IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.1996 of 2016(O&M)
Date of Decision: May 26, 2016

National Insurance Company Limited ...Appellant
Versus
Babli Devi and others ...Respondents

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

Present: Mr. Neeraj Khanna, 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 dated 3.11.2015 passed in MACT Petition No.330 of 2014 by the Motor Accident Claims Tribunal, Chandigarh (for short `the Tribunal'), whereby, a sum of Rs.36,05,648/- along with interest was ordered to be paid as compensation on account of the death of Anish Kumar in a vehicular accident.

Brief facts of the case are that on 26.05.2014, Anish (deceased) was driving Activa No.PB-65-W-2624, while Mam Chand was the pillion rider. They were going from MLA Hostel, Punjab, Sector 1, Chandigarh to Sector 39, Chandigarh and the scooter was being driven on its correct side of the road at a normal speed. When it reached near the residence of Haryana Chief Minister, Chandigarh, it was hit by motorcycle No.CH-01AU-7343, which was being driven rashly and negligently by Devi Dutt. As a result of this collision, Anish, Devi Dutt and Man Chand suffered multiple injuries. They were taken to PGI, Chandigarh, where Anish was declared `brought dead'.

Legal Representatives of Anish filed claim petition under Section 166 of the Motor Vehicles Act, 1988 pleading that he was aged 30 years and was a working in the Hospitality Department, Punjab and earning Rs.30,000/- per month.

Upon notice, respondent No.6-Girish Chander (Owner of the offending motorcycle No.CH-01-AU-7343) filed written statement, stating that the offending vehicle was fully insured with appellant – Insurance Company. The appellant - insurer filed separate written statement stating that the driver of the offending vehicle i.e. Devi Dutt (since deceased) was not holding a valid and effective driving licence and that the accident took place due to rash and negligent driving of scooter No.PB-65-W-2624 by Anish Kumar (since deceased) and driver of motorcycle No.CH-01-AU-7343 was not at fault.

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

> "*1. Whether Anish Kumar died due to injuries sustained in a motor vehicular accident, which was caused due to rash and negligent driving of motorcycle No.CH-01-AU-7343? OPP*
>
> *2. Whether the claimants are entitled to get compensation on account of death of deceased Anish Kumar in a motor vehicular accident? OPP*
>
> *3. Whether the driver of offending vehicle was not holding a valid driving licence at the time of accident? OPR-3*
>
> *4. 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 offending motorcycle No.CH-01-AU-7343 by Devi Dutt Bhatt. Based on the testimony of the official witness Maninderjit Kaur (PW1), Junior Assistant from the office of Hospitality, Punjab, MLA Hostel Canteen, Chandigarh who deposed about the last pay drawn by the deceased, the Tribunal assessed the income of the deceased Anish at Rs.17,062/- per month and added 50% towards future prospects. The monthly income of the deceased was assessed at Rs.25,593/- per month and then considering the number of dependants (5), deduction of 1/3rd was made towards personal and living expenses of the deceased and monthly dependency was assessed at Rs.17062/- (25593-8531). Multiplier of 17 was applied and total loss of dependency was assessed at Rs.34,80,648/-. Besides, Rs.1,00,000/- `for loss of consortium' and Rs.25,000/- for `funeral expenses and last rites' were also awarded.

However, in view of the finding that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of accident, as no licence was produced before the Tribunal, the appellant-Insurer was granted the right to recover the amount of compensation from respondent No.6 - Girish Chander, owner of the offending vehicle.

Arguments have been heard and paper-book perused with the assistance of Ld. Counsel for the appellant.

The sole argument of Ld. Counsel for the appellant – insurer is that once the Tribunal has returned a finding that the driver of the offending motorcycle was not having a valid and effective licence, then, it being a case of violation of terms and conditions of the insurance policy, the appellant – insurer could not be directed to first indemnify the loss caused by the vehicle and then recover the same from the owner of the offending vehicle.

It has been argued that the condition precedent for the application of the rule `pay and recover' is that there should be a valid policy of insurance and that there is no breach of the terms of the policy. Hence if any ground for avoiding liability as specified in Section 149(2) of the Motor Vehicles Act, 1988 is established, which includes the ground of the vehicle being driven by a person not having a valid driving licence, then there is no liability on the part of the insurer to pay the amount decreed or awarded under Section 149(1). Consequently, when the liability is avoided on one of the grounds mentioned in Section 149(2), there is no liability to pay the amount decreed or awarded and consequently the question of directing the insurer, in these circumstances, to pay and then recover would not arise.

The argument of the Ld. Counsel cannot be accepted.

The principle of `pay and recover' was examined in detail by this Court in **FAO No.2299 of 2016** titled **`The Oriental Insurance Company Ltd. vs. Smt.Archana and others'** decided on 3.5.2016, wherein, on a consideration of various decisions of Hon'ble Supreme Court it was concluded that, depending upon the facts and circumstances, in cases where the vehicle was not being driven by a duly licensed person, the Tribunal or the High Court may direct the insurer to first pay the compensation amount and thereafter to recover the same from the insured.

In view of above, there is no merit in the contention raised on behalf of the appellant – Insurance Company.

No other point was raised.

The appeal is dismissed.

May 26, 2016 **(HARINDER SINGH SIDHU)**
JUDGE

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GIANENDER KUMAR
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integrity of this document