

IN THE HIGH COURT OF PUNJAB AND HARYANA,  
AT CHANDIGARH

1) **FAO No. 2779 of 1998 (O&M)**  
**Date of Decision: 16.11.2016**

**National Insurance Company Limited**

**..... Appellant**

**Vs.**

**Krishan Kumar and others**

**..... Respondents**

2) **FAO No. 2780 of 1998 (O&M) and**  
**XOBJC No. 23-CII-1999**  
**(Filed by respondents no.1 to 4)**

**National Insurance Company Ltd.**

**..... Appellant**

**Vs.**

**Sumitra and others**

**..... Respondents**

**CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

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

Mr. Mani Ram Verma, Advocate,  
for respondent no. 1.

Mr. Surender Nagpal, Advocate, for  
Mr. APS Sandhu, Advocate,  
for respondents no. 2 and 3.

Mr. Vipul Sharma, Advocate, for  
Ms. Madhu Sharma, Advocate,  
for respondent no. 5.

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**AMOL RATTAN SINGH, J. (ORAL)**

These two appeals have been filed by the insurance company that  
had insured one of the vehicles involved in the accident, i.e. truck bearing  
registration no. PB-02B-9399, impugning the Award of the learned Motor

Accidents Claims Tribunal, Bhiwani, by which various amounts of compensation had been awarded in 4 different claim petitions, clubbed together by the Tribunal.

Mr. Khanna, learned counsel for the appellant, submits that the only ground of challenge is that the driving licence possessed by respondent no. 2 in FAO No.2779 of 1998 (respondent no.5 in FAO No.2780 of 1998), was a fake licence and as such, the insurance company was not liable to indemnify the owner of the aforesaid vehicle, i.e. respondent no.3 in FAO No.2779 of 1998 (respondent no.6 in FAO No.2780 of 1998).

Notice had been issued in both appeals at the time of their filing (in 1998), but due to the fact that the records of the cases were burnt, fresh notice was ordered to be issued on 11.03.2014.

Thereafter, respondent no.3 (the owner of the truck) having been duly served but not having appeared, he was proceeded against *ex parte*, vide order dated 07.05.2015. Fresh notice was issued to respondent no. 2, i.e. the driver of the vehicle (wrongly recorded as the owner of the truck in the order dated 08.09.2015), after which an application had been moved (CM No. 2576-CII-2016) by the appellant, seeking to serve both respondents no. 2 and 3 by way of substituted service. That application was allowed vide an order dated 05.02.2016 and now both the respondents are represented by learned counsel, Shri A.P.S. Sandhu, Advocate. Naturally, with the driver and owner duly being represented in this appeal, and it being not denied that they have knowledge of the other FAO No.2780 of 1998 also, learned counsel would be representing the said respondents in both the appeals, i.e. respondents no.2 and 3 in FAO No.2779 of 1998, they being respondents No.5 and 6 in FAO No.2780 of 1998.

2. The two civil revision petitions that have also been 'tagged' alongwith these two appeals, (Civil Revision No.5 and Civil Revision No.6, both of 1999), have also been filed by the same insurance company, impugning the same Award dated 25.08.1998, by which the two claimants in MACT Case Nos.18 and 19, i.e. Murari Lal and Hans Raj respectively, were awarded compensation of Rs.2000/- and 1500/- respectively, alongwith the interest @ 12% per annum thereupon, on account of the injuries that they sustained in the accident out of which all the claim petitions arose.

Since the amounts involved in these petitions was below to Rs.10,000/-, hence, no appeals were maintainable against them, as per Section 173 (2) of the Motor Vehicles Act, 1988. Hence, revision petitions have been filed, under Article 227 of the Constitution of India.

3. Briefly, the facts of the case, taken from the impugned Award, are that on 13.09.1993, Ved Parkash, Hans Raj, Murari Lal and Krishan Kumar, alongwith some other persons, were travelling in a 'four-wheeler' bearing registration no.HR19-3579, from village Balkara to Charkhi Dadri. The vehicle was driven by one Virender (respondent no.4 before the Tribunal, now represented by his widow and legal representatives as respondent no.4 in FAO No.2779 of 1998 and respondent no.7 in FAO No.2780 of 1998). At about 8:30 am, the said vehicle is stated to have reached the area of village Ram Nagar and, as per the claimants in all the four claim petitions out of which these appeals and civil revisions arise, a truck bearing registration no.PB-02B-9399, driven by Jarnail Singh, respondent no.2 in FAO No.2779 of 1998, allegedly in a rash and negligent manner, came from the side of Dadri at a very high speed and by coming on to the wrong side of the road, struck the four-wheeler, which was stated to be driven at a moderate speed.

