# In the High Court of Punjab and Haryana at Chandigarh

**Date of Decision:22.9.2016**

**FAO No. 4647 of 2014**

**Anil Kathait**

**---Appellant**

**vs.**

**Rakesh and others**

**---Respondents**

**FAO No. 4904 of 2014**

**Saroj Arora**

**---Appellant**

**vs.**

**Anil Kathait and others**

**---Respondents**

**Coram:** **Hon'ble Mrs. Justice Rekha Mittal**

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**Present:** Mr.J.S.Arora, Advocate
for the appellant in FAO-4647 of 2014
for respondent No. 1 in FAO No. 4904 of 2014

Mr. Shiv Kumar, Advocate
for the appellant in FAO-4904 of 2014

Mr. Rajesh Verma, Advocate
for respondent No. 3(in both the appeals)

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**Rekha Mittal, J.**

This order will dispose of FAO No. 4647 and 4904 of 2014 as these have emerged out of the same award dated 3.9.2013 passed by the Motor Accidents Claims Tribunal, Faridabad (in short “the Tribunal”) whereby compensation has been awarded in favour of Anil Kathait appellant in FAO No. 4647 of 2014 in regard to injuries sustained by him in a motor vehicular accident on 15.12.2011 due to rash and negligent driving of truck No.HR-38-M-1970 by Rakesh, its driver.

**FAO-4647 of 2014**

The injured victim is in appeal seeking enhancement of compensation in regard to the injuries sustained by him. The learned Tribunal has awarded an amount of Rs. 6,46,850/- under the following heads:-

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|---|---|---|
| Bills | - | Rs. 6,22,850/- |
| Stay in hospital | - | Rs. 9,000/- |

| | | |
|---|---|---|
| Pain & sufferings and special diet | - | Rs. 10,000/- |
| Loss of income for one month | - | Rs. 5,000/- |

Counsel for the appellant would urge that compensation awarded for loss of income, pain and sufferings requires enhancement. The claimant is further entitled to compensation for special diet and attendant charges.

Counsel for the respondent has supported the award passed by the learned Tribunal.

I have heard counsel for the parties, perused the paper book and the records.

The claimant examined Dr.Rajiv Gupta, Orthopedic Surgeon, Sarvodaya Hospital, Sector-8, Faridabad. He has deposed that Anil Kathait was admitted on 15.12.2011 having polytrauma-fracture both femur and compound fracture right leg grade III and degloving injury left leg and hemorrhagic shock and operated for fracture both femur and tibia and discharged on 24.12.2011. Second time he was admitted on 28.12.2011 for plastic surgery and discharged on 30.12.2011. Again he was admitted on 28.1.2012 for plastic surgery and discharged on 29.1.2012. The last time he was admitted on 26.7.2012 for infected non-union tibia right side, operated and discharged on 28.7.2012. It has further been deposed that the patient is required follow up and presently he is not allowed to walk. The learned Tribunal has allowed loss of income for a period of one month at Rs. 5000/-. Counsel for the appellant has not made any submission or pointed out any materials on record to assail findings of the Tribunal qua income of the deceased. However, there is no clear evidence on record as to what the victim was doing prior to the occurrence and for how much time he could not do the work. Taking into consideration the materials on record while examined in the light of observations made by Hon'ble the Supreme Court of India in ***R.D.Hattangadi Vs. M/s Pest Control (India) Private Limited AIR 1995 (SC) 755***, the claimant is allowed compensation for loss of income for a period of four months @ Rs. 5000/- per month i.e. **Rs. 20,000/-** .

Initially, the claimant remained admitted in the hospital with effect from 15.12.2011 to 24.12.2011. Later on three occasions, he was hospitalized for a period of 2-3 days each time. Twice, he had undergo operation in regard to fracture of femur and tibia. He was also admitted for plastic surgery on two occasions. Keeping in view nature of injuries sustained and period of treatment as an indoor patient, claimant is awarded an amount of **Rs. 20,000/-** for pain and sufferings.

