

(1) FAO No. 6200 of 2012 (O&M)
Date of decision: January 12, 2016

...Appellant

Harvinder Kaur and others

...Respondents

...Appellants

Mettalic (P) Ltd. and others

...Respondents

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?**

Mr. Rajiv Singh, Advocate,
for respondent No.5 in FAO No. 6200 of 2012
and for respondent No.3 in FAO No. 2656 of 2013.

1. This order shall dispose of the above mentioned appeals as they arise out of the same accident.

2. The above mentioned FAO No. 6200 of 2012 is by the owner

pleading for an indemnity for driving a vehicle with light motor vehicle licence. According to him, the vehicle was a light motor vehicle, as per the registration certificate and consequently, the licence must have been taken as an effective one to find the insurer fully liable.

3. The plea of the insurance company that was accepted was that it was a goods vehicle and insured as such and consequently, the licence required a transport vehicle endorsement under Section 3 of the Motor Vehicle Act. The endorsement was not so made and, therefore, the driver could not be taken as having a valid effective driving licence. The Tribunal accepted the defence and found the owner to be not entitled to indemnity and that the driving licence was not an effective and they resulted a breach of condition of the policy.

4. The learned counsel for the appellant relied on a judgment of the Supreme Court in National Insurance Co. Ltd. Versus Swaran Singh and others (2004) 3 Supreme Court Cases 297 that dealt with an issue of whether a fake driving licence could be treated as such when there was renewal of a fake licence but which was genuine. The judgment in Swaran Singh's case (supra) is an authority that the renewal of fake one is also a fake one. The Supreme Court, however, examined some exceptional situations where the requirement of driving licence itself was not necessary such as when the accident had taken place without any activity on the part of the driver. That was the only situation when the particulars of a driving licence was treated as irrelevant. This was a case when the vehicle was on the run at the time when the accident had taken place. The above judgment is also an authority to administer the principle of pay and recovery. The

Court was holding that the third party cannot come by any harm by any breach of terms of the policy and that the insurance company shall always be liable to pay. Full exoneration of the insurance company even for a third party claimant, the court observed, was not possible. In this case, the insurance company has been given the right of recovery which conforms to the law laid down in Swaran Singh's case (supra). The judgment relied by the appellant cannot help him in any way.

5. A Full Bench of this court in National Insurance Co. Ltd. Versus Parveen Kumar and others 2005 (1) RCR (Civil) 485 was considering the effect of type of licence for a motor vehicle but driven as a tempo. The court was holding that the insurance company was liable. The Full Bench decision is not any longer a good law and on this point there is a judgment of the Supreme Court directly in the case of National Insurance Versus Challa Bharathamma J.T. 2007 (4) SC 519 and New India Assurance Co. Ltd. Versus Prabhu Lal 2008 ACJ 627, both of which held that a light motor vehicle which is used as a transport vehicle which is used as a goods carrier it would require transport vehicle endorsement and if it is not so done, the driver cannot be said to have a valid driving licence. The judgments in Oriental Insurance Company Ltd. Versus Angad Kol 2009 (11) SCC 356 reiterates the same proposition. All these decisions reiterate the principle that the light motor vehicle which is used as a good carriage would be treated as a transport vehicle and would require a special endorsement as Section 3 of the Motor Vehicle Act stipulate. If it is not so done the insurance company is entitled to plead that the driver did not have a valid effective licence and obtain recovery rights for violation of terms of

policy.

6. The judgment of the court below is confirmed and the appeal by the owner in FAO No. 6200 of 2012 is dismissed.

7. As regards the claim for enhancement which is subject matter of FAO No. 2656 of 2013, the Tribunal took the income of the deceased at ₹6000/- on the evidence given that he was a driver and he was driving his own vehicle and running it as a taxi. The claimants were widow, two children and father. The scales of compensation have been increased several times fold and the case would require to be re-assessed, keeping in view the judgment in Sarla Verma Versus Delhi Transport Corporation 2009 (6) SCC 121 and Rajesh and others Versus Rajbir and others 2013 (9) SCC 54. I will not make any provision for additional income of what was taken as ₹6000/- having regard to the fragile evidence brought on record in this regard. If he was a professional driver, the claimants should have produced the driving licence or even if it was contended that he was running his own vehicle as a taxi, they could have produced the registration certificate book or the insurance which had been taken for the proof of the vehicle as a public service vehicle. The income taken by the Tribunal as ₹6000/-, I take it to be appropriate for reckoning but I will make modification regarding choice of multiplier and deduction to be applied to conform to the decisions referred to above. The various claims of heads are tabulated as under:-

<i>Fatal Accident</i>		<i>Date of accident</i>	
Age	40	2.9.2009	
Occupation	Driver		

Claimants:	Widow, two children and father		
	Heads of claim	Tribunal	High Court
Sr. No.		Amount (₹)	Amount (₹)
1	Income	4000	6000
2	Add, % of increase		
3	Deduction		4500
4	Multiplicand (annualised)	48,000	54000
5	Multiplier	12	15
6	Loss of dependence	5,76,000	8,10,000
7	Medical expenses		
8	Loss of Consortium	5000	1,00,000
9.	Loss of love and affection for children		2,50,000
10	Loss to estate		10000
11	Funeral Expenses	5,000	25000
	Total	5,86,000	11,95,000

8. The total compensation will be ₹11,95,000/- and the additional compensation shall also attract interest @ 9% from the date of the petition till the date of payment. The additional compensation shall be distributed in the ratio of 2:2:1 amongst the wife, children and the father.

9. As regards the share of the widow, ,having regard to the fact that the death was taking place 7 years prior to the disposal of this appeal, I will allow additional 50% of the amount permitted to be withdrawn and the remaining 50% shall be split into eight equal portions, 1st portion for a period of one year, 2nd portion for a period of two years and so on for eight years and deposited in a nationalized bank. The amounts shall be disbursed directly by the bank to the widow on the respective dates of maturity. As regards the share of the children, since they are claim to have become major, now, 75% of the amount will be permitted to be withdrawn by them and the remaining 25% shall be split into three equal portions, 1st portion for a

period of one year, 2nd portion for a period of two years and the 3rd portion for a period of three years and deposited in a nationalized bank. The amounts shall be disbursed by the bank in favour of the quondam minors as and when the amounts mature. As regards the share of the father, the entire amount shall be permitted to be withdrawn. In terms of the decision in the connected case in FAO No. 6200 of 2012, the right of enforcement shall be available to the claimants against the insurance company and the insurer will have a right of recovery against the owner and the driver in execution proceedings in the same case.

9. The appeal by the claimants is allowed to the above extent.

January 12, 2016
prem

(K. KANNAN)
JUDGE