Unfortunately, Ved Parkash died in the accident with the other three persons named hereinbefore, having been injured. Consequently, claim petitions were filed by the legal heirs of Ved Parkash, i.e. his widow, two minor children and mother, whereas the injured filed the other three claim petitions before the Tribunal themselves.

4. Upon a joint written statement filed by the driver and owner of the vehicle (the truck), the contentions raised in the claim petition were denied, further stating that the liability, if any, to pay the compensation, was that of the insurance company, i.e. the present appellant, which in its written statement denied any such liability, further stating that, in fact, the accident was caused by the driver of the four-wheeler.

5. Upon the aforesaid pleadings, the following issues were framed by the learned Tribunal:-

- “1. Whether the accident took place due to rash and negligent driving of truck No.PB-02B-9399 by respondent no.1 and caused the accident with the four-wheeler No.HR-19-3579 as a result of which Ved Parkash petitioner died and Krishan Kumar, Murari and Hans Raj sustained injuries, as alleged? OPP
2. Whether the petitioners are entitled to compensation, if so, from whom and to what amount? OPP
3. Relief.”

6. The claimants having led their evidence, oral and documentary, with the respondents not having rebutted the same in any manner, eventually the issue of negligence was decided against the driver and owner of the truck and its insurer.

As regards the compensation, the LR's of Ved Parkash, i.e. respondents No.1 to 4 in FAO No.2780 of 1998, they were awarded a

compensation of Rs.3,25,000/- alongwith interest thereupon @ 12% per annum, running from the date of the filing of the claim petition till realisation of the amount. That aspect would be dealt with while considering the cross-objections filed by respondents no.2 to 4 in FAO No.2780 of 1998.

7. Respondent no.1 in FAO No.2779 of 1998, i.e. Krishan Kumar, was awarded Rs.10,000/- for the injuries suffered by him, which has not been challenged by the said respondent-claimant, either by way of any appeal or even any cross-objections filed in FAO No.2779 of 1998.

As already noticed, claimants Murari Lal and Hans Raj (each being respondent no.1 in Civil Revision No.5 of 1999 and Civil Revision No.6 of 1999 respectively), were also awarded Rs.2000/- and Rs.1500/- respectively, which is also not under challenge by either of them.

8. As already noticed by a co-ordinate Bench, in an earlier order dated 11.03.2014, the only issue in these appeals is as to whether the appellant-insurance company can be granted rights of recovery of the compensation paid to the respondents. This is seen to be in view of the fact that the driving licence of respondent no. 2 herein was actually found to have been initially not issued by the Licensing Authority, Shimla. However, having recorded that finding, the learned Tribunal held that the licence having been thereafter renewed by the Licensing Authority, Amritsar, it could not be said to be an invalid licence.

To hold as above, the Tribunal relied upon a judgment of the hon'ble Supreme Court in **National Insurance Company Limited vs. Santro Devi and others** JT 1997 (9) S.C. 197, by which the judgment of a Full Bench of this Court, holding that a forged licence even if renewed would not become a valid driving licence, was reversed.

9. Mr. Khanna, learned counsel for the appellant insurance company,

has now relied upon a judgment of the hon'ble Supreme Court in M/s United India Insurance Company Limited vs. Davinder Singh 2007 (2) RCR (Civil) 90, in which though Santro Devis' case (supra) has not been noticed, other judgments on the issue have been discussed, including National Insurance Company Limited vs. Swaran Singh and others 2004 (2) RCR Civil 114, in which it was held as follows:-

*“92. It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of the wilful breach of the conditions of the insurance policy or the contract of insurance. In Lehu case 5 the matter has been considered in some detail. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of the law in terms whereof the insurer is to establish wilful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or for the owners to be absolved from any liability whatsoever. We would be dealing in some detail with this aspect of the matter a little later.”*

Thereafter, it was eventually held in Davinder Singh's case (supra) as follows:-

*“In view of the above analysis the following situations emerge:*

- 1. The decision in Swaran Singh's case (supra) has no application to cases other than third party risks.*
- 2. Where originally the licence was a fake one, renewal cannot cure the inherent fatality.*

*3. In case of third party risks the insurer has to indemnify the amount and if so advised, to recover the same from the insured.*

*4. The concept of purposive interpretation has no application to cases relatable to [Section 149](#) of the Act.”*

Thus, it was held that where originally the licence was fake, renewal would not cure the inherent fatality.

