IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

XOBJC-18-CII-2002 in/and
FAO No. 1674 of 2001 (O&M)
Date of Decision: April 23, 2018.

New India Assurance Company Limited
..........APPELLANT(s).

VERSUS

Gurmeet Kaur and others
........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Neeraj Khanna, Advocate for
Mr. Ravinder Arora, Advocate
for the appellant (s).

Mr. S.K. Arora, Advocate
for respondents No.1 to 4/cross-objectors.

Mr. Kuldeep Sanwal, Advocate
for respondents No.5 and 6.

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SURINDER GUPTA, J.

Instant appeal has been filed by New India Assurance Company against the award dated 03.03.2001 passed by Motor Accident Claims Tribunal, Sangrur (hereinafter referred to as 'the tribunal') allowing compensation of ₹2,56,128/- for death of Rajinder Singh, husband of respondent No.1, father of respondents No.2 and 3 and son of respondent No.4, in a motor vehicle accident, which took place on 15.05.1994 with Truck bearing registration No.PB-13B-5725 (later referred to as 'the offending vehicle').

In the appeal, the claimants have also filed cross-objections seeking enhancement of compensation as awarded by the tribunal.

As the finding of the tribunal that the accident was caused due to rash and negligent driving of the offending vehicle by its driver Sukhwant Singh, respondent No.5 has not been assailed, detailed facts of the case are being skipped for the sake of convenience.

FAO-1674-2001

Learned counsel for the appellant has confined his submission only on the issue of validity of driving licence of driver of the offending vehicle. He has argued that the driving licence of the driver was proved to be fake one and its subsequent renewal does not make it valid.

I find merits in the submission of learned counsel for the appellant. The tribunal while discussing the evidence regarding the validity of licence of driver of offending vehicle, has observed in para 20 and 21 of the award as follows:-

> "20. Onus to prove this issue is upon respondent no.3. To prove this issue, counsel for the respondent no.3 has tendered insurance policy Ex.R-2. During arguments, counsel for respondent no.3 submitted that the driving licence of respondent no.1 has been issued by the Licensing Authority, Guhati and for the verification of the said driving licence, a Local Commissioner was appointed by the court, who went to Guhati and recorded the statement of DW Jan Dass, Enforcement Officer. That from the perusal of the said statement, it is evidence that the driving licence of respondent no.1, whose copy is Ex.R-4, is fake driving licence. That as the driving licence is fake, respondent no.3 is not liable to pay any compensation.

> 21. From the perusal of the statement of RW.1 Sukhjit Singh, it is evident that the said driving licence of respondent no.1 has been got renewed from the office of DTO, Sangrur from 26.3.90 to 19.1.93, from 25.1.93 to 19.1.96 and again upto 19.1.99. RW.1 also proved the photostat copy of form-10, which is Ex.R-1. As such, it is fully proved on the record that the driving licence of respondent no.1 has been renewed by the office of DTO Sangrur from time to time upto 19.1.99. There is no evidence on the record that insured was in knowledge that respondent no.1 was holding a fake driving licence renewed by the competent authority."

In this case, the owner of the offending vehicle has not turned up to depose that before appointing Sukhwant Singh alias Mukhwant Singh as driver, he had verified his licence or was satisfied that driving licence held by him was legal and valid, as such, the observations of the tribunal that owner of the offending vehicle was not having any knowledge that Sukhwant Singh was holding a fake driving licence, has no basis. The tribunal has relied on the observations in case of ***National Insurance Company Limited Vs. Sucha Singh & Others, 1994(1)PLR 140,*** while making the above observation. The law as laid down in the aforesaid case has been set aside by Hon'ble Apex Court in case of ***New India Assurance Company Limited Vs. Kamla 2001(4) SCC 342.*** The observations of Hon'ble Apex Court in para 12 and 13 are reads as follows:-

> "12. As a point of law we have no manner of doubt that a fake licence cannot get its forgery outfit stripped off merely on account of some officer renewing the same with or without knowing it to be forged.

> Section 15 of the Act only empowers any licensing authority to renew a driving licence issued under the provisions of this Act with effect from the date of its expiry. No licensing authority has the power to renew a fake licence and, therefore, a renewal if at all made cannot transform a fake licence as genuine. Any counterfeit document showing that it contains a purported order of a statutory authority would ever remain counterfeit albeit the fact that other persons including some statutory authorities would have acted on the document unwittingly on the assumption that it is genuine.
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> 13. The observation of the Division Bench of the Punjab and Haryana High Court in **National Insurance Company Limited Vs. Sucha Singh** (supra) that renewal of a document which purports to be a driving licence, will robe even a forged document with validity on account of Section 15 of the Act, propounds a very dangerous proposition. If that proposition is allowed to stand as a legal principle, it may, no doubt, thrill counterfeiters the world over as they would be encouraged to manufacture fake documents in a legion. What was originally a forgery would remain null and void for ever and it would not acquire legal validity at any time by whatever process of sanctification subsequently done on it. Forgery is antithesis to legality and law cannot afford to validate a forgery."

