

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision-09.07.2018

1. FAO No.2952 of 2005(O&M)

Brijesh Kumar	... Appellant
Versus	
Jagbir @ Kala and others	... Respondents

2. FAO No.2984 of 2005

National Insurance Co. Ltd. Chd.	... Appellant
Versus	
Brijesh Kumar and others	... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. D.L.Gulati, Advocate for
Dr. Naresh Kaushik, Advocate
for the appellant in FAO No.2952 of 2005 and
for respondent No.1 in FAO No.2984 of 2005.

Mr. R.C. Kapoor, Advocate
for the appellant in FAO No.2984 of 2005 and
for respondent No.3 in FAO No.2952 of 2005.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, FAO No.2952 of 2005 titled Brijesh Kumar Vs. Jagbir @ Kala and others and FAO No.2984 of 2005 titled National Insurance Co. Ltd. Chd. Vs. Brijesh Kumar and others are being decided. Both the appeals have arisen from one accident, therefore, common facts are being noticed.

[2]. FAO No.2952 of 2005 has been preferred by claimant-Brijesh Kumar for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Jind (for short 'the Tribunal') vide judgment dated 01.03.2005, whereas FAO No.2984 of 2005 has been preferred by the Insurance Company seeking exoneration from the liability to pay compensation on the ground of non-production of driving licence of respondent No.1/driver, despite specific application moved by Insurance Company before the Tribunal.

[3]. The accident in question took place on 25.02.2001, when claimant along with his brother Balraj had gone to Safidon Mandi to attend marriage of one Mukesh, who is brother of his sister's husband. At about 2:30 PM, he along with Balraj was going on a motorcycle to the house of Mukesh from Jain Sanathak. When they reached near the crossing of Anaj Mandi, a Tata four wheeler (hereinafter known as offending vehicle) came from opposite direction in a rash and negligent manner and hit the motorcycle of the claimant. Claimant/appellant was driving the motorcycle, whereas Balraj was a pillion rider. As a result of accident, the claimant/appellant suffered serious injuries, whereas Balraj fell at some distance. Respondent No.1 driver of the offending vehicle fled away from the spot. The injured claimant was taken to CHC Safidon and thereafter, he was referred to PGIMS, Rohtak. Subsequently, he was also treated at Sonapat. Claimant stated that he became permanently disabled

and had incurred more than Rs.1,50,000/- towards treatment. The vehicle was insured with respondent No.3/Insurance Company.

[4]. Driver, owner and Insurance Company resisted the claim of the claimant. Insurance Company disputed its liability to pay the compensation on the ground that driver of the four wheeler (offending vehicle) was not having any valid driving licence.

[5]. Under issue No.1, the Tribunal held that the accident in question took place due to rash and negligent driving of driver of the four wheeler (offending vehicle). Issues No.2 and 3 were decided together being interconnected.

[6]. Claimant testified that he had suffered various injuries including fracture on chin, leg, spine, head and eyes. Claimant was taken to CHC Safidon by his brother, where he was medically examined. Later on, he was shifted to PGIMS, Rohtak for further treatment. He also got treatment from a private hospital at Sonapat. Claimant claimed that he remained confined to bed for 7/8 months and was being attended by two attendants during that period. He further stated that he had recovered only after 9/10 months and remained under pain and sufferings. He further claimed that a sum of Rs.1,50,000/- to Rs.2,00,000/- was spent towards treatment. He was earlier working as Accountant with M/s Mann Traders, Narela Mandi and was drawing Rs.7000/- per

month as salary, but because of his long absence from the duty due to the accident, his services were dispensed with by the employer. The claimant further stated that he is still unable to resume his work and is not even in a position to perform daily pursuits. He produced on record bills and receipts regarding purchase of medicines, hospitalization and other treatment i.e. Exs.P2 to P35 besides Ex.P36 i.e. certificate purporting to have been issued by the employer. Copy of account of his income was produced as Ex.P37. He also produced his driving licence Ex.P38. He further claimed that he had to engage a hired vehicle for transportation from his house to the hospital and from Safidon to Rohtak for which a receipt Ex.P29 was executed. Though the treatment provided in CHC Safidon and PGIMS Rohtak was free, but the medicines had to be purchased from the market as well.

