(2019) 05 P&H CK 0046

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 885, 2852 Of 2016 (O&M)

United India Insurance Company Ltd — APPELLANT

Vs

Nachhatar Singh And Others — RESPONDENT

Date of Decision : 08-05-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(15), 2(21), 2(41), 10, 10(2)(d), 10(2)(e), 10(2)(f), 10(2)(g), 10(2)(h), 166
Central Motor Vehicles Rules, 1989 — Rule 8

Citation : (2019) 05 P&H CK 0046

Hon'ble Judges : Avneesh Jhingan, J

Bench : Single Bench

Advocate : Paul S. Saini, Sandeep Thaken, Harish Nain, D.S. Bhinder

Final Decision : Disposed Off

Judgement

Avneesh Jhingan, J

The award dated 02.11.2015 passed by the Motor Accident Claims Tribunal, Jind [for brevity 'the Tribunal'] in Claim Petition No.128 of 29.10.2014 has been assailed by filing two cross-appeals, one by the insurer of XYLO Car bearing registration No.PB-01-8186 [hereinafter referred to as 'offending vehicle'] and another by the parents of Harpreet Singh (deceased).

The two-fold grievances raised by learned counsel for the insurer are as under :

(i) firstly, that recovery rights should have been granted as the Driving Licence was not having endorsement authorizing the driver to drive the commercial vehicle; and

(ii) secondly, the quantum of compensation awarded is on higher side.

The claimants have filed the appeal seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The factum of accident has not been disputed by the parties. A motor vehicular accident took place on 22.07.2011. The accident proved fatal for Harpreet Singh. The accident was result of the rash and negligent driving of the offending vehicle. FIR No.55, dated 22.07.2011 was registered at Police Station Garhi. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

The issue raised in the appeal filed by the insurer is that offending vehicle Xylo Car fell in the category of Light Motor Vehicles and was registered and insured as a Taxi. There is no challenge to the fact that the Driving Licence (Ex.R-1) produced before the Tribunal authorizes the driver of the offending vehicle to drive a Light Motor Vehicle. The only controversy is that there was no endorsement authorizing the driver to drive commercial vehicle. The issue raised is no longer res integra.

The Supreme Court in Mukund Dewangan Vs. Oriental Insurance Co. Limited, (2016) 4 SCC 298, has held as under:-

"46. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles.

It was pre-amended position as well the post-amended position of Form 4 as amended on 28.3.2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in section 2(21) and the provisions of section 10 (2) (d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section10(2)(e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in section 10(2)(e) to

(h) and our conclusion is fortified by the syllabus and rules which we have discussed. Thus we answer the questions which are referred to us thus:

(i) 'Light motor vehicle' as defined in section 2

(21) of the Act would include a transport vehicle as per the weight prescribed in section 2(21) read with section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54/1994.

(ii) A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. And holder of a driving licence to drive class of "light motor vehicle" as provided in section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road roller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.

(iii) The effect of the amendment made by virtue of Act No.54/1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10(2) which contained "medium goods vehicle" in section 10(2)(e), medium passenger motor vehicle in section 10 (2)(f), heavy goods vehicle in section 10(2)(g) and "heavy passenger motor vehicle" in section 10(2)(h) with expression 'transport vehicle' as substituted in section 10(2) (e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10(2)(d) and section 2(41) of the Act i.e. light motor vehicle.

(iv) The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect."

(emphasis supplied)

In view of law laid down by the Supreme Court, the issue raised is decided against the insurer.

In the claim petition filed by the parents of Harpreet Singh, it was claimed that the deceased was 28 years old at the time of accident and he was doing the agricultural work and dairy farming. His earning was claimed as Rs.25,000/- per month. The claimants failed to prove occupation and monthly earning of the deceased. The Tribunal assessed monthly earning of the deceased as Rs.7,000/- per month; ½ deduction for self-expenses was made and multiplier of '17' was applied. The Tribunal awarded compensation of Rs.8,34,000/- alongwith interest @ 9% per annum. The amount awarded included Rs.1,00,000/- for loss of love and affection and Rs.20,000/- for funeral expenses.

Heard learned counsel for the parties and perused the relevant documents produced by them.

Learned counsel for the insurer contends that claimants failed to prove occupation and earning of the deceased.

The income of the deceased assessed by the Tribunal is much more than the minimum wages prevalent for an unskilled labourer at the relevant time. He argues that amounts under the conventional heads be awarded as per decision of the Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157 and no amount be awarded for loss of love and affection.

Learned counsel for the claimants contends that deceased was 28 years old at the time of accident. He was doing agricultural work and dairy farming. He defends the income assessed by the Tribunal. It is further argued that no future prospects have been awarded.

The claimants had failed to prove occupation and earning of the deceased. Taking into consideration the minimum wages in the State of Haryana at the time of accident and in order to award just and equitable compensation, income of the deceased is assessed as Rs.5,600/- per month.

As the deceased fell in the category of self-employed or having fixed wages, 40% future prospects are awarded in consonance with the decision of the Supreme Court in Pranay Sethi's case (supra) and Hem Raj Vs. Oriental Insurance Company Ltd. (2018) 2 PLR 480. The claimants shall also be entitled to Rs.15,000/- each for funeral expenses and for loss of estate. No amount is awarded for loss of love and affection.

There is no challenge to the ½ deduction made for self-expenses and multiplier applied of '17'.

In view of above discussion, the compensation is re- calculated as under:-

Particulars

Amount (in Rs.)

Monthly income of the deceased as assessed

5,600/-

40 % Future Prospects

2,240/-

Sub Total

7,840/-

½ deduction for self expenses

3,920/-

Monthly Dependency

3,920/-

Annual Dependency

47,040/-

Applying multiplier of '17'

7,99,680/-

Funeral Expenses

15,000/-

Loss of Estate

15,000/-

Grand Total

8,29,680/-

As the variation in the amount of compensation, inspite of re-calculation, is minor, the amount awarded by the Tribunal is sustained as it is.

Both the appeals are disposed of accordingly.