

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

FAO No. 1743 of 1996 (O&M)

Date of decision : 2nd June 2016

Ved Kaur and othersAppellants

Versus

Ramphal and othersRespondents

FAO No. 2 of 1995 (O&M)

National Insurance Company LimitedAppellant

Versus

Ved Kaur and othersRespondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.C.P. Tiwana, Advocate for
Mr. R.S. Chahar, Advocate
for the appellant. (in FAO No. 1743 of 1996)
for respondents No. 1 to 6 (in FAO No. 2 of 1995)

Mr. Bhupesh Dogra, Advocate
for the appellant.(in FAO No. 2 of 1995)
for respondent No. 3. (in FAO No. 1743 of 1996)

Mr. Surinder Gandhi, Advocate
for respondent No. 2. (in FAO No. 1743 of 1996)
for respondent No. 8. (in FAO No. 2 of 1995)

LISA GILL, J.

This judgment shall dispose of FAO Nos. 1743 of 1996

(Ved Kaur and others versus Ramphal and others) and 2 of 1995

(National Insurance Company Limited versus Ved Kaur and others).

The aforesaid appeals have been preferred, challenging the award dated 09.09.1994 passed by the learned Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as the 'Tribunal').

FAO No. 1743 of 1996 has been filed by the legal representatives of the deceased Dharam Singh, who lost his life in a motor vehicle accident, which occurred on 13.09.1991. They claim enhancement of the compensation awarded by the learned Tribunal on account of death of Dharam Singh.

FAO No. 2 of 1995 has been preferred by National Insurance Company Limited on the ground that the appellant - insurance company is liable to be absolved of its liability as the driver of the offending vehicle was not holding a valid driving licence.

The facts are being taken from FAO No. 1743 of 1996 for convenience. The claim petition preferred by the legal representatives of Dharam Singh reveals that the deceased Dharam Singh was travelling in a matador bearing registration No. HYO-2116 from Gohana to Rohtak on 13.09.1991. The matador was being driven in a rash and negligent manner at a high speed. When the vehicle was in the vicinity of Jassiya at about 2.40 p.m., the driver could not control the matador because of its high speed and it turned turtle and fell into a pit near the road. Dharam Singh died on the spot on receipt of fatal injuries.

Claim petition under Section 166 of Motor Vehicles Act was preferred by the claimants i.e. widow, four children of the deceased Dharam Singh as well as mother of the deceased claiming

compensation to the tune of ₹8 lakh on account of death of Dharam Singh, who was claimed to be 52 years old at the time of accident, employed as a Senior Volley Ball coach under the Sports Institute Scheme, Patiala, a Government of India undertaking, earning a salary of ₹6,000/- per month.

The claim petition was contested by the respondents. The respondent-driver while admitting that he was driving the matador at the time of accident submitted that when they were near village Jassiya, a Haryana Roadways bus overtook the matador and in the process, the left side of the back of the bus struck against the right portion of the matador due to which he lost control over the vehicle which turned turtle and fell into a pit. It was admitted that Dharam Singh passed away in the accident. He alongwith the owner-respondent Daya Nand tried to lodge a report with the police, who paradoxically implicated him falsely in a criminal case on the next day. Respondent - Umed Singh denied being the owner of the matador while Daya Nand took a stand that he transferred the vehicle to Umed Singh prior to the accident. However, this aspect was decided by the Tribunal to the effect that it was Daya Nand who was the registered owner of the vehicle in question and the vehicle was not disposed of to respondent - Umed Singh. The vehicle was taken on superdari by Daya Nand before the Court seized of the criminal proceedings. Daya Nand further filed a claim petition Ex. R7 claiming compensation for the damage caused to the matador, claiming the accident to be the result of negligence of the Haryana Roadway bus. Respondent - insurance company also resisted the

claim with the averment that the driver of the matador did not hold a valid licence at the time of the accident.

Learned Tribunal on the basis of the pleadings formulated the following issues:-

1. Whether the motor vehicle accident dated 13.09.1991 took place because of the rash and negligent driving of vehicle No. HYO-2116? OPP.
2. Whether the death of Dharam Singh was caused as a result of the said motor vehicle accident? OPP.
3. Whether the petitioners or any one of them are/is entitled to compensation, if so how much and from whom? OPP.
4. Whether the petition is bad for non-joinder and misjoinder of parties? OPR.
5. Whether respondent No. 2-A is not liable to pay any compensation ? OPR 2-A.
6. Whether respondent No. 3 is not liable to pay any compensation as per preliminary objections of the written statement? OPR-3.
7. Relief.

Learned Tribunal on considering the facts and circumstances of the case concluded that the accident in question on 13.09.1991 occurred due to the rash and negligent driving of the vehicle by its driver Ramphal and Dharam Singh lost his life in the said accident.

A sum of ₹1,80,000/- was awarded to the claimants as compensation on account of death of Dharam Singh. Income of the deceased was assessed as ₹5,132/- on the basis of the salary

certificate Ex. P6. Deduction of ₹1,132/- was effected on account of personal expenses rendering the income of the deceased to be ₹4000 per month/₹48000 per annum. Dharam Singh deceased was 53 years old at the time of accident as proved by his Matric certificate Ex. P3 where his date of birth is reflected as 12.06.1938. A multiplier of 5 was applied rendering the amount to be ₹2,40,000/-. However, a deduction at the rate of 25% has been applied on the account of the pension which was received by the family of the deceased.

Learned Tribunal held respondent - Daya Nand to be the registered owner of the vehicle as narrated above. This finding has attained finality as it is not a point of challenge either by the owner or the insurance company. Insurance company was held liable on the basis of the judgment in **National Insurance Company versus Sucha Singh etc. 1994 (1) PLR 140.**

FAO No. 1743 of 1996

Learned counsel for the appellant-claimants submits that the learned Tribunal has awarded a woefully meagre compensation in the facts and circumstances of the case. Salary of the deceased, who was 53 years old, is proved to be ₹5,132/-. Multiplier of 11 is required to be applied in view of judgment of Hon'ble Supreme Court in **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another** 2009 (3) RCR (Civil) 77. No compensation has been afforded on account of loss of future prospects and neither has any compensation been afforded on account of loss of consortium to the widow, loss of love and affection to the minor children and the mother of the deceased.

Learned counsel for the respondents have refuted the said arguments and pray for dismissal of the claim petition, as a fair and just compensation has been awarded by the learned Tribunal.

I have heard learned counsel for the parties and keeping in view the factual matrix of the case, it is apparent that the compensation awarded to the claimants needs to be re-worked in accordance with the settled principles of law. There is no dispute regarding the age of the deceased being 53 at the time of the accident and a salary of ₹5,132/- p.m. or ₹61,584/- per annum being earned by the deceased Dharam Singh working as a Senior Volley Ball coach. Deduction of 1/4th is required to be applied keeping in view the number of dependants taking the income to be ₹46,188/- per annum. Loss of dependancy is, thus, calculated as ₹5,08,068/- after applying a multiplier of 11 (₹46,188x11). No deduction is to be made in respect of any pension which may be received by the family. In view of judgment of **Rajesh and others versus Rajbir Singh and others** 2013 (3) RCR (Civil) 170, the claimant widow is entitled to ₹1,00,000/- on account of loss of consortium and four children are entitled to a sum of ₹25,000/- each on account of loss of care and guidance. The mother of the deceased is entitled to a sum of ₹50,000/- on account of loss of love and affection. A sum of ₹20,000/- is awarded on account of funeral expenses.

Total amount of compensation to which the claimants are entitled to is **₹7,78,068/-** as detailed hereunder:-

Loss of dependancy	₹5,08,068/-
Loss of consortium	₹1,00,000/-
Loss of care and guidance for minor child (₹25,000 x 4)	₹1,00,000/-
Funeral expenses	₹ 20,000/-
Loss of love and affection for the mother	₹ 50,000/-
Total	₹7,78,068/-

Amount of compensation already paid shall stand deducted from the amount calculated as above. The appellants shall be entitled to interest at the rate of 6.5% per annum on the enhanced amount from the date of filing of the petition till realization.

FAO No. 2 of 1995

Learned counsel for the appellant - insurance company vehemently argues that the Tribunal has fastened the liability upon the insurance company on the ground that licence Ex. R1 issued by the Motor Vehicle Authority, Cuttack, was subjected to valid renewal by the Motor Vehicle Licensing Authority, Bahadurgarh, thus, it is a valid licence. However, this authority no longer holds the field. It is a settled position now that a valid renewal of a fake licence cannot confer genuineness upon it. It is submitted that the respondent - driver Ramphal has admitted in his cross examination that he never went to Cuttack for his driving license. Thus, there is no requirement on the part of the insurance company to have led any evidence to show that the said licence was fake and it should be accepted as a fake one.

Reference is made to communication dated 15.03.1993 by the Licensing Authority, Cuttack to the Divisional Manager

National Insurance Company stating that no such driving licence No. 53879/88/Cuttack dated 25.11.1988 was issued in favour of the Ramphal. It is, however, admitted that such a document has not been proved and exhibited on record.

