

2025:PHHC:076613



(197) **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO-3087-1999 (O&M) with
XOBJC-92-CII-2014
Reserved on: 30.04.2025
Pronounced on: 24.06.2025**

UNITED INDIA INSURANCE CO. LTD.

... Appellant

Versus

NIRMLA DEVI AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: - Mr. Sanjiv Pabbi, Advocate

for the appellant/Insurance company.

Ms. Kanchan Sindhu, Advocate for
Mr. Pritam Saini, Advocate

for respondent Nos.1 to 3/cross-objector.

HARKESH MANUJA, J.

[1]. Before dealing with the merits of the present appeal, it may be taken note of at this stage that notice of motion to Respondents No. 4 & 5 was issued on 26.10.1999 and since then even after more than 25 long years the appellant/insurance company has neither been able to furnish their complete and correct address nor even it has been able to serve them

through dasti process. The two last service reports as recorded by the concerned branch in this regard are reproduced hereunder:-

“Cross objection no. 92-CII of 2014 in/and FAO 3087 of 1999

(1st report)

Dasti notice issued to Resp no. 4 & 5 has not been received back served or otherwise.

Counsel for appellant has not filed the correct address of Resp no. 4 & 5 so notice could not be issued.

Submitted for 10/07/2014.”

(2nd report)

Counsel for appellant has not file the correct address of Resp no. 4 & 5 so notice could not be issued.

Submitted for 17/09/2014.”

Furthermore, even at the time of hearing on 30.04.2025, no request was ever made on behalf of the appellant/insurance company so as to serve Respondents No. 4 & 5; accordingly, the present appeal filed on behalf of appellant/insurance company qua Respondents No. 4 & 5 is hereby ordered to be dismissed for want of prosecution.

[2]. Further, by way of present appeal filed at the instance of Insurance Company, prayer has been made for setting aside of the decision dated 19.03.1999 passed by learned Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as “Tribunal”), whereby, Rs.2,56,000/- along with interest @ 12% per annum was awarded as compensation to respondent No.1 to 3/claimants; whereas, in this appeal, cross objections under Order 41 Rule 22 read with Section 151 CPC have

also been filed at the instance of respondent Nos.1 to 3/cross-objector seeking enhancement/modification of the award passed by the Tribunal.

Brief Facts

[3]. Respondent Nos.1 to 3 being dependents upon the deceased, filed claim petition before the learned Tribunal for grant of compensation to the tune of Rs. 15,00,000/- (Rupees Fifteen Lakhs only) on account of death of Ram Pal in a motor vehicular accident which took place on 02.12.1996, while alleging rash and negligent driving of respondent No. 4-driver.

[4]. Learned Tribunal after appraisal of evidence and record held that accident occurred due to rash and negligent driving of respondent No.4-driver; found appellant and respondent No. 4 & 5 jointly and severally liable and awarded compensation in the following manner:-

Sr.No.	Nature	Amount in Rupees
1.	<i>Loss of dependency (16000 x 16 multiplier)</i>	<i>Rs.2,56,000/-</i>
	<i>TOTAL:</i>	<i>Rs. 2,56,000/-</i>

[5]. Being aggrieved the present appeal was preferred by the appellant/Insurance Company, for setting aside the award on the point of liability and also in the alternative for reduction of compensation as awarded by the learned Tribunal; whereas the cross objections were filed by respondent No.1 to 3/cross-objector, praying for enhancement of compensation.

Arguments

[6]. Learned counsel for the appellant/Insurance Company assailed the award on the ground that the learned Tribunal failed to consider the fact that respondent No. 4- driver of the alleged vehicle bearing registration no.HR-11/1554 was not having a valid driving license on the date of accident i.e. 02.12.1996 and therefore the liability for payment of compensation could not have been fastened on the insurer. It was pointed from the impugned award that after 11.11.1995, the driving license was got renewed only on 26.03.1997. To buttress his argument, learned Counsel for the appellant/Insurance Company relied upon the decision of the Hon'ble Apex Court in the case of ***Beli Ram V. Rajinder Kumar*** reported as **2021 (3) ACC 436**. It was further submitted that respondent No.4-driver even in his cross-examination admitted that the license was never got renewed between 11.11.1995 to 26.03.1997. Thus, it was argued that on the date of accident i.e. 02.12.1996, respondent No. 4 was not possessing any valid driving license which amounted to breach of terms and conditions of the insurance policy and accordingly insurer was not held to be responsible for payment of compensation to the claimants and consequently the appeal was to be allowed.

