**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**(1)** **FAO No.4759 of 2003 (O&M)**

**Date of decision : 08.02.2017**

**Karan Singh and another**

......Appellants

*Versus*

**Suraj Bhan and others**

...Respondents

**(2)** **FAO No.2876 of 2003 (O&M)**

**Date of decision : 08.02.2017**

**National Insurance Company Ltd.**

......Appellant

*Versus*

**Karan Singh and others**

...Respondents

**CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH**

Present : Mr. S. K. Bhardwaj, Advocate for appellants in FAO No.4759 of 2003 and for respondents No.1 & 2 in FAO No.2876 of 2003.

Mr. R. N. Lohan, Advocate for respondents No.1 to 4 in FAO No.4759 of 2003 and respondents No.3, 4 (i), 4 (ii) & 4 (iii) in FAO No.2876 of 2003.

None for respondent No.5 in both the appeals.

Mr. R. N. Singal, Advocate for respondent No.6 in FAO No.4759 of 2003 and for appellant in FAO No.2876 of 2003.

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**DARSHAN SINGH, J.**

This judgment shall dispose of both the appeals captioned above, which have arisen out of the same award dated 06.03.2003 passed by the learned Motor Accidents Claims Tribunal, Bhiwani (hereinafter called the "Tribunal") vide which the appellants-claimants of FAO No.4759 of 2003 have been awarded compensation to the tune of ₹2,85,600/- on account of death of their son Naresh Kumar alias Umed Singh in the motor vehicular accident, which took place on 14.02.2000.

2. FAO No.4759 of 2003 has been preferred by the appellants-claimants for enhancement of the amount of compensation. FAO No.2876 of 2003 has been preferred by National Insurance Company Limited, the insurer of vehicle No.HR-39-7000 to assail its liability to pay the amount of compensation.

3. I have heard learned counsel for the parties and have meticulously gone through the record of the case.

4. Learned counsel for the appellants-claimants contended that the learned Tribunal has not awarded the just amount of compensation. He contended that deceased was a young man of 25 years of age. He was an agriculturist. He was also doing labour work and running a dairy farm but the learned Tribunal has not awarded any future prospects towards the income of the deceased. He further contended that no funeral expenses have been awarded to the claimants by the learned Tribunal. They have also not been awarded any amount towards loss of love and affection. Thus, the compensation awarded by the learned Tribunal is highly inadequate.

5. On the other hand, learned counsel for the Insurance Company as well as Mr. R.N. Lohan, Advocate, learned counsel for respondents No.1 to 4 contended that the deceased was treated as unskilled labourer by the learned Tribunal. He was not holding any permanent job under the Government carrying regular increments, so no future prospects were required to be added towards the income of the deceased. They further contended that the compensation awarded by the learned Tribunal is just and adequate.

6. Mr. R.N. Singal, Advocate, learned counsel for the appellant-Insurance Company in FAO No.2876 of 2003 contended that the liability has been wrongly imposed upon the Insurance Company. He contended that the driving licence of Suraj Bhan the driver of the vehicle had expired on 14.01.2000. The accident had taken place on 14.02.2000. The driver got his licence renewed on 06.03.2000 *i.e.* after the expiry of 30 days from the date of the validity of the licence had expired. Thus, he contended that on the date of accident, Suraj Bhan the driver of the Canter was not having the valid driving licence. So, no liability can be fastened upon the Insurance Company. To support his contentions, he relied upon cases ***Malla Prakasarao Vs. Malla Janaki and others 2004 (3) Supreme Court Cases 343*** and ***FAO No.7029 of 2010 titled Ved Singh Vs. Krishan Kumar decided by this Court on 17.01.2011***.

7. On the other hand, Mr. R.N. Lohan, Advocate, learned counsel for respondents No. 1 to 4 contended that it is an admitted fact that

respondent No.1 Suraj Bhan was having a valid driving licence. No doubt the same had expired on 04.01.2000 and was got renewed on 06.03.2000 and in the meanwhile, the accident had taken place. He contended that even though the driving licence of respondent No.1 Suraj Bhan was renewed later on and after expiry of 30 days, there would be no breach of terms and conditions of the insurance policy and the appellant - Insurance Company cannot escape from its statutory liability to satisfy the award and indemnify the insured. To support his contentions he relied upon cases ***Ramesh Chand alias Ramesh Kumar Vs. United India Insurance Company Ltd. Hisar 1997(4) RCR (Civil) 627 (DB)*** and ***K.G. Srinivasamurthy and etc. Vs. Habib Khathun and others 2002 ACJ 557 (DB)***.

