IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 26.3.2018

1. **FAO No.1210 of 2014(O&M)**

National Insurance Co. Ltd. …..Appellant

VERSUS

Harbans Kaur and others .....Respondents

Present: Mr. Neeraj Khanna, Advocate for the appellant.

Mr. Ashish Kapoor, Advocate for respondents No.6 and 7.

Mr. M.S. Rana, Advocate for respondent No.8.

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2. **FAO No.8292 of 2014(O&M)**

Harbans Kaur and others …..Appellants

VERSUS

M/s Indian Oil Corporation and others .....Respondents

Present: Mr. Rajbir Singh, Advocate for the appellants.

Mr. Ashish Kapoor, Advocate for respondents No.1 and 2.

Mr. M.S. Rana, Advocate for respondent No.3.

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

This order will dispose of FAO Nos.1210 and 8292 of 2014 as these have emerged out of the same award dated 08.08.2013 passed by the Motor Accidents Claims Tribunal, S.B.S. Nagar (in short 'the Tribunal') whereby compensation has been awarded on account of death of Sh. Satdev Singh in a motor vehicular accident that took place on 26.12.2009.

FAO No.1210 of 2014 has been filed by National Insurance Co. Ltd. (hereinafter to be referred as the 'insurance company') whereas FAO No.8292 of 2014 has been filed by the claimants seeking enhancement of compensation.

Counsel for the insurance company would inform that the appeal has been preferred to assail findings of the Tribunal on issue No.3 and press for entitlement of the insurance company to be exonerated of liability to pay compensation for want of valid driving licence.

FAO No.1210 of 2014

The sole submission made by counsel for the insurance company is that as the vehicle in question is oil tanker bearing No.PB-03N-0618, Prem Chand was not competent to drive the vehicle in question for want of necessary endorsement in compliance with the provisions of Section 14 of the Motor Vehicles Act, 1988 (in short 'the Act') read with Rule 9 of the Central Motor Vehicles Rules, 1989 (in short 'the Rules'). It is argued with vehemence that Prem Chand had a licence to drive Heavy Transport Vehicle issued for a period of 3 years i.e. 06.10.2007 to 17.09.2010 but licence for driving a vehicle carrying inflammatory or hazardous goods is issued for a period of one year or an endorsement in this regard can be made only if the driver files an application in compliance with the provisions of Rule 9 of the Rules. In support of his contention, heavy reliance has been placed upon judgment of this Court **Rajesh Singh and another Vs. Hardeep Singh and another along with connected cases FAO No.2178 of 2013 decided on 21.12.2017**. Further reference has been made to judgment of the Madras High Court **Nagamani Vs. Singaravelu, 2009(40) RCR (Civil) 656**.

Counsel representing the registered owner of vehicle has refuted contention of counsel for the insurance company and supported the award by relying upon judgments of this Court **National Insurance Co. Ltd. Vs. Presiding Officer and another, CWP No.6739 of 2012, decided on 20.12.2012, Oriental Insurance Co. Ltd. Vs. Rajinder Kumar Sharma and others, (2017) 188 PLR 17.** Further reference has been made to Division Bench judgment of Madhya Pradesh High Court (Jabalpur Bench) **Baghelkhand Filling Station and another Vs. Brijbhan Prasad and others, 2006 ACJ 2503**, judgment of the Gujarat High Court **National Insurance Co. Ltd. Vs. Amarshi Punchanbai Patel and others, First Appeal No.1446 of 2011 decided on 16.02.2017** and Chhattisgarh High Court **United India Insurance Company Ltd. Vs. A. Verlaxmi and others, 2015 ACJ 132.**

Before adverting to the submission made by counsel for the parties, it is appropriate to note that the vehicle in question is an oil tanker meant for transporting oil. There is also no dispute that the vehicle is a Heavy Transport Vehicle and the driver possessed licence authorizing him to drive transport vehicle as it was valid from 06.10.2007 to 17.09.2010 and accident took place on 26.12.2009. The Tribunal by relying upon judgments of this Court **National Insurance Co. Ltd. Vs. Parveen Kumar and another, 2005 ACJ 1178**, **National Insurance Co. Ltd. Vs. Presiding Officer and another, CWP No.6739 of 2012, decided on 20.12.2012, National Insurance Co. Ltd. Vs. Sanjay Kumar and others, 2012 ACJ 863** has held that the driver was competent to drive the vehicle in question and the insurance company is jointly and severally liable to pay compensation.

The question for consideration is whether the insured is guilty of committing breach of terms and conditions of insurance policy constituting a defence in favour of the insurer under Section 149(2) of the Act, thus, entitles the insurer to be exonerated of its liability to pay compensation or press for recovery right against the insured after payment to the claimants.

