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

**FAO No.2799 of 2000**
**Date of Decision.08.12.2017**

Smt. Satya Bansal .......Appellant

Vs

Kalawati and others ........Respondents

2. **FAO No.3861 of 2001**

Kalawati and others .......Appellants

Vs

Bagga Singh and others ........Respondents

**CORAM:HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Munish Behl, Advocate
for the appellant in FAO No.2799 of 2000 and
for respondent No.2 in FAO No.3861 of 2001.

Mr. Hari Mohan Sharma, Advocate
for the appellants in FAO No.3861 of 2001 and
for respondent Nos.1 and 4 in FAO No.2799 of 2000.

Mr. D.P. Gupta, Advocate
for respondent No.6 in FAO No.2799 of 2000.

Mr. D.R. Bansal, Advocate
for respondent No.3 in FAO No.3861 of 2001.

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**AMIT RAWAL J.(ORAL)**

This order of mine shall dispose of two appeals bearing Nos.2799 of 2000 preferred by the owner challenging the liability fastened upon it and 3861 of 2001 on behalf of the claimants seeking enhancement of compensation.

Mr. Munish Behl, learned counsel appearing on behalf of appellant-owner submits that the Tribunal has committed illegality and perversity in exonerating the insurance company from indemnification owing to the breach of terms and conditions of the insurance policy. In fact, the driver employed by the owner had a driving licence bearing No.15227/98/MKG issued on 06.06.1998 valid upto 5.6.2001. Instead of summoning the witness from the concerned Licensing Authority i.e. Nagaland, it had sought indulgence of the Court for appointment of the local commissioner. The local commissioner Mr. Surinder Kumar, Advocate was appointed as local commissioner, who submitted his report dated 02.08.2000 revealing that he had not verified the register in the manner it was required to be, for, he had seen the licence bearing No.15227/98/MKG dated 2.9.1996 whereas the driving licence was issued on 6.6.1998. This itself was a clincher for not discharging the onus on the part of the insurance company, therefore, the award under challenge qua finding on issue No.2 is liable to be set aside.

Per contra, Mr. D.P. Gupta, learned counsel appearing on behalf of the insurance company submits that the aforementioned local commissioner was appointed with the consent of the parties without any objection. Despite extensive cross-examination, no suggestion was put with regard to non-examination of the record maintained by the Licensing Authority, Nagaland. Even otherwise, the address of the driver was of Ropar, Punjab and it has not come forth as to how he managed to obtain the licence from Nagaland. Therefore, the insured committed the breach of the terms and conditions of the insurance policy, thus, the award under challenge cannot be modified.

Mr. Hari Mohan Sharma, learned counsel appearing on behalf of the appellants-claimants in FAO No.3861 of 2001 submits that the Tribunal had applied a multiplier of 12 instead of 14 as the deceased concededly was 45 years of age at the time of accident. He was working as a Tailor and therefore, the Tribunal committed a mistake in taking his income as ₹1500/- per month whereas as per the minimum wages prevalent at that time, it should have been taken as ₹2000/- per month. He left behind widow, two sons and daughter, therefore, deduction towards personal expenses should have been 1/4th instead of 1/3rd. No future prospects, much less, conventional heads have been provided by the Tribunal, thus, the amount of compensation is liable to be enhanced.

Mr. Munish Behl, learned counsel appearing on behalf of the owner submits that in the absence of any proof of income and keeping in view that the accident had taken place in the year 1999, taking the income of the deceased as ₹1500/- per month is correct approach and cannot be tinkered with.

Similar is the argument of Mr. Bansal representing the insurance company.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no merit in the submissions of Mr. Behl *viz-a-viz* the insurance company having failed to discharge the onus of proving the fakeness and invalidity of the driving licence. The report of local commissioner dated 2.8.2000 and the cross-examination of the witness reads as under:-

*"Report of the Local Commissioner.*

*Sir,*

*It is submitted as under:-*

*1. That the undersigned was appointed as a Commissioner by this learned court on 6.6.2000 to go to Mokokchun*

*Nagaland to verify the driving licence No.15227/98/MKG issued on 6.6.98 valid upto 5.6.2001 I obtained the order of this learned court and went to the spot on 11.7.2000. I disclosed my identity to the officer concerned and gave the order of this learned court. The concerned officials directed me to deposit the fee for the verification of the driving licence and checked the record of the registration/licencing authority in the presence of Mr. D. Gogoi Shankar Surveyor of loss assess. I checked the register and found that no licence was issued to Bagga Singh on the said serial No. and the licence was issued in the name of the other person on the said Sr. No.15227/98 MKG Dt. 2.9.96. The report is hereby submitted. I have received my fee. The licencing authority issued the driving licence in the name of Kartar Singh son of Moti Singh r/o V. Hryana Distt. Rajouri at the said Sr. No.*

*dt. 2.8.2k* *submitted by*
*sd/-*
*Surinder Kumar L.C./Advocate Ropar*

Cross-examination of Surinder Kumar, Advocate, Ropar.

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*Before going to Nagaland I had not served any notice on the counsel for respondents No.1 and 2 but I had verbally told him about the same. I had gone there as per the directions of the court. I have checked the relevant register in the presence of the surveyor and the official present in the office at that time. The register was not computerised. I do not know personally to the Licensing Authority. I had not recorded any* *statement of any person who was present and keeping the record with him. I showed the order of the Court and obtained the record from them and thereafter I also obtained their report. I cannot say at whose direction Mr. D. Gogoi Shanker Surveyor/Loss Assessor had come to that office. I do not know whether said Surveyor belongs to National Insurance Co. It is wrong to suggest that I have made false report.*

*R.O.& A.C.* *Sd/-*
*sd/- Surinder Kumar Adv.* *MACT, Rupnagar*
*4.8.2000."*

A cumulative reading of the aforementioned report and cross-examination reveals that no suggestion has been put in the cross-examination with regard to the date of the driving licence nor that attempt has been made before this Court that the local commissioner had not verified the driving licence in correct perspective, as the date of issuance of the licence allegedly in the name of the Kartar Singh was 2.9.96 whereas the licence had been issued in 1998. Be it as it may but the fact remains that the owner was required to put a suggestion to the witness to cause dent in the cross-examination and raise suspicion to enable the Tribunal to render a different view than the one already taken.

As regards the enhancement of compensation, I am of the view that income of the deceased being a Tailor should have been taken as ₹2000/- per month as per minimum wages. Therefore, I will take the income of the deceased as ₹2000/- per month, make a deduction of 1/4$^{th}$ towards personal expenses and adopt a multiplier of 14 to assess the loss of dependency as ₹2,52,000/-. I will further add to it ₹30,000/- for loss of consortium and ₹15,000/- each for loss of estate and funeral expenses.

In all, the compensation payable shall be ₹3,22,000/-. The amount in excess over what has already been provided by the Tribunal shall attract interest @6% from the date of filing of the appeal till its realization. The enhanced amount shall be distributed equally between the parties. The liability to satisfy the award of compensation at the first instance shall be on the insurance company, however, it shall have right of recovery against the owner and driver in accordance with law.

The award passed by the Tribunal is modified to the above extent only. Resultantly, the appeal filed by the owner bearing No.2799 of 2000 is dismissed and the appeal filed by the claimants bearing No.3861 of 2001 is allowed in above terms.

**(AMIT RAWAL)**
**JUDGE**

**December 08, 2017**
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes