IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 02.09.2015

1. FAO No.1868 of 1998 (O&M)

National Insurance Company Limited
....Appellant

Versus

Shamsher Singh and others
....Respondents

2. FAO No.1019 of 1999 (O&M)

Shamsher Singh and another
….Appellants

Versus

National Insurance Company and others
….Respondents

CORAM: HON'BLE MR. JUSTICE K.C. PURI

Present: Mr. L.M. Suri, Sr. Advocate
with Ms. Rajni Paul, Advocate
for the appellant. (in FAO No.1868 of 1998)
and for respondent No.1 (in FAO No.1019 of 1999)

Mr. A.S. Rupal, Advocate
for respondent No.1 and 2 (in FAO No.1868 of 1998)
and for the appellants (in FAO No.1019 of 1999)

K.C. PURI J. (Oral)

Vide this common order, I intend to dispose of **FAO No.1868 of 1998**, titled as ***"National Insurance Company Limited vs Shamsher Singh and other"*** and **FAO No.1019 of 1999**, titled as ***"Shamsher Singh and another vs. National Insurance***

Company Limited and others”.

The Insurance Company has directed FAO No.1868 of 1998, claiming right for recovery of the amount from the owner and the driver, whereas the parents of Gurtej Singh filed FAO No.1019 of 1999, for enhancement of compensation on account of death of Gurtej Singh in a motor vehicular accident which took placed on 15.01.1994.

Both the present appeals have arisen out of the same accident and, as such, are being disposed of with common order.

<u>FAO No.1868 of 1998</u>

Challenge in the present appeal is by insurance company regarding the validity of driving licence.

Mr. L. M. Suri, learned Senior counsel for the appellants has submitted that as per the evidence on record, the driver of the offending vehicle was having a heavy goods vehicle licence which is covered under Section 2 (16) of the Motor Vehicles Act, 1988(hereinafter referred to as 'the Act'), whereas, the driver was driving a bus which is covered under Section 2 (17) of the Act (relating to heavy passenger motor vehicle).

It is submitted that there is a violation of the terms of the policy. It has also been submitted that Section 3 of the Act provides for having a licence for specific type of vehicle, since, the driver of the offending vehicle was not holding licence for heavy passenger motor vehicle and as such, the insurance company is not liable to pay the amount of compensation.

On the other hand, learned counsel for respondent No.3 has supported the award of the Tribunal and has submitted that the insurance company has rightly been held liable to pay the amount of compensation.

In order to properly appreciate the arguments of learned counsel for the parties, Section 2 (16) and 2 (17) are reproduced as under:-

> *"(16) "heavy goods vehicle" means any goods carriage the gross vehicle weight of which, or a tractor or a road roller the unladen weight of either of which, exceeds 12,000 kilograms;*
>
> *(17)"heavy passenger motor vehicle" means any public service vehicle or private service vehicle or educational institution bus or omnibus the gross vehicle weight of any of which, or a motor car the unladen weight of which, exceeds 12,000 kilograms;"*

The relevant Section 3 of the Act is also reproduced a under:-

> *"**Necessity for driving licence**- (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than [a motor cab or motor cycle] hired for his own use or rented under any scheme made under sub-section (2) of section 75] unless his driving licence specifically*

entitles him so to do.”

From the conjoint reading of Section 2 (16) and 2 (17) of the Act, together it is revealed that unladen weight must exceeds 12,000 kilograms in both the cases.

Learned Senior counsel for the appellant could not point out whether there is any mechanical difference between the heavy goods vehicle and heavy passenger motor vehicle. Moreover, Section 3 deals with only relating to transport vehicle and the driver of the offending vehicle was holding a heavy goods vehicle licence. So, I have no hesitation in holding that there is no violation of the terms of the policy.

Consequently, the appeal preferred by the insurance company is without any merit and the same stands dismissed.

FAO No.1019 of 1999

This is an appeal directed by the parents of the deceased-Gurtej Singh, for enhancement of compensation.

The learned Tribunal has taken the income of deceased as Rs.1,500/- per month as he was unmarried. The claimants, namely, Shamsher Singh was 66 years and Balbir Kaur was 64 years and as such, the dependency has been taken as Rs.1,000/- per month. The multiplier of 5 has been applied.

Learned Senior counsel for the insurance company has supported the award and has submitted that deduction has been made to the extent of 1/3rd, whereas, it should be ½ in view of the authority ***"Smt. Sarla Verma and others vs. Delhi Transport Corporation and another"*** reported in **2009(3) R.C.R. (Civil) 77**. Learned Senior counsel has relied upon the authority ***"Ishwar Devi and another vs Gopal Singh and another"***, reported in **2014 PLR 374**.

I have heard the learned counsel for both the parties and have gone through the record of the case.

So, far as the authority Ishwar Singh and another's case (supra) relied upon by the learned Senior Counsel is concerned, the authority ***"Munna Lal Jain and another vs Vipin Kumar Sharma and others"*** in **Civil Appeal No.4497 of 2015** decided on **15.05.2015,** will prevail upon the said authority as the same was passed by Constitutional Bench of Hon'ble Apex Court.

In this case, the dependency has been taken as Rs.1,000/- per month, by deducting 1/3rd amount in respect of personal expenses of the deceased-Gurtej Singh.

I am of the considered opinion that the dependency part does not call for any interference, but the future prospects has to be added in view of authority ***"Munna Lal Jain and another vs Vipin Kumar Sharma and others"*** in **Civil Appeal No.4497 of 2015** decided on **15.05.2015** and ***"Rajesh and others Vs. Rajbir Singh and others"*** reported in **2013(3) R.C.R. (Civil) 170**. So, the dependency is taken as Rs.1,500/- per month after adding 50% amount in respect of future prospects. The yearly dependency comes to Rs.18,000/-. The multiplier applicable at the age of deceased is 18. So, by applying that multiplier, the amount of compensation comes to Rs,3,24,000/-. A sum of Rs.10,000/- stands allowed in respect of expenses on last rites and transportation. The claimants are also held entitled to claim Rs.30,000/- in respect of loss of love and affection by keeping in view the price index for the year 1994. So, in this manner, the claimants are held entitled to claim Rs.3,64,000/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of application till payment. The liability to pay the enhanced amount shall be same as ordered by the Tribunal.

The appeal stands accepted to the extent mentioned above.

A copy of this order be sent to the Tribunal for compliance.

02.09.2015 **(K.C. PURI)**
yakub **JUDGE**