IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Date of Decision: 24.05.2016.

<u>FAO No.373 of 2014 (O&M)</u>

Joginder Kaur and others ....Appellants.

VERSUS

Mangal Singh and others ....Respondents.

<u>WITH</u>

<u>FAO No.1515 of 2014 (O&M)</u>

Rashpal Singh ....Appellant.

VERSUS

National Insurance Company Limited and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. N.K. Vadehra, Advocate
for the appellants (in FAO No.373 of 2014) and
for respondents No.2 to 5 (in FAO No.1515 of 2014).

Mr. R.K. Arya, Advocate
for the appellant (in FAO No.1515 of 2014) and
for respondent No.2 (in FAO No.373 of 2014).

Mr. Suvir Dewan, Advocate
for respondent No.3 (in FAO No.373 of 2014) and
for respondent No.1 (in FAO No.1515 of 2014).

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<u>SNEH PRASHAR, J.</u>

The above captioned two first appeals had arisen from an award dated 05.07.2013 passed by learned Motor Accident Claims Tribunal, Gurdaspur (for short, “the Tribunal”) in MACT Case No.20 of 2010 by virtue of which claimant No.1-Joginder Kaur-widow, claimants No.2 and 3 Gurdip Singh and Kuldeep Singh-sons of deceased Bhupinder Singh, who lost his life in a vehicular accident, were awarded compensation. The driver and owner (respondents No.1 and 2 in the petition) of the truck bearing No.PB-06C-2477 (hereinafter referred to as "the offending truck") were held liable to pay the compensation amount. Both the appeals shall stand disposed of by this common judgment.

The facts are that on 26.04.2010 Bhupinder Singh (since deceased) alongwith his son Gurdip Singh, who was a pillion rider, was coming from village Chak Sharif to Kahnuwan on his motorcycle and had stopped on the roadside due to dense smoke near Mandi of Jagdish Singh alias Deesa when the offending truck, being driven rashly, negligently and in a high speed, came from the opposite direction and coming on the wrong side, struck into his motorcycle. Due to the injuries suffered by Bhupinder Singh, he died at the spot.

First Information Report No.39 dated 26.04.2010 under Sections 304-A/279/427 of the Indian Penal Code was registered in respect of the accident at Police Station Kahnuwan on the statement of Gurdip Singh.

Appellants-Joginder Kaur alongwith her two sons Gurdip Singh and Kuldeep Singh filed a petition invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") claiming compensation impleading driver, owner and insurer of the offending truck as respondents.

The respondents contested the petition. Respondents No.1 and 2 denied the accident in question. Respondent No.3-insurance company pleaded that the driver of the offending truck as well as of the motorcycle were not holding valid and effective driving licence at the time of accident and the offending vehicle was being driven in violation of the terms and conditions of the insurance policy.

On the pleadings of the parties, issues were settled. Both the parties adduced evidence in discharge of the onus of issues on them. Considering the ocular and documentary evidence led by the parties and the submission made on their behalf, learned Tribunal accepted the petition and awarded Rs.3,20,000/- to the claimants and finding that Mangal Singh (respondent No.1 in the petition), driver of offending truck, was not holding a valid and effective driving licence and there had been violation of terms and conditions of the insurance policy, learned Tribunal exonerated the insurance company of the liability to pay compensation amount to the claimants and held only the driver and owner (respondents No.1 and 2 in the petition) liable for payment of the compensation amount.

Feeling dissatisfied with the quantum of compensation, appellants-Joginder Kaur and others preferred FAO No.373 of 2014. Rashpal Singh-owner, also feeling aggrieved, filed FAO No.1515 of 2014 impuging the award.

The submissions made by learned counsel for the parties have been heard and record perused.

