IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 856 of 2013 (O&M)
Date of decision 15 .07. 2015.

Parveen Chawla .

...... Appellant.

versus

Shakuntla Rani and others

...... Respondents.

Present : Mr. Pritam Saini, Advocate for the appellant.
Mr. Munish Mittal, Advocate for respondent Nos.1 to 3.
Mr. Raman B. Garg, Advocate and
Mr. Suresh Goyal, Advocate for respondent No.5.
Respondent No.2 died.
Respondent No.4 ex-parte.

FAO No. 1108 of 2013

Shakuntla Rani and others

...... Appellants.

versus

Jarnail Singh and others

...... Respondents.

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

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

Present : Mr. Munish Mittal, Advocate for the appellant.
Mr. Pritam Saini, Advocate for respondent No.2.
Mr. Raman B. Garg, Advocate and
Mr. Suresh Goyal, Advocate for respondent No.3.

K.C.PURI, J.

This appeal FAO No. 856 of 2013 titled as Parveen Chawla . versus Shakuntla Rani and others has been directed by Parveen Chawla owner of TATA Tipper bearing registration No.HR-37C-3018 against the Award dated 24.12.2012 passed by Shri Rakesh Singh, learned Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri vide which the claim petition preferred by the claimants was partly accepted and a sum of Rs.6,17,000/- was allowed to the claimants in respect of death of Amit Kumar in a motor vehicular accident on 26.9.2010. However, the Insurance Company was absolved from its liability.

2. The claimants have also directed cross FAO No. 1108 of 2013 regarding the said Award dated 24.12.2012, referred to above, for enhancement of compensation. Since both these appeals have arisen out of the same Award and as such these are being disposed of with the common judgment.

3. Briefly stated, the case of the claimants is that on 26.09.2010 Amit Kumar @ Rinku (since deceased) was coming from Ambala with his employer namely Vijay Kumar Gupta, driving Car No.HR-2S-3506 at a slow speed in his correct left side of the road. At about 10.30/11.00p.m., when they reached near Maruti show room, Tepla Industrial Area Saha, District Ambala on Jagadhri-Ambala road, a Tata Tipper/Dumper bearing registration No. HR-37C-3018 being driven by its driver-respondent No.1 in a rash and negligent manner and at a very high speed came from opposite side and struck against the car by coming on wrong side and caused the accident in which Amit Kumar @ Rinku received multiple grievous injuries

and trapped in the steering of car and succumbed to his injuries at the spot. After causing the accident, the driver of the offending truck/dumper fled away, leaving his truck at the spot. The car was also damaged in the accident. Amit Kumar thereafter was taken in Civil Hospital, Ambala where he was declared brought dead due to injuries sustained by him in the accident. FIR No.133 dated 27.09.2010 under Sections 279 and 304-A of the IPC was registered against respondent No.1 on the statement of the complainant. Therefore, the claimants have prayed for compensation to the tune of Rs.10,00,000/-.

4. On notice, respondent Nos.1 and 2 appeared and filed joint reply raising preliminary objections as to maintainability etc. On merits, it has been submitted that FIR has been lodged falsely against the respondent No.1 as no accident took place with Tata Tipper/Dumper bearing registration No. HR-37C-3018. Denying other averments, answering respondents prayed for dismissal of the claim petition.

5. Respondent No.3 Insurance Company filed separate written statement and took up preliminary objections as to maintainability ; locus standi, cause of action ; nonjoinder of necessary parties etc. On merits answering respondent has submitted that no accident had taken place with the truck/dumper bearing registration No. HR-37C-3018 and a false and fabricated FIR has been registered. It is further pleaded that respondent No.1 was not holding any valid and effective driving licence at the time of alleged accident and further that the vehicle in question was driven in contravention of the terms and conditions of the insurance policy. Denying

other averments, answering respondents prayed for dismissal of the claim petition.

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

1. Whether Amit Kumar alias Rinku died on account of injuries sustained by him in a motor vehicle accident which took place on 26.9.2010 in the area of police station, Industrial Area Saha on account of rash or/and negligent driving of TATA Tipper bearing registration No.HR-37C-3018 by respondent No.1 which is owned by respondent No.2 and insured by respondent No.3, as alleged ? OPP

2. If issue No.1 is proved, whether the claimants are entitled to any amount as compensation, if so, to what amount and from whom?OPP

3. Whether the petition is bad for misjoinder and non-joinder of the parties?OPP holding

4. Whether the insured has violated the terms and conditions of the insurance policy as well as provisions of the Motor Vehicle Act,1988 and as such, the insurance company is absolved of its liability to pay the amount of compensation ?OPR-3

5. Relief.

7. The Tribunal, after appraising the testimony of the witnesses decided issue Nos.1 and 2 in favour of the claimants. Issue No.3 was not pressed during the course of arguments and therefore decided accordingly. However, the Tribunal decided issue No.4 in favour of respondent No.3-Insurance Company and against respondents No.1 and 2 , holding that respondents No.1 and 2 shall be jointly and severally liable to pay the amount of compensation to the claimants vide Award dated 24.12.2012, as aforesaid.

8. Feeling dissatisfied with the above said Award dated 24.12.2012, the owner has preferred appeal for absolving her from the liability whereas claimants have preferred separate appeal for enhancement, as aforesaid.

9. I have heard learned counsel for the appellant/Insurance Company and have gone through the records of the case.

FAO No. 856 of 2013

10. Counsel for the appellant-Parveen Chawla has challenged the finding of Tribunal in respect of issue No.4 only. Mr. Pritam Saini, counsel for the appellant-Parveen Chawla has submitted that Insurance Company has been absolved from its liability on the ground that original licence issued by Regional Transport Authority, Raipur (Chhatisgarh) is not valid. It is submitted that the Tribunal has committed a grave error by ignoring the basic law on the point of driving licence. The Insurance Company has not only to prove that the driving licence was fake but has to prove that the owner was negligent in employing the driver. It is not expected from owner to enquire about the genuineness of the driving licence from the Licensing Authority. In this case, the licence was stated to be issued in the year 1990 and thereafter it was renewed by various licencing authorities right from the year 1990 till 2010. The appellant has made a statement that she has gone through the licence and considered it as genuine. So, the learned Tribunal has wrongly fastened the liability upon the owner and driver alone. To fortify his argument, learned counsel for the appellant has relied upon the following authorities :-

1. **<u>United India Insurance Co. Ltd vs. Rajinder Kaur & Ors II (2012) ACC page 174</u>** ;
2. **<u>National Insurance Company Limited vs. Rajbir Singh and others 2011-2 PLR page 99</u>** ;
3. **<u>Pepsu Road Transport Corporation vs. National Insurance Company 2013(4) R.C.R.(Civil) page 273</u>**
4. **<u>National Insurance Company Limited vs. Geeta Bhat & Ors 2008 (3) RCR page 44 ;</u>**
5. **<u>Naresh Kumar vs. Ram Dass and others reported in 2011 ACJ page 1611 ;</u>**
6. **<u>United India Insurance Co. Ltd vs. Lehru and Ors 2003 (2) RCR (Civil) page 278.</u>**;

11. The only point urged during the course of argument is that the onus to prove that owner has violated the terms and conditions, is always lies upon the Insurance Company. It is submitted that the Insurance Company has failed to prove that appellant Parveen Chawla has committed any deliberate act of breach of terms of the policy. The Hon'ble Apex Court in authority **<u>Pepsu Road Transport Corporation's case (supra)</u>** held that owner has to satisfy that driver was having a valid driving licence and competency of the driver to drive the vehicle has been tested. In case the driver is causing the accident, after a long period of employment, in that case owner cannot go to the extent of verifying the genuineness of the driving licence from the concerned authorities.

12. RW-1 Jasbir Singh, Clerk of Licensing Authority-cum-Secretary R.T.A. Ambala has stated that licence No.J-18986/90 dated 14.10.1990 issued by Licensing Authority, Raipur (MP) in the name of said Jarnail Singh was renewed by our office vide endorsement No.HR37-5119

dated 4.2.2010 and was renewed from 04.02.2010 to 03.02.2013 prior to that said licence was renewed by Licensing Authority, Kurukshetra from 15.12.2006 to 18.10.2009. In the cross-examination, this witness has stated that original licence was valid from 14.10.1990 to 13.10.1993 and subsequent it was renewed upto 17.10.1996 w.e.f. 18.10.1993 by the same Licensing Authority. Thereafter, it was renewed from Licensing Authority, Ambala from 16.6.1997 to 15.9.2000 vide renewal No.9901/RTA/AMB/97. In the cross-examination he has further stated that no licence is renewed without getting verification from the previous issuing licensing authority and authority must have followed the procedure for renewal of the licence. Thereafter the said licence was renewed by Licensing Authority, Thanesar.

13. RW-2 Swatanter Kumar Sharma has stated that licence No.J-18986/90 dated 14.10.1990 in the name of Jarnail Singh was renewed by licensing authority, Thanesar from 15.12.2006 to 18.11.2009. He has further stated that as per their record, the said licence was also renewed from D.T.O.Ambala vide renewal No.9901/97 from 19..1.2003 to 18.11.2006.

14. RW-3 Parveen Chawla while appearing as her own witness tendered her affidavit Ex.RW-3/A, she has stated that she along with her husband had gone through the licence of Jarnail Singh, which was issued by Licensing Authority, Ambala. Jarnail Singh was having the licence for the last so many years. Trial of Jarnail Singh was conducted before employing him. So, this witness has stated that she and her husband satisfied that licence is a valid.

15. In authority **United India Insurance Co. Ltd vs. Lehru and Ors' case (supra),** the Hon'ble Apex Court has held that Insurance Company can recover from the owner only if it is proved that the vehicle was knowingly and intentionally handed over to a driver not holding any valid driving licence.

16. In the present case, accident has taken place on 26.9.2010 Jarnail Singh driver of the offending vehicle was holding licence since the year 1990. The Insurance Company has not disputed the fact that endorsement made regarding renewal after the year 1996 are not fake one rather RW-1 Jasbir Singh and RW-2 Swatanter Kumar Sharma have proved those endorsements from 1996 onwards regarding renewal of the licence. The appellant is lady and is not expected to verify licence from the Licensing Authorities.

17. This Court in **United India Insurance Co. Ltd. vs. Rajvinder Kaur & Ors reported in 2012 Accident and Compensation Cases page 174,** fastened the liability upon the insurance company where the insurance company has failed to prove that there is deliberate breach of the terms of the policy.

18. Similar view was taken by this Court in **National Insurance Company Limited vs. Rajbir Singh and others' case (supra).**

19. In authority **National Insurance Company Limited vs. Geeta Bhat & Ors 2008 (3) R.C.R. (Civil) page 44,** the Hon'ble Apex Court has held that owner of the vehicle despite taking reasonable care might have not been able to find out as to whether the licence was fake one or not. It

has been further stated that owner is not expected to verify the genuineness thereof from the Transport authorities. The Hon'ble Apex Court in authority In authority **United India Insurance Co. Ltd vs. Lehru and Ors' case (supra),** the Hon'ble Apex Court has held as under : -

> "20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of its looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competence to drive the vehicle, he will hire the driver. We find it rather strange that Insurance companies expect owners to make enquires with RTO's, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of section 149(2)(a)(ii). The Insurance Company would not then be absolved of liability. If it ultimately turns out that the licence was fake the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover

> from the Insured. Thus is the law which had been laid down in Skandia's, Sohan Lal Passi's and Kamla's case. We are in full agreement with the views expressed therein and see no reason to take a different view."

