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

Date of decision:25.2.2016

1. FAO No.3215 of 1999 (O&M)

Sita Ram and others ….Appellants

VERSUS

Krishan Kumar and others .....Respondents

Present: Mr. Kulvir Narwal, Advocate and
Mr. Alankrit Bhardwaj, Advocate for the appellants.

Mr. Neeraj Khanna, Advocate for respondent No.3.

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2. FAO No.5 of 2000 (O&M)

National Insurance Co. Ltd. ….Appellant

VERSUS

Sita Ram and others .....Respondents

Present: Mr. Neeraj Khanna, Advocate for the appellant.

Mr. Kulvir Narwal, Advocate and
Mr. Alankrit Bhardwaj, Advocate for respondents No.1 to 3.

CORAM: HON'BLE MRS. JUSTICE LISA GILL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

LISA GILL, J.(Oral)

This order shall dispose of FAO No.3215 of 1999 and FAO No.5 of 2000, both of them arising out of the award dated 30.08.1999 passed by the learned Motor Accident Claims Tribunal (hereinafter referred to as 'the Tribunal'), Rohtak.

FAO No.3215 of 1999 has been preferred by the legal representatives of Smt. Asha Rani (since deceased) who passed away in a motor vehicle accident which took place on 27.10.1997 whereas FAO No.5 of 2000 has been preferred by the National Insurance Company Ltd. challenging its liability to pay the compensation awarded, on the ground that the original driving licence is not genuine.

For the facility of reference, the facts are being taken from FAO No.3215 of 1999. The facts in brief as revealed in the claim petition are that on 27.10.1997 at about 7 A.M., Ram Dhari, brother-in-law (devar) of Smt. Asha Rani (since deceased) accompanied her to the bus station at Rohtak from where she had to take a bus for going to school for discharge of her duties as a teacher at village Bahu Akbar Pur, District Rohtak. As they stood on the unmetalled (kacha*)* berm of Rohtak - Hisar road outside the main gate of bus stand, waiting for a bus, the offending truck bearing No.HR-46-9564, driven by respondent- Krishan Kumar in a rash and negligent manner approached from Rohtak towards Hisar. He lost control of his vehicle which veered to the wrong side and struck against Smt. Asha Rani. She sustained multiple injuries due to which she died at the spot. Smt. Asha Rani was taken to Medical College Hospital, Rohtak, where she was declared dead.

First Information Report (hereinafter referred to as 'FIR') No.1099 dated 27.10.1997 under Sections 279 and 304-A of Indian Penal Code (hereinafter referred to as 'IPC') was registered against respondent-

Krishan Kumar. Postmortem of the deceased was conducted and as per the postmortem report Ex.PE, she died due to the injuries sustained in the accident.

The claimants i.e. the husband and two minor children of the deceased – Smt. Asha Rani preferred a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') for grant of compensation on account of death of Smt. Asha Rani. It was pleaded that she was drawing a salary of Rs.7,795/- per month being employed as a Math Mistress/ Teacher at Government Senior Secondary School, village Bahu Akbar Pur, District Rohtak. Besides her official work, she was looking after the family consisting of her son pursuing his studies in Engineering at I.I.T., Delhi; her daughter who was a student of +2 and her husband who was a Junior Engineer with the Irrigation Department which is a field job. Thus, the deceased used to look after the entire household almost single-handedly. Compensation to the tune of Rs.15,00,000/- has been claimed.

The claim was resisted by respondents – owner and driver of the offending vehicle while stating that the truck was being driven at a normal speed and the deceased fell on the road after slipping and received injuries. There was no fault on the part of the driver and a false case was registered against him. The respondent – Insurance Company took a plea that a false case has been registered in collusion with the owner and driver of the offending vehicle. It was thus prayed that the claim petition be dismissed.

On the basis of pleadings of the parties, following issues were framed by the learned Tribunal:-

1. Whether the accident dated 27.10.1997 resulting into the death of Asha Rani took place due to rash and negligent driving of truck No.HR-46/9564 by Krishan Kumar respondent No.1? OPP
2. Whether the petitioners are entitled to compensation, if so, how much and from whom? OPP
3. Whether the respondent No.1 did not hold valid driving licence if so to what effect? OPD
4. Relief.