8. I have duly considered the aforesaid contentions.

9. Firstly, I take up the issue regarding the question of enhancement of compensation. As per the case of the claimants, the deceased was working as an agriculturist was also doing the labour work and running the dairy farming. But the learned Tribunal, on appreciation of the evidence and material brought on record by the claimants, came to the conclusion that deceased Naresh Kumar must be earning ₹2100/- per month at least by engaging himself as a labourer. No fault can be found with this conclusion of the learned Tribunal with respect to the assessment of the income of the deceased. But the learned Tribunal has not added anything towards future prospects to the income of the deceased. The deceased was a young man of 25 years of age. Even though he might be working as a

labourer, his income was bound to increase with the passage of time as it is a fact of common knowledge that the income of nobody remains stagnant for whole of the life and it certainly increases with the passage of time. The deceased was only 25 years of age. Thus, in view of his age 50% of the income of the deceased is required to be added towards the future prospects. Thus, the total income of the deceased comes to ₹3150/- per month *i.e.* ₹37,800/- per annum. The claimants in this case are the parents of the deceased, so 50% of the income of the deceased shall be deducted towards his personal and living expenses. The remainder comes to ₹18,900/-. In view of the age of the deceased, the multiplier of 18 shall be applicable. The compensation on account of loss of dependency comes to ₹3,40,200/-.

10. In addition to the aforesaid amount, the appellants-claimants shall be entitled to ₹25000/- towards funeral and last rites expenses. They will also be entitled to ₹50,000/- towards loss of love and affection of their son. The total amount of compensation payable to the claimants comes to ₹4,15,200/-.

11. Now the question arises about the lability to pay the amount of compensation. From the statement of RW-3 Mukesh Kumar Licensing Clerk, Office of Sub Divisional Magistrate-cum-Licensing Authority, Tohana it comes out that the licence of respondent Suraj Bhjan the driver of the canter had expired on 04.01.2000. The present accident has taken place on 14.02.2000. He got his licence renewed with effect from 06.03.2000 to 04.01.2003, so his licence was renewed after more than 30

days from the date of expiration of the driving licence. Section 15 of the Act reads as under:-

> "**15. Renewal of driving licences.** - (1) Any licensing authority may, on application made to it, renew a driving licence issued under the provisions of this Act with effect from the date of its expiry :
>
> Provided that in any case where the application for the renewal of a licence is made more than thirty days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal :
>
> Provided further that where the application is for the renewal of a licence to drive a transport vehicle or where in any other case the applicant has attained the age of forty years, the same shall be accompanied by a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8, and the provisions of sub-section (4) of section 8 shall, so far as may be apply in relation to every such case as they apply in relation to a learner's licence.
>
> (2) An application for the renewal of a driving licence shall be made in such form and accompanied by such documents as may be prescribed by the Central Government.
>
> (3) Where an application for the renewal of a driving licence is made previous to, or not more than thirty days after the date of its expiry, the fee payable for such renewal shall be such as may be prescribed by the Central Government in this behalf.
>
> (4) Where an application for the renewal of a driving licence is made more than thirty days after the date of its expiry, the fee payable for such renewal shall be such amount as may be prescribed by the Central Government :
>
> Provided that the fee referred to in sub-section (3) may be accepted by the licensing authority in respect of an application for the renewal of a driving licence made under this sub-section if it is satisfied that the applicant was prevented by good and sufficient cause from applying within the time specified in sub-section (3) :
>
> Provided further that if the application is made more than five years after the driving licence has ceased to be effective, the licensing authority

may refuse to renew the driving licence, unless the applicant undergoes and passes to its satisfaction the test of competence to drive referred to in sub-section (3) of section 9.

(5) Where the application for renewal has been rejected, the fee paid shall be refunded to such extent and in such manner as may be prescribed by the Central Government.

(6) Where the authority renewing the driving licence is not the authority which issued the driving licence it shall intimate the fact of renewal to the authority which issued the driving licence."

12. As per the aforesaid provision of law, where the application for renewal of a licence is made after more than 30 days of the expiry of the driving licence, it shall be renewed with effect from the date of its renewal. Respondents No.1 to 4 have not led any evidence to show that respondent Suraj Bhan the driver of the vehicle has moved any application for renewal his licence within 30 days of its expiry. Rather, in the cross-examination he stated that he got his licence renewed on 06.03.2000. Thus, the driving licence of respondent Suraj Bhan was renewed with effect from 06.03.2000 and he had no valid licence on 14.02.2000 the date of the accident.

13. Three Judges Bench of the Hon'ble Apex Court in case ***Malla Prakasarao Vs. Malla Janaki and others*** (supra) has laid down as under:-

> *"1. It is not disputed that the driving licence of the driver of the vehicle had expired on 20-11-1982 and the driver did not apply for renewal within thirty days of the expiry of the said licence, as required under Section 11 of the Motor Vehicles Act, 1939. It is also not disputed that the driver of the vehicle did not have driving licence when the accident took place. According to the terms of the contract, the Insurance Company has no*

> *liability to pay any compensation where an accident takes place by a vehicle, driven by a driver without a driving licence. In that view of the matter, we do not find any merit in the appeal.*
>
> *2. The appeal fails and is, accordingly, dismissed. There shall be no order as to costs."*

14. In case ***National Insurance Company Limited Vs. Jarnail Singh and others 2007(15) SCC 28*** the driving licence of the driver had expired on 18.05.1994. The accident had taken place on 20.10.1994. The driver got his licence renewed on 28.10.1996. The Hon'ble Apex Court held that there is a breach of the policy condition as the vehicle was being driven by a person without a valid driving licence. However, the Insurance Company was made liable to pay the compensation to the third party with right to recover the said amount from the insured.

