IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

219 **FAO-7295-2016 (O&M)**
Date of decision: 22.05.2025

United India Insurance Company Limited

...Appellant(s)

Vs.

Premwati and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. D.P.Gupta, Advocate and
Mr. Shubham Gupta, Advocate
for the appellant.

Mr. Gaurav Aggarwal, Advocate
for respondent No.1.

Mr. Kanwal Goyal, Advocate for
respondents No.2 and 3.

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NIDHI GUPTA, J.

The present appeal has been filed by the Insurance Company laying challenge to the Award dated 29.04.2016 passed by the learned Motor Accident Claims Tribunal, Jhajjar (hereinafter referred to as "the Tribunal"), whereby the claim petition bearing No. RBT-107 of 2014 dated 21.08.2014 filed by the sole claimant/respondent No.1 herein, under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"), has been allowed; and the claimant has been granted compensation of Rs.9,95,000/-. The claimant at the time of filing of the claim petition was 80 years old mother of the deceased Radhey Shyam.

2. The learned Tribunal on the basis of the pleadings and the evidence adduced before it, concluded that the deceased Radhey Shyam had died due to injuries suffered by him in a Motor Vehicular Accident that took place at midnight on 26.05.2014 due to the rash and negligent driving of a Flori Mixer machine bearing registration No. HR-55R-7181 (hereinafter referred to as 'the offending vehicle'), which was being driven by respondent No.2; owned by respondent No.3; and insured by the appellant herein. The above said compensation was awarded along with interest @ 7.5% per annum from the date of filing of the claim petition till final realisation. Respondents No. 2, 3 and the appellant herein were held jointly and severally liable to pay the above said compensation.

3. Learned counsel for the appellant-Insurance Company assails the impugned Award on the basis of quantum by submitting that:

a) the deceased was 40 years old at the time of accident. As such, future prospects should have been added @ 40% instead of 50% as awarded by learned Tribunal;

b) learned Tribunal has further awarded Rs.25,000/- towards love and affection which, as per present law, is not admissible;

c) learned counsel contends that even application of multiplier of 15 is not justified in view of the old age of the claimant. It is submitted that applying multiplier of 15 amounts to giving 'bonanza' to her.

4. It is submitted that therefore, quantum of maintenance awarded deserves to be reduced in the above manner.

5. Learned counsel for the appellant further submits that in any event, the appellant was not liable to pay the impugned compensation as the driver of the offending vehicle was not having valid driving licence. It is submitted that driving licence Ex.R2 (appended herein as Annexure A3) was valid for driving motorcycle and LMV. In this regard, learned counsel refer to the submissions made in para 5 of the present Grounds of Appeal which reads as follows:-

> *"That the learned Tribunal erred in holding that the driver was having a valid driving licence of the vehicle. The driving licence Ex. R-2 was valid for driving motorcycle and LMV and there was no endorsement on the driving licence for driving a transport vehicle. As per Ex.R-1/A the vehicle was categorised as a transport vehicle. The vehicle is a mixture machine. Thus, the driving licence was not valid and the learned Tribunal ought to have exonerated the appellant from any liability to pay compensation."*

6. It is further submitted that the deceased was travelling as a passenger on the vehicle. As per the Registration Certificate (Annexure A-2), no passenger could be carried on the vehicle. It is submitted that respondent No.2 had hit the truck because of which the deceased had fallen down and died. However, as the offending vehicle was not a vehicle meant to carry passengers, the liability of the deceased was not covered under the Insurance Policy. Thus, the learned Tribunal ought to have exonerated the appellant, from any liability for death of the deceased on this ground also. It is accordingly prayed that the impugned

Award be set aside; and the claim petition be dismissed with costs throughout.

7. *Per contra*, learned counsel for the claimant/respondent No.1 refutes submissions made on behalf of the appellant and submits that no doubt Rs.25,000/- has been awarded by way of love and affection however, nothing has been granted towards consortium or loss of estate. It is further submitted that the claimant would now be 91 years old lady, who had lost her only support during her old age. It is accordingly prayed that the present appeal be dismissed.