Learned counsel for appellants-claimants submitted two fold arguments. First that even the Tribunal had arrived at a conclusion that the insured was not liable to indemnify the insured for having proved the defence taken as envisaged under Section 149(2) of the Act, 1988, still it being a third party claim, the Tribunal should have directed the insurer to pay the amount of compensation to the appellants-claimants with a right to recover the same from the insured. To support his argument, learned counsel relied upon ***M/s United India Insurance Co. Ltd. vs. Davinder Singh, 2008(1) Apex Court Judgments 605*** and ***National Insurance Co. Ltd. vs. Swaran Singh and Ors., 2004(2) Recent Civil reports 114.***

The second argument of learned counsel for the appellants-claimants is that the age of the deceased according to the claimants was 52 years at the time of his death. However, learned Tribunal on the basis of the ocular and documentary evidence available on record arrived at the conclusion that the age of the deceased was 55 years on the date of accident. Even if the deceased was taken to be 55 years of age, the appropriate multiplier was '11', but learned Tribunal fell in error in applying the multiplier of '8'. The income of the deceased was assessed as Rs.5000/- per month but noting was added to the actual income computing future prospects. Learned Tribunal also did not award anything to the widow of the deceased on account of loss of consortium and to the sons of the deceased for loss of love, care and guidance.

Assailing the finding of learned Tribunal that there had been breach of terms and conditions of the insurance policy on part of the owner namely Rashpal Singh (appellant in FAO No.1515 of 2014) of the offending truck, learned counsel for the said appellant argued that driver Mangal Singh was employed by the appellant only after he had satisfied himself that he (driver) possessed a valid and effective driving licence and was a competent driver. The mere fact that the driver did not possess a valid driving licence would not by itself be enough to foist the liability of payment of compensation on the owner of the vehicle when the owner is able to show that he had taken reasonable precautions while employing the driver i.e. he had checked the driving licence and had also taken other steps to ensure that he was a competent driver. To support his argument, learned counsel relied upon ***Pepsu Road Transport Corporation vs. National Insurance Company, 2013(4) R.C.R. (Civil) 273*** and ***Oriental Insurance Co. Ltd. vs. Smt. Bhuri Bai and Ors., 2013(6) R.C.R. (Civil) 1727.***

On the other hand, learned counsel for the insurance company argued that no plea was taken by appellant-Rashpal Singh in his written statement that before giving employment to driver-Mangal Singh, he had satisfied himself that he possessed a valid driving licence or that he had tested his competency of a driver. As such, the plea now being raised by appellant-Rashpal Singh is not available to him.

Having considered the submissions made by learned counsel for the parties, to me the finding of learned Tribunal that the driving licence possessed by driver Mangal Singh was fake and for that reason there was violation of terms and conditions of the insurance policy on part of the insured-appellant Rashpal Singh, appears justified which calls for no intervention. RW1 Gurnam Kumar, Clerk, D.T.O. Office, Gurdaspur produced the relevant record relating to driving licence no.15222/R/07 dated 11.09.2007. He stated that the said licence was issued in the name of driver Mangal Singh son of Phuman Singh and was valid upto 10.09.2010 for LTV/HTV only. However, RW1 further stated that the old number of the said driving licence was 6950/04. He produced the original record and stated that licence no.6950/04 was issued in the name of Gurdit Singh son of Harjit Singh, resident of village Kala Nangal, Gurdaspur. Copy of the said licence Ex.RW1/A was tendered by him in evidence. The said licence was valid for motorcycle/LTV only. The statement of RW1 Gurnam Kumar proved that the original driving licence, which was subsequently renewed in the name of driver Mangal Singh, was not actually in his name and was also not valid for driving a heavy transport vehicle. Licence of some other person was got fakely renewed in the name of driver Mangal Singh. In other words, the licence which Mangal Singh possessed was fake.

The contention of appellant Rashpal Singh that before employing Mangal Singh as a driver on the offending truck, he had taken all precautions to satisfy himself that he possessed a valid licence and was a competent driver, is not tenable in view of the facts in hand. Appellant Rashpal Singh did not bother to appear in the witness box to make a statement on oath to the said effect. He also did not produce evidence in any other form to prove the date on which he employed driver Mangal Singh. It is not a case where the original licence was fake and subsequently renewal of the licence by the licensing authority was valid. Rather, as observed above, the original driving licence was in the name of some other person and was not in the name of driver Mangal Singh and was also not valid for driving heavy transport vehicle, but somehow it was managed to be renewed in the name of driver Mangal Singh which apparently proved that it was a fake licence. On the said facts, the instant case is distinguishable from the facts of **Pepsu Road Transport Corporation'**s case (supra) and **Smt. Bhuri Bai and Ors**.'s case (supra). Since driver Mangal Singh, did not have a genuine and valid licence, it goes without saying that there was breach of terms and conditions of the insurance policy on part of the insured-owner.

