

(2013) 07 P&H CK 0798

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order Nos. 4043 and 4131 of 2010 (O and M)

The New India Assurance Company Limited

APPELLANT

Vs

Chaman Lal

RESPONDENT

Date of Decision : 16-07-2013

Acts Referred:

Citation : (2014) 1 PLR 63

Hon'ble Judges : Vijender Singh Malik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vijender Singh Malik, J.—The above mentioned two appeals are brought against the common award dated 5.2.2010 passed by the Motor Accidents Claims Tribunal, Patiala (for short, "the Tribunal"). Chaman Lal and Kanta Rani, the parents of deceased Inderjit Kumar alias Shampy brought the claim petition which has been decided by the Tribunal vide award dated 5.2.2010 awarding a sum of Rs. 6,53,000/- as compensation in favour of the claimants. New India Assurance Company Limited, who brought FAO No. 4043 of 2010 challenges the liability of the insurer to pay the compensation on the ground that driving licence of the driver of the offending vehicle was not valid. On the other hand, the appellants in FAO No. 4131 of 2010 seek enhancement of compensation assessed and awarded on the death of Inderjit Kumar alias Shampy.

2. Inderjit Kumar alias Shampy is claimed to be aged 28 years at the time of his death. It is claimed that he was employed as Supervisor with Vidya Sagar & Sons, Timber Merchants, Patiala who were paying a sum of Rs. 8,000/- to him as salary. According to them, besides it, he was also working as a news paper hawker. These facts are denied by the respondents.

3. Learned counsel for the insurer has submitted that the driving licence of Rajpal Singh, the driver of the tanker No. PB-10N-9519 is not genuine. According to him, Ex. R3 is the application moved by the insurer to the Tribunal for seeking

report regarding genuineness of otherwise of the driving licence of Rajpal Singh. According to him, Ex. R2 is the report of the Licensing Authority, Gwalior to the effect that the licence is not genuine. According to him, when report is sought by the insurance company through the Tribunal and the report comes from the Licensing Authority to the Tribunal, the said report is admissible in evidence and no further evidence is required to prove it. In this regard, he has placed reliance on a decision of a co-ordinate Bench of this court in Jagmohan Singh v. United India Ltd. Insurance Company and others Civil Revision No. 5768 of 2001 decided on 31.1.2002 where it has been held, that the report becomes admissible.

4. On the other hand, learned counsel for the claimants has submitted that the report, Ex. R2 is not admissible in evidence and it does not prove the invalidity of the driving licence. According to him, the Tribunal has rightly taken the driving licence as genuine and the award cannot be challenged on this ground.

5. Coming to the appeal brought by the claimants (FAO No. 4131 of 2010), learned counsel for the claimants has submitted that the deceased was taken by the Tribunal to have been earning Rs. 150/- per day and thus, his monthly income is assessed at Rs. 4,500/-. He has further submitted that though, Hon"ble Supreme Court of India in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, as held that no increase in the income of the deceased is to be admitted in case the deceased was self employed, yet in a subsequent decision, Hon"ble Supreme Court of India has held in Santosh Devi Vs. National Insurance Company Ltd. and Others, a person, who is self employed or is engaged on fixed wages, will also get 30 per cent increase in his total income over a period of lime. According to him, the law laid down in Smt. Sarla Verma's case [supra] has been explained in this decision. He has further submitted that though, the claimants have been the parents of the deceased, yet the multiplier should have been adopted taking into account the age of the deceased and not the age of the parents/claimants. In this regard, he has cited before me a decision of Hon"ble Supreme Court of India in P.S. Somanathan and Others Vs. District Insurance Officer and Another, where it has been laid down that the multiplier should be governed by the age of the deceased.

6. To counter these submissions, learned counsel for the insurance company has submitted that in this case, there is no brother of the deceased as claimant and, therefore, the claimants being the parents of the deceased, the multiplier should be governed by the age of the claimants and not by the age of the deceased. He, however, had nothing to submit against the aforesaid decision in Santosh Devi's case [supra] with regard to the increase in the total income of a person who had been self employed.

7. Though, Ex. R3 is the application made by the insurer to the Tribunal for seeking the report of the Licensing Authority, Gwalior, Ex. R2 is not a report of the Licensing Authority. Ex. R2 is a letter written by Mr. Raj Kumar Aggarwal, Advocate to Senior Divisional Manager, New India Assurance Company Limited,

Gwalior. This letter of the Advocate to the Senior Divisional Manager of the insurer cannot be treated as a public document and cannot be held per se admissible. So, learned Tribunal had not fallen in error in not relying upon this report.

8. In the case in hand, though, the claimants are the aged parents of the deceased, yet Hon"ble Supreme Court of India in Shakti Devi v. "New India Insurance Co. Ltd. and another Civil Appeal No. 3660 of 2006, decided on 9.11.2010 has held that the multiplier should be determined by the age of the deceased or that of the claimants, whichever is higher. Looking to the matter in the light of this decision, the multiplier adopted by the Tribunal in this case is correct.

9. The question, thus, left to be considered is as to whether any increase in the income of the deceased is required to cover the future prospects. As has been held in Santosh Devi's case [supra], the increase in such a case should be 30%. So, the income of the deceased at Rs. 4,500/- has to be increased by 30%, which would come to Rs. 5,850/-. As no objection has been raised to the cut applied by the Tribunal, applying the same, I find Rs. 3,900/- to be the monthly dependency of the claimants. Multiplying U with 12, the annual dependency comes to Rs. 46,800/-. Applying the multiplier of 18, as adopted by the Tribunal, the amount that comes to as compensation is Rs. 8,42,400/-. Adding to it a sum of Rs. 5,000/- awarded by the Tribunal as expenses on funeral etc. I assess a sum of Rs. 8,47,400/- as compensation payable to the claimants on the death of their son, Inderjit Kumar alias Shampy. Consequently, FAO No. 4043 of 2010 filed by the insurer fails and is dismissed as such. FAO No. 4131 of 2010 filed by the claimants for enhancement is accepted and the compensation is enhanced from Rs. 6,53,000/- to Rs. 8,47,400/- with other terms regarding rate of interest etc. appearing in the award of the Tribunal remaining the same.