IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 907 of 2004 (O&M)
Date of decision 04.08. 2015.

National Insurance Company Limited

...... Appellant.

versus

Smt. Nisha Devi and others

...... Respondents.

Present : Mr. Neeraj Khanna, Advocate for appellant
None for the respondents.

<u>FAO No. 325 of 2004</u>

Nisha Devi and others

...... Appellant.

versus

Rakesh Kumar and others

...... Respondents.

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

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present : None for the appellant.
Mr. Neeraj Khanna, Advocate for Insurance Company.

K.C.PURI, J.

Vide this common judgment I intend to dispose of FAO No.907 of 2004 titled as National Insurance Company Limited versus Smt. Nisha Devi and others directed by National Insurance Company Limited and FAO No.325 of 2004 titled as Nisha Devi and others vs. Rakesh Kumar and others directed by the claimants for enhancement of compensation against the Award dated 5.11.2003 passed by Shri H.S. Bhangoo, Motor Accident Claims Tribunal, Panchkula .

2. Briefly stated the case of the claimants is that Nisha Devi widow, Jammi Devi mother and Gorakh Nath father of deceased Sita Ram alias Babli filed claim petition under Section 166 of the Motor Vehicle Actm 1988 claiming compensation on account of death of Sita Ram. It is pleaded in the claim petition that one Puneet Aggarwal and Sita Ram (deceased) were riding their scooter bearing registration No.HR03-C-4953. They were going to village Abheypur when they were crossing Industrial Area, Panchkuila at that time a car bearing registration No.16B-3501 driven by Rakesh Kumar respondent came from the side of sector 4 and it struck the scooter from behind. As a result, both the occupants of the scooter had fallen down and sustained injuries. The accident took place due to rash and negligent driving of car driver. Sita Ram was taken to General Hospital, Panchkula and from there he was referred to PGI where he died due to the injuries received by him. Rs.20,40,000/- were claimed by the claimants as compensation.

3. Respondent No.1 owner and driver of the car has denied that

any accident took place on 06.05.2001. The other averments made by the claimants were also denied.

4. Respondent No. 3 Insurance Company has filed written statement and denied all the averments of the petition and has taken the objection that respondent No.1 was not holding a valid driving licence.

5. From the pleadings of the parties, the following issues were framed-

1 Whether the accident in question had taken place on account of rash and negligent driving of car No. HR-16-B-3501 by respondent No.1 ? OPP

2 If issue No.1 is proved, to what amount of compensation the claimants are entitled to and from whom ? OPP

3 Whether the vehicle in question was being driven by respondent no.1 without a valid and effective driving licence in violation of terms and conditions of insurance policy ? OPR

4 Relief.

6. In order to prove the claims, claimants examined seven witnesses whereas respondent No.1 failed to appear on 31.10.2003 and he was proceeded ex-parte. However, respondent No.3 examined Padam Singh, Record-keeper as RW-1 and also tendered into evidence document Ex.RX and closed the same.

7. The Tribunal, after appreciating the evidence returned findings on issue Nos.1 and 2 in favour of the claimants and a sum of Rs.3,94,000/- was allowed. Regarding issue No.3, it was held that respondent No.1 was not holding valid driving licence and as such recovery rights were given to the Insurance Company.

8. Insurance Company has directed the FAO No.907 of 2004 for absolving the Insurance Company of its liability to pay whereas the claimants have directed FAO No. 325 of 2004 for enhancement of compensation.

9. Since both these appeals have arisen out of the same Award and as such are being disposed of by common judgment.

FAO No.907 of 2004

10. In this appeal challenge has been made on the finding of issue No.3 by the insurance company.

11. Learned counsel for the appellant has submitted that since the driving licence was not valid at the time of occurrence and as such insurance company is not liable to pay the amount of compensation. However, counsel for the appellant is fair enough to concede that amount of compensation has been paid to the claimants. The present appeal preferred by the Insurance Company is of academic interest only as amount has been paid and now the remedy available with the Insurance Company to recover the amount and recovery rights have already been given to the appellant.

12. So, in these circumstances, the appeal directed by the Insurance Company is without any merit. Otherwise also, in authority **National Insurance Co. Ltd. vs. Swaran Singh and Ors Reported in 2004 (2) RCR page 114,** the Hon'ble Apex Court has held that when there is a valid Insurance Policy, the Insurance company has to indemnify 3rd party and claimed the amount from the owner/driver in case of default of terms and conditions of the policy.

13. In view of the above, the appeal preferred by Insurance Company stands dismissed.

FAO No. 325 of 2004

14. The case of the claimant is that deceased Sita Ram alias Babli was working as mechanic-welder with M/s Sharma Cycle Store and was earning Rs.7000/- per month. However, the Tribunal after adjudication came to the conclusion that income of the deceased Sita Ram was Rs.3000/- per month. No doubt, PW-7 Vinod Kumar has deposited that Sita Ram was employed at his shop and got Rs.7000/- per month but according to the return furnished by him his income was Rs.5000/- per month and as such the Tribunal has rightly held that it cannot be believed that he was paying Rs.4000/- to Rs.5000/- per month. The income of Rs.3000/- per month taken by the Tribunal stands affirmed. However, the deceased was 25 years of age at the time of accident and as such 50% amount should have been added by the Tribunal regarding future prospectus keeping in view authority **Rajesh and others vs Rajbir Singh and others reported in 2013 (3) RCR (Civil) page 170.** Therefore, the income of the deceased comes to Rs.4500/- per month after adding 50% in respect of future prospectus. There are three dependent of the deceased and as such the Tribunal has rightly deducted 1/3rd in respect of personal expenses. So, in this manner, the dependency of the claimants comes to Rs.3000/- per month after deducting 1/3rd in respect of personal expenses. The age of the deceased was 25 years and in view of authority **Smt. Sarla Verma and others vs. Delhi Transport Corporation and Anr 2009 (3) R.C.R.(Civil)**

77, the multiplier of 18 is applicable. So, by applying that multiplier, the amount of compensation comes to Rs.6,48,000/-. The amount of funeral expenses, consortium and love and affection has to be given, keeping in view the price index of the year 2001. So, a sum of Rs.10,000/- stands allowed in respect of last rites. A sum of Rs.30,000/- stands allowed in respect of consortium and parents are allowed a sum of Rs.30,000/- in respect of loss of love and affection. So, in this manner, the claimants are held entitled to claim Rs.7,18,000/-. The enhanced amount shall carry interest @ 7.5% p.a. from the date of claim petition till payment. The liability to pay the enhanced amount shall be the same as ordered by the Tribunal. The recovery rights are also given to the Insurance Company in respect of enhanced amount. Out of the enhanced amount Rs.1,50,000/- shall be paid to the widow and the remaining amount shall be shared by the remaining claimants in equal shares.

15. Consequently, the appeal preferred by the claimants is partly accepted to the extent mentioned above.

16. A copy of this judgment be sent to the Tribunal for strict compliance.

(K.C.PURI)
JUDGE

August 04 , 2015
sv