Coming to the interse liability of the owner and the insurer, in **M/s United India Insurance Co. Ltd. vs. Davinder Singh's** case (supra) it was held by Hon'ble Apex Court as under:-

> *"**Laxmi Narain Dhut** (supra) has since been followed by this Court in **The Oriental Insurance Company Limited v. Meena Variyal and Ors. 2007 (5) SCALE 269,** wherein this Court referring to **Swarn Singh** (supra) held:*
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> *"It is difficult to apply the ratio of this decision to a case not involving a third party. The whole protection provided by Chapter XI of the Act is against third party risk. Therefore, in a case where a person is not a third party within the meaning of the Act, the insurance company cannot be made automatically liable merely by resorting to the **Swaran Singh** (supra) ratio. This appears to be the position. This position was expounded recently by this Court in **National Insurance Co. Ltd. v. Laxmi Narain Dhut** **2007 (4) SCALE 36**. This Court after referring to **Swaran Singh** (supra) and discussing the law summed up the position thus: In view of the above analysis the following situations emerge:*
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> *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.*

Similarly, in **National Insurance Co. Ltd. vs. Swaran Singh's** case (supra), it was held by Hon'ble Supreme Court that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time. The doctrine of stare decisis persuades not to deviate from the said principle. It is a well settled rule of law and should not ordinarily be deviated from.

Following the above ratio of law laid down by Hon'ble Apex Court, it is held that as it is a case of third party risk, the insurance company has to indemnify the amount i.e. has to pay the compensation amount to the claimants, but then shall be entitled to recover the amount so paid from the insured-owner of the vehicle in question.

Coming to the prayer of the appellants-claimants for enhancement of compensation, there being no cogent and reliable evidence regarding income of the deceased and keeping in view the age and the relevant factors, learned Tribunal rightly assessed the income of the deceased as Rs.5000/- per month. However, no amount was added to the income computing future prospects of the deceased. Accordingly, as laid down in ***Rajesh and others vs. Rajbir Singh and others, 2013(3) R.C.R. (Civil) 170*** since the age of the deceased was 55 years, there had to be an addition of 15% to the actual income of the deceased on account of future prospects, which learned Tribunal failed to allow. There being three dependents on the deceased, i.e. widow and two sons, deduction of 1/3rd from the income towards his personal and living expenses was rightly made by learned Tribunal. Further, learned Tribunal applied the multiplier of '8' whereas in view of the law laid down by Hon'ble Supreme Court in ***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) R.C.R. (Civil) 77,*** multiplier of '11' was appropriate. Accordingly, the compensation payable to the appellants-Joginder Kaur and others is calculated as under:-

1.	Monthly income of the deceased (in Rupees)		Rs.5000/-
2.	Actual age of the deceased		55 years
3.	Increase in future income as per Rajesh and others case (supra)		Rs.750/-
4.	Annual dependency		2/3 of Rs.5750 x 12 = Rs.46,000/-
5.	Multiplier		11
6.	Total		Rs.5,06,000/-

In addition to the amount of Rs.5,06,000/- calculated towards dependency, an amount of Rs.25,000/- as funeral expenses, Rs.1,00,000/- on account of loss of consortium to appellant No.1-Joginder Kaur and Rs.50,000/- for loss of love and affection to appellants No.2 and 3-Gurdip Singh and Kuldeep Singh is allowed.

Accordingly, the appeal FAO No.1515 of 2014 filed by owner-Rashpal Singh is dismissed whereas the appeal FAO No.373 of 2014 filed by appellants-Joginder Kaur and others is partly allowed. The award dated 05.07.2013 passed by learned Tribunal is modified. The enhanced compensation of Rs.3,61,000/- shall be paid to appellants-Joginder Kaur and others within 45 days from the date of receipt of certified copy of this judgment failing which they shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing the appeal till realization. The amount of compensation will be disbursed to the appellants-claimants in terms of shares/conditions incorporated in the award of the Tribunal.

(SNEH PRASHAR)
JUDGE

24.05.2016.
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