218 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) **FAO No. 6297 of 2012 (O&M)**
Decided on: 8.5.2015.

United India Insurance Company Limited

... Appellant

Versus

Anil Kumar and another ... Respondents

(2) **FAO No. 3585 of 2013 (O&M)**
Decided on: 8.5.2015.

Anil Kumar

... Appellant

Versus

Sonu and another ... Respondents

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

Present : Mr. R.K. Bashamboo, Advocate,
for the insurance company.

Mr. Ajit Sihag, Advocate,
for the claimants.

Mr. Amandeep Rana, Advocate for
Mr. Sandeep Goyat, Advocate,
for driver/owner of offending vehicle.

K.C.PURI.J.

Vide this judgment, I intend to dispose of afore-mentioned two FAOs bearing No. 6297 of 2012 and FAO No.3585 of 2013.

Briefly stated, Anil Kumar filed claim petition claiming compensation to the tune of Rs.3 lacs in respect of the injuries sustained by him in a motor vehicular accident. The case of the claimant is that on 2.7.2011 claimant was coming from CCS HAU Hisar and was going to Railway colony to meet his friend Amit Kumar on motor cycle bearing No. HR-20-Q-0839. The said motor cycle was driven at a moderate speed. At about 3 PM the claimant reached Laxmi Bai Chowk and after seeing the traffic on the road, he was crossing the chowk, when Indica car bearing No. HR-51-P-2100 came from opposite side which was being driven by respondent No.1 at a high speed and in a rash and negligent manner. On seeing the car coming at high speed and in rash and negligence manner, the claimant applied brakes and stopped his motor cycle but respondent No.1 was so rash and negligent that he struck his Indica car into motor cycle of the claimant. As a result of this impact, the claimant received serious injuries. The claimant spent Rs.70,000/- on the treatment and still required more amount for treatment. The Doctor stated that he will not be able to carry out the routine work due to permanent disability. So, the amount of Rs.3 lacs has been claimed.

The respondent No.1 filed written statement denying the factum of accident. It was pleaded that false case has been registered. However, it was pleaded that vehicle was insured with respondent No.2.

The respondent No.2 insurance company filed written statement that respondent No.1 was neither the driver nor having the driving licence. False case has been registered against respondent No.1.

FIR is false and meant to get the compensation.

From the pleadings of the parties, following issues were framed:-

1. Whether the accident in question had taken place due to rash and negligent driving of vehicle No. HR-51-P-2100 by respondent No.1 as alleged ?OPP

2. If issue No.1 is proved, whether claimant suffered injuries in the accident in question, if so, what amount of compensation he is entitled to and from whom ?OPP

3. Whether there was a violation of the terms and conditions of the insurance policy and respondent No.2 insurance company is not liable to pay any compensation ?OPR2

4. Relief.

Learned Tribunal returned finding on issue No.1 in favour of the claimant and against the respondent. Issue No.3 was decided against the insurance company and issue No.2 was decided in favour of the claimant and he was held entitled to claim Rs.40,000/- in all along with interest @ 6% per annum vide Award dated 31.7.2012 passed by Sh. Pardeep Kumar, Presiding Officer, Motor Accident Claims Tribunal, Hisar (for short "the Tribunal")

Feeling dis-satisfied with the said Award dated 31.7.2012, United India Insurance Company Limited filed FAO No.

6297 of 2012 praying for recovery rights whereas claimant has directed FAO No.3585 of 2013 which was ordered to be heard along with FAO No.6297 of 2012.

Learned counsel for the insurance company has submitted that the respondent has not produced the driving licence before the Tribunal inspite of order of the Court and as such an adverse inference may be drawn against respondent No.1. Insurance company is not liable to pay compensation in view of authority **New India Insurance Company vs. Manu Krishna and others 2011 ACJ 466.**

I have considered the said submission but do not find any force in that submission.

From the perusal of the record of the Tribunal, it is revealed that although, at one occasion, respondents were ordered to produce the licence but there is nothing on the file that thereafter the insurance company pressed for producing the driving licence. Onus to prove the fact that driver was not holding a valid driving licence is always on the insurance company. Mere seeking direction to produce the licence does not absolve the insurance company from its liability to pay the amount. The insurance company should have pressed for production of the driving licence.

So far as the authority **Manu Krishna's case (supra)** is concerned, in that case, it was held that the insurance company has not only to prove the fact that driver of offending vehicle was not holding a valid driving licence but also to prove the fact that the owner has the knowledge of the fact that licence is fake one.

So, in view of above discussion, appeal bearing FAO No. 6297 of 2012 filed by the insurance company is devoid of any merit and the same stands dismissed.

Now reverting to FAO No.3585 of 2013 directed by the claimant for enhancement of compensation. In this case, learned Tribunal has allowed a sum of Rs.40,000/- as compensation. As per medical record in the shape of Ex.P-11 to P-17 the claimant spent Rs.34,500/- in respect of medical treatment and he remained admitted for four days. The claimant has been allowed a sum of Rs.5500/- in respect of transportation, special diet, mental pain and agony. The claimant has examined PW-1 Dr. B.L. Bagri, who has stated that on 2.7.2011 Anil Kumar was admitted in his hospital on account of roadside accident. His MLR is Ex. P-1. The claimant was treated by Dr. Umesh Kalra, Neuro Surgeon. The claimant was discharged on 6.7.2011. He has also proved the receipt. As per Ex.P-1 the claimant suffered as many as six injuries which are on the right side of forehead, right side of face on front, right shoulder, right elbow, right leg and knee. The amount of Rs.5500/- in respect of special diet, transportation, pain and suffering in such circumstances is on lower side.

Keeping in view the facts and circumstances and the evidence on record, a total sum of Rs.25,500/- stands allowed in respect of all these heads. So, consequently, the claimant is held entitled to claim Rs.60,000/- in all. The enhanced amount of

Rs.20,000/- shall carry interest @ 7.5% per annum from the date of application till payment. The liability to pay the amount shall be the same as ordered by the Tribunal.

Both the appeals stand disposed of accordingly.

8.5.2015. **(K.C.PURI)**
SN **JUDGE**