IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.250 of 1998
DATE OF DECISION: February 12,2016

National Insurance Company Ltd.

…Appellant

versus

Smt.Gulabo Devi and others

…Respondents

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr.Neeraj Khanna, Advocate for the appellant.
Mr.R.S.Mamli, Advocate for respondent No.1
Mr.Rahul Vats, Advocate for respondent Nos.2 and 3.

RAMENDRA JAIN, J.

By way of this appeal, the Insurance Company has sought recovery rights assailing the award dated 15.10.1997 only to the extent of holding it jointly and severally liable to make the payment of compensation.

Brief facts are that on 11.2.1995, respondent No.2 while driving his four wheeler bearing No.HR-02-A/6969 in a rash and negligent manner struck the cyclist Singh Ram by coming from the opposite direction at Bilaspur road. Singh Ram fell down receiving multiple injuries and succumbed to the same on the spot, leaving behind his wife alone as a dependent, because respondent Nos.4 to 10, his children being well settled were not dependent upon him.

His widow as a sole legal/natural heir filed a claim petition under Section 166 of the Motor Vehicle Act claiming ₹10 lacs as compensation against the death of Singh Ram.

Respondent Nos.2 and 3, driver and owner of the aforesaid vehicle as well as the appellant contested the claim petition. Respondent Nos.1 and 2 jointly pleaded that Singh Ram, being an old person, fell on his own from his bi-cycle on the road and received injuries. Their vehicle was never involved in the aforesaid accident. Respondent No.3, taking the similar stand, pleaded that it was not liable to make any payment of compensation, as driver of the offending vehicle was not holding a valid and effective driving licence. Insurance Company got verified the driving licence Ex.R1 from the Licencing Authority, Shimla and found it to be a fake vide report, Ex.R2. It was specifically reported that the driving licence, Ex.R1 was not issued in the name of Gulsher Ahmad son of Mohd. Sharif by Licensing Authority, Shimla. The learned Tribunal though observed that prima facie driving licence of respondent No.2 was fake, but does not absolve the liability of Insurance Company for payment of compensation by placing reliance upon the decision rendered in National Insurance Company Ltd. v. Smt. Santro Devi 1997(2) RCR (Civil) 337.

The learned Tribunal, taking into consideration the age of deceased Singh Ram as 70 years mentioned in the post mortem report

Ex.PB and his income at ₹7,500/- per annum from agricultural pursuits, after deducting his personal expenses and considering that the deceased had left only behind his widow, applied the multiplier of 5, calculated the compensation amount of ₹37,500/- but taking aid of the second schedule of Section 163-A of the Act granted ₹50,000/- as compensation plus ₹9,500/- towards funeral expenses, loss of consortium and loss of estate totalling ₹59,500/- as compensation amount, which is rounded off to ₹60,000/- vide impugned awarded dated 15.10.1997.

Learned counsel for the appellant argued that driving licence of respondent No.2 was found fake vide report Ex.R2. Hence, the learned Tribunal ought to have exonerated the liability of the Insurance Company or at least recovery right should have been given to it, to recover the awarded compensation amount from the insured. In support of his arguments, he relied upon the judgment of Gujarat High Court in New India Assurance Co. Ltd. v. Babubhai Purshottambhai Harijan and others, 2008 ACJ 104.

On the other hand, learned counsel for the owner of the offending vehicle argued that the owner is not expected to go to the extent of verifying the genuineness of the driving licence with the licencing authority. He has only to satisfy himself that the driver so employed has a valid driving licence and has competent to drive. The learned Tribunal has rightly not exonerated the liability of Insurance Company, because the driving licence Ex.R1 was very much seen by respondent No.3-owner and finding it to be prima facie genuine, he appointed respondent No.2 as driver. He was not required to do anything more than it. In support of his arguments, learned counsel for the owner relied upon a decision dated 14.1.2014 in FAO No.1051 of 2008 (M/s.Atlas Construction Faqridabad v. Labh Singh and others).