Evidence was adduced by the claimants. PW1 Arvind Kumar, Clerk in the Government Senior Secondary School, village Bahu Akbar Pur, proved the last drawn pay receipt of Smt. Asha Rani (since deceased) as Ex.PA. PW2 Sita Ram, appellant No.1, husband of the deceased, gave the details about the dependency of the claimants. PW3 Ram Dhari, the eye-witness of the accident and the propounder of the FIR (Ex.PB) was also examined. Matriculation certificate of the deceased is Ex.PC reflecting the date of birth of the deceased as 25.04.1958 and the Insurance Policy of the offending truck is Ex.PD. Postmortem report of the deceased is Ex.PE; service form is Ex.PF; progress report of the minor children Mamta Singroha and Amit Chaudhary are Ex.PG and Ex.PH, respectively; photocopy of driving licence of respondent – Krishan Kumar is Ex.PJ.

Respondents examined RW1 Mukesh Chand, Criminal Ahlmad in the District Courts at Rohtak, who proved that respondent No.1-

Krishan Kumar was facing criminal proceedings in respect to the accident in question. Driving licence (Ex.R1) was placed on record by him. RW2 R.D. Upadhya, Senior Clerk in the Licencing Authority, Mathura affirmed the renewal of Krishan Kumar's driving licence for the period 22.02.1995 to 21.02.1998.

Learned Tribunal on consideration of the pleadings as well as the evidence on record held that Smt. Asha Rani (since deceased) died due to the fatal injuries suffered by her in the accident caused due to rash and negligent driving of the offending truck No.HR-46-9564 by respondent No.1 - Krishan Kumar.

A total sum of Rs.5,48,992/- was awarded to the claimants on account of death of Smt. Asha Rani taking into account the salary of Rs.7,795/- being drawn by the deceased. Income Tax to the tune of Rs.3708/- was deducted from the annual income of Rs.93,540/- to assess it as Rs.89,832/-. Applying a deduction of 1/3rd, dependency was assessed as Rs.59,888/-. Multiplier of 9 was applied and loss of dependency calculated as Rs.5,38,992/-. A sum of Rs.10,000/- was awarded on account of funeral expenses.

The Insurance Company was held liable to pay the amount of compensation on the ground that it had failed to prove any breach of the terms and conditions of the Insurance Policy or that the licence held by the driver of the offending vehicle was not genuine at the relevant time.

Learned counsel for the appellant-claimants submits that a multiplier of 15 has to be applied keeping in view the age of the deceased. Nothing has been awarded on account of loss of love and affection qua the minor children as well as loss of consortium. Funeral expenses to the tune of Rs.25,000/- should be awarded keeping in view the authoritative decision of Hon'ble Supreme Court in Rajesh and others versus Rajbir Singh and others, 2013 (3) RCR (Civil) 170. Furthermore, no amount has been awarded in respect to loss of future prospects of the deceased who is admittedly a Government employee. Thus, she is entitled to 50% increase in her income. A deduction of Rs.3708/- on account of Income Tax has been wrongly effected by the Tribunal in view of the provisions of the Income Tax Act, 1961. It is, thus, prayed that the compensation awarded to the claimants be enhanced.

Learned counsel for respondent-Insurance Company has refuted the abovesaid arguments and states that adequate compensation has already been awarded which calls for no further enhancement. He submits that the Insurance Company is liable to be absolved of its responsibility to pay the compensation as it is proved on record that the driving licence originally issued to the driver was not genuine. Subsequent renewal by the Licencing Authority at Mathura cannot confer genuineness on a licence which is otherwise fake. He, thus, prays for setting aside this finding returned by the learned Tribunal. No serious argument has been addressed for reduction of the quantum of compensation awarded.

Having heard learned counsel for the parties and going through the record, it is apparent that the compensation awarded to the claimants has to be enhanced keeping in view the judgments of the Hon'ble Supreme Court in Smt. Sarla Verma and others versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77; Rajesh's case (supra) and Munna Lal Jain and others versus Vipin Kumar Sharma and others, (2015) 6 SCC 347.

As the age of the deceased was 39 years at the time of death, her date of birth being 25.04.1958 as reflected in the matriculation certificate (Ex.PC), a multiplier of 15 has to be applied instead of 9.

Keeping in view the decision of the Hon'ble Supreme Court in Rajesh's case (supra), a sum of Rs.1,00,000/- each is to be awarded to the minor children on account of loss of love and affection and a sum of Rs.1,00,000/- to the claimant-husband on account of loss of consortium. A sum of Rs.25,000/- on account of funeral expenses is awarded instead of Rs.10,000/-.

Contention of learned counsel for the claimants that deduction should not be effected from the income of the deceased on account of income tax is unacceptable, especially in view of the judgment of the Hon’ble Supreme Court in Manasvi Jain versus Delhi Transport Corporation, (2014) 13 SCC 22 and Shyamwati Sharma and others v. Karam Singh and others, (2010) 12 SCC 378. A sum of Rs.3708/- has been rightly deducted from Rs.93,540/- i.e. the annual income of the deceased. Learned counsel for the claimants is unable to show any evidence to suggest that a lesser amount should have been deducted.

