

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

FAO No.3979 of 2015

Date of decision: 03.02.2017

ICICI Lombard General Insurance Company Limited

..Appellant

Versus

Ramwati and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Amrinder S. Sidhu, Advocate
for the appellant.

Daya Chaudhary, J.

The appellant-Insurance Company has approached this Court by way of filing the present appeal to challenge the judgment/award dated 18.02.2015 passed by the Motor Accident Claims Tribunal, Palwal (hereinafter called as 'the MACT').

Briefly, the facts of the case as made out in the present appeal are that on 21.05.2013, Sukhbir (deceased) along with the claimant was going on motorcycle, which was being driven by the deceased. On reaching near Govt. Boys Senior Secondary School, Hodal, the offending vehicle i.e., TATA-909 bearing registration No. HR-73/4079 came from Hodal side and hit the said motorcycle. Due to accident, deceased fell down and received multiple injuries on his body, which resulted into his death. FIR was registered on 26.05.2013. A claim petition was filed by the mother and brother of the deceased for grant of compensation of ₹20,00,000/- with interest on account of death of Sukhbir in the motor accident.

The MACT Palwal while allowing the claim petition awarded

compensation of ₹5,70,000/- on account of death of Sukhbir to the claimants with interest @ 6% per annum from the date of institution of the claim petition i.e., 30.09.2013 till its recovery.

The amount of compensation and the maintainability has been challenged by the appellant-Insurance Company stating to be on the highly excessive side and contrary to the provisions of Motor Vehicles Act.

Learned counsel for the appellant submits that the Tribunal has not taken into consideration the very material fact that the driver of the offending vehicle, namely, Bal Kishan was not holding a valid and effective driving licence to drive the offending vehicle at the time of alleged accident. The driving licence of driver-Bal Kishan was meant to drive motorcycle and light motor vehicle only whereas the vehicle involved in the accident was TATA-909, which is a commercial vehicle. Learned counsel also submits that there is breach of terms and conditions of the insurance policy and no liability can be fastened on the appellant-Insurance Company. At the end, learned counsel for the appellant submits that the impugned award passed by the Tribunal is contrary to evidence available on record and as such, the present appeal be accepted.

Notice of motion was issued in the case on 02.07.2015 by recording contention of learned counsel for the appellant that the offending vehicle was light goods vehicle having weight of 9050 kg and the licence of the driver of the offending vehicle was for LMV (Non-transport vehicle), as such, the licence was not valid and the Insurance Company is entitled to recovery rights.

Respondents No.3 and 4 were served but no one has put in

appearance on their behalf and they were proceeded against ex-parte vide order dated 17.11.2015. Even on subsequent dates also, neither respondents No.3 and 4 were present nor they were represented through counsel.

Heard arguments of learned counsel for the appellant and have also perused the impugned award as well as other documents available on the file.

The facts regarding filing of claim petition, death of Sukhbir and amount of compensation awarded by the MACT to the tune of ₹5,70,000/- are not disputed. The interest @ 6% per annum from the date of institution of claim petition i.e., 30.09.2013 till its recovery are also not disputed.

After hearing arguments of learned counsel for the appellant; on perusal of impugned award; by considering the age of the deceased and the averments made in the claim petition, the amount of compensation awarded to the claimants cannot be said to be on the excessive side.

The following issues were framed by the Tribunal: -

1. Whether Sukhbir died due to the injuries sustained in a Motor Vehicular accident which took place due to rash and negligent of respondent No.1 by driving offending vehicle Tata 909 No. HR-73/4079?OPP
2. If issue no.1 is proved, whether petitioners are entitled to compensation, if so, to what amount and from whom?OPP
3. Whether respondent no.1 was not holding a valid effective driving licence at the time of alleged accident and has violated the terms and conditions of insurance policy?OPR

4. Whether the petitioners have no locus standi and cause of action to file the claim petition?OPR
5. Relief.

By considering the submissions made by learned counsel for the appellant that issues No.2 and 3 are relevant, the relevant portion of the award as mentioned in para Nos.16 and 17 is reproduced as under: -

“16. So far as the question of compensation is concerned, deceased as hale and hearty and was of 27 years of age and a national income of deceased is hereby taken as Rs.5000/- per month in view of law laid down in Santosh Devi Versus National Insurance Company and others, 2012 (6) SCC 421 and 20012 (3) T.A.C.1 (SC). Accordingly the deceased was earning an amount of Rs.5,000/- per month and out of which 50% should be deducted for his own use. Since age of deceased was about 27 years, in view of law laid down in Sarla Devi Versus DTC, 2009(3) RCR (Civil) 77, the multiplier would be applied as 17. So far as dependency is concerned, there was only mother of deceased was dependent upon him, whereas petitioner No.2 is major son of petitioner no.1 and he was not dependent upon the deceased. So, the deductions should be made as 1/2 out of the total income. Consequently, the income comes to Rs.30,000/- and total amount comes to

Rs.5,10,000/-. At the same time, the petitioner would have spent amount on funeral expenses at least Rs.10,000/- and at the same time she is also entitled for Rs.50,000/- as loss of love and affection towards her son and by that way the petitioner no.1 is entitled for total sum of Rs.5,70,000/- and petitioner no.1 is certainly entitled for recover the same alongwith interest.

