

These issues were not pressed by respondent No. 4 who was required to discharge their burden. Even otherwise, there is nothing vague or incomplete in the claim petition or else that there is misjoinder of necessary parties. No doubt, respondent No. 4 has been unnecessarily joined but it does not make any difference. Similarly, the plea that the respondent No. 1 was not holding a valid driving licence on the date of accident was not pressed. These issues are decided against the respondent and in favour of the petitioners.

8. Mr. Suri, learned Counsel for the Insurance Company, states that the Tribunal was not right in observing that this issue had not been pressed. In support of his argument, an affidavit of Mr. Gurmeet Singh, Advocate, who had appeared before the Tribunal, had also been filed.

9. Mr. Manchanda, learned Counsel for the respondent Nos. 1, 2 and 4, fairly concedes that in view of the submissions of Mr. Suri, the matter regarding the validity of driving licence case be remanded-back to the Tribunal for fresh adjudication. Order accordingly.

10. Accordingly, the Insurance Company as well as respondent Nos. 1, 2 and 4, through their Counsel are directed to appear before the Motor Accident Claims Tribunal, Karnal on March 11, 2002, for arguments. The Tribunal, thereafter, shall record its findings on issue No. 5. In case the Insurance Company succeeds in

establishing that the driver of the offending vehicle was not holding a valid driving licence at the time of accident, it shall be entitled to recover the amount of compensation paid by it to the claimants from the insured. The records of this case also be sent to the Motor Accident Claims Tribunal, Karnal.

The appeal is, accordingly disposed of in the above terms.

Appeal partly allowed.