

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

FAO No.5911 of 2011 (O&M)

Date of Decision: 18.05.2015

Narender Gehlawat and another

.....Appellants

Versus

Dharmender and another

.....Respondents

FAO No.5912 of 2011 (O&M)

Narender Gehlawat and another

.....Appellants

Versus

Manjeet @ Ajay Kumar and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporters or not? | |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Present:- Ms. Kiran Bala, Advocate,
for appellants.

Mr. Sandeep Kumar Chahar, Advocate,
for the respondent No.1.

Mr. Rajneesh Malhotra, Advocate,
for respondent No.2.

SHEKHER DHAWAN, J

These two appeals arising out of award dated 17.05.2011 by Motor Accident Claims Tribunal, Rohtak (hereinafter referred as 'The Tribunal') whereby 'The Tribunal' awarded compensation to the tune of **Rs.6,98,096/-** in claim petition No.104 of 2010 titled as Dharmender Vs.

Rampal and another and in claim petition No.105 of 2010 titled as Manjeet @ Ajay Kumar Vs. Rampal and another in which 'The Tribunal' awarded compensation to the tune of Rs.67,325/-.

2. Relevant facts of the case are that on 07.06.2009 at about 9.00 a.m. Dharminder along with Manjeet @ Ajay Kumar and Sonu were going from his house to his fields on motorcycle bearing registration No.DL-4SDK-6072. Dharminder was driving and Manjeet @ Ajay Kumar and Sonu were pillion rider. When they crossed Assam Minor, a Tata Safari bearing registration No.DL-6SQ-0021 came from the side of village Rurkee being driven by respondent No.1 in rash and negligent manner and hit against motorcycle. Resultantly Dharminder, Manjeet @ Ajay Kumar and Sonu sustained injuries. Injured were taken to hospital for treatment. Leg of Dharminder was amputated. Remaining injured sustained injuries.

3. Liability was fastened upon respondent No.2. Respondent No.2 was held liable to make payment of 70% i.e. Rs.4,88,667/- to claimant Dharmender and Rs.47,127/- to claimant Manjeet @ Ajay Kumar. Respondent No.3 shall make the payment of compensation to the claimant and thereafter recover the same from the respondent No.3 Insurance Company. Being aggrieved of passing of said award, driver and owner of the vehicle are in appeal in both the cases.

4. Respondents No.1 and 2 contested the claim petition taking the plea that Tata Safari bearing registration No.DL-6SQ-0021 was not involved in the accident. The driver of Tata Safari was trained and experienced driver whereas the driver of motorcycle was not trained and experienced. FIR was registered and prayed that claim petition be dismissed.

5. Respondent No.3 i.e. Bajaj Allianz General Insurance Company Limited raised preliminary objection regarding maintainability. Respondents also took the plea that claimant was driving the vehicle in rash and negligent manner as three persons were riding on the motorcycle in violation of terms and conditions of the insurance. The driver of motorcycle was rash and negligent in driving. The injuries sustained by claimants were not caused on account of this accident and claim petition is liable to be dismissed.

6. On these facts 'The Tribunal' recorded the evidence and after appreciating the oral as well as documentary evidence passed the award. Claimants as well as driver and owner of Tata Safari bearing registration No.DL-6SQ-0021 being dis-satisfied with the award are in appeal before this Court.

7. At the time of arguments Ms. Kiran Bala, learned counsel for appellant took the plea that appellant who was alleged to be driving Tata Safari bearing registration No.DL-6SQ-0021 was a trained driver and having valid driving licence as admitted by RW-1 in his cross-examination. More so as per Ex.R-4 to R-6 Narendra Gehlaut was the owner of the vehicle and the said vehicle was LMV (jeep) having seating capacity of 8 and unladen weight of 1935 Kgs.

8. As per testimony of RW-2 Satish Chander, Clerk, RTA Office, Delhi who made statement on the basis of record, the said Tata Safari was LMV. However 'The Tribunal' recorded the findings that driving licence was not valid whereas it had come in the statement of RW-1 Satpal Singh, Licence Clerk Authroity, Sonapat who already made statement on the basis of record that Rampal s/o Om Parkash r/o Nizampur Majra, District Sonapat

was having valid driving licence Ex.R-2 to drive scooter, motorcycle and car only and same was valid upto 04.02.2029 and verification of DL is Ex.R-3.

9. Learned counsel for appellant also took the plea that as per law laid down by Hon'ble Supreme Court in **Pepsu Road Transport Corporation Vs. National Insurance Company, Civil Appeal No.8276 of 2009 (CITATION TO BE TAKEN FROM INTERNET)**, employer needs only to test the capacity of the driver and if at a later stage his driving licence is found to be invalid insurance company cannot escape from the liability.

10. While arguing this point Mr. Rajneesh Malhotra, learned counsel for respondent-insurance company took the plea that it had come in the statement and it is evident from driving licence Ex. R-2 and verification report Ex.R-3 that the driving licence was to drive scooter, motorcycle and car only and same was valid till 04.02.2029. There was no endorsement to drive light motor vehicle even whereas he was driving light motor vehicle (jeep) having seating capacity of 8. There was no endorsement to drive such like motor vehicle. So there was no valid driving licence. As the driver was driving the vehicle without valid driving licence there was complete violation of insurance policy and insurance company is certainly entitled to recover the amount paid as per award of 'The Tribunal' and appeals are without any merit and the same be dismissed.

11. Learned counsel for respondents also placed reliance upon judgment from Hon'ble Supreme Court in case **New India Assurance Co. Ltd. Vs. Roshanben Rahemansha Fakir & Anr 2008(3) RCR (Civil) 267** and in case **National Insurance Co. Ltd. Vs. Kusum Rai & Ors 2006(2)**

RCR (Civil) 313 wherein such law was laid down.

12. Having considered the rival contentions, this Court is of the considered view that the short point involved in this case is whether the amount of compensation awarded in these circumstances is to be satisfied by the driver and owner or in the alternative or whether the Insurance company is entitled to recover the said amount. 'The Tribunal has held that the payment of compensation shall be paid by insurance company at the first instance and thereafter recover the same from respondents No.1 and 2.

13. As regards to the liability of insurance company to pay the amount or in alternative right to recover the amount which was paid as per award of the Court is based upon the fact whether insurance company is liable to pay the amount of compensation or not on account of his contractual liability. As per contract of insurance between owner of the vehicle and the insurance company, the vehicle is to be driven by a person having valid driving licence. However, in this case respondent No.1 was authorized to drive scooter, motorcycle and car only and he was not authorized to drive light motor vehicle even. As per copy of registration Ex.R-4 to R-6 available on the file, the offending vehicle bearing No. DL-06QS-0021 was registered as light motor vehicle (jeep) and the same was having passenger capacity of 8 persons. 'The Tribunal has also considered this aspect in its true prospective that driving licence Ex.R-2 was not a valid driving licence so as to drive light motor vehicle as there was no authorization for the same and pass the order that insurance company shall make the payment of awarded amount of compensation at the first instance and thereafter shall recover the same from drive/owner. Identical law was laid down by Hon'ble Supreme Court in case New India Assurance Co.

Ltd. Vs. Roshanben Rahemansha Fakir & Anr (supra) that if driver was not having a valid driving licence then insurance company is not liable to pay the amount of compensation and if directed to satisfy the award in favour of the claimant the same can be later on recovered from the owner. 'The Tribunal' has already recorded the observation on the basis of facts and evidence available on the file and the same do not call for any interference.

14. In view of the above both the present appeals are without any merit and same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

May 18, 2015
msd