

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

**FAO Nos. 8848 of 2014 (O&M)**  
**Date of Decision: February 21, 2017**

**Paramjit Kaur and others**

..Appellant(s)

**Versus**

**Nahar Singh and others**

...Respondent(s)

with

**FAO Nos. 9115 of 2014 (O&M)**

**Oriental Insurance Co. Ltd.**

..Appellant(s)

**Versus**

**Nahar Singh and others**

...Respondent(s)

**CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY**

Present: Mr. Ashok Jindal, Advocate  
for the appellants in FAO-8848-2014 and  
for respondents no.4 to 7 in FAO-9115-2014.

Ms. Narender Kaur, Advocate  
for respondents no.1 & 2.

None for respondent no.3.

Mr. Lalit Garg, Advocate  
for the appellant in FAO-9115-2014 and  
for respondent no.4 in FAO-8848-2014.

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**ANITA CHAUDHRY, J.**

These are two appeals arising out of common award dated  
05.07.2014 wherein the LRs of Kuldeep Singh were awarded  
compensation. The claimants are seeking enhancement while the

insurance company has challenged the award on the ground that the deceased himself was responsible for the accident and the claim petition should have been dismissed.

The claimants are Paramjit Kaur, the widow, her two children and her mother-in-law who filed a petition under Section 166 of the Motor Vehicles Act, 1988 pleading that Kuldeep Singh Gill, aged 46 years was a Director Finance and a partner with Baba Farid Vidhayak Society and had a monthly income of Rs.50,000/-. In the intervening night of 19/20.06.2010 Kuldeep Singh, Vivek and Sohan Lal were going from Nabha and were proceeding towards Bathinda in a car bearing registration No. PB-03S-3786. The car was driven by Kuldeep. It was claimed that Kuldeep was driving on the left side of the road. At about 3:30 AM they had reached near village Jethuke when a Tata Sumo driven by respondent no.1 came from the opposite direction and went out of control and struck against the car, as a result all the occupants sustained multiple injuries and Kuldeep died on the spot. The claimants had pleaded that the police in connivance with respondents no.1 & 2 only registered the DDR and failed to file the FIR. A claim of Rs.70 lacs was filed.

Respondents no.1 & 2 denied the accident but admitted that an accident had taken place. It was pleaded that the accident occurred on account of negligence of Kuldeep and respondent no.1 was not driving the Tata Sumo and no FIR had been registered.

Respondent no.3 took the plea that the claim was exaggerated and the claimants had failed to mention the PAN number

of deceased to support their plea of a higher income and no FIR was registered and the claim was filed on wrong facts.

The insurance company took the plea that the driver was not holding a valid and effective licence and they were not liable to reimburse the insured and the liability of the insurance company was limited liability. It was pleaded that the claimant should be put to strict proof regarding the factual facts. A plea was also taken that the claim made was highly excessive and exaggerated.

The parties were put to trial on the following issues:-

1. Whether Kuldeep Singh died in an accident caused by respondent no.1, by driving Tata Sumo No.HR-51-2514, in a rash and negligent manner? OPP
2. Whether respondent no.3 is not liable to pay amount being financier only? OPR
3. Whether respondent no.1 was not holding valid driving licence at the time of accident? OPR
4. Whether the claimants are entitled to compensation? OPP
5. Relief

The Tribunal though had noted the submissions made by the insurance company but chose to rely upon the statement made by Vivek Kumar – CW1, who was also an occupant of the car holding that it was not necessary that an FIR or DDR should have been lodged for filing a claim petition and the claim could not be rejected solely on the

ground that no criminal case was registered and CW1 had specifically deposed that respondents no.1 & 2 in connivance with the police had only lodged the DDR and nothing could be brought out in the cross-examination. The Tribunal took an adverse view of the fact that the driver of the offending vehicle had not stepped into the witness box, therefore, the statement of the eye-witness had to be accepted.

The Tribunal gave a finding that the claimant had failed to show that the deceased was a Director of the firm. It rejected the photocopy and the audit report tendered in evidence by the counsel. It was also held that the claimants had not proved the income-tax return and a photocopy was produced and the income of a labourer was taken at Rs.4,400/- per month and after making a deduction of 1/4<sup>th</sup> and applying the multiplier of 13 the compensation was assessed as Rs.5,14,800/- and after adding the amount on loss of consortium and funeral expenses, the total compensation awarded was Rs.5,30,000/- and the claim petition was allowed with interest @ 12% per annum from the date of passing of the award till actual payment.