This Court in **Rajesh Singh's case** (supra) on consideration of the provisions of Section 14 of the Act coupled with Rule 9 and 132 of the Rules has held that as the owner had engaged the driver and it was his responsibility to see that the licence had the necessary endorsement, he has failed to discharge his duty/responsibility placed upon the transporter/owner of goods carrier. Further held that the Tribunal had rightly exonerated the insurance company since there was a breach of conditions of the insurance policy. The driving licence could not be accepted as a valid licence.

As has been noticed hereinbefore, there is no dispute that the driving licence possessed by the driver did not contain an endorsement authorizing him to drive a vehicle carrying goods of inflammable or hazardous nature. Hon'ble the Supreme Court in **National Insurance Company Ltd. Vs. Swaran Singh and others, 2004(2) RCR (Civil) 114** has held that to avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of 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. It has further been held, quoted thus:-

> "Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is / are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under section 149(2) of the Act."

The question that now arises would be whether such a breach of not having obtained necessary endorsement as required under sub-Rule (3) of Rule 9 of the Rules, is so fundamental as to have contributed to the cause of accident. The answer, at the outset, appears to be in the negative. It is nobody's case that the accident took place because of dangerous or hazardous substance being carried in the vehicle. On the contrary, there is no challenge to findings of the Tribunal that the accident occurred due to negligence in driving the offending tanker. In the given scenario, carrying or non-carrying of dangerous or hazardous substance has no nexus with cause of accident that occurred due to rash and negligent driving of the vehicle by its driver. In this view of the matter, it can safely be held that the breach complained of by the insurer is not so fundamental as is found to have contributed to the cause of accident.

This apart, perusal of Rule 9 of the Rules would make it evident that before a driver can file an application for obtaining necessary endorsement as required under sub-rule (3) of Rule 9 of the Rules, he is to undergo some training for a period of two to three days but the same does not deal with the professional skill of driving. With regard to professional skill of driving, it has already been clarified by the licensing authority at the time of granting licence to the driver authorizing him to drive a transport vehicle. When the facts and circumstances of the present case are examined in the light of judgment of Hon'ble the Apex Court in **Swaran Singh's case** (supra) coupled with the discussion made hereinbefore, I am inclined to agree with what has been held by the Division Bench of the Madhya Pradesh High Court in **Baghelkhand Filling Station and another's case** (supra) and Gujarat High Court in **Amarshi Punchanbai Patel and others' case** (supra). This Court in **Rajesh Singh's case** (supra) has neither adverted to judgment of Hon'ble the Supreme Court in **Swaran Singh's case** (supra) nor judgments by the High Courts of Madhya Pradesh and Gujarat. In this view of the matter, insurance company can neither escape its liability to pay compensation nor press for right of recovery merely for want of endorsement required under Rule 9(3) of the Rules on the licence held by driver of the offending vehicle.

No other point has been raised.

For the foregoing reasons, the appeal filed by the insurance company fails and is accordingly dismissed.

FAO No.8292 of 2014

The Tribunal has awarded compensation to the tune of Rs.7,62,000/- detailed hereunder:-

Monthly income of the deceased	Rs.6000/-
Deduction for personal expenses	1/4th
Multiplier	13
Loss of dependency	Rs.7,02,000/-

Loss of consortium, love and affection	Rs.50,000/-
Funeral expenses etc.	Rs.10000/-

Counsel for the claimants would argue that the Tribunal has not allowed benefit of increase in income for future prospects at the rate of 25% as the deceased was 47 years old. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company would argue that the application for compensation was filed by the widow, son, minor daughter and two married daughters of deceased Satdev. It is argued that as married daughters cannot be held to be dependent upon the deceased, admissible deduction for personal expenses should be 1/3rd.

Plea of the claimants for extending benefit of future prospects at the rate of 25% is meritorious and granted. As has been rightly argued by counsel for the insurance company, two of the claimants are the married daughters of deceased Satdev Singh, therefore, they cannot be held to be dependent upon income of the deceased. In the given scenario, admissible deduction for personal expenses would be 1/3rd. Multiplier adopted by the Tribunal is affirmed. In this manner, loss of dependency comes to Rs.7,80,000/- [Rs.9,36,000/- (Rs.6000/- x 12 x 13) + Rs.2,34,000/- (25% towards future prospects) – Rs.3,90,000/- (1/3rd deduction towards personal expenses)].

The claimants shall be entitled to following compensation under conventional heads in the light of judgment **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270**:-

Loss of consortium to the widow	Rs.40,000/-

Funeral expenses/last rites	Rs.15,000/-
Loss of estate	Rs.15,000/-

In view of the above, total compensation comes to Rs.8,50,000/- and additional amount is Rs.88,000/- (Rs.8,50,000/- - Rs.7,62,000/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization except for the period of delay of 205 days to be shared by the widow and minor daughter of the deceased in the proportion 70:30. The share of the minor shall be invested in Fixed Deposit till she attains the age of majority or for a period of three years, whichever is later.

The appeal is partly allowed in the aforesaid terms.

MARCH 26, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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