IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 10.01.2018

FAO No.1035 of 2015 (O&M)

Sanjay ...Appellant

Versus

Ranbir Singh and others ...Respondents

FAO No.9515 of 2014 (O&M)

Ranbir Singh and another ...Appellants

Versus

Sawan Ram and another ...Respondents

FAO No.9566 of 2014 (O&M)

Ranbir Singh and another ...Appellants

Versus

Sanjay and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vijay K. Sheoran, Advocate
for the appellants in FAO Nos.9515 and 9566 of 2014.

Mr. S.K. Verma, Advocate
for the appellant in FAO No.1035 of 2015 and
for respondent No.1 in FAO No.9566 of 2014.

Mr. Sushil Sheoran, Advocate
for respondent No.1 in FAO No.9515 of 2014.

Mrs. Madhu Sharma, Advocate
for the insurance company.

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<u>REKHA MITTAL, J. (Oral)</u>

This order will dispose of FAO Nos.9515, 9566 of 2014 and 1035 of 2015 as these have emerged out of the same award dated 31.10.2014 passed by the Motor Accidents Claims Tribunal, Bhiwani whereby compensation has been awarded in regard to injuries sustained by Sanjay and Sawan Ram in a motor vehicular accident that took place on 24.10.2011 and liability to pay compensation has been fastened against the driver and owner of offending vehicle Tata Sumo No.HR-16-D-0153 but the insurer of the said vehicle has been exonerated to pay compensation.

FAO Nos.9515 and 9566 of 2014 have been filed by the driver and owner of Tata Sumo whereas FAO No.1035 of 2015 has been filed by claimant Sanjay seeking enhancement of compensation.

FAO Nos.9515 and 9566 of 2014

Counsel for the appellants would inform that the appeals have been preferred by the driver and owner of the vehicle to assail findings of the Tribunal recorded in para 33 of the award whereby it has been held that licence possessed by the driver was fake and the insured is guilty of violating the terms and conditions of insurance policy and the insurance company has been exonerated of its liability to pay compensation by holding that driver and owner are jointly and severally liable to pay compensation. It is argued with vehemence that driving licence mark R1 issued by the licensing authority, Farukabad (UP) was placed on record.

The insurance company filed an application for appointment of a local commission to visit the office of concerned licensing authority and make a report with regard to correctness or otherwise of driving licence of Ranbir Singh. The local commission appointed by the Court submitted a report wherein it was specifically mentioned that licence in question was issued by the concerned licensing authority valid from 23.02.2008 to 22.02.2028, thus, the Tribunal has seriously erred by accepting plea of the insurance company that licence mark R1 is not genuine or the driver was not competent to drive the vehicle in question. In the alternative, it is urged that even if the Tribunal had concluded that licence was fake, insurance company, at best, could be held entitled to right of recovery against the insured after satisfying award towards the claimants. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Swaran Singh and others, 2004 ACJ 1.**

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal upholding plea of the insurer that the insured is guilty of violating the terms and conditions of insurance policy constituting a defence in favour of the insurer under Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act'). It is argued that as per the report submitted by the local commission, fee of Rs.140/- for issuance of licence was not paid and without payment of fee, no licence could be issued. Another submission made by counsel is that as per the facts recorded in para 30 of the award, driver was holding two driving licences, one issued by DTO, Jind valid upto 05.09.2009 and the other purported to be issued by the licensing authority, Farukhabad.

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

Sh. Kulvir Singh, Advocate, local commission appointed by the Tribunal submitted report dated 29.09.2014. A relevant extract therefrom reads as follows:-

> *"3. That on this, clerk named Ajay stated that report pertaining to driving licence is computerised. However, he made a separate report regarding the validity and issuance of the DL of Ranveer, after verifying the fact of the DL from the computer set and the same was signed by Head Clerk Madhu Misan Mishra and extract regarding the DL of Ranveer Singh was also generated from the computer set and same was also signed by Head Clerk Madhu Misan Mishra. Both verification reports and extract also bears the stamp of the concerned authority.*
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> *4. That in licensing authority, Motor Licensing Department, Fatehgarh, Farrukhabad, record pertaining to driving licence is computerised one and taking into consideration. Verification report and extract issued by the concerned authority. Opinion of undersigned is that the DL of the Ranveer Singh, prima facie appears to be genuine.*
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> *5. That copy of order dated 05.09.2014 having original report regarding driving licence No.24624/2008 along with computer generated report issued by licensing authority, Fatehgarh, Farrukabad, is attached herewith."*

A report was made on copy of order dated 05.09.2014 passed by the Tribunal with regard to appointment of local commission. The said report in Hindi but translated in English reads as follows:-

