

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

FAO-5724-2013 (O&M)

Date of decision: 12.09.2017

Balwinder Singh (since deceased) through his LRs Appellants

Versus

Manoj @ Mannu and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Jagtar Kureel, Advocate
for the appellant.

Mr.Banni Thomas, Advocate
for respondent No.3.

Avneesh Jhingan, J.

Present appeal has been preferred by the claimant against the award dated 03.10.2012 passed by Motor Accidents Claims Tribunal, Chandigarh (hereinafter referred to as the 'Tribunal').

On 11.06.2008, Balwinder Singh, aged about 40 years, met with an accident with a truck bearing registration No.HR-46-7120 which was being driven rashly and negligently by Manoj @ Manu. As a consequence of the accident, Balwinder Singh suffered injuries and his second toe of right foot was amputated.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was moved.

The Tribunal after considering the witnesses and evidence produced, awarded a sum of Rs.2,10,000/-as compensation. The Tribunal

further held that the recovery be effected jointly and severally from the driver and the owner.

Aggrieved of the said award, the present appeal has been filed.

I have heard the learned counsel for the appellant and learned counsel for the Insurance Company.

Respondents No.1 and 2 (driver and the owner) were served respectively through publication but none had appeared on their behalf. They may be proceeded against exparte. It may be noted that the driver was exparte before the Tribunal. The two issues raised by learned counsel for the appellant are as under :-

(i)that the compensation of Rs.2,10,000/- awarded by the Tribunal alongwith interest @ 7.5.% per annum needs to be enhanced.

(ii)that the Tribunal should not have absolved the Insurance Company merely on the ground that the driver and owner of the truck had not produced the driving licence.

Learned counsel for the appellant contended that the injured was working as a mason. His monthly income was assessed at Rs.4,000/-. As a result of the accident, he suffered a permanent disability of 25% and has been awarded Rs.1,80,000/- as compensation for disablement. Counsel further submitted that the amount under various heads needs to be enhanced. Learned counsel further contended that the owner was represented before the Tribunal. It was not for the claimant to produce the route permit or driving licence before the Tribunal.

Learned counsel for the Insurance Company has argued that there was no proof that the injured was working as mason. Further, no permanent disability has been suffered which would effect day to day working. Counsel further argued that no driving licence or route permit was produced before the Tribunal. The Insurance Company was not liable to pay the awarded compensation.

First of all, the issue regarding the payment of compensation is to be decided. In the present case, the Tribunal has only proceeded on the basis that the driving licence was not produced. It would be presumed that vehicle was driven without a valid driving licence.

It has not been disputed by the Insurance Company that the said truck was insured with them. In such circumstances, the Tribunal should not have absolved the Insurance Company from the payment of compensation awarded. The issue, if any, was between owner/driver and the Insurance Company and for this, the claimant should not suffer.

The Hon'ble Apex Court in **National Insurance Company Ltd. & ors. Vs. Swaran Singh and ors., 2004(3)SCC, 297**, has held as under:-

“Furthermore, the insurance company with a view to avoid its liabilities is not only required to show that the conditions laid down under [Section 149\(2\)](#) (a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. By reason of the provisions contained in the 1988 Act, a more extensive remedy

has been conferred upon those who have obtained judgment against the user of a vehicle and after a certificate of insurance is delivered in terms of [Section 147\(3\)](#) a third party has obtained a judgment against any person insured by the policy in respect of a liability required to be covered by [Section 145](#), the same must be satisfied by the insurer, notwithstanding that the insurer may be entitled to avoid or to cancel the policy or may in fact have done so. The same obligation applies in respect of a judgment against a person not insured by the policy in respect of such a liability, but who would have been covered if the policy had covered the liability of all persons, except that in respect of liability for death or bodily injury.

Such a breach on the part of the insurer must be established by the insurer to show that not only the insured used or caused or permitted to be used the vehicle in breach of the Act but also that the damage he suffered flowed from the breach.

[Under the Motor Vehicles Act](#), holding of a valid driving licence is one of the conditions of contract of insurance. Driving of a vehicle without a valid licence is an offence. However, the question herein

is whether a third party involved in an accident is entitled to the amount of compensation granted by the Motor Accidents Claims Tribunal although the driver of the vehicle at the relevant time might not have a valid driving licence but would be entitled to recover the same from the owner or driver thereof.

From a perusal of the above said decision of the Hon'ble Apex Court, it is clear that if the third party is involved in the accident and there is a dispute with regard to the validity of driving licence, the third party has to be compensated by the Insurance Company. The Insurance Company would be entitled to recover the same from owner and the driver of the vehicle.

In the present case, even the validity of driving licence has not been decided. It is merely a case that driving licence or route permit was not produced before the Tribunal. Be that as it may, the claimant is the third party involved and the Insurance Company should compensate the claimants and thereafter it may recover the amount from driver/owner.

As regards the enhancement of the amount under various heads is concerned, in the present case, a 40 years old person, suffered a permanent disability of 25% as per Ex.P5. Even the doctor PW2 was produced before the Tribunal supporting the disability. The claimant may be taken as a mason or a labourer, the fact remains he has to suffer for rest of his life because of the said accident. It is not disputed that the injured had to undergo surgery on the right foot and remain hospitalised from

11.06.2008 to 18.06.2008.

Keeping in view the type of injury, the follow up treatment must have been there. In such circumstances, the enhanced amount is awarded as mentioned below :-

<i>Sr.No.</i>	<i>Heads</i>	<i>Amount earlier awarded by the Tribunal</i>	<i>Now awarded</i>
<i>1</i>	<i>Loss of future income</i>	<i>Rs.1,80,000/-</i>	<i>Rs.2,00,000/-</i>
2	Medical expenses	Rs.10,000/-	Rs.20,000/-
3	pain and suffering	Rs.10,000/-	Rs.25,000/-
4	special diet	Rs.5,000/-	Rs.10,000/-
5	transport expenses	Rs.5,000/-	Rs.20,000/-
	Total	Rs.2,10,000/-	Rs.2,75,000/-

Net result is that the appeal is partly allowed and the award dated 03.10.2012 is modified to the extent that the amount awarded by the Tribunal of Rs.2,10,000/- is enhanced to Rs.2,75,000/-.

As per the discussion above, the Insurance Company would pay the enhanced compensation to the appellant along with interest as awarded by the Tribunal and the Insurance Company will have a right to recover the said amount from the driver and owner of the truck.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

12.09.2017

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Note:

1. Whether the order is speaking/reasoned: Yes

2. Whether the order is reportable : Yes