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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 11th February, 2014*

+ MAC.APP. 1135/2012

FUTURE GENERAL INDIA INSURANCE
CO LTD

..... Appellant

Represented by: Ms. Suman Bagga, Adv.

versus

SHAKILA KHATOON & ORS

..... Respondents

Represented by: Mr. V.N. Jha and Mr. B.K.
Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. The present appeal is directed against the impugned award dated 19.09.2012, whereby Id. Tribunal has granted compensation for a sum of Rs.13,43,758/- (wrongly typed as Rs.11,81,924/-) with interest @ 7.5% per annum from the date of filing of the petition till realization of the amount.

2. Ld. Counsel appearing on behalf of the appellant submitted that the driver of the offending vehicle was holding fake driving licence on the date of accident. In such eventuality, Ld. Tribunal ought to have exonerated the appellant from any liability. However, Ld. Tribunal directed the appellant /

insurance company to deposit the amount and thereafter recover the same from respondent nos. 5 and 6, i.e., driver and owner of the offending vehicle.

3. Ld. Counsel for the appellant further argued that deceased was rickshaw puller and was 43 years of age at the time of accident and stated to be earning Rs.6,000/- per month. Since the proof of income was not filed, therefore, Ld. Tribunal has assessed the income of the deceased as Rs.6,422/- applicable to unskilled persons at the prevalent time as per the Minimum Wages Act. Ld. Counsel further submits that keeping the age of the deceased as 43 years into view Ld. Tribunal ought to have added 30% as future prospects, however, erred in adding 50% in his income as future prospects.

4. The issue of fake driving licence, no driving licence and invalid driving licence was dealt with by this court in the case of **Santosh Chabra and Ors. v. Abhishek Gureja and Ors. MAC.A 805/2010** decided on 04.10.2013, wherein this court held as under:

*“21. Law is settled on the issue of no licence, fake licence or invalid driving licence in the case of **New India Insurance Company Ltd. v. Darshana Devi 2008 ACJ 1388**. The offending vehicle at the time of accident was being driven by son of the owner of the vehicle, who was not holding any licence to drive the same. Ld. Tribunal, while awarding the compensation held that the amount shall be payable by the insurer initially, however, the insurer will be at liberty to recover the same from the owner of the offending vehicle. The award passed by ld. Tribunal was challenged by the Insurance Company, same was affirmed by the High Court and also upheld by the Supreme Court.*

*22. In **New India Assurance Co. Ltd. v. Kamla and Ors. etc.***

2001 ACJ 843, wherein it is held as under:

“The position can be summed up thus: The insurer and insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence..”

23. In **National Insurance Co. Ltd. v. Swarn Singh, 2004 ACJ 1** while deciding the issue of driving licence, the Apex Court has held as under:

“(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time. (iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

In V. Mepheron vs. Shiv Charan Singh [1998 ACJ 601 (Del.)], the the owner of the vehicle was held not to be

guilty of violating the condition of policy by willfully permitting his son to drive the car who had no driving licence at the time of accident. In that case, it was held that the owner and insurer both were jointly and severally liable.”

24. In *Oriental Insurance Co. Ltd. v. Rakesh Kumar & Ors.*, 2012, ACJ, 1268, the Coordinate Bench of this court in Para 44 has held as under:

“44. (ii) Even when there is a willful breach of the terms of the policy under Section [149\(2\)\(a\)](#) of the Act, the Insurance Company is under obligation to indemnify the liability towards the third parties and recover the same from the owner.

(iii) Once the Insured proves that the driver did not hold any driving licence to drive the Class of vehicle involved in the accident or that the driving licence was fake; requires the owner and driver to produce the driving licence and if they failed to produce the same, the onus of proving breach of policy would be deemed to be discharged. Onus would then shift on the owner to establish that he was not guilty of breach of the terms of policy. In the absence of any evidence being produced by the Insured, in such cases, it will be presumed that he was guilty of a willful breach. The Insured in such cases, would be entitled to recover the compensation paid to third party in discharge of its statutory liability.

(iv) Where policy is avoided on proof or facts which renders the Insurance policy void under Section [149\(2\)\(b\)](#) of the Act, the Insurance Company would not be under obligation to pay even to third parties, as in such cases the contract of insurance is non est.”

25. No doubt, the respondent no. 3 / insurance company successfully proved that there was breach of terms and conditions of the policy, mere breach of the conditions of the

policy would not entitle the insurance company to avoid its liability against the insured.”

5. Admittedly, recovery rights have been granted. Therefore, I do not find any merit on this issue.

6. On the issue of future prospects, I find force in the submission of Ld. Counsel for the appellant. The Full Bench of the Apex Court while deciding this issue in the case of ***Rajesh and Ors. Vs. Rajbir Singh and Ors. 2013 (6) SCALE 563*** has held as under:

*“11. Since, the Court in **Santosh Devi's case** (supra) actually intended to follow the principle in the case of salaried persons as laid in **Sarla Verma's case** (supra) and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.”*

*12. In **Sarla Verma's case** (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter.*

Therefore, keeping in view the age of the deceased as 43 years at the time of accident and the dictum of ***Rajesh & Ors. (Supra)***, I reduce the future prospects to 30%.

7. I note, in the present case Ld. Tribunal has awarded Rs.10,000/- each towards funeral expenses and for loss of consortium.

8. In Appeal this court has the power to enhance the award amount, if the compensation is not just and proper. Therefore, keeping in view the dictum of ***Rajesh & Ors. (Supra)***, I enhance Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses.

9. Consequently, the compensation amount comes as under:-

Sr. no.	Heads of Compensation	Calculation as per MACT	Calculation as per this Court
i.	Loss of dependency	Rs. 12,13,758/-	Rs.10,51,923.6/-
ii.	Loss of Love and affection	Rs.1,00,000/-	Rs.1,00,000/-
iii.	Loss of consortium	Rs.10,000/-	Rs.1,00,000/-
iv.	Loss of Estate	Rs.10,000/-	Rs.10,000/-
v.	Towards funeral expenses	Rs.10,000/-	Rs.25,000/-
	Total	Rs.13,43,758/-	Rs.12,86,923.6 Rounded off Rs.12,86,925/-

Hence, an amount of Rs.56,833/- (Rs.13,43,758 – Rs.12,86,925) is reduced from the compensation.

10. Resultantly, the compensation is assessed for Rs.12,86,925/-.

11. I note vide order dated 19.10.2012, appellant was directed to deposit 50% of the award amount with the Claims Tribunal. Therefore, appellant / insurance company is directed to deposit the balance compensation amount with interest within five weeks from today.

12. On deposit, the Claims Tribunal is directed to release the same in favour of the respondents /claimants in terms of the impugned award dated 19.09.2012 passed by the learned Tribunal on taking necessary steps by them.

13. Statutory amount be released in favour of the appellant.

14. In view of the above, present appeal is partially allowed.

CM. No. 18283/2012

With the disposal of the instant appeal itself, instant application has become infructuous and disposed of as such.

SURESH KAIT, J

FEBRUARY 11, 2014

Jg/sb