[7]. The Tribunal after assessing the expenses incurred by the claimant awarded a sum of Rs.25,000/- with interest as there was no material evidence regarding his confinement to bed for 7/8 months and for want of proof regarding his permanent disability.

[8]. The appeal filed by Brijesh Kumar is for enhancement of aforesaid compensation, whereas in the appeal filed by the Insurance Company, the grievance of the Insurance Company is that the driving licence of driver of the offending vehicle was not produced on record, despite an application filed by the Insurance

Company before the Tribunal for directing respondents No.1 and 2 i.e driver and owner of the offending vehicle to supply copy of registration certificate and driving licence of respondent No.1. In view of aforesaid, learned counsel for the Insurance Company claimed that Insurance Company is entitled to take defence that offending vehicle was being driven by unauthorized person having no valid driving licence. The Tribunal has fastened the onus on the Insurance Company only on the ground that the owner has testified that the driver was employed by him only after seeing the Driving Licence and conducting a Driving Test. Since no Driving Licence was produced by the driver and owner of the offending vehicle, therefore, the onus shifted upon the Insurance Company could not be discharged and Insurance Company was well within its right to claim that the vehicle was not being driven by authorized person. Owner and driver of the offending vehicle did not produce the driving licence, despite specific application moved by Insurance Company, therefore, it could not be said that the efforts made by the Insurance Company by moving a specific application for production of documents was not enough. Since the driving licence of driver of the offending vehicle has not come forth, therefore, it would be imprudent to expect the Insurance Company to lead further evidence to show that driver of the offending vehicle was not having valid driving licence. In such eventuality, the Insurance Company has to be taken to have discharged its burden of proving breach of policy conditions.

[9]. I have heard learned counsel for the parties.

[10]. Claimant Brijesh Kumar has appeared as PW 2 and stated on broad aspect of the case. Dr. A.K. Suri has appeared as PW 3 and testified that he was posted in CHC Safidon on 25.02.2001. He had conducted medico legal examination of injured Brijesh Kumar who had 9 injuries on his person. Injuries No.1 to 6 were kept under observation, while remaining injuries were declared to be simple. MLR is Ex.P38/x. The patient was referred to PGIMS, Rohtak on the same day i.e. 25.02.2001. The injured was discharged on 03.03.2001 from PGIMS, Rohtak. Thereafter, the injured took treatment from a hospital at Sonapat. Ex.P15 is the bill, however, copy of X-ray report could not be proved in terms of execution and the same remained as Mark A. According to Mark A, there was fracture on right clavicle and multiple fractures on left side of ribs were noticed. The bills Exs.P21 to P27 were not on any prescribed form, nor the same were signed by any person as token of issuing the same. The aforesaid documents remained in the shape of slips prepared on a plain paper. The total amount of other bills came to Rs.1394.50. No evidence was led by the claimant in respect of his confinement to bed for 7-8 months. No evidence was led in respect of any permanent disability suffered by the claimant. In the discharge card Ex.P35, there was no mention of any fracture in the right clavicle or any other part of the body. It is true that practically the injured cannot keep record of each and every

medicine purchased during currency of treatment as some unforeseen medical expenses are bound to be incurred in emergency.

[11]. There were total 9 injuries suffered by the claimant as per MLR Ex.P38/x. Injuries No.1 to 6 were kept under observation and claimant was referred to PGIMS, Rohtak on 25.02.2001 itself. Evidently, the claimant was discharged from PGIMS, Rohtak on 03.03.2001. The aforesaid situation itself is suggestive of the fact that the claimant remained hospitalized for at least 8 days. Even though, the treatments in CHC Safidon and PGIMS Rohtak were free, but the medicines had to be purchased from the market as well, therefore, consolidated amount of Rs.25,000/- as compensation towards medicines, hospitalization, transportation, special diet, pain and suffering and loss of income would be totally on lower side.

[12]. In view of hospitalization of the claimant, in my considered opinion, medical bills to the tune of Rs.1394.50 cannot be construed to be an exact amount spent by the claimant as there were some unforeseen expenses which had to be incurred by the attendants of the patient/injured in such type of emergency. It is also true that sometimes bills i.e Exs.P21 to P27 can only be issued in the manner as projected on record. Some guess work has to be applied while assessing true compensation for the injured claimant.