8. Learned counsel for respondents no. 2 and 3/driver and owner of the offending vehicle, vehemently opposes submissions made on behalf of the appellant. Learned counsel while referring to the driving licence Ex.R-2/Annexure A-3 produced by the appellant submits that it is not in dispute that respondent No.2 held licence for 'Motorcycle LMV (NT).' Learned counsel then refers to the Registration Certificate Ex.R1-A (appended herein by the appellant as Annexure A-2) and submits that in the said Certificate, the offending vehicle in the column of "Vehicle Category" is shown to be "Transport". It is submitted that a three-Judge Bench of Hon'ble Supreme Court in "***Mukund Dewangan vs. Oriental Insurance Company Limited", Law Finder Doc Id # 881800*** has categorically held that a driver holding "light motor vehicle" licence is competent to drive "transport vehicle". It is submitted that therefore, respondent No.2 possessed valid driving licence.

9. It is submitted that in the present case in para 23 of the impugned Award, the learned Tribunal has directed that **"***However, the respondent No.3 may recover the claim amount paid by respondent No. 3 to claimant along with interest from respondent No.1 & 2*." In this regard, ld. counsel refers to judgment of Himachal Pradesh High Court in "***Sarita Devi and others vs. Ashok Kumar Nagar and others", Law Finder Doc Id # 785758*** to submit that even in the absence of an appeal filed by respondents No. 2 and 3 herein, any adverse findings recorded against them in the impugned Award can be set aside. It is submitted that therefore, no liability could have been fixed upon the respondents no.2 and 3.

10. It is lastly pointed out that the learned Tribunal has made above said observations against respondent No.2 only on account of the fact that challan had been submitted against respondent No.2. Ld. Counsel points out that vide judgment dated 12.12.2019 passed by the learned Judicial Magistrate 1st Class, Bahadurgarh in Criminal Case RBT No. 53 of 2014/2019 titled as "***State vs. Raj Bahadur***", respondent No.2 stands acquitted in FIR No. 204 dated 27.05.2014 registered under Sections 279/304-A IPC at Police Station Sadar, Bahadurgarh. A copy of the said judgment is handed over in Court today, which is taken on record.

11. Learned counsel for the appellant rebuts submissions made on behalf of respondents No. 2 and 3 and refers Rule 2(cab) of the Central Motor Vehicle Rules, 1989, which reads as under:-

> *"(cab) "construction equipment vehicle" means a self-propelled machine with rubber tyred (including pneumatic tyred), rubber padded or rubber or steel drum wheel mounted compactor, wheeled hydraulic excavator, wheel loader, backhoe loader, skid-steer loader, dumper, motor grader, mobile crane, dozer and pavers with rubber track or rubber pads or wheeled pavers, fork lift truck, self-loading concrete mixer or self-propelled boom pumps, self-propelled or concrete pumps or any other construction equipment vehicle or combination thereof primarily designed to perform earth moving, excavation, loading, transportation, drilling, spreading, compacting or trenching of earth, rock, other materials, off-highway operations in mining, industrial undertaking, irrigation and general construction but modified and manufactured with "on or off" or "on and off" highway capabilities."*

12. Learned counsel submits that even as per Section 2(47) of the Act 'transport vehicle' is defined as:

> ***"****(47) "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;*

13. Learned counsel submits that in view of the clear statutory stipulation, the offending vehicle could not have been taken to be a transport vehicle. In support, learned counsel for the appellant relies upon judgment of Karnataka High Court in ***Miscellaneous First Appeal No. 12091 of 2011*** titled as "***Sri. Manjunatha and Sri. Ravi and others.***"

14. It is accordingly prayed that the present appeal be allowed.

15. No other argument is raised on behalf of the parties.

16. I have heard learned counsel for the parties and perused the case file in great detail.

17. I have given my very thoughtful consideration to the rival submissions advanced on behalf of both the parties.

QUANTUM:

18. In respect of quantum, learned counsel for the appellant has agitated that despite admitted fact that the deceased was 40 years old at the time of accident, multiplier of 15 has been incorrectly applied by the learned Tribunal; and doing so, amounts to granting "bonanza" to the claimant keeping her old age in mind. To the contrary, this Court finds that keeping in view the advanced age of the claimant, and the fact that she had lost her unmarried son who would have been her support in her old age, there is no error in the multiplier applied by the learned Tribunal. Moreover, the same is in accordance with law as laid down in "***Sarla Verma Vs. Delhi Transport Corporation" (2009) AIR (SC) 3104 Law Finder Doc ID # 188882*.** As regards grant of Rs.25,000/- towards love and affection, said argument is also misconceived as the record reveals that ld. Tribunal has awarded nothing by way of consortium or loss of estate.