The submission on behalf of the appellants-claimants was that the deceased was a partner and they had produced the audit report prepared by the Chartered Accountant and the income-tax return was exhibited and in the ITR report the salary is shown as Rs.96,000/- per annum and an addition towards future prospects should have been made and the amount awarded towards consortium and funeral expenses was less. It was urged that the driver of the offending vehicle had failed to deny his negligence and did not step into the witness box, therefore, the

adverse inference was rightly drawn. It was urged that Vivek had stepped into the witness box and had given the detailed account of the accident and his statement was rightly accepted. It was urged that it is not necessary that an FIR should be lodged to raise a claim and the accident was admitted. It was urged that the driving licence of the driver of the offending vehicle was available on record and since the vehicle was insured, the company was rightly made liable to pay the compensation. It was contended that the Tribunal being a Civil Court had to decide the case on the basis of the evidence before it and the licence cannot be said to be fake only because it had been issued from Nagaland. Reliance was placed upon *United India Insurance Company Ltd. Vs. Sham Lal and others* FAO-4508-2009, DOD 08.04.2010 (P&H), *Raju and others Vs. Sukhwinder Singh and others* 2006(4) RCR (Civil) 82, *Sandhya Rani Debbarma & Ors. Vs. National Insurance Company Ltd. and another* 2016(4 RCR (Civil) 465, *Bimla Devi and others Vs. Punjab State and others* 2001(1) RCR (Civil) 596, *Oriental Insurance Co. Ltd. Vs. Vijay Kapur and others* 2002(2) RCR (Civil) 45, *Bharat Kharbanda Vs. New India Assurance Co. Ltd. Vo;* CLIV-(2009-2) PLR 635 and *United India Insurance Co. Ltd. Vs. Sahil Garg and another* FAO-6419-2016, DOD 04.11.2016 (P&H).

To tide over the submissions, the counsel appearing for the insurance company had urged that the onus was upon the claimants to prove that the driver of the Tata Sumo was negligent and no FIR had been lodged but DDR was registered and Vivek had made a statement

that the accident had occurred as the headlights of the vehicle coming from the opposite direction blinded their driver. It was urged that the accident had occurred on account of the fault of Kuldeep himself who was driving the vehicle and Vivek had changed his statement while appearing in the witness box and the first version given by the eyewitness could not have been rejected in the manner in which the Tribunal has done and the claimants could not wriggle out from the vital admission made in the DDR and it was the initial version. It was urged that the Tribunal had failed to discuss the evidence led by them. It was urged that they had examined a witness from the DTO Office who had stated that the driver was not competent to drive a Tata Sumo but subsequently another driving license was produced which had been issued from Nagaland. It was urged that the driver could not have two driving licences and the driving licence issued to a person who is an ordinary resident and respondent no.1 was a resident of Punjab and there was no reason for him to go to Nagaland and get another licence. The counsel had referred to Section 9(1) of the Motor Vehicle Act to urge that a driving licence can only be made from a place where a person ordinarily resides or carries on his business. It was urged that a person cannot have two driving licenses and the language of Section 6(1) of the Motor Vehicle Act, 1988 is clear that the person can have only one licence at one point of time and if any addition has to be made then the endorsement has to be made in the same driving licence and the second licence has been produced to avoid the liability and has been obtained with an ulterior motive. It was urged that they were disputing

the liability since the accident had occurred on account of negligence of the deceased himself. It was urged that a penal interest has been awarded which amounts to imposition of penalty, which is not envisaged in the Act and the prevalent rate of interest could only have been awarded. Reliance was placed upon *National Insurance Co. Ltd. Vs. Keshav Bahadur and others 2004(2) RCR (Civil) 99, Shri Ram General Insurance Co. Ltd. Vs. Asha and others FAO-6997-2011, DOD 14.03.2014 (P&H), Pritpal Singh Vs. Jaswant Singh and others Vol.CLXXXII-(2016-2) PLR 125, Jaswinder Singh Vs. Balwant Singh and others 2014(4) RCR (Civil) 55, The New India Assurance Co. Ltd. Vs. Sube Singh and others 2014(4) 34 and Kuljeet Singh Vs. Surinder Kaur and others Vol.CLXXX-(2015-4) PLR 273.*

The original records were also summoned to see whether certified copy of the income-tax return had been filed. On perusal thereof it is found that the income-tax return is not certified. No witness had been summoned from the Income Tax Department to prove the ITR. The audit report Ex.C-1 is prepared by a private Chartered Accountant, which was tendered in evidence by the counsel representing the claimants.

The claimants had pleaded that the deceased was a partner with Baba Farid Society. No record from the Society was summoned. There is absolutely no explanation why it could not be produced. There is no document to prove that the deceased was a partner or had any interest. Paramjit Kaur – CW2 had stated that the Managing Director of the Society was the husband of her sister. She had stated that her

husband Kuldip was an employee and was drawing the salary of Rs.50,000/- per month. She had also stated that the partnership of her husband was still continuing as she had stepped into those shoes as a partner but immediately thereafter, she corrected herself and stated that she was not receiving any amount as she was a government employee and was a teacher and was not receiving any share. Perhaps this is the reason why the records of the society was not summoned and had Kuldeep an interest in the Society and the admission that Paramjit Kaur had stepped into those shoes, it could be that there was no loss so far as the income that was being received from the partnership.

Though the income-tax return had not been proved but even if it is taken into consideration, it shows that Kuldeep was shown as an employee and he was getting salary of Rs.96,000/- per annum. There is a reference to income from other sources. That income would still be available to the widow and the children. I do not propose to make any addition or make calculation for assessing the loss on the basis of what is mentioned in the ITR for the reasons which would follow in the succeeding paragraphs.

