IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 01.05.2018

(i) F.A.O. No. 6245 of 2014 (O&M)

Jawahar Lal and another ....Appellants

Versus

Ram Kishan and others ......Respondents

(ii) F.A.O. No. 8513 of 2014 (O&M)

Shri Ram General Insurance Company Ltd. ....Appellant

Versus

Jawahar Lal and others ......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Mukesh Yadav, Advocate
for the appellants in FAO No. 6245 of 2014 and
for respondents No. 1 and 2 in FAO No. 8513 of 2014.

Mr. Tajender K. Joshi, Advocate
for Insurance Company-respondent No.3 in FAO No. 6245 of 2014 and for appellant in FAO No. 8513 of 2014.

AVNEESH JHINGAN, J.(oral)

Legal heirs of Anil Kumar and insurer of Truck bearing registration No. HR-46-A-7365 have filed two separate appeals against the award dated 10.03.2014 passed by the Motor Accident Claims Tribunal, Narnaul (for short 'the Tribunal').

Insurer in the appeal has raised two issues; firstly the truck was not having a valid route permit and secondly the driver of the offending vehicle was holding a licence from Nagaland for driving heavy motor vehicles and not for heavy goods vehicles.

The grievances of the claimants are that no future prospects have been added; the multiplier considering the age of the parents of the deceased has wrongly been applied and the amounts awarded under conventional heads are on lower side.

The facts giving rise to these appeals are that on 12.02.2012 an accident took place which proved fatal for Anil Kumar aged 20 years. He was going home on his motor cycle bearing registration No.HR-26-AP-1513. The motor cycle was struck by a rashly and negligently driven Truck bearing registration No. HR-46-A-7365 (for short 'the offending vehicle'). Anil Kumar was crushed under the tyres of the offending vehicle. FIR No. 30 dated 12.02.2012 was registered at Police Station Kanina.

In the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') by the legal heirs of the deceased, the Tribunal held that the accident occurred due to rash and negligent driving of the offending vehicle. The age of the deceased was proved as 20 years. Deceased was unmarried. His income was assessed as Rs.5000/- per month which is not disputed by either of the parties. The Tribunal awarded a sum of Rs.3,50,000/- along with interest at the rate of 7% per annum. The amount awarded included Rs.10,000/- each for loss of love and affection and funeral expenses.

The issue raised by the insurer is that the truck was not having valid route permit and hence the Insurance Company is not liable to pay the compensation, has been dealt with by Division Bench of this Court.

The Division Bench judgment of this Court in FAO No. 3726 of 2006 ***United India Insurance Company Limited Versus Subhash Chander,*** decided on 18.8.2006 has decided the issue raised. Counsel for the Insurer candidly stated that his case is covered by the said decision.

The Division Bench of this Court while deciding FAO No.3726 of 2006 titled as "United India Insurance Company Limited vs. Subhash Chander and others", on 18.8.2006, considering the case of "Challa Bharathamma (supra)", has dealt with a similar question and held as under:-

> "In this insurer's appeal, learned counsel submitted that the offending vehicle being a truck (RJ-07-G2333) did not have the requisite route permit to ply the vehicle on the route in question. Learned counsel placed heavy reliance on a judgment of Hon'ble the Apex Court reported in 2004 ACJ 2094 (National Insurance Company Limited Versus Challa Bharathamma and others).
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> We have carefully perused the judgment and we find that, in the said case, there was no permit at all in terms of definition of permit, as contained in Section 2(31) of the Motor Vehicles Act, 1988 (for short `the Act'). The said definition, on reproduction, reads as under:-
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> "2(31) "Permit" means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorising the use of a motor vehicle as a transport vehicle." We have also perused Section 149 of the Act which relates to insurer's liability and it is reproduced as under:-
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> "149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.-
> (1) If, after a certificate of insurance has been issued under sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy) (or under the provisions of Section 163A) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as
> if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any

enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under subsection (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had noticed through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely.-
(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where any such judgment as is referred to in subsection (i) is obtained from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of Section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in subsection (1), as if the judgment were given by a Court in India: Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the

judgment is given, the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

(4) Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in clause (b) of subsection (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of subsection (1) of section 147, be of no effect:
Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(6) In this section the expression "material fact" and "material particular" means, respectively a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or has avoided or cancelled the policy.