> *"Sir,*
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> *While returning this in original, it is intimated that DL No.24624/08 has been issued by our office in the name of Ranbir Singh S/o Fakir Chand R/o Bahadurpur, Farrukhabad. The above mentioned licence is issued by our office on 23.02.2008. The validity of LMV thereof is upto 22.02.2028. TVT endorsement is done on 12.06.2010 and the same is valid upto 18.09.2017.*
>
> *Licensing Authority*
> *Motor Licensing Department.*
> *Fatehgarh, Farrukhabad."*

In the computer generated report prepared by the said office, again it has been reported that driving licence in question was issued by the said authority, valid from 23.02.2008 to 22.02.2028. The mere fact that as per records of the licensing authority, fee of Rs.140/- for issuance of licence was not found paid, is not sufficient to accept plea of the insurance company that driver was not possessing a valid licence on the day of occurrence i.e. 24.10.2011. In this view of the matter, I find merit in contention of the appellants that findings recorded by the Tribunal that driver did not possess a valid licence are not well founded and liable to be set aside. As the driver was possessing a valid licence to drive the vehicle in question, insurance company can neither be heard to say that the insured is guilty of violating terms and conditions of the insurance policy nor can escape its liability to pay compensation by way of indemnification of the insured under the contract of insurance.

So far as the plea that driver was possessing two driving licences for the period overlapping from 23.02.2008 to 05.09.2009, the same does not constitute a defence in favour of the insurance company to exonerate it from liability to pay compensation. Holding of two driving licences by a person may be an offence under the Act but the same is not a defence available to the insurance company under Section 149(2) of the Act.

No other issue has been raised.

For the foregoing reasons, the appeals are allowed. Findings recorded by the Tribunal that driver was not possessing a valid licence and exonerating the insurance company from liability to pay compensation are ordered to be set aside. As a natural corollary, the insurance company shall be jointly and severally liable to pay compensation with the driver and owner of the offending vehicle.

No order as to costs.

FAO No.1035 of 2015

The Tribunal has awarded compensation to the tune of Rs.1,61,739/- on account of injuries sustained by Sanjay, represented in tabulated form in para 21 of the award, extracted hereinbelow:-

1. Period of hospitalisation	25.10.2011 to 14.11.2011
2. Income	Rs.5,000/-
3. Medical expenses	Rs.56,739/-

4. Special Diet	Rs.10,000/-
5. Transportation	Rs.5,000/-
6. Income x % of loss of earning power x multiplier	Rs.90,000/-

Counsel for the appellant has submitted that the injured suffered disability to the extent of 30% but the Tribunal has awarded meager amount of Rs.90,000/- towards loss of earning. Compensation awarded for loss of income during the period of treatment and recovery is grossly inadequate. The Tribunal has not awarded any compensation for pain and sufferings, attendant charges. All the medical bills produced on record have not been reimbursed. Claimant is entitled to loss of amenities of life.

Counsel representing the insurance company has supported assessment made by the Tribunal with the submission that adequate compensation has been allowed.

The Tribunal has assessed income of the victim at Rs.5000/- per month. The claimant failed to adduce satisfactory much less cogent evidence on record with regard to his avocation and income. Under the circumstances, income of the victim assessed by the Tribunal on the basis of wage fixed by the State of Haryana cannot be faulted with.

The injured has suffered disability to the extent of 30%. Dr. Manish Kumar, Orthopedic Surgeon, General Hospital, Bhiwani PW6 has deposed that he along with other members of disability board assessed disability of Sanjay at 30% on account of united fracture of right ilium bone with fracture accabulum right side with implant. On physical examination, there was stiffness of right hip joint with pain. Disability certificate is Ex.P33. In his cross-examination, he has deposed that disability is not curable in future.

Ilium is the upper most and largest part of the hip bone. In view of nature and extent of disability, it can be safely presumed that functional disability to the victim is 15%. Claimant shall be entitled to future loss of income qua disability to the tune of Rs.1,35,000/- i.e. Rs.5000 x 12 x 15 x 15%.

The injured remained hospitalised for a period of three weeks. He suffered fracture of ilium bone. He is entitled to loss of income for a period of three months qua period of treatment and recovery i.e. Rs.15,000/-. The claimant shall be entitled to an amount of Rs.10,000/- for pain and sufferings and Rs.5000/- for services of an attendant.

The Tribunal has allowed reimbursement of medical expenses including hospitalisation charges to the extent of Rs.56,739/-. Taking into consideration the value of bills, claimant shall be entitled to an amount of Rs.65,000/- qua medical expense including hospitalisation charges.

The claimant suffered disability to the extent of 30%, permanent in nature. Accordingly, he is entitled to Rs.25,000/- for loss of amenities of life.

The total compensation comes to Rs.2,70,000/- and the additional amount is Rs.1,08,261/- (2,70,000 – 1,61,739), payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

10.01.2018 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No