It is further urged that the respondent - driver produced another driving licence Ex. R1/A issued by the motor vehicle authority at Delhi. Thus, the driver cannot hold two driving licences and this fact in itself amounts to a contravention of the terms and conditions of the insurance policy, thereby absolving the insurance company of its liability to pay any compensation. Thus, the finding of the Tribunal that the driver of the matador was holding a valid licence is incorrect and deserves to be set aside thereby absolving the insurance company of its liability.

Learned counsel for the respondents in this case have refuted the said argument while vociferously arguing that no evidence whatsoever has been led by the insurance company to prove that Ex. R1 was a fake or forged document. Reliance upon the statement of RW1 Ramphal in his cross examination that the driving licence was prepared from Cuttack by his brother and he did not go there, is misconceived. It is further submitted that there is no evidence to deny that RW1 Ramphal had been working as driver for the past 20 years prior to the accident driving cars, trucks, tractors and other vehicles. Furthermore, once another driving licence was produced by the driver, it was incumbent upon the insurance company to have verified the same, an exercise which was admittedly not undertaken. Thus, it is prayed that the appeal by the insurance company be dismissed.

Having heard learned counsel for the parties and going through the available record (file and record of this case, attached with FAO No. 2 of 1995, was lost in a fire which occurred on 30.01.2011 and its file was reconstructed), it is apparent that the reasoning of the learned Tribunal upholding the validity of the driving licence merely on the basis of its valid renewal by Motor Vehicle Licensing Authority, Bahadurgarh is not sustainable, in view of the judgment of Full Bench of this Court in **National Insurance Company Limited versus Santro Devi and others** 1998 (1) R.C.R. (Civil) 156. However, the insurance company cannot be absolved of its liability due to different reasons as discussed hereunder.

Ex. R1, the driving licence, issued by the Motor Vehicle Authority, Cuttack valid from 25.11.1988 to 24.11.1991 is sought to be falsified on the basis of the statement of RW1 in his cross examination. It is, however, not denied by learned counsel for insurance company that the alleged communication dated 15.03.1993 from the Motor Vehicle Authority, Cuttack has not been proved on record. There is no reason whatsoever for not proving the said document or bringing on record specific and positive evidence to show that this licence Ex. R1 was a fake and forged document. It is a settled position that the onus to prove that the driving licence held by the driver of the offending vehicle is not genuine, is upon the insurance company. It cannot be said to have been discharged by the so-called statement made by RW1 as referred to above. It has been held by this Court in **Parveen Kumar and another versus Sumitra Devi and others** 2016 (1) PLR 255 that to prove the breach of terms

and conditions of the policy, burden upon the insurer of insurance company is heavy. It has to be dislodged by appropriate evidence by examination of witnesses from the District Transport Office proving that the licence held by the driver was not genuine.

Another point vehemently argued by learned counsel for the insurance company that there is a breach of terms and conditions of the policy with the driver holding two licences, being illegal and impermissible under the Motor Vehicles Act is not tenable. It has been held by a Division Bench of this Court in **United India Insurance Company Limited versus Raj Rani 1996 (2) PLR 495** that when two driving licences are produced by the driver, it is for the insurance company to verify both the licences. The question whether there is a violation of Motor Vehicles Act by holding two driving licences would be addressed by the authorities and it cannot be said that the same would amount for breach of terms and conditions of the insurance policy absolving the insurance company of its liability.

It is observed by the learned Tribunal that the licence Ex. R1/A issued by the Delhi Authorities to RW1, which was valid upto 30.07.1993, has not been verified by the insurance company. This licence was validly renewed from 30.07.1993 to 29.07.1996. There is nothing on record to show this licence to be fake or fabricated. Thus, it cannot be said that the insurance company has discharged the onus cast upon it. Furthermore, another aspect of the matter is that there is nothing on record to show that the owner had not discharged the responsibility cast upon him to verify the capacity and capability of respondent No. 1 to drive the said vehicle. There is nothing on

record to refute the claim of RW1 Ramphal that he was working as a driver for the last twenty years from the date of accident. In such a situation, insurance company cannot be absolved of its liability. Reference can be made to a decision of Hon'ble Supreme Court in **Pepsu Road Transport Corporation versus National Insurance Company** 2013 (4) RCR (Civil) 273 that an owner is not expected to go to the extent of verifying the genuineness of the license from the licensing authority.

No other ground of challenge has been raised by learned counsel for the insurance company.

In view of the facts and circumstances of the case, FAO No. 1743 of 1996 is partly allowed with abovesaid modification in the award dated dated 09.09.1994 passed by the learned Motor Accident Claims Tribunal, Rohtak. FAO No. 2 of 1995 preferred by the insurance company is dismissed.

June 02, 2016
rts

(Lisa Gill)
Judge