(7) No insurer to whom the notice referred to in subsection (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in subsection (2) or in the corresponding law of the reciprocating country, as the case may be.
Explanation.- For the purposes of this section, "Claims Tribunal" means a Claims Tribunal constituted under section 165 and "award" means an award made by that Tribunal under section 168."
None of the provisions contained in both the above Sections refers to route permit. Under the circumstances, we are not inclined to accede to the submissions of learned counsel for the appellant, and further, no such plea was ever taken in the written statement before the Tribunal."

It is held in the above judgment that provision of Section 149 of the Act deals with permit and not route permit. Insurance Company cannot be granted recovery right if there is no route permit.

The issue stands covered against the insurer by the aforesaid Division Bench judgment of this Court. The same has been followed by a Single Bench decision of this Court in ***Gian Chand Versus Iqbal Hassan (P&H)*** 2014 (3) RCR (Civil) 965.

The second issue raised by the insurer is that the offending vehicle was a truck and hence it was heavy goods vehicle whereas the driving licence Ex.R1 issued by Licensing Authority, Phek, Nagaland authorize the driver to drive motorcycle, LMV, MMV and HMV only.

It is not disputed that the said licence was otherwise valid on the date of the accident and was validly issued by the Licensing Authority. The only issue raised is that there is no endorsement of heavy goods vehicle on the said licence. The onus is on the insurer to prove that the driver was not holding a valid driving licence. Nothing has been brought on record to establish that in the licence issued by Nagaland authority, there is a requirement of endorsement of heavy goods vehicle and the endorsement of heavy motor vehicle itself is not sufficient. Truck is duly covered under heavy motor vehicle. In absence of discharge of onus by the insurer, the said plea cannot be accepted.

The contentions raised by the learned counsel for the claimants for enhancement of compensation deserve acceptance. The deceased was 20 years of age and his income was assessed as Rs.5000/- per month. In view of the decision of Supreme Court **National Insurance Company Limited Versus Pranay Sethi and others**, 2017 AIR (SC) 5157 and **Hem**

Raj Versus Oriental Insurance Company Ltd. 2017 DNJ 1102, 40% future prospects should be added while awarding the compensation.

Supreme Court in **Pranay Sethi's case (Supra)** has held that Rs.15,000/- each is to be awarded for funeral expenses and loss of estate and no amount is to be awarded for loss of love and affection. An amount of Rs.15000/- each for funeral expenses and for loss of estate are awarded. The multiplier has to be applied taking into consideration the age of the deceased and not of the parents. Supreme Court in case of **Shri Nagar Mal Vs. Oriental Insurance Company Limited, (Civil Appeal No. 448 of 2018)**, decided on 19.01.2018 and **Sube Singh Vs. Shyam Singh (Civil Appeal No. 7176 of 2015)**, decided on 09.02.2018 relying on decision of **Pranay Sethi's case (supra)** held that multiplier is to be applied keeping in view the age of the deceased.

The compensation is re-calculated as under:

Monthly income	Rs.5000/-
40% future prospects	Rs.2000/- Rs.7000/-
½ self expenses	Rs.3500/-
Multiplier of 18	(3500x18x12)
	Rs.7,56,000/-
Conventional heads (Loss of estate and funeral expenses Rs.15000/- each)	Rs.30,000/-
Total:	Rs.7,86,000/-

The award dated 10.03.2014 is modified to the extent that the amount awarded of Rs.3,50,000/- is enhanced to Rs.7,86,000/-.

The claimants would be entitled to enhanced amount alongwith interest at the rate of 6% per annum from the date of filing of the claim petition till realization of the amount.

Accordingly, the appeal filed by claimants is partly allowed and the appeal filed by the Insurance Company is dismissed.

(AVNEESH JHINGAN)
JUDGE

01.05.2018
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No