Learned counsel for the claimant argued that though his cross objections have not been listed with this appeal, but still this Court can enhance the compensation as the Appellate Court can pass any order, if there is no appeal, under Order 41 Rule 33 CPC. No compensation qua consortium, loss of estate etc. have been granted by the Tribunal to the widow of the deceased. Hence, the impugned award may be modified to that extent. In support of his arguments, he placed reliance upon the judgments rendered in Ranjana Prakash and others v. Divisional Manager and another 2011 ACJ 2418, National Insurance Co. Ltd. v. Komal & Ors. 2013 AAC 986, Oriental Insurance Company Ltd. v. Gurdev Singh and others 2012(4) PLR 531, Managing Director, Tamil Nadu State Trans Corpn. Ltd. v. Lakshmanan & Others 2011 ACJ 1999, Vimal Kanwar and others v. Kishore Dan and others 2013(3) SCR 223.

There is a categoric finding of the learned Tribunal that as per report, Ex.R2, driving licence of the driver Ex.R1 was found fake.

It has been contended by learned counsel for the Insurance Company that **Santro Devi's** case (supra) has already been overruled by the Apex Court.

The facts and circumstances of **M/s Altas Construction Faqridabad's** case (supra) are not identical to the present case. In that case, owner of the truck had deposed in the witness box that at the time of appointing driver Labh Singh upon his dumper, he had seen his driving licence and satisfied himself that it was bearing stamp of competent authorities. The driving licence was having photographs of Labh Singh. This evidence is missing in this case, because respondent No.3 never entered into the witness box and deposed to the above said effect. The learned Tribunal was left with no leg by the owner of the offending vehicle that whether at any point of time he had satisfied himself about the genuineness of the driving licence of respondent No.1. In these circumstances, the learned Tribunal when has specifically held that driving licence Ex.R.1 was fake, it ought to have given recovery rights to the Insurance Company while fixing joint and several liability of the owner and driver.

There is no dispute with the observations of the Apex Court that when owner has to satisfy that the driver had valid driving licence and competency to drive, he is not expected to go to the extent of verifying the genuineness of the driving licence with the Licencing Authority. If such a driver causes accident, then insurer and not the insured will be liable. However, the satisfaction of the owner about the driving licence Ex.R.1 is missing in this case. In the judgment rendered in PEPSU Road Transport Corporation v. National Insurance Company, reported as 2013(4) RCR (Civil) 273, the PRTC had led evidence before the Tribunal that they had appointed the driver Nirmal Singh in 1994. Thereafter, he had been given proper training from the driving school at Patiala and, thus, having taken reasonable steps in verifying the driving licence and, thereafter having trained the driver by the employer himself. In these circumstances, it was held that the Insurance Company was liable. There was no breach of any condition by the insured. In **National Insurance Co. Ltd. v. Geeta Bhat &Ors.** 2008(3) RCR (Civil) 44, it has been held by the Apex Court that owner of a vehicle is bound to make reasonable enquiry, whether the driver had a valid licence. So far as driving licence of a professional driver is concerned, the 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 he is not expected to verify the genuineness thereof from the transport officer. However, the facts of this case are not identical to the facts of the present case, because the owner has not brought any evidence on the record that he ever made reasonable enquiry about the genuineness of the driving licence of respondent No.2 and as such, the aforesaid judgments are not applicable.

In the present case, there was no loss to the estate, because all his children i.e. respondent Nos.4 to 10 were also incharge of their estate. They themselves were cultivating land and the daughters of the deceased are also married. The deceased was more than 70 years of age was not much helpful in fulfilling his social obligation. The judgment rendered in **Vimal Kanwar's** case (supra) is not applicable to the facts of the present case, because in that case the deceased has left behind the young widow of 24 years and the daughter of 2 years, whereas, in the instant case, respondent No.1 by this time must have around 85 years to 90 years. By the time, the compensation would be disbursed, she would not be in a condition to recognise her children. However, in all circumstances, the deceased was all in all for his widow. Considering overall facts and circumstances, I award further a sum of ₹50,000/- to the widow Gulabo Devi.

In view of the aforesaid discussion, the present appeal is partly allowed. The Insurance Company is held entitled to recover the amount of compensation from the owner and driver of the offending vehicle. Respondent No.1 is held entitled to further compensation amount of ₹50,000/- as compensation along with interest at the rate of 6% per annum from the date of filing the claim petition till its actual realization.

February 12,2016 (Ramendra Jain)
KD Judge