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

**FAO No.1824 of 2014 (O&M)**
**Date of Decision: 12.12.2017**

**M/s Jain Steel Industry and another .......Appellant**

**Vs.**

**Charanjit Kaur and others ........Respondents**

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

**Present:-** Ms.Jigyasha Tanwar, Advocate, for the appellant.

Mr.D.P.Gupta, Advocate, for the respondent/Insurance Co.

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**RITU BAHRI, J. (ORAL)**

**CM No.11414-CII of 2014**

For the reasons stated in the application, delay of 315 days in filing the present appeal is condoned.

Application stands disposed of.

**Main Case**

Present appeal has been preferred by the appellant/owner (for short 'the appellants'), against award dated 16.01.2013, passed by the learned Motor Accident Claims Tribunal, Ludhiana (for short, 'the Tribunal') vide which recovery rights have been given to the Insurance Company to recovery the amount from driver and owner.

Parties are not in dispute that the findings on issued No.1 that the accident took place on account of rash and negligence of driver i.e. Swaran Singh-respondent No.7 herein as FIR No.95 dated 12.06.2011 for the offence under Sections 304-A, 279, 427 IPC has been registered with Police

Station,Division No.6, Ludhiana against him.

As per portmortem report Ex.CW1/3, the cause of death was found on account of accidental injuries of deceased Narinder Singh and the compensation has been assessed as under:

| Sr. No. | Heads of compensation | Amount of compensation |
|---|---|---|
| 1. | Income as per skilled labourer | Rs.6000/- |
| 2. | Deduction 1/3rd on personal expenses | Rs.6,000/- --- Rs.2,000/-= Rs.4000/- |
| 3. | Total annual loss of dependency after applying the multiplier | Rs.4,000/- X 12 X 11=Rs.5,28,000/- |
| 4. | Loss of consortium | Rs.5,000/- |
| 5. | Funeral Expenses | Rs.2,000/- |
| 6. | Loss of estate | Rs.2500/- |
| | Total | Rs.5,37,500/- |

The Insurance Company has opposed the findings on issued No.3 that the driving licence of respondent No.1 i.e. Ex.R1 was verified by respondent/United India Insurance company and as per verification report Ex.R4/1 given by Mr.H.C.Kalia investigator , from the licencing authority, Ludhiana, it was stated that licence No.0029172.Ren., dated 05.02.2010 was not issued by the said office, meaning thereby that the respondent No.1 at the time of accident was not holding correct and valid driving licence and the issued was decided in favour of respondent/Insurance Company and the Insurance Company has been given right to recover the amount of compensation from respondents No.1 and 2.

Learned counsel for the appellants/owner has referred to the judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited Vs. Swaran Singh and Others, 2004(2) R.C.R.(Civil) 114 and Lal Chand Vs. Oriental Insurance Company Limited 2006(4) RCR

(Civil) 204 on the proposition even if the driver has fake and invalid driving licence or disqualification of law are not defence available to the insurer against insured or third party right under Section 149(2)(ii) of the Motor Vehicles Act. 1988. Even if the defence is taken the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time. The sub para III of para 10 of the National Insurance Company Limited Vs. Swaran Singh and Others, 2004(2) R.C.R.(Civil) 114, it has been held as under:

> "........................................
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> (iii) The breach of policy condition i.e. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (1)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time."

A reference has also been made by the judgment of the Hon'ble Supreme Court in the case of Pepsu Road Transport Corporation Vs. National Insurance Company 2013(4) RLW 3237, wherein, it has been held that when an owner hires a driver he had to satisfy that driver had valid driving licence. The owner cannot go to extent of verifying the genuineness of the driving licence with the licencing authority. If such a driver causes accident, then Insurer and not the insured will be liable.

In these circumstances, the appeal is allowed. The finding on issue No.3 given by the learned Tribunal is set aside and the respondent/Insurance Company is liable to indemnify the appellant/owner and, hence, there can be no recovery of the compensation already paid to the claimants.

**(RITU BAHRI)**
**JUDGE**

**12.12.2017**
*anil*

*Whether speaking/reasoned Yes/No*

*Whether reportable Yes/No*