As the deceased - Asha Rani was a Government employee, less than 40 years of age, it is a settled proposition of law that the claimants are entitled to an addition in the annual income on account of future prospects at the rate of 50% of the actual salary [less tax as held in Shyamwati’s case (supra)]. Annual income of the deceased was

Rs.89,832/- and with an addition of 50% it comes to Rs.1,34,748/- (Rs.89,832 + Rs.44916/-). Applying a deduction of one third (Rs.44,916/-) dependency is Rs.89,832/-. Loss of dependency after applying a multiplier of 15 is assessed as Rs.13,47,480/-.

The total amount of compensation is, thus, calculated as under:-

Loss of dependency	Rs.13,47,480/-
Loss of consortium	Rs.1,00,000/-
Funeral expenses	Rs.25,000/-
Loss of love and affection for two minor children @ Rs.1 lac each	Rs.2,00,000/-
Total	**Rs.16,72,480/-**

The amount of compensation already released to the claimants shall obviously be deducted from the amount so calculated which shall be released to the claimants with interest at the rate of 7.5% from the date of filing of the claim petition till its release.

Argument of learned counsel for the respondent- Insurance Company that the said company is not liable to pay compensation is not borne out from the record. RW2 R.D. Upadhya, Senior Clerk of Licencing Authority at Mathura, has proved on record the licence held by the driver of the offending vehicle at the time of the accident. The testimony of RW2 R.D. Upadhya reads as under:-

> "I have brought the summoned register. In the said register driving licence No.C-422/MTR/1995, was issued to one Krishan Kumar son of Chhotu Ram, resident of Ranchi Bangar Town-ship Mathura. It

was issued on 22.1.1992 from the Licencing Authority, Agra. Old licence number was 3812/Agra/1994. It was valid for driving of Heavy Goods Vehicle (Paid Employee). It was renewed by our office on 22.2.1995 up to 21.2.1998. The same was again renewed on 10.8.1998 till 9.8.2001. The licence was originally issued by the Licencing Authority, Aagra and it was renewed by our office time to time.

xxmn by Sh. R.R. Gulia, cl. for respondent no.1 and 2.

Nil (Opportunity given).

xxxmn by Shri J.S. Narwal, cl. for the petitioners.

Photo copy of the driving licence Ex.PJ and Ex.R1 pertain to the driving licence of Krishan Kumar. Original of which was issued by our office."

A perusal of the evidence on record reveals that the Insurance Company has failed to prove that the original driving licence held by respondent - Krishan Kumar is not valid. Reliance on the alleged report by the Licencing Authority, Agra i.e. Mark- A is a futile exercise on the part of the Insurance Company. Admittedly, this report has not been proved in accordance with the provisions of the Indian Evidence Act, 1872. Furthermore, RW2 R.D. Upadhya, Senior Clerk of Licencing Authority at Mathura, has specifically deposed that the registration number of driving licence of respondent- Krishan Kumar is C-422/MTR/1995 and its old number was 3812/Agra/1994 whereas the alleged report Mark-A relates to the driving licence No.3812/Agra/1992. Undoubtedly subsequent renewal/renewals of a licence which is fake, cannot confer any validity upon it but it is equally well settled that it is incumbent upon an Insurance Company to lead positive evidence to prove its assertion that driving licence held by the driver of the offending vehicle is fake. No reliance can be placed merely on a report, not even proved or exhibited in accordance with the provisions of law, as sought to be urged by learned counsel for the Insurance Company. Therefore, there is no ground whatsoever for interfering in the finding returned by learned Tribunal on this count, though the observations that the defect if any in the driving licence stood cured by subsequent renewal is incorrect especially in view of the judgment of Hon'ble Supreme Court in National Insurance Company Ltd. versus Swaran Singh and others, (2004) 3 SCC 297. Be that as it may, this does not affect the ultimate finding of the learned Tribunal that the Insurance Company is liable to pay the compensation as assessed, as no breach of the terms and conditions of the policy has been proved.

In view of the discussion as above, FAO No.3215 of 1999 preferred by the claimants is partly allowed with the modification in the quantum of compensation as detailed above and FAO No.5 of 2000 preferred by the Insurance Company is dismissed.

FEBRUARY 25, 2016 **(LISA GILL)**
'D. Gulati' **JUDGE**