It was further held that where third parties risk are covered in the insurance policy, the insurer has to indemnify, to the claimants, the amount awarded, but thereafter can recover the same from the insured.

10. At this stage it needs further to be noticed here, that a copy of the said driving licence (produced in Court by Mr. Mani Ram Verma, learned counsel for the claimants-cross objectors in the connected FAO No. 2780 of 1988), shows that the said driving licence, as was exhibited before the Tribunal, is only seen to be issued by the Licensing Authority, Amritsar, valid up-to 14.06.1994. A reference of the original driving licence is given on top of the driving licence (exhibited by the respondent owner and driver in the present *lis*), showing that the original licence had in fact been issued in Shimla in 1982. Learned counsel for respondents no.2 and 3, i.e. the driver and owner of the “offending vehicle”, has not been able to point to any perversity in the finding that the official from the office of the Licensing Authority, Simla, who testified as RW2, had deposed that the licence held by Jarnail Singh (respondent no.2 in FAO No.2779 of 1998) was never issued by that authority.

The question would therefore be, as to whether the driver, i.e. the holder of the driving license, alone would be the person from whom recovery could be made by the insurance company, in view of the fact that the licence presented to the owner was contended by him (driver) to be a duly valid

licence, or it would also be the insurer, i.e. the employer of the driver, who would be liable to make good the recovery to the insurance company?

11. In the opinion of this Court, if the owner of the vehicle is shown a driving licence that appears to be wholly genuine, whether purported to be the first licence issued or a subsequently renewed licence, such owner cannot be expected to verify the licence from the licensing authority, which may be in a completely different part of the country. Consequently, actually it would be only the driver who is employed by the owner of the vehicle, who would be liable to pay the insurer the entire compensation paid to the claimants.

However, it having been specifically held in *Davinder Singhs'* case (supra), that the insurer can recover the compensation paid by it to the claimant, from the insured, this Court is, naturally, bound by the ratio of that judgment.

12. Hence, this appeal is allowed and the appellant-insurance company is at liberty to recover the compensation awarded to the respondents-claimants from respondent no.3 herein. However, the owner, i.e. respondent no.3, would also be at liberty to recover the amount from respondent no.2, by proving that he had no knowledge at any stage, with regard to the original licence possessed by respondent no.2 not being a genuine licence.

Hence, both the appeals stand allowed as above, with no order as to costs.

**XOBJC No. 23-CII-1999 in FAO No. 2780 of 1998**

13. Mr. Verma, appearing for the cross-objectors (claimants) submits that the Tribunal has wholly erred in not including the Dearness Allowance of Rs.1,187/-, Medical Allowance of Rs. 45/-, House Rent of Rs. 125/- and City Compensatory Allowance of Rs. 32.25/- in the income of the deceased,

despite the fact that his last pay certificate showed the details of the said monthly pay.

He has produced a photostat copy of the certificate, stated to have been led by way of evidence before the Tribunal, which, in fact, with the records of the case having been burnt, was not disputed by learned counsel for the other parties. The said certificate actually reflects the aforesaid amount, with a total salary of Rs. 2,879.25/- shown as the last salary drawn by the deceased, Ved Prakesh. However, even though counsel for the other respondents have not denied the last pay certificate produced in Court today by learned counsel for the cross-objectors, it is seen from a perusal of the impugned Award, that the learned Tribunal specifically recorded in paragraph 7 thereof, that though the widow of the deceased (respondent no.1 in this appeal) had testified that her husband was drawing Rs.3000/- per month, of which he used to give her Rs.2500/- to run the household, the certificate led by way of evidence, Ex.PW6/A, in respect of which Ram Kishan, PW6, an employee in the District Rehabilitation Centre, General Hospital, Bhiwani, testified, did not show the monthly salary of the deceased. It only contained his date of birth. PW6 however testified that Ved Parkash was working as a driver in the office, getting a basic salary of Rs.1290/- alongwith Rs.100/- as special pay. The learned Tribunal, on its own, therefore inferred that with all allowances etc. applicable to Government employees, the deceased must have been drawing a salary of at least Rs.2500/- in the year 1993. That amount was, therefore, assessed as the income of the deceased Ved Parkash.