The Tribunal has not awarded any compensation for special diet and attendant charges. Keeping in view the aforesaid discussion, the claimant is awarded an amount of **Rs. 20,000/-** for special diet, attendant charges and transportation charges. The compensation awarded by the Tribunal for expenses on medical treatment, stay in hospital etc. Rs. 6,22,850/- and Rs. 9000/- respectively, is affirmed. The total compensation comes to **Rs.6,91,850/-** and the enhanced compensation is **Rs.45,000/-.** The additional amount shall be payable with interest at the rate of 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

**FAO No.4904 of 2014**

The registered owner (insured) of the offending vehicle has assailed the award only qua recovery rights given to the insurer.

It has been argued that the learned Tribunal has committed a serious error rather illegality by relying upon report of RTA, Kanpur that was addressed to the Tribunal. It is argued that as none of the officials from the said transport authority was examined alongwith relevant records and deprived an opportunity to the appellant to challenge correctness of the report, the report cannot form the basis for holding that driver of the offending vehicle was not holding a valid driving licence. Another submission made by counsel is that the appellant appeared in the witness box and tendered into evidence her duly sworn affidavit and deposed that before engaging Rakesh as a driver on the truck, she had seen driving licence No. R-37375/KP/2002 dated 31.7.2002 issued by the Licensing Authority, Kanpur (U.P.) which was valid upto 27.12.2011. She had also taken test drive of the driver and he (Rakesh) drove truck in question very smoothly and with care. She was satisfied that the driver had a driving licence and drove the truck efficiently. The witness was cross examined at length but there is no challenge to her testimony in regard to the aforesaid facts. It is argued with vehemence that as the Tribunal did not advert to this important aspect of the matter, thus, findings recorded by the Tribunal with regard to driving licence are the result of ignoring vital evidence on record.

Counsel for the insurance company, on the contrary, has supported the findings with the submission that the appellant has admitted in her cross examination that she had not taken trial of the driver in the presence of any government authority nor verified the driving licence Ex. R3 from the authority concerned.

I have heard counsel for the parties, perused the paper book and the records.

The Tribunal has relied upon the report purported to be prepared by RTA, Kanpur and addressed to the Tribunal. There is nothing on record suggestive of the fact that the Tribunal ever sent any requisition to RTA, Kanpur for sending a report on the basis of verification of the licence Ex. R3 possessed by driver of the offending vehicle. Counsel for the insurance company has failed to cite any law or precedent that such a report is per se admissible in evidence. In this view of the matter, I find merit in contention of the appellant that the report can not form the basis to record a finding that the driving licence possessed by the driver is a fake one and the insurance company is entitle to have recovery rights due to violation of terms and conditions of the policy by the insured.

This apart, the learned Tribunal has altogether overlooked statement of the appellant, referred to by counsel, in order to contend that even if the driving licence was fake, there is no intentional breach of the terms and conditions of the insurance policy by the insured.

The registered owner/insured appeared in the witness box and made a statement that she had seen the driving licence, accepted it genuine and tested driving skill of the driver. Hon'ble the Supreme Court of India in ***United India Insurance Company Limited vs. Lehru and others 2003(2) RCR(Civil) 278*** on a detailed consideration of implications of Section 149 (2) of the Motor Vehicles Act, 1988 (in short "the Act") has held that Section 149(2)(a)(ii) absolves the insurance company where there is a breach by the insured. In para 20 of the judgment, the Court has held, quoted thus:-

> "**20.** When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that

the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The Insurance Company would not then be absolved of liability. If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly, even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia's, Sohan Lal Passi's and Kamla's case. We are in full agreement with the views expressed therein and see no reason to take a different view."

The same view was reiterated in a recent judgment of the Apex Court ***Pepsu Road Transport Corporation vs. National Insurance Company 2013 (10) SCC 217***. When the facts brought in the statement of Saroj Arora (insured) are examined in the light of observations made in para 20 of the judgment extracted hereinbefore, I find contention of the appellant (insured) to be meritorious that neither the insurance company can be heard to say that the insured has committed breach of Section 149(2)(a)(ii) of the Act nor can it recover the amount of compensation from the insured after satisfying the award qua the claimant. In view of the above, findings recorded by the learned Tribunal upholding plea of the insurance company that the insured is guilty of committing breach of the terms and conditions of insurance policy cannot be allowed to sustain and accordingly set aside.

For the foregoing reasons, the appeal is allowed in the aforesaid terms.

**(Rekha Mittal)**
**Judge**

**22.9.2016**
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No