IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.809 of 1996 (O&M)
Date of Decision.15.01.2016

Smt. Phulo Bai and others ....Appellants

Vs.

Jaginder Singh and others ....Respondents

2. **FAO No.2128 of 1995 (O&M)**

National Insurance Company Limited ....Appellant

Vs.

Smt. Phulo Bai and others ....Respondents

Present: Mr. J.S. Thind, Advocate
for the appellant in FAO No.809 of 1996 and
for the respondents No.1 to 4.

Mr. R.C. Kapoor, Advocate
for the appellant in FAO No.2128 of 1995 and
for respondent No.3 in FAO No.809 of 1996.

Mr. Sanjeev K. Sharma, Advocate for
Mr. Kuldeep Tiwari, Advocate
for respondent No.2 in FAO No.809 of 1996 and
for respondent No.6 in FAO No.2128 of 1995.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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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K. KANNAN J. (ORAL)

1. Both the appeals are connected as arising out of the same accident. The appeal in FAO No.809 of 1996 is for enhancement of claim for compensation for death of a male aged 25 years. The accident had taken place on 19.03.1994. The deceased was said to be a vegetable vendor. The claimants were parents and brothers and sisters. The contention was that the deceased was earning not less than ₹500/-

every day. The Tribunal has awarded a compensation of ₹65,000/-.

2. Considering the fact that the accident had taken place in the year 1994, I will take the average income of the deceased at ₹3000/- per month, make a deduction of 50% and adopt a multiplier of 18 to assess the loss of dependence at ₹3,24,000/-. I will also provide for loss of love and affection for parents at ₹1 lac and provide for conventional heads of loss to estate and funeral expenses at a minimal sums to the tune of ₹5000/- each. The total compensation payable will be ₹4,35,000/-. The amount will be distributed between the parents. Since the brother and sister are dependents on the parents, I will not make any particular provision for them. The additional compensation of what has already been passed by the Tribunal will also attract interest @6% from the date of petition till the date of payment.

3. As regards the appeal in FAO No.2128 of 1995 by the insurance company, in this case the original driving licence was proved to be false although there was nothing wrong about the renewal itself. At the time when the Tribunal was deciding the case, the *extant* law was that if the renewal was genuine but the original was fake, the genuineness of the renewal will save the driving licence from being dubbed as fake. However, this law has now since been modified in the judgment of the Supreme Court in ***National Insurance Company Limited Vs. Swaran Singh (2004) 3 SCC 29*** where it has been authoritatively laid down that renewal of fake licence is also fake. However, the law has veered around the issue of the bona fides of the owner in his own belief about whether he knew that the original that had been issued was also fake. As regards the burden of proof, certain

other decisions which have come about subsequently, make it clear that owner is not required to check up with the DTO office of whether there had been actual issue of licence. All that is necessary is that whether the owner had any reason to suspect the genuineness. This law has been laid down in ***Pepsu Road Transport Corpn. v. National Insurance Co., (2013) 10 SCC 217.***

4. I thought for a while whether it would be necessary to remit the matter to the Tribunal for an opportunity to be given to the owner to give evidence about how he acted when the driving licence was produced. It is obvious if such an opportunity is going to be given, the owner will only stand by his statement that he only acted on the renewal licence. It will be needless formality which need not be gone through. I will find, therefore, no error in fixing the liability on the insurance company. The amount determined will, therefore, be paid by the insurance company. The insurance company will be at liberty to proceed against the driver of the vehicle, for recovery for the holder of a fake licence cannot be protected. The owner alone will be fully protected and the right of enforcement for the claimants will be available against the insurance company.

5. The appeal filed by the claimants in FAO No.809 of 1996 is allowed enhancing the compensation in the manner determined above and the appeal filed by the insurance company in FAO No.2128 of 1995 is also allowed to the above extent.

(K. KANNAN)
JUDGE

January 15, 2016
Pankaj*