14. In view of the specific finding above, there would be no reason for this Court to accept a photostat copy of the last pay certificate in appeal, without even an application filed under Order 41 Rule 27 CPC. Therefore,

though otherwise I see no reason to disbelieve the photostat copy of the last pay certificate shown today in Court, which also reflects the stamp of the Assistant Rehabilitation Officer, Bhiwani (as would be reflected in a photostat copy), however, there being no application under Order 41 Rule 27 CPC and naturally, no witness examined in respect of the said certificate, the pay of the deceased assessed by the learned Tribunal is to be accepted by this Court as Rs.2500/- per month.

15. However, I agree with the contention of Mr. Mani Ram that the deceased admittedly having been proved to be a Government servant, and therefore in permanent employment, 50% of that salary is also to be added towards loss of future prospects of an increased income, thereby bringing the total monthly income assessable to be Rs.3750/-.

It was also proved before the Tribunal that he was 34 years of age and as such, a multiplier of 16 is to be applied after deducing a  $\frac{1}{4}$ <sup>th</sup> amount (and not  $\frac{1}{3}$ <sup>rd</sup> as deducted by the Tribunal) from the aforeassessed monthly salary towards the personal expenses of the deceased, there being four dependents upon him, i.e. the respondents-claimants.

Thus, the loss of dependent monthly income to the claimants comes to Rs.2812.50, which per annum works out to Rs.33750/-.

To that amount, applying a multiplier of 16, the total loss of income to the claimants-cross-objectors comes to Rs.5,40,000/-

16. Next, though as per settled law, loss of consortium to the widow of the deceased, i.e. respondent no.1, would be payable to the extent of Rs. 1,00,000/-, however, the accident being of the year 1993, Rs.75,000/- is awarded under that head and since the amount claimed for the funeral expenses and last rites of the deceased was only Rs. 10,000/- that too is

awarded, as against Rs, 5,000/- awarded by the Tribunal.

Though the age of the two minor children of the deceased, i.e. respondents no. 2 and 3, is not given, obviously the deceased being only 34 years old, they cannot be taken to be on the cusp of majority.

Accordingly, a sum of Rs.75,000/-each is awarded to the two children of the deceased for the loss of love, care and guidance of their father. A sum of Rs. 50,000/- is also awarded to the mother of the deceased by way of loss of love and affection of her son.

17. The cross-objections are accordingly allowed to the aforesaid extent, with the total enhanced compensation now awarded to the respondents-claimants coming to Rs.8,25,000/-

The Tribunal had awarded Rs.3,25,000/-; therefore, the enhancement of compensation which is now awarded to the claimants is Rs. 5,00,000/-.

The enhanced amount of Rs. 5,00,000/- would carry interest @ 6% per annum, running from the date of the filing of the claim petition, till the date of filing of the appeal and @ 4% per annum thereafter, till realization of the amount, pendency of the appeal for a long time not being the fault of those liable to pay compensation.

Since recovery rights have already been awarded to the appellant-insurance company, the enhanced amount of compensation, along with interest thereupon, would now be paid by the insurance company, recoverable at its option from respondents no. 2 and 3, i.e. the driver and owner of the vehicle, with a right of recovery to respondent no.3, from respondent no.2, as already held in FAO No.2779 of 1998.

#### **Civil Revisions No.5 and 6 of 1999**

Mr. Khanna, learned counsel for the petitioners in these two civil revisions, submits that the ground of challenge is the same as in the two appeals decided hereinabove, i.e. the petitioner-insurance company seeks the right of recovery from the owner and driver of the truck bearing registration No.PB-02B-9399, i.e. respondents no.3 and 2 respectively in both these petitions, on account of the invalid licence of respondent no.2.

Thus, in view of what has been held on that issue, in FAOs No.2779 and 2780 of 1998 hereinabove, these revision petitions are allowed in the same terms.

(AMOL RATTAN SINGH)  
JUDGE

November 16, 2016  
nitin

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|---------------------------|-----|
| Whether speaking/reasoned | Yes |
| Whether Reportable        | Yes |