IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 2.7.2018

1. **FAO No.1064 of 1999(O&M)**

National Insurance Co. Ltd. …..Appellant

VERSUS

Smt. Surekha and others .....Respondents

Present: Mr. Umesh Aggarwal, Advocate for the appellant.

Mr. Ritesh Parshad, Advocate for respondents No.1 to 3.

Ms. Chitwan Kaur, Advocate for respondent No.5 to 7.

****

2. **FAO No.1977 of 1999(O&M)**

Gurmukh Singh and others …..Appellants

VERSUS

Smt. Surekha and others .....Respondents

Present: Ms. Chitwan Kaur, Advocate for the appellants.

Mr. Ritesh Parshad, Advocate for respondents No.1 to 3.

Mr. Umesh Aggarwal, Advocate for respondent No.5.

****

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

This order will dispose of FAO Nos.1064 and 1977 of 1999 as these have emerged out of the same award dated 08.02.1999 passed by the Motor Accidents Claims Tribunal, Amritsar whereby compensation has been awarded on account of death of L/N Sonawane Subash Deo Ram in a motor vehicular accident that took place on 09.06.1994.

FAO No.1064 of 1999 has been filed by the National Insurance Company (hereinafter to be referred as the 'insurance company') whereas the other appeal has been filed by Gurmukh Singh and others, owner of the offending vehicle i.e. Jeep No.PB-02F-8239.

FAO No.1064 of 1999

The sole submission made by counsel for the insurance company is that licence possessed by Diwan Singh, driver of the offending vehicle was found to be fake in the light of testimony of Nirbhai Kumar, Clerk from the office of S.D.M. Kangra, therefore, the insured is guilty of violating the terms and conditions of the insurance policy constituting defence in favour of the insurer under Section 149 (2) of the Motor Vehicles Act, 1988 (in short 'the Act'), accordingly, the insurance company is entitled to be exonerated of liability or in the alternative right of recovery against the insured after payment of compensation to the claimants.

Counsel representing respondents No.5 to 7, on the contrary, would urge that the mere fact that licence possessed by Diwan Singh was not found to be issued by the licensing authority at Kangra would neither enure to benefit of the insurer to seek exoneration nor can the insurance company press for right of recovery. It is argued with vehemence that the insurance company has not produced any evidence to prove that the owner/insured had the knowledge that licence of the driver was fake. In support of her contention, she has relied upon judgments of this Court **United India Insurance Company Ltd. Vs. Shanti Devi and others, 2008(3) RCR (Civil) 541** and **Oriental Insurance Co. Ltd. Vs. Smt. Krishna and others, 2006(1) RCR (Civil) 821.**

Counsel for the insurance company, in reply, has submitted that in the written statement filed by respondents No.5 to 7, no plea was raised by the insured that driver was possessing a valid licence. None of the respondents/insured appeared in the witness box to say on oath that they had seen the licence and satisfied themselves that licence had been issued in the name of driver before they engaged his services. For this purpose, reference has been made to judgment of this Court **National Insurance Company Ltd. Vs. Balvir Kaur widow of Nirmal Singh and others, 2013(4) RCR (Civil) 440.**

I have heard counsel for the parties and perused the paper-book.

Indisputably, the insurance company examined a witness from the office of S.D.M. Kangra to prove that licence possessed by Diwan Singh, driver of the offending vehicle was not issued by the concerned licensing authority. Meaning thereby that licence possessed by Diwan Singh was found to be fake/invalid. As has been rightly argued by counsel for the insurance company that respondents No.5 to 7 did not raise a plea in the written statement that driver was possessing a valid driving licence or they had examined licence before Diwan Singh was engaged as a driver to drive the offending vehicle. There is also no denial that none of the insured appeared in the witness box to say that they had seen the licence with the driver and thought it to be genuine before engaging him as a driver. As the insured failed to discharge the basic responsibility of alleging and proving that they had seen the licence with the driver and accepted it as genuine before engaging him as such, the insured failed to ensure that the vehicle is given for driving to a person who is duly authorized to drive the same or to say that he was not disqualified to hold a licence. The matter would have been different had the respondents/insured discharged their obligation of satisfying themselves that the driver possessed a licence, thus, competent to drive the vehicle in question. In this view of the matter, the insured is guilty of violating the terms and conditions of the insurance policy that entitles the insurance company to press for right of recovery against the insured after payment of compensation to the claimants. In this context, reference can be made to latest judgment of Hon'ble the Supreme Court **Pappu and others Vs. Vinod Kumar Lamba and another, 2018(2) RCR (Civil) 42.** In view of the above, respondents No.5 to 7 cannot derive any advantage to their contention from the judgments cited at bar.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms. The insurance company shall be entitled to recover the amount of compensation from the insured after payment of compensation to the claimants.

FAO No.1977 of 1999

Counsel for the appellants would urge that she does not press the appeal to challenge quantum of compensation assessed by the Tribunal.

I have examined the award particularly para 13 thereof, pertaining to assessment of compensation.

The Tribunal has awarded compensation of Rs.2,93,000/- detailed hereunder:-

Monthly income of the deceased	Rs.2276/- (rounded off to Rs.2300/-)
Deduction for personal expenses	1/3rd
Monthly loss of dependency	Rs.1500/-

Multiplier	16
Loss of dependency	Rs.2,88,000/-
Expenses on last rites	Rs.5,000/-

The deceased was working as Lance Naik ARMC Kasauli. He was drawing salary of Rs.2276/- per month as per certificate marked as an exhibit. The deceased was 25 years old at the time of accident. As the deceased was a government employee, claimants shall be entitled to benefit of future prospects @ 50%. Appropriate multiplier for computing loss of dependency is 18 when examined in the light of authoritative enunciation laid down by Hon'ble the Supreme Court **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77**. Deduction for personal expenses allowed by the Tribunal to the extent of 1/3rd is correct and affirmed. In this manner, loss of dependency comes to Rs.4,91,616/- [Rs.4,91,616/- (Rs.2276 x 12x 18) + Rs.2,45,808/- (50% future prospects) – Rs.2,45,808/- (1/3rd deduction towards personal expenses).

The claimants shall be entitled to Rs.70,000/- under conventional heads in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270,** detailed hereunder :-

Loss of consortium to the widow	Rs.40,000/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-

In view of the above, total compensation comes to Rs.5,61,616/- and the additional amount is Rs.2,68,616/- (Rs.5,61,616/- -

Rs.2,93,000/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization to widow of the deceased. The respondents before the Tribunal shall be liable to pay compensation to the claimants but the insurance company shall be entitled to recover the amount from the insured after payment of compensation to the claimants, in terms of order of even date passed in FAO No.1064 of 1999.

For the foregoing reasons, the appeal is disposed of in the aforesaid terms.

JULY 2, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no