19. Further no doubt, as deceased was 40 years old, future prospects ought to have been added @ 40% but since nothing has been granted towards consortium and loss of estate, the impugned compensation is just and fair. The **Hon'ble Supreme Court in (SC) SLP No.13931 of 2017 titled as "New India Assurance Co. Ltd. Vs. Vinish**

Jain & Others", has held that where difference in compensation is about 4 to 5 per cent only, it does not warrant interference by this Court as, such variation in compensation is within permissible limits.

20. This above-said judgment of the Hon'ble Supreme Court has been followed by the Kerala High Court in "**The Managing Director, Divisional Controller Versus Alikutty and Others" Law Finder Doc Id # 1885188**. Relevant para 18 of the said judgment is reproduced below:-

> *"18. It is to be borne in mind, the accident occurred on 23,2,2019. It is more than 2 ½ years since the respondents 1 to 4 have been knocking at the doors of the Courts seeking compensation on account of the death of the bread-winner. It is trite law that the Tribunal is permitted to do some guess work and also exercise its discretion to fix the reasonable and just compensation, for which there cannot be any straightjacket formula based on mathematical precision. In* ***New India Assurance Company Vs. Vinish Jain and Others [(2018) 3 SCC 619],*** *the Hon'ble Supreme Court has held that if the fixation of compensation is within permissible limits, the courts should normally not interfere with such awards".*

21. Above said view has been reiterated by the Kerala High Court in "**Reliance General Insurance Company Limited Vs. Adila and Others", Law Finder Doc ID # 1921609,** paras 16 and 17 of which read as under:-

> "*16. The other area of dispute is that the Tribunal after awarding compensation under the conventional heads has awarded Rs.75,000/- towards loss of love and affection and Rs.10,000/- awarded towards pain and sufferings.*
> *17. In* ***New India Assurance Co., Ltd v. Vineesh.J [2018 (3) SCC 619]****, the Hon'ble Supreme Court has held that the Appellate Court can permit variation of plus or minus 4 to 5 percent."*

22. Thus, I find no ground is made out to interfere in the quantum of compensation awarded to the claimant.

LIABILITY:

23. As regards liability, a few undisputed facts on record are that as per the Registration Certificate Ex.R1 (appended by the appellant with the present appeal as Annexure A-2), the 'Class of Vehicle' is shown to be "Earth-moving equipment"; and the "Vehicle Category" is shown to be "Transport" with the permitted laden weight of 9360 kgs and unladen weight is 4560 kgs. The issue, as to whether a driver holding license for a Light Motor Vehicle is authorised to drive a vehicle such as the above one/transport vehicle, has been considered extensively by a 3-Judge Bench of the Hon'ble Supreme Court in the case of ***Mukund Dewangan supra*** relied upon by learned counsel for respondents No.2 and 3.

24. The reference made for the kind consideration of the larger Bench was as follows: –

> *"1. In the reference, the main question involved is whether a driver is having a licence to drive 'light motor vehicle' and is driving 'transport vehicle' of that class is required additionally to obtain an endorsement to drive a transport vehicle?"*

25. On the basis of the above reference one of the issues framed for consideration of the larger Bench, was as follows: -

> *"2. ……*
>
> *2. Whether '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-licence to drive the class of "light motor vehicle" as provided in Section 10(2)(d) would be competent to drive a transport vehicle or omnibus, the "gross vehicle weight" of which does not exceed 7500 kgs. or a motor car or tractor or road roller, the "unladen weight" of which does not exceed 7500 kgs.?"*

26. After considering all the relevant factors such as the statutory provisions etc. including Section 2(47), said reference pertinent to the present case was answered by Their Lordships in the following manner: -

> *"46. (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."*

27. A bare reading of the above pronouncement amply indicates that it has been unequivocally and clearly laid down by a three-Judge Bench of the Hon'ble Supreme Court that a transport vehicle including motor car, tractor, or a road-roller, the gross unladen weight of which

does not exceed 7500 kg can be driven by the holder licenced to drive light motor vehicle. It is not denied by learned counsel for the appellant that present offending vehicle falls in the category of road-roller. As per the Registration Certificate (Annexure A-2) the offending vehicle is a 'Transport Vehicle' the unladen weight of which, is 4560 kgs. Thus, the present case is squarely covered by the above said three-Judge Bench of the Hon'ble Supreme Court in ***Mukund Dewangan' supra***. Needless to say, the said judgment will prevail over judgment of Karnataka High Court passed in ***Sri. Manjunatha' s case (supra),*** relied upon by the appellant.