In case of ***Pappu and Ors. Vs. Vinod Kumar Lamba and Ors., 2018 (2) RCR (Civil) 42***, Hon'ble Apex Court has observed on this issue as follows:-

> "11. .... Merely producing a valid insurance certificate in respect of the

> offending Truck was not enough for the respondent No.1 to make the Insurance Company liable to discharge his liability arising from rash and negligent driving by the driver of his vehicle. The Insurance Company can be fastened with the liability on the basis of a valid insurance policy only after the basic facts are pleaded and established by the owner of the offending vehicle - that the vehicle was not only duly insured but also that it was driven by an authorised person having a valid driving licence. Without disclosing the name of the driver in the Written Statement or producing any evidence to substantiate the fact that the copy of the driving licence produced in support was of a person who, in fact, was authorised to drive the offending vehicle at the relevant time, the owner of the vehicle cannot be said to have extricated himself from his liability. The Insurance Company would become liable only after such foundational facts are pleaded and proved by the owner of the offending vehicle."

In view of the law as settled above, the finding of the tribunal on issue No.4 are reversed. It is ordered that the claimants are entitled to compensation as awarded by the tribunal/this Court from the insurer. On payment of compensation, the insurer will have right to recover the same from the owner of the offending vehicle.

As no other point has been raised by learned counsel for the appellant in this appeal, the same is allowed to the above extent.

XOBJC-18-CII-2002

Learned counsel for cross-objectors/claimants has argued that the deceased was 25 years of age. He has left behind four dependants. The tribunal while calculating the amount of compensation towards loss of dependency, has applied multiplier of 16, which as per the age of the deceased and in view of law settled by Hon'ble Apex Court in case of ***Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (2009)6 SCC 121,*** is 18. The tribunal has also deducted 1/3rd income of the deceased towards his future prospects instead of 1/4th as the deceased has left behind four dependants. The claimants are also entitled to addition of 40% in the income of the deceased towards future prospects and compensation under the conventional heads as per the law laid down by Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others 2017(4) R.C.R. (Civil) 1009***.

Learned counsel for the insurance company has not disputed the enhancement of compensation as per the observations by Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others (supra).***

The tribunal has taken age of the deceased as 25 years and as per the law settled in case of ***National Insurance Company Limited Vs. Pranay Sethi and others (supra),*** claimants are entitled to addition of 40% in the income of the deceased towards future prospects. The deceased has left behind four dependants, as such, 1/4th of his income is to be deducted towards his personal expenses and while computing the compensation for loss of dependancy, multiplier attracted in this case is 18. Keeping in view the fact that accident had taken place in the year 1994 i.e. about 24 years back, claimants are awarded a lump sum compensation of ₹30,000/- towards loss of consortium, loss of estate and funeral expenses.

As a sequel of my above discussion, the compensation to which the claimants are entitled, is reassessed as follows:-

Sl.No.	*Heads*	*Calculation*
(i)	Income of the deceased	₹2000 per month
(ii)	40% of above (i) to be added as future prospects	(₹2000+₹800)= ₹2800 per month
(iii)	Deduction of $1/4^{th}$ towards personal expenses of the deceased	(₹2800-₹700)= ₹2100 per month
(iv)	Compensation after multiplier of 18 is applied	(₹2100X12X18)= ₹453600
(v)	Compensation under conventional heads i.e. loss of consortium, loss of estate and funeral expenses	₹30000
Total		₹4,83,600/-

As a sequel of my above discussion, the appeal as well as cross-objections have merits and are accepted. The award of the tribunal is modified and the compensation allowed to the claimants/cross-objectors is enhanced from ₹2,56,128/- to ₹4,83,600/- for death of Rajinder Singh. It is ordered that initial liability to pay the amount of compensation shall be of the insurer-appellant but it shall have the right to recover the same from the insured-respondent No.6. The enhanced amount of compensation will carry interest @ 7% per annum from the date of filing of the appeal till actual realisation. The amount of enhanced compensation shall be apportioned between the claimants as follows:-

(i) Claimant No.1-widow : 40%

(ii) Claimants No.2 and 3. : 20% each

(iii) Claimant No.4-mother : 20%

Appellant-insurance company will deposit the shares of claimants in their bank accounts or pay the same through demand drafts. The claimants shall also be entitled to costs of this appeal. In case of demise of any of above claimant(s) before his/her share of compensation is disbursed, the same shall be apportioned equally amongst other surviving claimants.

(SURINDER GUPTA)
JUDGE

April 23, 2018.
Sachin M.

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No