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

FAO No.1612 of 2016(O&M)
Date of Decision: **August 10, 2016**

National Insurance Company Limited ...Appellant

Versus

Parkashi and others ...Respondents

CORAM:- HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.Lalit Garg, Advocate for
the appellant – Insurance Company.

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HARINDER SINGH SIDHU, J.

This is an appeal by the Insurance Company (National Insurance Company Limited) against the Award of the Motor Accident Claims Tribunal, Jhajjar (for short `the Tribunal'), in MACT Petition No. RBT-127 of 2014 whereby, a sum of Rs.9,48,600/- along with interest was ordered to be paid as compensation for the death of Rambir in a vehicular accident.

Brief facts of the case are that on 23.4.2014, Rambir (*wrongly written as Ram Singh in the Award)* was going on motorcycle bearing No.HR-10H-5634 to his field for harvesting the wheat crop and his brother, namely Pradeep was going to give food for labourers at his field. At about 10.30/11 p.m., Pradeep was standing on Jhajjar-Badli road to cross the road towards his field. In the meantime, when Rambir Singh tried to cross the road on his motorcycle from his fields, an Alto Car bearing No.DL-4C-AA-

4968, which was being driven by respondent No.3 - Surender Singh came from Jhajjar side in a rash and negligent manner at a very high speed and struck against the motorcycle of Rambir , due to which he fell down on the road and the motorcycle fell in the pit besides the road. Rambir sustained multiple grievous injuries resulting in his death. He was brought to Govt. Hospital, Jhajjar, where he was declared dead.

The legal representatives of the deceased filed claim petition under Section 166 of the Motor Vehicles Act, 1988 pleading that the deceased was aged about 45 years, he was doing agricultural work and was also running a milk dairy in the village and was earning Rs.20,000/- per month.

Upon notice, respondents No.3 and 4 appeared and filed their joint written statement by taking objections regarding maintainability of the petition, locus-standi, cause of action, concealment of material facts from the court and that the driver of the motorcycle was not holding a valid and effective driving licence at the time of accident. Appellant – insurer filed separate written statement and took similar objections, besides pleading contravention of terms and conditions of the insurance policy.

Pleadings of the parties led to the framing of following issues:-

> "*1. Whether Rambir (deceased) had sustained serious and grievous multiple injuries in a road accident on 23.04.2014 at about 10.30/11.00 p.m due to rash and negligent driving of Alto car bearing registration No.DL-4CA-AA-4968 driven by respondent No.1 Surender Singh and insured by respondent No. 3? OPP*
>
> *2. If issue No.1 is proved in favour of petitioners, whether petitioners are entitled to get compensation against respondent*

no.1,2 & 3 and if so to what amount and from which, as prayed for? OPP

3. Whether respondent no.1 was not having valid and effective license at the time of accident? OPR

4. Whether the respondent No.1 and 2 have violated the terms and conditions of insurance policy etc.? OPR-3

5. Relief."

Issue No.1 was decided in favour of the claimants and it was held that the accident had taken place due to rash and negligent driving of vehicle No.DL-4C-AA-4968 by respondent Surender Singh. In the absence of proof of income of the deceased, the Tribunal assessed his income at Rs.6000/- per month. The deceased being 45 years old, 30% increase in the income was granted and $1/3^{rd}$ was deducted towards his personal and living expenses. The monthly dependency was assessed at Rs.5200 and after applying the multiplier of 14, the loss of dependency was assessed at Rs.8,73,600/- (5200x12x14). Besides, Rs.25,000/- each, for `loss of consortium', `funeral expenses' and `loss of love and affection' was also awarded.

Assailing the impugned award, Ld. Counsel for the appellant – insurer has raised two points – (i) that the offending vehicle was falsely involved in the accident as neither the registration number of the offending Alto car nor the name of its driver was mentioned in the FIR and (ii) that its driver was not having a valid driving license to drive a car, as he was possessing a driving license to drive `HTV' and `Motorcycle', whereas, the offending car was in the category of `LMV'.

Having considered the submissions, I do not find merit in the same.

So far as involvement of the vehicle is concerned, indeed, the number of the vehicle was not given in FIR No.281 dated 24.4.2014 registered under Section 279/304-A IPC, but the driver was arrested. The case was investigated by the Police of Police Station Jhajjar and it was only thereafter that it filed report under Section 173 CrPC against Surender Singh challaning him for the offence under Section 304-A, etc. IPC.

