IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. FAO No. 402 of 1999
Date of Decision : 19.10.2015

National Transport Company ....Appellant

Versus

Satpal ....Respondent

2. FAO No. 1355 of 1999

National Transport Company ....Appellant

Versus

Amarjit Kaur and others ....Respondents

3. FAO No. 1356 of 1999

National Transport Company ....Appellant

Versus

Sarabjit Kaur and others ....Respondents

4. FAO No. 1357 of 1999

National Transport Company ....Appellant

Versus

Manpreet Singh Dhaliwal and others ....Respondents

5. FAO No. 1488 of 1999

Surinder Singh ....Appellant

Versus

Amarjit Kaur and others ....Respondents

6. FAO No. 1489 of 1999

Surinder Singh ....Appellant

Versus

Sarabjit Kaur and others ....Respondents

7. FAO No. 1490 of 1999

Surinder Singh ....Appellant

Versus

Manpreet Singh Dhaliwal and others ....Respondents

8. FAO No. 1491 of 1999

Surinder ....Appellant

Versus

Satpal and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rishav Jain, Advocate
for the appellants
(in FAOs No. 402, 1355 to 1357 of 1999).

Mr. Neeraj Khanna, Advocate
for Mr. Ravinder Arora, Advocate
and Mr. Rahit Goswami, Advocate
for respondent no. 3-Insurance Company
(in FAOs No. 1355 to 1357 of 1999 and 1488-90).

Surinder Gupta, J.

The above captioned appeals have been filed by owner (National Transport Company) and driver (Surinder Singh) of bus No. PB-11-B-8517 (later referred to as 'the offending vehicle') against the award passed by the Motor Accident Claims Tribunal, Patiala (later referred to as 'the Tribunal') whereby part of the compensation allowed to the claimants was ordered to be paid by the driver and owner of the offending vehicle with the observations, as follows:-

> *"25. So far as the case of Surinder Singh is concerned, he has been found to be rash and negligent. Due to his rash and negligent act, a number of persons suffered multiple injuries and some of*

> *the injured even died. The roads have become unsafe for the people. Due to act and conduct of such drivers, the people fear even to come on the roads, because they have no value for the human life and they enjoy high speed at the cost of others. So far as the owner of Transport Company is concerned, he can also be held responsible because the Company has been unable to exercise due control over its driver and restrain him from indulging in rash and negligent driving......."*

2. With above observations, compensation amount of ₹ 1 lac allowed in the case of claimant Satpal (FAOs No. 402 and 1491 of 1999) was ordered to be apportioned, as follows:-

1	*Surinder Singh, respondent no. 1*	*₹10,000*
2	*National Transport Company*	*₹10,000*
3	*Oriental Insurance Company*	*₹80,000*
	Total	***₹1,00,000***

3. Compensation allowed in the cases of Amarjit Kaur, Sarabjit Kaur and Manpreet Singh Dhaliwal and others (FAOs no. 1488, 1489 and 1490 of 1999), was ordered to be apportioned, as follows:-

In the case of Amarjit Kaur-claimant:-

1	*Surinder Singh, respondent no. 1*	*₹20,000*
2	*National Transport Company, respondent no. 2*	*₹30,000*
3	*Oriental Insurance Company, respondent no. 3*	*₹1,00,000*

In the case of Sarabjit Kaur-claimant:-

1	*Surinder Singh, respondent no. 1*	*₹20,000*
2	*National Transport Company, respondent no. 2*	*₹30,000*
3	*Oriental Insurance Company, respondent no. 3*	*₹1,00,000*

In the case of Manpreet Singh-claimant:-

1	*Surinder Singh, respondent no. 1*	*₹15,000*
2	*National Transport Company, respondent no. 2*	*₹15,000*
3	*Oriental Insurance Company, respondent no. 3*	*₹50,000*

4. I have heard learned counsel for the appellant, counsel representing the Insurance Company, perused paper-books and the judgment of Tribunal with their assistance.

5. Learned counsel for the appellant has argued that the Tribunal has held the driving licence of driver of the offending vehicle to be valid and the Insurance Company has not come up with any appeal against the award passed by the Tribunal, as such, findings of the Tribunal have attained finality. Once the driving licence is held as valid, liability of the Insurance Company cannot be bifurcated on the ground that driver was rash and negligent and owner of the bus has no control over the driver.

6. Learned counsel for the Insurance Company has argued that the Tribunal while discussing validity of the driving licence has observed that it was a fake one but its renewal was valid. The observation in the case of ***National Insurance Co. Ltd.*** ***vs.*** ***Sucha Singh and others*****, *(1994) 106 PLR 140 (P&H)*** relied upon by the Tribunal is no more a good law, as such, the

Tribunal has rightly apportioned the liability of payment of the compensation amount.

7. The Tribunal has held the driving licence of driver of the offending vehicle as valid relying on the citation in the case of ***Sucha Singh (supra).*** The Insurance Company has not come up with any appeal against the award passed by the Tribunal, as such, the above finding cannot be assailed by it.

8. Even otherwise, the Tribunal has taken note of the fact that owner of the offending vehicle had appeared as RW-3 and stated that when he employed Surinder Singh as driver he had examined his driving licence. He checked the renewal of the licence from the office of District Transport Officer (D.T.O.), Patiala, which was genuine. However, he had not verified the correctness of the licence from the D.T.O. Office, Delhi. This shows that owner of the offending vehicle had taken reasonable care while employing Surinder Singh as driver of the offending vehicle to verify the authenticity of his driving licence.

9. In case of ***Pepsu Road Transport Corporation*** **vs**. ***National Insurance Company*, *2013 (10) SCC 217***, the driver of the vehicle was found having a fake driving licence. Contention of the employer was that the driver was given proper training in its driving school and reasonable steps for verifying the driving licence were taken. In view of above facts and circumstances, the Apex Court observed as follows:-

> *"8. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a*

defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation."

10. In the case of ***Sant Baba Labh Singh* vs. *Santto,***

2008 (3) RCR (Civil) 210, a coordinate Bench of this Court while exonerating the insured of its liability to pay the compensation amount, has observed in para 19, which reads as follows:-

> *"19. In the instant case, the appellant-owner did discharge his obligation under the insurance policy of satisfying himself regarding driving skill of the driver and the fact that he is holding a driving licence, which is enough. Nothing more was required on his part. He cannot be held to be guilty of breach of the policy. In any case, no evidence has been led by the Insurance Company to show that the owner was negligent or guilty of wilful breach of the Insurance Policy. The Tribunal has only drawn an inference from the evidence produced by the Insurance Company that the driver was not holding a valid driving licence. To establish breach, there has to be evidence in affirmative form and mere inference cannot be substitute for the positive evidence to establish breach."*

11. When the insured has taken adequate care and caution and taken reasonable steps to verify the genuineness of the driving licence held by driver of the offending vehicle, his liability to pay compensation is not attracted. The owner had verified from licencing authority that driving licence of Surinider Singh was valid. The observations of the Tribunal that because of the rashness and negligence of driver and lapse on the part of owner they should bear the part of compensation amount, are not sustainable and not based on proper appreciation of law on the point. The entire liability was of Insurance Company to pay the amount of compensation awarded by the Tribunal.

Consequently, these appeals have merit and the same are accepted. The awards passed by the Tribunal are modified to the extent that the entire amount of compensation shall be payable by the Insurance Company.

12. However, keeping in view the peculiar facts and circumstances of the case, the parties are left to bear their own costs.

October 19, 2015 **(SURINDER GUPTA)**
jk **JUDGE**

Whether to be referred to the Reporters? Yes/No