28. From the above facts, it is clear that respondent No.2 possessed a valid driving licence on the date of accident vide which he was competent to drive offending vehicle.

29. In respect of affixation of liability, learned counsel for the appellant has also raised the contention that the offending vehicle had a seating capacity of only one person; and at the time of the accident, the deceased was travelling on the offending vehicle. It has been argued that for this reason, his liability was not covered under the Policy and therefore, appellant could not have been held liable. In this regard, learned counsel for the appellant has relied upon judgment passed by a Coordinate Bench of this Court in FAO No. 123 of 2010 titled as ***"Oriental Insurance Company Limited vs. Ishwanti and others" (2013) 1 RCR (Civil) 110.*** However, this Court is not impressed with the said argument either as, a perusal of the Registration Certificate of the

offending vehicle (Annexure A-2) shows that there is provision for "standing" also in the said offending vehicle. The offending vehicle was an "earth moving machine". Besides the Driver, 1 other person was also required to operate the offending vehicle. It is for this reason that in the Registration Certificate issued to the offending vehicle, there is provision for seating of one person, besides which provision is made/permission is granted for "standing" as well. Thus, the argument of the appellant that the deceased was travelling in the offending vehicle which had only a seating capacity for one, is misconceived.

30. From the above, it follows that the driving licence; Registration Certificate; as also the Insurance Policy issued by the appellant were all valid in respect of the offending vehicle. Therefore, no ground is made out for imposition of liability to pay the compensation upon respondents No.2 and 3.

31. In this regard, it has also been contended by learned counsel for the appellant that the adverse observations of the learned Tribunal in para 23 of the impugned Award qua respondents No.2 and 3 cannot be interfered into in the present Appeal as this is not the appeal of respondents No. 2 and 3. However this Court is not impressed by the said argument either as Himachal Pradesh High Court in ***Sarita Devi and others's case (supra),*** has considered the said issue in minute detail while referring to numerous judgments of the Hon'ble Supreme Court and has held as follows in paras 24, 26 and 27: -

"24. The learned counsel for the insurer argued that in the instant appeal, the claimants cannot challenge the impugned award so far as it relates to fastening of the liability. The learned counsel for the appellant further argued that this Court, in an appeal filed by the claimants, cannot set aside the findings which have been recorded against the owner and the driver, who have not filed any appeal.

XXXXXXXX

26. The appeal under Section 173 of the Act is alike the appeal under Section 96 of the Code of Civil Procedure, (for short, the CPC). Therefore, the Court is under obligation to decide all issues arising in case both on facts and law after appreciating the entire evidence.

27. The Apex Court in ***U.P.S.R.T.C. v. Km. Mamta and others, reported in AIR 2016 Supreme Court 948****, held that Section 173 of the Act and the first appeal under Section 96 of the CPC are alike and, therefore, the High Court is equally under legal obligation to decide all issues arising in the case. It is apt to reproduce paragraph 24 of the said judgment hereunder:*

> *"24. An appeal under Section 173 of the M.V.Act is essentially in the nature of first appeal alike Section 96 of the Code and, therefore, the High Court is equally under legal obligation to decide all issues arising in the case both on facts and law after appreciating the entire evidence."*

32. The said view was followed by the Himachal Pradesh High Court in another judgment passed in ***"Oriental Insurance Company Limited vs. Smt. Krishna Kumari and others", Law Finder Doc Id # 826391***; wherein it is held that Motor Vehicles Act, 1988, Section 173

Civil Procedure Code, 1908 Section 96 Appeal under Section 173 of 1988, Act is alike appeal under Section 96 of Civil Procedure Code - Therefore, Court is under obligation to decide all issues arising in a case both on facts and law after appreciating the entire evidence.

33. Lastly, it may be pointed out that undisputedly respondent No.2/driver has been acquitted vide judgment dated 12.12.2019 passed by the learned Judicial Magistrate 1st Class, Bahadurgarh.

34. From the above facts, it is clear that no ground is made out to interfere in the impugned Award.

35. In view of the above, present appeal is **dismissed.**

36. Pending application(s) if any also stand(s) disposed of.

22.05.2025 **(NIDHI GUPTA)**
Divyanshi **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No