20. The Tribunal has not gone into this aspect that Insurance Company has failed to prove the fact that there was willful default on the part of the appellant. The expectation from the owner is not that he/she should verify the validity of the licence from licensing Authority. Each case has to be decided on its on peculiar facts and circumstances. In the present case, appellant has employed the driver after taking his driving test and after going through the driving licence. Various renewal endorsements were found to be valid. So, I have no hesitation in holding that the Insurance Company has failed to prove that there was willful default on the part of the appellant and consequently the finding on issue No.4 stands reversed and it is held that Insurance Company has failed to prove this issue and the same stands decided against the Insurance Company and in favour of the appellant.

21. Consequently, the appeal preferred by owner Parveen Chawla stands accepted. That part of the judgment vide which the Insurance Company was absolved from its liability stands set aside and liability to pay the awarded amount is held to be that of owner, driver and Insurance Company jointly and severally and the primary liability to pay the amount shall be that of Insurance Company.

FAO No. 1108 of 2013

22. Amit Kumar @ Rinku aged 29 years has died in the motor vehicular accident. The Tribunal has taken the income of the deceased as Rs.4500/- per month against the claimed income of Rs.6500/-per month. The income of the deceased in the year 2010 has rightly been taken as Rs.4500/- per month and that aspect of the case does not call for any interference.

23. Counsel for the claimants has submitted that future prospectus have not been taken into account while determining the amount of compensation and no amount in respect of loss of love and affection has been granted and the amount granted in respect of funeral expenses is granted on lower side.

24. Counsel for the Insurance Company has submitted that amount has to be calculated keeping in view the age of the parents. The matter regarding future prospectus is pending before the Larger Bench. The multiplier of 17 at the age of the claimants is on higher side. It is submitted that 50% amount has to be deducted as the deceased was bachelor.

25. I have considered the submissions made by both the sides and have gone through the records of the case.

26. The income of the deceased has been rightly taken as Rs.4500/- per month. The next question arises for consideration whether the future prospectus has to be taken into count in case the deceased is a bachelor. The answer to that question has been given by Hon'ble Apex Court in authority **Rajesh and others vs. Rajbir Singh and others reported in**

2013 (3) RCR (Civil) page 170. The said authority has been followed by three Judges Bench of Hon'ble the Apex Court in case titled as **Munna Lal Jain & another vs. Vipin Kumar Sharma and others C.A. No.4497 of 2015 decided on 15.05.2015** wherein it is held that 50% amount should be added in respect of future prospectus where the deceased is major and below 40 years of age. So, the income of deceased by adding 50% regarding future prospectus comes to Rs.6750/-. The claimant in this case are parents and sister of deceased Amit Kumar @ Rinku. So, the amount of 50% has to be deducted in respect of personal expenses of the deceased in view of authority **Smt. Sarla Verma and others vs. Delhi Transport Corporation and Anr 2009 (3) R.C.R.(Civil) 77.** So, the amount of monthly dependency comes to Rs.3375/- and yearly dependency comes to Rs.45,500/-. The age of the deceased was 29 years and as such multiplier of 17 has been rightly applied by the Tribunal. So, the claimants are entitled for an amount of Rs.6,88,500/-. The claimants are further held entitled to claim Rs.20,000/- in respect of expenses on last rites and transportation of dead body. The claimants are also held entitled to claim Rs.75,000/- in respect of loss of love and affection. So, in this manner the claimants are held entitled to claim a sum of Rs.7,83,500/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of application till realization. The liability to pay the awarded amount and enhanced amount shall be that of jointly and severally of the respondents and the primary liability to pay the amount shall be that of Insurance Company.

27. Both the appeals stand partly allowed to the extent mentioned above.

28. A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

July 15 , 2015
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