[7]. Per contra, learned counsel for respondent Nos.1 to 3/claimants argued that as per the deposition of widow (AW-1), earning of the deceased was to the tune of Rs. 6000/- per month as he was running a shop of repairing tyres/tubes and Milk diary at Ismailabad. It was further submitted that the above fact was not rebutted by the respondents by leading any cogent evidence and therefore, Ld. Tribunal wrongly assessed monthly income as Rs.2000/- only and the same was thus liable to be enhanced. He also contended that learned Tribunal deducted 1/3rd from the

salary of deceased as his personal expenses which was also on the higher side as the entire family was totally dependent upon him and in such circumstances same should have been at the most 1/4th. Furthermore, he submitted that multiplier of 16 was wrongly applied by the learned Tribunal, as the deceased being 29 years old on the date of accident therefore multiplier of 17 was to be applicable. Lastly, he concluded with the argument that compensation under conventional heads was also required to be awarded besides granting the benefits of income towards future prospects and thus, the impugned award be modified.

Discussion

[8]. I have heard learned counsel for the parties and perused the paper-book. I find force in the arguments advanced by learned counsel for respondent Nos. 1 to 3.

[9]. As per the material available on record the driver of the offending vehicle i.e. Respondent No. 4 possessed valid driving license since 1968. After having got it renewed w.e.f. 12.11.1992 to 11.11.1995, the same was never got renewed w.e.f. 12.11.1995 till 25.03.1997 and it was only on 26.03.1997, it was again got renewed by Respondent No. 4 from the concerned authorities whereas the accident took place on intervening night of 1/2.12.1996. As per the law laid down by the Hon'ble Apex Court in the case of ***Beli Ram V. Rajinder Kumar*** reported as **2021 (3) ACC 436**, in such a situation the driver of the offending vehicle cannot be presumed to be having possessed with legal and valid driving license as on the date of accident, yet the Hon'ble Apex Court approved the view expressed in the case of ***National Insurance Company Limited V. Hem Raj***, reported as **2012 ACJ 1891**, passed by the Hon'ble High Court of Himachal Pradesh whereby it was directed that in order to protect the rights

of the claimants, the insurance company to deposit the amount at the first instance followed by its recovery from the insured. Relevant para no. 20 to

22 of the said judgment are extracted as under:-

“20. The last judgment is of the Himachal Pradesh High Court in National Insurance Co. Ltd. v. Hem Raj & Ors., 2012 ACJ 1891 (authored by Deepak Gupta, J., as he then was) This was, once again, a case of an originally valid licence, which had expired, there was no question of a fake licence. It was opined that the conclusions to be drawn from the observations of the judgment in the Swaran Singh (supra) case of this Court, were that the insurance company can defend an action on the ground that the driver was not duly licensed on the date of the accident, i.e., an expired licence having not been renewed within thirty (30) days of the expiry of the licence as provided in Sections 14 & 15 of the MV Act. In this context it was observed that the Swaran Singh (supra) case did not deal with the consequences if the licence is not renewed within the period of thirty (30) days. If the driving licence is not renewed within thirty (30) days, it was held, the driver neither had an effective driving licence nor can he said to be duly licenced. The conclusion, thus, was that the driver, who permits his licence to expire and does not get it renewed till after the accident, cannot claim that it should be deemed that the licence is renewed retrospectively.

21. The learned Judge debated the question of the consequences of the MV Act being a beneficial piece of legislation. Thus, if two interpretations were possible, it was opined that the one which is in favour of the claimants should be given, but violence should not be done to the clear and plain language of the statute. Thus, while protecting the rights of the claimants by asking the insurance company to deposit the amount, the recovery of the same from the insured would follow as the sympathy can only be for the victim of the accident. The right which has to be protected, is of the victim and not the

owner of the vehicle. It was, thus, observed in para 18 as under:

*"18. When an employer employs a driver, it is his duty to check that the driver is duly licensed to drive the vehicle. Section- 5 of the Motor Vehicles Act provides that no owner or person incharge of a motor vehicle shall cause or permit any person to drive the vehicle if he does not fulfill the requirements of Sections 3 and 4 of the Motor Vehicles Act. The owner must show that he has verified the licence. He must also take reasonable care to see that his employee gets his licence renewed within time. In my opinion, it is no defence for the owner to plead that he forgot that the driving licence of his employee had to be renewed. A person when he hands his motor vehicle to a driver owes some responsibility to society at large. Lives of innocent people are put to risk in case the vehicle is handed over to a person not duly licensed. Therefore, there must be some evidence to show that the owner had either checked the driving licence or had given instructions to his driver to get his driving licence renewed on expiry thereof. In the present case, no such evidence has been led. **In view of the above discussion, I am clearly of the view that there was a breach of the terms of the policy and the Insurance Company could not have been held liable to satisfy the claim.**"*

22. We have reproduced the aforesaid observations as it is our view that it sets forth lucidly the correct legal position and we are in complete agreement with the views taken in all the three judgments of three different High Courts with the culmination being the elucidation of the correct legal principle in the judgment in the Hem Raj (supra) case."