In **Mallamma vs. Balaji and others, 2004 ACJ 368**, the Karnataka High Court while reversing the finding of the Tribunal on the issue of negligence, held as under:-

> *"12. Therefore, under these circumstances, I am of the considered view that the Tribunal has wrongly come to the conclusion and held that the claimant has not proved the negligence on the part of the driver of the milk van involved in the accident. Filing of the charge-sheet against the driver is also a prima facie case to hold that the driver of the said lorry was responsible for the accident and burden shifts on him to prove the same."*

In **The United India Insurance Co. Ltd. vs. Deepak Goel and others, MAC.APP.No.750/2006,** decided on 24.01.2014, while taking note of the decisions of the Hon'ble Supreme Court, it was observed by the Delhi High Court as under:-

> *"xxx xxx xxx In a criminal case in order to have conviction, the matter is to be proved beyond reasonable doubt and in a civil case the matter is to be decided on the basis of preponderance of evidence, but in a claim petition before the Motor Accident Claims Tribunal, the standard of proof is much below than what is required in a criminal case as well as in a civil case. Undoubtedly, the enquiry before the Tribunal is a summary enquiry and, therefore, does not require strict proof of*

liability.

21. Nonetheless, in a case, where FIR is lodged, charge-sheet is filed and specially in a case where driver after causing the accident had fled away from the spot, then the documents mentioned above are sufficient to establish the fact that the driver of the offending vehicle was negligent in causing the accident particularly when there was no defence available from his side before the learned Tribunal. Thus, the claimants have proved negligence of the driver of the offending vehicle"

In view of the above factual and legal position, the finding of the Tribunal that the accident was caused due to rash and negligent driving of the offending Alto Car is affirmed.

Coming to the second argument regarding not holding a valid driving license, though, issue No.3 was framed on the point, but no evidence was led by the appellant – Insurer in this regard and accordingly, it has not been discussed by the Tribunal. The copy of the driving licence, as shown by Ld. Counsel for the appellant – Insurer, reveals that it was valid from 31.10.2013 to 30.10.2016 and the driver Surender Singh was authorised to drive HTV and Motorcycle. The accident in question had occurred on 23.4.2014. In other words, on the date of accident, the driver of the offending vehicle was holding a driving license to drive `HTV' and `Motorcycle', but not `LMV'.

Similar issue was considered by the Jammu and Kashmir High Court in **National Insurance Co. Ltd. v. Gh. Rasool Baba (Jammu and Kashmir), 2011(2) J.K.J. 357.** After referring to the provisions of the Motor Vehicles Act as also the case law on the subject, it was concluded that holder of a licence to drive HTV(PE), cannot be said to be having no licence for driving Light Motor Vehicle as they are of the same type. It was observed as under :

> "32. Section 10(2) of the MV Act provides that driving licence shall be express as entitling the holder to drive a motor vehicle of various classes, such as:
> (a) motor cycle without gear;
> (b) motor cycle with gear;
> (c) invalid carriage;
> (d) light motor vehicle;
> (e) transport vehicle;
> (f) road-roller;
> (g) motor vehicle of a specified description.
>
> *33. The aforesaid classification does not give the description of all the vehicles but gives the description of type of vehicles. In the said backdrop the vehicle (Scorpio), in the context of definitions as given to transport vehicle, is held to be the vehicle of same type.*
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> *34. In paragraph 47 of the three Judge judgment as referred hereinabove, it has been held that "if a person has been given a licence for a particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle which is of the same category but of different type".*
>
> *35. Applying the same ratio to the facts of the instant case, the driver, holder of licence to drive HTV(PE), while driving a Scorpio (Light Motor Vehicle) cannot be said to be having no licence for driving such type of vehicle which in effect is not different and more so when in terms of Section 7 of the Act pre-condition for obtaining licence for driving transport vehicles, means heavy vehicle, is to possess licence for driving light motor vehicle at least for one year. ....*
>
> *38. The category of the vehicle is of essence and then to hold license for driving a particular category of vehicles having different types can be driven by the driver who possesses driving license for driving such type of vehicles.*
>
> *39. For the stated reasons, the driver, holder of licence to drive HTV(PE) while driving vehicle (Scorpio) cannot be said to be not holding the licence to drive such type of vehicle, so is held to be having valid and effective license, resultantly there being no violation of specified condition, the insurer is held liable to pay the compensation."*

This issue was also considered by this Court in **Harsewak**

Singh son of Niranjan Singh v. Lajo Devi wife of Gurmail Singh (Punjab And Haryana) 2013(2) PLR 809, wherein, agreeing with the decisions of different High Courts, it was held that possession of licence to drive HTV must be seen as sufficient qualification for a person to drive a LMV also, as the mechanism to drive in both the categories of vehicles was the same.

Accordingly, the second argument is also devoid of merit.

No other point was raised.

Appeal dismissed.

August 10, 2016 **(HARINDER SINGH SIDHU)**
gian **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No