IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 2653 of 2012 (O&M)
Date of decision: 09.02.2016

New India Assurance Co. Ltd.

... Appellant

versus

Saroj Kumari and others

.... Respondents

FAO No. 1921 of 2012 (O&M)

Saroj Kumari

... Appellant

versus

New India Assurance Co. Ltd. and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Vinod Gupta, Advocate for the appellant.

Mr. H.K. Aurora, Advocate for respondent No. 1.

K.Kannan, J. (ORAL)

This is an appeal by the Insurance Company on the issue of liability. The Insurance Company wanted to prove that the original issue of licence said to be made by the DTO's office at Hoshiarpur in licence No. 5620 had been actually issued on 27.10.1993 in favour of one Chanchal Singh and not in the name of driver Husan Lal. There was, however, a renewal of licence at the office of Jalandhar and the renewal endorsement referred to the original licence as having been issued in July 1993 for the same serial No. 5620. The Court inferred that there were two different dates of issue of original licence and, therefore, the Insurance Company could be said to have proved the invalidity of the licence. In my view, the reason is completely wrong. There was not even a suggestion put to RW-3 who confirmed from the register that serial No. 5620 contained an entry of an issue to Chanchal Singh on 27.10.1991. It was only in renewal licence there had been a reference to the issue of licence originally at Hoshiarpur against serial No. 5620 on 25.07.1993. The wrong reference to an earlier issue in a renewal licence cannot validate a fake licence. In terms of the judgment of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Swaran Singh and others, 2004 3 SCC 297, that renewal of fake licence is also fake.

Even a genuine renewal of fake licence is also fake. Only exceptional situation when the owner would still be entitled to indemnity is when there is an evidence that the owner acted on the licence produced by the driver and believed even the fake original issue to be genuine one. If the owner did not himself give evidence to his own benefit of his bonafides then the Insurance Company is not required to prove any more than the fact that the driving licence was not genuine and that the owner had committed a breach of term of the policy. All this will not be in any way affect the right of the 3rd parties to claim compensation against the insurer. This, however, will enable the insurer to claim recoveries against the owner and driver. The award is modified and the right of recovery against the owner and driver is hereby allowed.

FAO No. 1921 of 2012 is a claim for enhancement for the claimant who had suffered deprivation of a right hand that she lost in the accident. The disability assessed was 80%. She was Instructor of tailoring and said to be earning Rs. 4,000/- per month. There was evidence that she was hospitalized for about a month. The Tribunal awarded Rs. 2,50,000/-. I will raise the component of pain and suffering to Rs. 75,000/- retain the medical expenses and charges at Rs. 50,000/-, take the loss of income before the petition at Rs. 10,000/- at future loss. I take 80% disability as resulting in 80% loss of earning capacity and apply a multiplier of 15 and assess the various heads of compensation as under:

Injury Case	Date of accident 15.06.2006		
Age	385		
Period of hospitalization	1 month		
Occupation/ Income	Instructor of tailoring		
SR. No.	**Heads of claim**	**Tribunal Amount (Rs.)**	**High Court Amount (Rs.)**
1	Loss of Income from: to:		10,000/-
2.	Medical Expenses:	49,544/-	
	(i) Medicines		50,000/-
	(ii)Hospital charges		

	(iii)Attendant charges		
	(iv)Special diet		
	(v)Transportation		
3	Pain and suffering	40,000/-	75,000/-
4	Disability 80%	1,60,000/-	1,60,000/-
5	Loss of earning capacity		3,200/-
	(i)Income		4,000/-
	(ii)Multiplier		15
	(iii)% of loss of earning capacity		5,76,000/-
6.	Loss of amenities		
7.	Reduction in life expectancy		
8.	Loss of prospect of marriage		
9	Total	2,49,544/-	8,71,000/-

I retain Rs. 1,60,000/- as loss of amenities due to disability. There shall be a total compensation of Rs. 8,71,000/- and the amount of what has been assessed already shall attract interest @ 7.5% from the date of the petition till the date of payment. Consistent with the finding in the connected case in FAO No. 2653 of 2012 the insurance shall be liable to satisfy the claim and recovery against the owner and driver in execution proceedings. Both the appeals are allowed to the above extent.

(K.KANNAN)
JUDGE

09.02.2016
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