[10]. In the present case, as per the deposition of respondent No. 1 widow, it has come on record that the deceased was running a shop of

repairing tyres/tubes, however, as no documentary evidence to support the same was placed before the learned Tribunal in this regard, the Ld. Tribunal assessed the monthly income of the deceased as Rs. 2,000/- per month. In the humble opinion of this Court, even if the criteria of minimum wages was to be followed then also in the case of skilled labour it was approximately Rs.3,000/- per month for the relevant period as per the notification of the State Government.

[11]. In such circumstances, assessing the income of the deceased at Rs. 2,000/- per month was not appropriate and in the given facts it was more appropriate to assess the income of the deceased as Rs. 3,000/- per month while considering him as a skilled labour.

[12]. Further, in view of judgments of the Hon'ble Apex Court in "***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another***", reported as ***2009 (3) R.C.R (Civil) 77, Pranay National Insurance Company Ltd. Vs. Pranay Sethi and others, reported as 2017(4) RCR (Civil) 1009 and United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur***", reported as ***(2021) 11 SCC 780***, the findings of learned Tribunal on deduction made towards personal expenses while determining the compensation warrant no interference, however, with regard to the multiplier of 16 it may be noticed here that while considering the deceased to be around 29 years on the date of accident, in view of ***Sarla Verma (supra)***, he falls in the age category of 26-30, therefore multiplier of 17 needs to be applied and the same is accordingly ordered. Even the amount awarded under the heads of "funeral expenses", "loss of estate" and "consortium" is required to be awarded. Respondents no.1 to

3/claimants are thus held entitled to Rs.18,000/- as compensation under the head of funeral expenses and Rs.18,000/- towards loss of estate by applying 10% increase under the conventional heads. Loss of consortium is to be awarded to the tune of Rs.48,000/- x 3 (Rs.1,44,000/-) as respondents no.1 to 3 being wife and children are also entitled for spousal consortium; but simultaneously, they would not be entitled for compensation on account of loss of love and affection.

[13]. In view of the discussion made herein above, respondent Nos.1 to 3/claimants shall be entitled for the grant of following compensation: -

Sr.No	Nature	Amount in Rupees
1.	<i>Annual Income of deceased (Rs. 3000/- per month)</i>	<i>Rs.36,000/-</i>
2.	<i>Add 40% of Future prospects)</i>	<i>Rs.14,400/-</i>
3.	<i>Total Income (Rs. 36,000+ Rs. 14,400/-)</i>	<i>Rs.50,400/-</i>
4.	<i>Deduction (1/3)</i>	<i>Rs.16,800/-</i>
5.	<i>Net Income after Deduction</i>	<i>Rs. 33,600/-</i>
6.	<i>Total Loss of dependency {after applying multiplier of 17 as per age of 29 years (Rs.33,600 X 17)}</i>	<i>Rs.5,71,200/-</i>
7.	<i>Funeral Expenses</i>	<i>Rs.18,000/-</i>
8.	<i>Loss of Consortium (Rs.48000x3) (to respondents no.1 to 3/claimants)</i>	<i>Rs.1,44,000/-</i>
9.	<i>Loss of Estate</i>	<i>Rs.18,000/-</i>
	Total Compensation	Rs.7,51,200/-
	Amount Awarded by the Tribunal	Rs.2,56,000/-
	Enhanced Amount	Rs.4,95,200/-

[14]. The award of interest @ 12% per annum being just and proper in the prevailing economic scenario as well in the view of the facts and circumstances of the present case, thus warrants no interference.

Therefore, respondent No. 1 to 3/claimants are entitled to receive the interest on the awarded compensation from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claimants shall be deducted from the enhanced compensation. It is further ordered that the entire amount of compensation be immediately released to the claimants rather than making any kind of deposit of FDR in the bank etc.

[15]. Although in view of the law down in case of *Beli Ram (supra)* recovery rights need to be conferred upon the appellant/insurance company, however, in terms of peculiar terms and circumstances of the case in hand wherein the appellant/insurance company has not made any bonafide efforts to serve Respondents No. 4 & 5, during the pendency of their present appeal for the past 25 years and the same thus has been dismissed qua Respondents No. 4 & 5, as such, no such directions can be passed in favour of the appellant/insurance company in the absence of Respondents No. 4 & 5 on account of their own act and conduct.

[16]. Accordingly, the appeal filed at the instance of Insurance Company is hereby dismissed and the XOBJC-92-CII-2014 filed at the instance of respondent no.1 to 3 is disposed of in view of aforesaid modification of the award passed by the Tribunal.

[17]. Pending miscellaneous application(s) if any, shall also stand disposed of.

June 24, 2025
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(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>