

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

**FAO No.75 of 1995  
and Cross Objection No.20-CII of 1999**

**Date of Decision: 28.2.2007**

**The New India Assurance Company Limited**

Appellant

versus

**Ram Asri and others**

Respondents

**CORAM:- HON'BLE MR. JUSTICE JASBIR SINGH**

Present: Shri L.M.Suri, Sr.Advocate with  
Ms.Karnika Burjee, Advocate for the appellant  
Shri Harsh Aggarwal, Advocate for the cross-objectors-  
respondent Nos.1 to 4

**Jasbir Singh, J. (Oral)**

This order will dispose of FAO No.75 of 1995 and Cross Objection No.20-CII of 1999. For the purpose of dictating this order, facts are being mentioned from FAO No.75 of 1995.

This appeal has been filed by the Insurance Company, to lay challenge to the award, passed by the Motor Accident Claims Tribunal, Hoshiarpur (in short, the Tribunal) dated 12.8.1994, vide which, compensation amount of Rs.2,75,000/- was awarded in favour of respondent Nos.1 to 4, with regard to death of their predecessor in interest, namely, Swaran Chand.

Respondents-claimants filed an application to claim compensation with regard to death of Swaran Chand, by stating that on

17.6.1991, when he was coming back to his house, he met with an accident, caused by respondent No.5, who was driving a truck bearing No.HIC-4711. Factum of accident is not in dispute. The appellant has raised objection regarding its liability to pay compensation, by stating that the driver of the offending vehicle was not having valid driving licence, at the time of alleged accident. To prove its assertion, RW1 Vinod Kumar, Clerk from the office of the Registering and Licencing Authority, Una was summoned, who has stated that licence alleged to have been issued in favour of the driver, in fact, was not issued by the office concerned. RW2, Clerk from the office of Licencing Authority, Ghumarmi, District Bilaspur was summoned to show that the renewal of the licence was not correct. However, this witness has stated that the licence was renewed by the office, in which, he was working. It has further been stated that the renewal was granted correctly. Besides that, no evidence was brought on record by the Insurance Company, to show that the insured/ owner of the vehicle had committed any breach of terms and conditions of the insurance policy. It has not been said that before employing the driver, the owner had not seen his licence. Otherwise also, it is apparent from the records that when the driver was employed, he was having renewed driving licence, which was valid at that time. The Hon'ble Supreme Court in Lal Chand v. Oriental Insurance Co. Ltd., 2006 ACJ 2161, while dealing with a similar situation has observed thus:-

*“As observed in the above para, the insurer, namely, the insurance company, has to prove that the insured, namely, the owner of the vehicle, was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicle by a duly licensed driver or one who was not disqualified to drive at the relevant point of time.”*

Counsel for the appellant has failed to show to this Court that any evidence was led by the Insurance Company, to show that the owner of the vehicle was negligent in employing the driver and had not seen his licence when he was put on duty.

So far as Cross Objections are concerned, a prayer has been made by the claimants, to enhance amount of the compensation. Deceased was 33 years of age and he was working as a Carpenter. It has also come on record that shortly, prior to his death, he was serving in some foreign country. To show his income, certificate Ex.A3 was brought on record wherein it is mentioned that he was drawing an amount of Rs.9495/- per month towards salary. The Court below has assessed the salary only at Rs.2000/- per month, which, this Court feels, is on the lower side. It is an admitted fact that at the time of death, the deceased was not working in any foreign country. Even in our country, a qualified Carpenter was not getting less than Rs.150/- per day towards his salary in the year 1991. By taking that yardstick, salary of the deceased can be assessed at Rs.4200/- per month. By applying a cut of 1/3<sup>rd</sup> towards personal spending, amount of dependency will come to Rs.2800/- per month.

Counsel for the appellant states that in view of ratio of judgment of the Hon'ble Supreme Court in The New India Assurance Company Limited v. Smt.Kalpana and others, JT 2007(2) SC 353, multiplier applied is on the higher side. No doubt, as per established law, the Insurance company is not entitled to lay challenge to the quantum of compensation granted, be that as it may, this Court feels that the argument raised has some force. By taking note of ratio of the judgment of the Hon'ble Supreme Court, referred to above, if multiplier of 13 is applied, it will serve ends of justice. By re-calculating the amount, now the claimants

will be entitled to get an amount of Rs.4,36,800/-. The amount of enhanced compensation be paid to the claimants alongwith interest @ 9% (simple) per annum from the date of moving their application to claim compensation, till realisation of the amount.

In view of facts mentioned above, appeal filed by the Insurance Company stands dismissed and Cross Objections filed by the claimants stands allowed.

**February 28, 2007**  
**gk**

**( Jasbir Singh )**  
**Judge**