[13]. In my considered opinion, the award of Rs.25,000/- for all the aforesaid heads needs to be doubled. In this way, award of Rs.50,000/- would suffice to meet the headings of medicines, hospitalization, transportation, special diet, pain and sufferings and loss of income.

[14]. The enhanced amount of compensation i.e. Rs.25,000/- shall carry interest @ 7.5 % from the date of filing of the claim petition till final realization of the amount.

[15]. With the aforesaid modification, FAO No.2952 of 2005 stands disposed of.

[16]. FAO No.2984 of 2005 has been preferred by the Insurance Company. Insurance Company had specifically moved an application dated 28.07.2003 before the Tribunal, directing respondents No.1 and 2 i.e. driver and owner of the offending vehicle to supply copy of R.C and driving licence of driver of the offending vehicle, but despite the said application, no documents were brought on record by the driver and owner of the offending vehicle.

[17]. At one point of time, driver and owner of the offending vehicle were proceeded against *ex parte*, however, later on, *ex parte* proceedings qua owner of the offending vehicle were set aside vide order dated 12.01.2005. Driver of the offending vehicle remained absent from the proceedings before the Tribunal.

[18]. The Tribunal fastened liability to pay compensation on the Insurance Company solely on the ground that owner of the offending vehicle was examined as RW 1 and he had testified that he had employed Jagbir @ Kala as driver of his four wheeler after checking his driving licence and taking his driving test. Ved Pal (owner) made it clear that Jagbir @ Kala had worked as a driver of his vehicle for about two months. In his cross examination, owner had testified that Jagbir @ Kala had a driving licence issued by Licensing Authority, District Sonapat and was an efficient driver. On the basis of ratio laid down **in National Insurance Co. Ltd. Vs. Swaran Singh and others, 2004, Accidents Claims Journal 1**, the Tribunal took cognizance of the issue and fastened liability on the Insurance Company as the mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time were not the defences available to the insurer against either of the insured or the third party, but for its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

[19]. Learned counsel for the Insurance Company relied upon **National Insurance Co. Ltd. Vs. Jai Lasie and others, 2015 ACJ 2209** and **Pappu and others Vs. Vinod Kumar Lamba and another, 2018(1) PLR 425** and contended that once

burden of proof was on the Insurance Company and Insurance Company disputed its liability on the ground that owner and driver of the offending vehicle had failed to produce driving licence despite a specific application moved by the Insurance Company before the Tribunal for issuance of directions to driver and owner of the offending vehicle to supply copy of registration certificate and driving licence of the driver, then, in the event of non-production of such documents by the driver and owner of the offending vehicle, Insurance Company cannot be presumed to have not discharged its burden of proving breach of policy conditions. Though the Insurance Company is liable to satisfy the award, but with a right to recover the same from the owner and driver of the offending vehicle.

[20]. Learned counsel further submitted that the offending vehicle was being driven by an unauthorized person having no valid driving licence. Initially, the onus was shifted on the Insurance Company as the owner of the offending vehicle had testified that the driver was employed after seeing his driving licence and taking his driving test, but once the documents were not produced despite specific application moved by the Insurance Company, then by merely producing valid insurance certificate in respect of offending vehicle was not enough to make Insurance Company liable to discharge liability arising from rash and negligent driving of driver of the offending vehicle.

[21]. In the light of above attending circumstances of the case, I am of the view that Insurance Company had taken reasonable steps to discharge its onus in order to prove that there was a breach of policy condition as the driver and owner of the offending vehicle had not produced driving licence of the driver.

[22]. In view of above, I have least hesitation to hold that though the Insurance Company is liable to pay the compensation at the first instance, however with a recovery right to recover the same from owner and driver of the offending vehicle in accordance with law. The awarded amount of Rs.25,000/- has already been deposited by the Insurance Company. The amount has been enhanced to Rs.50,000/- along with interest, therefore the Insurance Company shall make payment of enhanced amount along with interest and then recover the same from driver and owner of the offending vehicle in accordance with law.

[23]. With the aforesaid modification, FAO No.2984 of 2005 stands disposed of.

09.07.2018

(RAJ MOHAN SINGH)
JUDGE

Prince	
Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No