IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 23.10.2017

1. FAO No.1728 of 1999

National Insurance Company ...Appellant

Versus

Atwari Devi and others ...Respondents

2. FAO No.1972 of 1999

Atwari Devi and others ...Appellants

Versus

Jang Singh and others ...Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Pardeep Goyal, Advocate for appellant in FAO No.1728 of 1999 and respondent no.3 in FAO No.1972 of 1999
Mr.Vivek Suri, Advocate for appellants in FAO No.1972 of 1999

None for the respondents-driver and the owner of the offending vehicle.

<u>RAJIV NARAIN RAINA, J.</u> (Oral)

1. This order will dispose of FAO Nos.1728 and 1972 of 1999 as the same arise out of a common award passed by the Motor Accident Claims Tribunal, Patiala.

2. Indisputably, the driver of the offending vehicle did not possess a valid driving licence on the date of accident i.e. 26th February, 1997. The Insurance Company has appealed to this Court against the liability fastened on it by the Tribunal. The Tribunal has awarded

compensation of ₹ 2.10 lakhs to the widow and the four minor children of the deceased Mithu. It is not necessary to traverse the entire facts mentioned in the impugned award dated 6th April, 1999 passed by the Motor Accident Claims Tribunal, Patiala (for short "the Tribunal"). As per the impugned award, the liability has been fastened on the Insurance Company and nothing has been said as far as the owner and the driver of the offending vehicle are concerned regarding their liability whether joint or several. The Tribunal had found that the driving licence at the time of accident was not a valid one as it had expired. The licence was valid upto to 20th October, 1988, but was subsequently renewed from 4th March, 1999 to 16th October, 2000 while the accident had taken place before the renewal. While concluding the issue on facts, the Tribunal relied on the judgments in Ramphool vs. Krishna Makkar, 1988 (2) 94 PLR 561 and Ramesh Chand vs. United India Insurance Company, 1997 (3) PLR 426. Applying the ratio of these two judgments, the Tribunal fastened the liability on the Insurance Company.

3. Mr.Pardeep Goyal, learned counsel appearing for the Insurance Company has relied on a decision of the Supreme Court in National Insurance Company Limited vs. Jarnail Singh and others, 2007(15) SCC 28 to show that the reasoning of the Tribunal in fastening liability on the Insurance Company without the driver holding a valid driving licence was not correct view on law. A similar situation arose in that case. The driver did not hold a valid and effective driving licence on the date of accident as it had expired. There is no dispute that the policy stipulated a condition that the vehicle would not be driven by any person without a valid driving licence. This meant that the condition in the

policy had been violated. While holding thus, the Supreme Court enunciated the legal position as far as Section 149 (2)(a)(ii), (5) and 15 (1) of the Motor Vehicles Act, 1988 are concerned that when the driver did not hold a valid driving licence on the date of accident, there is breach of the condition of the contract of insurance, nonetheless the Insurance Company is liable to pay compensation to the third party on the strength of valid insurance policy issued in respect of the vehicle. The Supreme Court held that the remedy of the insurer when there was breach or violation of the policy condition was to recover the amount from the insured. Applying the principle in *Jarnail Singh* (supra) the liability of the Insurance Company in this case cannot be obliterated by the fact that respondent no.6, the driver did not hold a valid driving licence while driving the vehicle owned by the owner, respondent no.7 which was insured against risk to third party.

4. Thus, the impugned award has resulted in these two appeals, one filed by the Insurance Company being FAO No.1728 of 1999 to absolve it from liability while the other filed by the claimants being FAO No.1972 of 1999 for enhancing the compensation. Since the liability falls on the Insurance Company with right to recover from the owner, it may be noted that by order dated 15th November, 2000 passed by this Court in the appeal filed by the Insurance Company, the driver and owner of the offending vehicle, respondents no.6 and 7 respectively were proceeded against ex parte since they did not appear despite service. The Division Bench of this Court dismissed the appeal of the Insurance Company qua claimants, respondents no.1 to 5 and the appeal was admitted as against the owner. Therefore, this Court is empowered to hear the claimants in

their appeal for enhancement of compensation and the Insurance Company would not be in a position to contest any justified increase in compensation, if made out on merit and either not granted by the Tribunal or awarded deficient in quantum.

5. The appeal (FAO No.1972 of 1999) filed by the claimants was admitted on 14th September, 2001. The age of the deceased at the time of death was 30 years and multiplier of 17 has been applied which is proper. The monthly income of the deceased has been assessed by the Tribunal at ₹ 1500/- per month. The deceased was a Painter by profession for which the notified minimum wages under the Minimum Wages Act, according to Mr.Vivek Suri, learned counsel for the claimants at the relevant time was ₹ 2100/- per month. The Tribunal has not discussed this issue while assessing income of the deceased and therefore, there is patent defect in the impugned award. The reasoning ascribed by the Tribunal is not the correct one when it takes the minimum wages for unskilled labourer bench mark which may have then been ₹ 1500/- per month, but for a skilled labourer, the wages would certainly be more. The death having occurred in 1997, it is not preposterous to assess the income of the deceased assessed at ₹ 2100/- per month. Mr.Suri, is correct in submitting that the income of the deceased should be enhanced to ₹ 2100/- per month. Having reached thus far, the monthly dependency taken by the Tribunal is 1/3rd of the monthly income which is highly disproportionate to real living expenses when the deceased had to support four minor children and wife with his income and therefore, deduction of 1/4th of dependency (expenditure upon oneself) should have been ordered being the proper medium of

assessment of dependency. Accordingly, the dependency is accepted as 1/4th of the monthly income of the deceased by rejecting $1/3^{rd}$ apportioned by the Tribunal.

6. The Tribunal awarded ₹ 2000/- on account of funeral expenses which is less and is enhanced to ₹ 25000/- and for loss of consortium to the widow a sum of ₹ 1.00 lakh has to be granted in view of the law laid down by the Supreme Court, especially in Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121 and Rajesh v. Rajbir Singh, (2013) 9 SCC 54. Loss of love and affection and care and guidance, all caused by the unfortunate death of the deceased is assessed at ₹ 1.00 lakh each payable to the four children who at the time of death were minor the oldest being only 12 years of age. No change in rate of interest would be justified as that has been correctly applied by the Tribunal which was proper and justified in the time of the fatal accident.

7. As a result, the appeal (FAO No.1728 of 1999) filed by the Insurance Company is dismissed, except that it will have the recovery right against respondents no.6 and 7, the driver and the owner of the offending vehicle, respectively.

8. Claimants' appeal (FAO No.1972 of 1999) which has been partially contested by the Insurance Company on the principle of pay and recover, is partially allowed and the amounts of compensation on each of the heads is enhanced accordingly in terms of the above directions. The Tribunal would calculate the amount in execution in terms of this order and the Insurance Company shall deposit the modified amount within two months from the date of receipt of the certified copy of this order

and the amount be disbursed directly into the account of the claimant(s) on furnishing of bank account number by them. The transfer of compensation money would take place by RTGS or by draft drawn in the name of the claimants and none else so that the compensation goes directly to the claimant(s) represented by the widow of the deceased in whose account the same be deposited so that the compensation is used for the benefit of the family. The Insurance Company would remain at liberty to recover the amount as awarded and enhanced by this Court by modification of the impugned award from the insured owner of the offending vehicle.

(RAJIV NARAIN RAINA)
23.10.2017 **JUDGE**
MFK

Whether speaking/reasoned *Yes*

Whether Reportable *No*