The vital issue for examination is whether the claimants had been able to prove the negligence of the driver of the offending vehicle. It is not in dispute that Kuldeep was driving the vehicle. The accident took place at 3:30 AM. In the first version, which was given by the occupant of the car was that the headlights of the vehicle had blinded their driver (deceased) and the accident happened naturally and all of a sudden and no-one was at fault. The statement was given by

Vivek few hours after the accident. Even thereafter, no FIR was lodged by the other occupant or by the family members or by the any eyewitness. Vivek did not make any complaint nor did the family members make any complaint to the Senior Officers. If the DDR was wrongly recorded or that it did not contain the correct version they would have made a complaint. The claim petition was filed a year later and Vivek stepped into the witness box in May, 2012 and it is the first time that his version comes out that it was the driver of Tata Sumo who lost control over his vehicle and struck against their car. There is no site plan to see the spot where the accident had occurred. There are no photographs to find out whether the Tata Sumo came on the wrong side or it is Kuldeep who had struck the Tata sumo by going to the other side. The fact that Vivek had made a statement that their driver was blinded by headlights and the accident had occurred suddenly and no-one was at fault goes to show that the driver of the other side was not wrong. Vivek was a passenger in Kuldeep's car and was known to the family. His interest could not have been against Kuldeep's family. He has been examined as the claimants' witness and for him to change the version subsequently shows that he was changing the story. He could not be allowed to wriggle out the initial version regarding the incident. In the case of *Surinderjit Singh Vs. Kuldeep Rai Thapar (1982-8)-48 PLR 711* in the statement immediately made after the accident, the claimant observed the car driver of his negligence but later on he filed the petition claiming compensation. This Court held that the claimant cannot resile from the statement made to the police. The same ratio has

been laid down by this Court in *Jagdish Kaur and another V/s. Raghbir and others (2004-1) 173 PLR page 670*. Vivek had good relations with the claimant and her family, therefore, he had stepped forward to make a statement. He had approached the police and had made a different statement. It appears that he has been managed subsequently. He could not be allowed to wriggle out of the first statement and it is held that the claimants had failed to prove that it was respondent no.1 who was responsible for the accident and the claim petition could not have been allowed.

It is necessary to deal with the second submission made on behalf of the insurance company with respect to the licence. The DTO examined by the insurance company had stated that the driver i.e. respondent no.1 did not have the valid driving licence to drive the Tata Sumo. On the subsequent date the driver introduced another driving licence issued from Nagaland. The license which was produced earlier had been issued in 1996 while the licence issued from Nagaland was issued in 2008. In the present case, there was one driving license that was produced by the driver regarding which the insurance company had led its evidence. The second licence was tendered by the driver at a later stage.

Section 6(i) of the Motor Vehicle Act, 1988 is relevant and reads as under:-

**“6. Restrictions on the holding of driving licences.-**

(1) No person shall, while he holds any driving licence for the time being in force, hold any other driving licence except a

learner's licence or a driving licence issued in accordance with the provisions of Section 18 or a document authorizing, in accordance with the rules made under Section 139, the person specified therein to drive a motor vehicle.”

The language of the aforesaid Section is clear that a person can have only one driving licence at one point of time. If any addition is to be made, the same has to be endorsed in the same driving licence.

Why a person would have two driving licences. The reason is obvious – to hood-wink the law. A particular driving licence is to be used in a particular set of circumstances as per convenience of the user. In proceedings under Motor Vehicles Act, to avoid civil liability, second driving licence which was perhaps 'obtained' for that very purpose was tendered. The method adopted is too mischievous. The object is to deceive the Insurance Companies. Should the Tribunal or the Court become a party to such frauds by ignoring forgery and hold that at least one driving licence was genuine?

The answer must be 'no'. It was never the intention of the Legislature framing the law. While granting compensation, the Tribunal has to uphold the law. Anybody found to be tinkering with it has to be dealt with a strong hand. Such malpractices cannot and should not be tolerated. The fact remains that the driving licence which respondent No.1 was holding at the time of the fateful accident did not allow him to drive a Tata Sumo. Merely because the appellant later on came up with another driving licence in his name, does not mean that at the time of the accident, respondent No.1 was holding an effective driving licence.

The licence produced by the driver subsequently had been issued from Nagaland, which is not the ordinary place of residence of the driver, therefore, the Court can take notice of this fact that the licence has been managed from a different area with a view to overcome the liability in such cases. The driver could not hold two licences and the first licence did not authorise him to drive the vehicle. Therefore, the insurance company could not have been made liable. In view of the finding on the main issue regarding negligence, it is held that the claim could not have been allowed. The appeal filed by the insurance company is allowed and the award is set aside. The claim petition is dismissed. The appeal filed by the claimants is dismissed.

**(ANITA CHAUDHRY)**  
**JUDGE**

February 21, 2017  
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No