IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No. 4109 of 2013(O&M)

Date of Decision: November 6 , 2015.

Kharaiti Lal ...... APPELLANT(s)

Versus

Naresh Kumar and others ...... RESPONDENT (s)

2. FAO No. 2674 of 2013(O&M).

Naresh Kumar ...... APPELLANT(s)

Versus

Kharaiti Lal and others ...... RESPONDENT (s)

3. FAO No. 1816 of 2013(O&M).

Satish Kumar ...... APPELLANT(s)

Versus

Kharaiti Lal and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Namit Khurana, Advocate
for the appellant (in FAO No.4109 of 2013)
for respondent No.1 (in FAO No.1816 and 2674 of 2013).
Mr. G.C.Shahpuri, Advocate
for the appellant (in FAO No.1816 of 2013)
for respondent No.2 (in FAO No.2674 and 4109 of 2013).
Mr. Robin Dutt, Advocate
for the appellant (in FAO No.2674 of 2013)
for respondent No.1 (in FAO No.4109 of 2013)
for respondent No.3 (in FAO No.1816 of 2013).

Mr. G.D.Gupta, Advocate
for respondent – Insurance Company.

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1. Whether reporters of local papers 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?

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LISA GILL, J.

This order shall dispose of FAO No. 4109 of 2013 (Kharaiti Lal v. Naresh Kumar and others), FAO No. 2674 of 2013 (Naresh Kumar v. Kharaiti Lal and others) and FAO No. 1816 of 2013 (Satish Kumar v. Kharaiti Lal and others) arising out of a common award dated 17.01.2013 passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (hereinafter referred to as, the 'Tribunal') on account of the vehicular accident which occurred on 13.03.2010.

FAO No. 4109 of 2013 (Kharaiti Lal v. Naresh Kumar and others) has been preferred by injured – claimant praying for enhancement of the compensation awarded to him on account of the injuries suffered by him.

FAO No. 1816 of 2013 (Satish Kumar v. Kharaiti Lal and others) has been preferred by the owner of the offending vehicle and FAO No. 2674 of 2013 (Naresh Kumar v. Kharaiti Lal and others) has been preferred by the driver of the offending vehicle challenging liability to pay compensation fixed upon them by the learned Tribunal.

Brief facts of the case are that, Kharaiti Lal claimant was involved in a motor vehicular accident on 13.03.2010. As per the claim petition preferred by him under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act'), he was proceeding towards Subzi Mandi on 13.03.2010 at about 10.00 a.m. When he reached at S.K. road from Bubka road, a truck bearing registration No. HR-58A-5876 being driven by Naresh Kumar in a rash and negligent manner, hit Kharaiti Lal's bicycle from back side. Said truck was coming on the wrong side of the road. Claimant fell and sustained numerous grievous injuries including a fracture on his right leg. His leg and foot were crushed beneath the truck's wheel's. Driver of the truck Naresh Kumar fled from the spot while leaving the truck behind. Accident was witnessed by Rajiv Kumar and Subhash Chand. Said persons took the injured to Civil Hospital, Radaur. He was given first-aid and referred to Civil Hospital, Yamuna Nagar. However being in a serious condition, he was admitted at Astha Hospital, Jagadhri where he remained admitted till 16.03.2010. He was thereafter shifted to PGI Chandigarh and remained admitted there till 24.03.2010. He was yet again shifted to CHC, Radaur uptill 05.04.2010. He was then admitted at Balaji Plastic Surgery and Burn Centre, Karnal on 06.04.2010 for surgery of his right foot. He remain admitted there till 10.04.2010. Claimant had to be taken to Chandrawati Medical Centre, Karnal where he remain admitted till 15.04.2010. He was again brought back to Balaji Hospital, Karnal on 15.04.2010 where was admitted upto 27.04.2010. As the surgery was not successful, he had to be admitted in Balaji Hospital on 05.06.2010 till 25.06.2010. FIR No.30 dated 13.03.2010, under Sections 279/338 IPC was registered at Police Station Radaur in respect to the accident. Claimant Kharaiti Lal preferred claim petition and claimed compensation to the tune of ₹8 lacs on account of the injuries suffered by him. He claimed to be a shop-keeper earning ₹10,000/- per month.

Abovesaid claim was resisted by the owner and driver of the offending vehicle as well as the insurance company. It was pleaded in the joint written statement filed on behalf of the owner and driver that the accident, in question, never took place with the offending truck which was falsely involved.

Claimant may have received injuries in some other manner. However in case of any liability, insurance company would be responsible to make good the payment as the truck in question was insured. Driver – Naresh Kumar held a valid and effective driving licence at the time of accident.

Insurance company while denying the accident in question further pleaded that the driver of the offending truck was not holding a valid and effective driving licence. There being a breach of terms and conditions of the insurance policy, no liability can be foisted upon the insurance company.

Learned Tribunal on the basis of the pleadings of the parties framed the following issues:-

1) Whether the accident in question allegedly resulting into the injuries to claimant Kharaiti Lal took place due to rash and negligent driving of truck No. HR-58A-5876 by respondent No.1?OPP
2) Whether the vehicle in question was being driven in contravention of terms and conditions of the insurance policy, if so to what effect? OPR3
3) If issue No.1 is proved, what amount of compensation the petitioner is entitled to and from whom? OPP
4) Relief.

