IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3113 of 1996 (O&M) and
XOBJC-42-CII-1997
Date of Decision: April 25, 2017

National Insurance Company

..Appellant(s)

Versus

Tarsno and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Akash Sridhar, Advocate for
Mr. Ashwani Talwar, Advocate
for the appellants.

Mr. G.S. Bawa, Advocate
for respondent no.5.

Ms. Kamalpreet, Advocate
for respondent no.5.

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ANITA CHAUDHRY, J.

The insurance company has disputed the liability placed upon them by the Motor Accident Claims Tribunal, Sirsa. It would be necessary to mention here that in the first page of the award the name of the insurance company does not figure but it is not disputed that the vehicle was insured with National Insurance Company i.e. the appellant. It appears that there is a typing error.

The record of this file had been burnt in the fire accident which had taken place in the year 2011. Only the copy of the award could be reconstructed. The insurance company has placed on record copy of the statement made by their Assistant Manager, copy of the statement made by the driver–Swaran Singh and the report Mark-A & Mark-B as well as the copy of the driving licence obtained from the trial Court record. The counsels appearing for the parties agreed that the matter can be decided on the basis of whatever is available on the record.

An accident had taken place on 24.10.1993 in which Rajpal who was just 23 years old had died. He was married. The claim petition was filed by his mother, wife and the minor sister. No evidence could be led to show that the deceased was a helper, therefore, his income was taken as Rs.2,100/- per month. The minimum wages in the year 1993 were Rs.1,046.50/- per month. The Tribunal had deducted 1/3rd and had applied the multiplier of 16 to calculate the compensation to be Rs.2,56,000/-. A sum of Rs.5,000/- was added as funeral expenses.

The submission on behalf of the appellant-insurance company is that the driver was driving a truck for which a licence for HTV was required and the Tribunal had ignored the verification report and the District Transport Officer of Bathinda had made his report that the licence was renewed from 16.07.2013 to July 1996 but when the licence was verified from Alwar where the licence was earlier renewed a report had been given that no driving licence bearing no.1586/R/87 was issued in the name of Swaran Singh and a licence in the name of Kamal Singh had been renewed on that number and the driver did not possess any licence prior to this licence and a HTV licence is not issued in the first instance and the statement of the driver completely supports their case as in the cross-examination he had admitted that he had never lived in Raipur nor any licence was issued to him prior to 15.07.1993 and with this admission, the Tribunal could not have placed the liability upon them and the evidence has been ignored by the Tribunal.

On the other hand, the submission on behalf of respondent no.5 was that the Division Bench in ***National Insurance Company Vs. Sucha Singh 1994-1 PLR 439*** had held that if a licence is renewed though originally it was a fake licence then it would get its validity and the insurance company would be liable to reimburse the insured. It was urged that merely because the licence was fake, the insurance company cannot avoid its liability. The counsel also refers to ***M/s. Atlas Construction Faqridabad Vs. Labhy Singh and others 2014(1) Law Herald 784, National Insurance Co. Ltd. Vs. Santosh Kumar Gaur and others 2015 ACJ 1857*** and ***National Insurance Company Ltd. Vs. Swaran Singh and others 2004 (2) RCR (Civil) 114***. While placing reliance upon *M/s. Atlas Construction's* case (supra), the counsel further urges that mere fact that the driver had a fake driving licence would not be enough to foist the liability on the owner when the owner is able to show that he had exercised reasonable care while employing the driver and the owner had checked the driving licence.

The submission on behalf of the insurance company is that the Apex Court in **New India Assurance Company Vs. Kamla**

2001(3) RCR Civil 716 had held that a fake licence cannot get its forgery outfit stripped off merely because some officer had renewed the same with or without knowing it to be forged and no licensing authority has the power to renew a fake licence.

Coming to the cross-objections filed by the claimants, the submission on behalf of the claimants/objectors was that the multiplier should have been 18 instead of 16 since the deceased was 23 years old and no amount has been awarded for loss of love and affection for the mother and for loss of consortium and the amount allowed as funeral expenses was less.

The Tribunal failed to award the compensation on the miscellaneous heads and had used the wrong multiplier. Therefore, the calculations will have to be made again.

Taking the income to be Rs.2,100/- per month and making a deduction of 1/3rd the amount available for the family would be Rs.1,400/- per month and after applying the multiplier of 18 the compensation would come to Rs. 3,02,400/- (1400 x 12 x 18). I would add Rs.25,000/- for loss of consortium and Rs.10,000/- for loss of love and affection for the mother and I would add Rs.5,000/- more for funeral expenses/transportation charges etc., rasing the total to Rs.3,42,400/-. The Tribunal had awarded Rs.2,62,000/-, which would be deducted from the above amount and the remaining amount would be payable with interest at the rate of 6% from the date of filing of cross-objections i.e. June, 1997.

In New India Assurance Co. Vs. Kamla's case (supra) the Division Bench judgment referred to by respondent no.5 had been dealt with in para no.13. The observations made therein read as under:-

> *The observation of the Division Bench of the Punjab and Haryana High Court in National Insurance Co. Ltd. vs. Sucha Singh (supra) that renewal of a document which purports to be a driving licence, will robe even a forged document with validity on account of Section 15 of the Act, propounds a very dangerous proposition. If that proposition is allowed to stand as a legal principle, it may, no doubt, thrill counterfeiters the world over as they would be encouraged to manufacture fake documents in a legion. What was originally a forgery would remain null and void for ever and it would not acquire legal validity at any time by whatever process of sanctification subsequently done on it. Forgery is antithesis to legality and law cannot afford to validate a forgery.*

In view of above, the submission made is to be rejected. The owner did not step into the witness box to say that he had exercised reasonable care while employing the driver or that he had checked the driving licence. Therefore, this submission has also to be rejected.

There was sufficient material on the record to give a finding against the owner–driver. Swaran Singh PW1 had himself admitted that he did not possess any licence prior to 15.07.1993 and he had never lived in Raipur. With this admission it is clear that the licence which was produced before the Bathinda authorities was a fake licence and the Tribunal should have taken note of the statement made by G.L. Goyal, Assistant Manager RW-3. If the Tribunal had any doubts, it could have asked for the report from any authority. Though in my mind the statement of Swaran Singh was enough to reject the plea. The licence which was possessed by the driver was a fake licence. The appeal filed by the insurance company is allowed. In terms of Swaran Singh's case (supra) the amount would be paid initially by the insurance company and the insurance company would be entitled to recover the same from the owner-driver.

The appeal filed by the insurance company is allowed. The cross objections are also partly allowed.

(ANITA CHAUDHRY)
JUDGE

April 25, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No