17. The other important factor that it should be seen who is liable to pay compensation. Since the vehicle was driven by respondent no.1 recklessly and same was owned by respondent no.2 and insured with respondent no.3. Hence all the respondents are liable for making payment of amount of compensation to the petitioners jointly and severally. So far as keeping in view the recent rate of interest that 6% per annum from the date of filing of the petition till its actual realization. Accordingly, issue no.2 is hereby returned in favour of petitioner.”

As per award passed by the MACT, the claim petition was partly allowed and petitioner No.1 in the claim petition was held entitled to compensation of ₹5,70,000/- with interest @ 6% per annum from the date of institution of claim petition till its realization. The amount was to be recovered from all the respondents jointly and severally but the Insurance Company was directed to deposit the amount of compensation by way of

pay order/bank draft in the name of the petitioner before Tribunal within a period of two months. 50% of the amount of compensation was ordered to be paid to claimant No.1 in cash and 50% of the amount of compensation was ordered to be deposited in FDR for a period of three years in any Nationalized bank fetching good interest.

The driver of the offending vehicle was holding licence to drive light motor vehicle only and he was not possessing any licence to drive commercial vehicle. Evidently, there was breach of condition of contract of insurance. The Tribunal did not consider this issue correctly.

Same issue was there before Hon'ble the Apex Court in ***National Insurance Co. Ltd. vs. Swaran Singh and others, 2004(2) RCR (Civil) 114***, wherein it has been held as under: -

"The owner of a motor vehicle in terms of Section 5 of the Act has a responsibility to see that no vehicle is driven except by a person who does not satisfy the provisions of Section 3 or 4 of the Act. In a case, therefore, where the driver of the vehicle, admittedly, did not hold any licence and the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in its defence and avoid liability. The matter, however, may be different where a disputed question of fact arises as to whether the driver had a valid licence or where the owner of the vehicle committed a breach of the terms of the contract of insurance as also the

provisions of the Act by consciously allowing any person to drive a vehicle who did not have a valid driving licence. In a given case, the driver of the vehicle may not have any hand in it at all e.g. a case where an accident takes place owing to a mechanical fault or vis major. (See Jitendra Kumar)"

In **Swaran Singh's case (supra)**, earlier judgment rendered by Hon'ble the Apex Court in ***Malla Prakasarao vs. Malla Janaki and others, (2004) 3 SCC 343*** was relied upon and it was held 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 30 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."

Hon'ble the Apex Court in **Swaran Singh's case (supra)** clearly laid down that the liability of the insurance company vis-a-vis the owner would depend upon several factor. The owner would be liable for payment of compensation in a case where the driver was not having a

licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle. The question as regards the liability of the owner vis-a-vis the driver being not possessed a valid licence was considered in **Swaran Singh's case (supra)**, which is as under: -

"Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section (2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are: (a) motorcycle without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller, and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10. They are "goods carriage", "heavy goods vehicle", "heavy passenger motor vehicle", "invalid carriage", "light motor vehicle", "maxi-cab", "medium goods vehicle", "medium passenger motor vehicle", "motor-cab", "motorcycle", "omnibus",

"private service vehicle", "semi- trailer", "tourist vehicle", "tractor", "trailer" and "transport vehicle". In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence for "motorcycle without gear", [sic may be driving a vehicle] for which he has no licence. Cases may also arise where a holder of driving licence for "light motor vehicle" is found to be driving a "maxi-cab", "motor-cab" or "omnibus" for which he has no licence. In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence."

Same issue was there before Division Bench of Hon'ble the

Apex Court in ***National Insurance Corporation Ltd. vs. Kanti Devi (Mrs.) and others, 2005(3) RCR (Civil) 388*** and it was observed as under : -

"12. The decision in Swaran Singh case was not before either MACT or the High Court when the respective orders were passed. Therefore, we think it proper to remit the matter to MACT for fresh consideration. It shall permit the parties to lead such further evidence as they may intend to lead. The matter shall be decided keeping in view the principle enunciated by this Court in Swaran Singh case."

The owner of the vehicle cannot take the stand that he has no liability to verify the fact as to whether the driver of the vehicle was possessing a valid licence or not.

In the present case, the deceased was 27 years of age and was from a poor family and was earning ₹5000/- per month. The whole of the family was dependent upon the meager salary of the deceased. It is held that the driver of the offending vehicle was not holding valid driving licence and as such, the Insurance Company has no liability to pay compensation to the claimants.

Accordingly, I am of the considered view that it would be difficult for the claimants to secure the presence of the owner of the vehicle and they will have to face another round of litigation. Accordingly, while allowing the appeal, it is directed that the insurer shall pay the quantum of compensation fixed by the Tribunal to the claimants within a period of 60 days from the date of receipt of certified copy of this order. However, the

insurer shall be entitled to recover the amount from the owner. It is also mentioned that the insurer shall not be required to file a suit. However, it may initiate a proceeding before the concerned Executing Court in case, there is a dispute between the insurer and the owner of the vehicle. Before release of the amount to the insured, the owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached as a part of the security. If necessity arises, the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, the owner of the vehicle shall make payment to the insurer. In case, there is any default, it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured.

Accordingly, the appeal is allowed with the direction to have recovery rights from the owner of the offending vehicle.

03.02.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	√ Yes/No
Whether Reportable	√ Yes/No