15. In case ***National Insurance Company Limited Vs. Vidhyadhar Mahariwala and others 2008(4) RCR (Civil) 485*** the accident has taken place on 11.06.2004. The licence of the driver was valid up to 14.12.2003. Thereafter, it was again renewed with effect from 16.05.2005 to 15.05.2008. The Tribunal held that at the time of the accident the driver was not competent to drive the vehicle and the plea raised by the insured, that with the subsequent renewal of the driving licence it cannot be said that during the intervening period the driver was incompetent or disqualified to drive the truck, was turned down. However, in appeal the High Court came to hold that Insurance Company was liable to indemnify the award. It was held that merely there was a gap in renewal of the driving licence that cannot be a ground for exoneration, but the Hon'ble Apex Court allowed the

appeal with the following observations:-

> *"11. In Ishwar Chandra's case (supra) the three decisions referred to by the High Court were considered and it was held that the insurance company would have no liability in the case of this nature. We are in agreement with the view. The appeal deserves to be allowed which we direct. The impugned order of the High Court is set aside. It is open to the claimant to recover the amount from respondent No.2."*

16. Again in case ***New India Assurance Company Ltd. Vs. Suresh Chandra Aggarwal 2009(3) RCR (Civil) 500*** the driving licence of the driver had expired four months prior to the date of accident and its renewal was not applied within 30 days from the date of its expiry. The vehicle met with an accident on 29.02.1992. In the intervening period the accident has taken place. The Hon'ble Apex Court taking note of the provisions of Section 15 of the Act, laid down as under:-

> *"18.We are fortified in our view by the decision of this Court in the case of Jarnail Singh (supra). In that case also, the driving licence of the driver, who drove the vehicle which got involved in the accident, had expired on 16th May, 1994. The accident took place more than five months thereafter i.e. on 20th October, 1994 and the driving licence was renewed only with effect from 28th October, 1996. On these facts, it was held that proviso to sub-section (1) of Section 15applied; the driver had no licence to drive the vehicle on the date of accident; the condition in the policy identical to the one in the present case was violated and therefore, the Insurance Company was not liable to pay any amount to the insured."*

17. This Court also in case ***FAO No.7029 of 2010 titled Ved***

***Singh Vs. Krishan Kumar*** (supra) has reiterated the same legal position.

18. Thus, in view of the aforesaid consistent rule of law laid down by the Hon'ble Apex Court, the cases relied upon by learned counsel for respondents No.1 to 4 are of no help to him and there is no escape from the conclusion that on the date of the accident respondent Suraj Bhan, the driver of the canter, was not having the valid driving licence as his driving licence had already expired before the date of the accident and it was got renewed after the expiry of the period of more than 30 days which was effective from 06.03.2000, whereas the accident took place on 14.02.2000. Thus, the appellant-Insurance Company cannot be directed to indemnify the insured. But at the same time, as the claimants are the legal representatives of the victim of the accident and vehicle in question was validly insured with the appellant-Insurance Company, the Insurance Company can be directed to satisfy the award first and then to recover the awarded amount from the insured by executing this very award as per the ratio of law laid down by the Hon'ble Apex Court in case ***National Insurance Company Limited Vs. Jarnail Singh and others*** (supra).

19. Thus, keeping in view my aforesaid discussion, both the FAOs filed by the appellants-claimants and appellant-Insurance Company are hereby partly allowed. In FAO No.4759 of 2003 filed by appellants-claimants, the amount of compensation payable to the appellants-claimants is enhanced to ₹4,15,200/- from ₹2,85,600/- as awarded by the learned Tribunal. The appellants-claimants in FAO No.4759 of 2003 shall also be

entitled to interest on the enhanced amount of compensation at the rate of 6% per annum from the date of filing the petition till realisation. The apportionment of the enhanced amount of compensation amongst the claimants shall remain same as determined by the learned Tribunal in the main award. The Insurance Company will satisfy the award first and then to recover the awarded amount from the insured by executing this very award.

20. As the matter with respect to future prospects has been referred to the Larger Bench of the Hon'ble Apex Court in case ***National Insurance Company Vs. Pushpa, 2015 (9) SCC 166***, in order to safeguard the interest of respondent-Insurance Company, the amount of compensation under the head future prospects shall be disbursed to the appellants/claimants in FAO No.4759 of 2003 against adequate security in the form of sufficient indemnity bonds to the satisfaction of the learned Tribunal/executing Court, wherein the claimants will undertake that if the Hon'ble Apex Court adjudicates that the casual labourers/persons not holding the permanent jobs will not be entitled to the future prospects, then they will be bound to refund the amount of future prospects received by them on moving the requisite application by the respondent-Insurance Company and the learned Tribunal will be competent to take the steps without making any reference to this Court.

**08.02.2017.** **( DARSHAN SINGH )**
*sunil yadav* **JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No