On consideration of the facts and circumstances of the case and evidence on record, learned Tribunal held that the accident in question is the result of rash and negligent driving of the offending truck by its driver Naresh Kumar. Total sum of ₹2,41,886/- awarded as compensation to the claimant-injured as detailed in para 24 of the award is reproduced as under:-

Head	*Values*	*Calculation*	*Total*
Medical Treatment			₹2,90,786/-
Loss of future earnings on account of permanent disability	Taking multiplication of 5 for age of 55 years, keeping in mind annual income ₹52,200/- (₹4350 x12) and disability as 10%	₹52,200x5x10/100	₹26,100/-
Physical and mental pains			₹5,000/-
Loss of amenities and loss of expectation of life			₹5,000/-
Special diet and transportation			₹5,000/-
Total			₹2,41,886/-

While fixing the liability, learned Tribunal held that the owner and driver of the offending vehicle i.e., appellants in FAO No.1816 of 2013 and FAO No.2674 of 2013 shall be jointly and severally liable for making the payment of compensation to the claimant. Insurance company was exonerated of liability in view of the finding that Driving Licence Ex.R1 was forged and fabricated.

Arguments raised by the claimant, driver and owner in all the three appeals are dealt with separately.

FAO No.4109 of 2013

Learned counsel for appellant-claimant Kharaiti Lal submits that he is a vegetable vender having his own shop therefore, he suffered functional disability much greater than the 10% as assessed by the learned Tribunal. He should have been awarded higher compensation on account of loss of earnings. Learned counsel further submits that a meagre amount has been awarded on account of pain and suffering as well as loss of amenities and special diet, transportation etc. specially keeping in view the treatment which the appellant had to take.

Per contra, learned counsel for the respondents submits that fair and just compensation has already been awarded by the Tribunal which calls for no further enhancement.

Having heard learned counsel for the parties, I find that the Tribunal has rightly held that there is no evidence on record to prove the injured claimant to be a vegetable vender. He is claimed to be 55 years old but yet again, no evidence to this effect is forthcoming. In this situation, his monthly income was rightly assessed as ₹4,350/- in the year 2010.

As per Disability Certificate Ex.P131, claimant is stated to be having 20% disability qua the limb on account of crushed right foot with defuse right ankle joint. Plastic surgery was done on right foot. He had difficulty in walking and standing. Abovesaid disability certificate has been proved by PW 13 Dr. Depender Singh Sandhu who was a member of the Board constituted for assessing the disability of the claimant-injured. PW13 Depender Singh Sandhu has specifically deposed that the claimant would not find difficulty to sell vegetables while sitting. As per the claimant, his son Rajiv who is 22-23 years old at that time was doing business with him. Thus, there is no infirmity or illegality in the award of compensation under this head as functional disability to any greater extent is not proved on record.

However, compensation awarded on account of pain and suffering as well as loss of amenities is indeed meagre and needs to be enhanced to ₹50,000/- each. Keeping in view the prolonged treatment and hospitalization, a sum of ₹20,000/- is awarded on account of special diet and transportation instead of ₹5,000/-. Though an argument has been raised for award of future medical expenses, there is no evidence on record to show that the claimant-injured requires further or continuous medical treatment for the affliction. Appellant-claimant Kharaiti Lal is thus, entitled to enhanced compensation to the tune of ₹ 4,36,886/- detail of which is as under:-

Sr.No.	*Heads of Claim*	*Amount*
1.	Medical treatment	₹2,90,786/-
2.	Loss of future earnings on account of permanent disability	₹26,100/-
3.	Pain and suffering	₹50,000/-
4.	Loss of amenities and loss of expectation of life	₹50,000/-
5.	Special diet and transportation	₹20,000/-
	Grand Total =	4,36,886/-

Compensation already awarded to claimant by the Tribunal shall stand deducted from the amount as detailed above. Claimant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of petition till realization.

FAO No.2674 of 2013 and FAO No.1816 of 2013

Appellants – owner and driver of the offending vehicle assail the liability imposed upon them.

Learned counsel for owner Satish Kumar vehemently argues that the owner cannot be held liable in the present case for the reason that due care and caution has been exercised by him before employing the driver. He made necessary inquiries about the driving licence held by driver Naresh Kumar. He had also tested his driving skills before employing the said driver.

It is vehemently argued that it was the second licence, Ex.RW2/B issued from Licensing Authority, Nagaland which was shown to the owner and the same was verified by him. In case, driving licence Ex.R1 alleged to be issued from Licensing Authority, Una has been found to be forged and fabricated, said circumstance cannot be sufficient to saddle the owner with liability. It was incumbent upon the Insurance company to have verified the Driving Licence Ex.RW2/B, once it was brought on record. It is submitted that learned Tribunal has erred in holding that there was no necessity on the part of the Insurance Company to verify the Driving Licence, Ex.RW2/B. Learned counsel relies on judgment of this Court in **Devsons Pvt. Limited v. Manjit Kaur**, ***2001 (3) RCR (Civil) 591*** to say that a person cannot be said to be having two licences, if one of them is found to be fake.

Learned counsel for driver Naresh Kumar of the offending vehicle also reiterates that no liability can be foisted upon him as well as the owner in the present case.

Learned counsel for the Insurance Company vehemently refutes the said contentions and supports the finding returned by the Tribunal to the extent that once Driving Licence, Ex.R1 was proved to be fraudulent, there is no requirement of even verifying the second licence produced by the driver at the fag end of the trial. It is submitted that the Act does not envisage holding of two licences by one driver. Ex.R1 was the licence taken in possession by the Police at the time of the accident. Once the said licence was proved to be false, there is no question of verification of the second licence which the driver is not entitled to hold in any case. Therefore, Insurance Company has been rightly exonerated of any liability to pay compensation. He thus prays for upholding the said finding returned by the learned Tribunal.

Having heard learned counsel for the parties, it is apparent that the Insurance Company has been absolved of its liability to pay compensation on account of the fact that two Driving Licences held by driver, Naresh Kumar have come on record. One is Ex.R1 which was taken in possession by the police officials in the proceedings related to FIR No.30 dated 13.03.2010. As per statement of RW1 Sanjay Kumar, an official of the Transport Department, Una, said Driving Licence No.203 dated 15.05.1989 was not issued by their office in the name of Naresh Kumar. Learned Tribunal while absolving the Insurance Company of its liability held that as per Section 6 of the Act, a driver can possess only one Driving Licence therefore, possession of a second Driving Licence, Ex.RW2/B is of no avail. It is in this situation, Insurance Company was even absolved of its duty to verify the said Driving Licence. It has been observed that the second Driving Licence does not find mention in the written statement and neither could be held legally by the driver within the meaning of Section 6 of the Act. Thus, there is no necessity for having the same verified by the Insurance Company. It is further observed that in the written statement owner has not pleaded that he took due precaution of verifying the Driving Licence and testing the driving capabilities of driver Naresh Kumar before engaging him on the post. Thus, his version as a witness has to be ignored.

A perusal of the written statement filed on behalf of the driver and owner of the offending truck reflects an additional plea, which reads as under:-

"ADDITIONAL PLEA:

1. That the above said accident is totally denied, but if this Hon'ble Court comes to the conclusion after recording the evidence that the petitioner is entitled to any compensation, the same is liable to be paid by the Insurance Company, as the truck of the answering respondents is insured with The Oriental Insurance Co. Ltd. Yamuna Nagar, as stated above, and the answering respondent No.1 is having a valid and effective driving licence and truck bears valid fitness certificate."

While replying to the averments in the claim petition, it has been stated that driver Naresh Kumar was having a valid and effective Driving Licence at the time of accident. It is in this backdrop that RW2 Naresh Kumar in his affidavit Ex.RW2/A dated 27.01.2012 states that:-

> ".... That I was employed by Shri Satish Kumar as truck driver in the year 2009. At the time of his employment, I have shown the driving License No.47724/TV/Z/2008 valid for LMV, HTV issued by D.T.O. Junheboto (Nagaland) to Shri Satish Kumar and he also got verified the said license and employed the deponent as driver on his truck."

Driving Licence, Ex.RW2/B was originally issued on 03.11.2008 valid upto 02.11.2011 and thereafter, renewed upto 02.11.2014. In the cross-examination, RW2 Naresh Kumar deposed he had shown his Driving Licence Ex.RW2/B to the owner who tested his driving skills at the time of engaging his services. Satish Kumar owner of the offending vehicle has specifically deposed that Driving Licence issued on 03.11.2008 valid upto 02.11.2011 has been shown to him. He had verified the same. Driving skills of the said driver were also tested prior to his appointment.

In the facts and circumstances as narrated above, it is clear that the learned Tribunal has erred in absolving the Insurance Company of its liability. Hon'ble Supreme Court in **PEPSU Road Transport Corporation v. National Insurance Company Limited,** ***(2013) 10 SCC 217*** has specifically held that once the owner has taken proper steps to verify the driving skills of the driver and to satisfy himself regarding the driver having a valid Driving Licence, Insurance Company cannot be absolved of its liability to pay compensation. To say that specific pleadings are not available is not correct. It has been specifically pleaded that the driver had a valid Driving Licence at the time of accident. Once Ex.RW2/B has been permitted to be brought on record, it was incumbent upon the Insurance Company to have verified the same. Insurance Company cannot be absolved of its liability without proving the said Driving Licence, Ex.RW2/B to be forged or fabricated.

Keeping in view the aforesaid, finding of the learned Tribunal on the question of liability to pay compensation is set aside. Insurance Company is held liable to pay compensation, in question.

Accordingly, FAO No. 4109 of 2013 preferred by the claimant is disposed of with the modification in the amount of compensation as above.

FAO No. 2674 of 2013 and FAO No. 1816 of 2013 preferred by the driver and owner are allowed with liberty to the Insurance Company as above.

(LISA GILL)
JUDGE

November 6 , 2015.
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