IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2046 of 2018 (O&M)
Date of Decision: April 25, 2018

Future General India Insurance Company Ltd. ...Appellant

Versus

Suman and others ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Rajesh K.Sharma, Advocate
for the appellant – Insurance Company.

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HARINDER SINGH SIDHU, J.

For the reasons mentioned in the application CM No.7942-CII of 2018, the delay of 89 days in filing the appeal is condoned.

The insurer has filed the present appeal challenging the award dated 14.09.2017 passed by the Motor Accident Claims Tribunal, Panipat (for short 'the Tribunal').

Brief facts as disclosed in the claim petition are that on 01.07.2014 at about 8.30 pm, Balvinder Singh along with his nephew Jitender was going on motorcycle No.HR-06R-4207 from Village Balana to Village Naultha. When they reached near fields of Surja Pandit at village Balana, they stopped their motorcycle to answer the call of nature. In the meanwhile, Rakesh and Vishal were coming from village Naultha on Motorcycle No.HR-06R-0356. At the same time, a tractor of brick kiln being driven in a rash and negligent manner came from village Balana side and directly hit the motorcycle of Rakesh. Both the occupants of the motorcycle suffered injuries and they were shifted to Prem Hospital, Panipat, where, during treatment Vishal succumbed to the injuries. Rakesh was referred to Delhi. He also succumbed to the injuries later. The driver of the tractor was over-powered. As there was no registration number on the tractor, therefore, its Engine and Chasis Numbers were noted. The accident was alleged to have been caused due to rash and negligent driving of the offending vehicle. FIR regarding the accident was also registered.

On a claim petition filed by the legal representatives of deceased Rakesh, the Tribunal assessed the income of the deceased at Rs.4500/- per month, awarded addition of 50% towards future prospects, deducted 1/4th towards his personal expenses, applied the multiplier of 17 (deceased aged 30 years). The loss of dependency was assessed at Rs.10,32,648/-. Besides, sum of Rs.1,00,000/- towards 'loss of consortium', Rs.25,000/- as 'last rites', Rs.5,000/- for 'loss of estate' and Rs.1,20,000/- towards 'loss of love and affection' were awarded. In all, compensation of Rs.12,82,700/- (rounded off) along with interest was awarded.

Challenging the impugned award, Ld. Counsel for the appellant – insurer has argued that the negligence on the part of the driving offending was not proved as the author of the FIR was not examined. He also argued that the offending vehicle was being driven in violation of the terms and conditions of the insurance policy as its driver was not having a valid driving license. The driver was a resident of the State of Haryana, but he was having a driving license issued by the Licensing Authority in the State of Nagaland, which too was not a *smart card.* Further, while terming the compensation on higher side, it is argued that the Tribunal should have awarded only 40% addition towards 'future prospects' and that the amounts awarded under the conventional heads are also on the higher side.

Having heard Ld. Counsel for the appellant and going through the paper-book, the arguments raised appear to be without merit.

To prove the negligence, copy of the final report of the Police under Sections 173 CrPC and the charge-sheet were placed on record as Ex.P2 and P3, respectively. As per charge-sheet, the Court of Judicial Magistrate, where the trial is pending against Sandeep, has framed charge against him under Section 279 and 304-A IPC. Prior thereto, the matter was investigated by the Police, and it found that the accident was caused by the rash and negligent driving of the tractor by Sandeep – respondent No.5 and accordingly, it filed its final report under Section 173 CrPC (Ex.P2) against him, challaning him for the offence.

In the oral evidence, Balvinder Singh, an eye-witness of the accident also appeared as PW1 before the Tribunal and corroborated the version of the FIR.

It is well-settled that in a case, where FIR is lodged against the driver, charge-sheet is filed against him, charge has been framed in the Criminal Court against him and eye-witness of the accident, has been examined before the Tribunal, it is sufficient to establish the fact that the driver of the offending vehicle was negligent in causing the accident. In view of this evidence, the non-examination of the author of the FIR cannot be fatal to the case of the claimants.

On the point of validity of the driving licence, learned counsel for the insurance company argued that the driver is a permanent resident of Haryana, yet he has produced a licence which has been issued by a Licensing Authority of the State of Nagaland. Hence this licence cannot be considered to be valid because as per Section 9 of the Motor Vehicles Act, 1988 a person can apply for a licence only to the licensing authority where he ordinarily resides. The contention therefore is that a licence issued by a licensing authority of the place where the driver is not a permanent resident is invalid.

The argument of the Insurance Company cannot be accepted for more reasons than one.

First, it is well settled that the onus to prove that the driver was not having a valid driving licence is on the insurance company. That onus can only be discharged by examining an official of concerned licensing authority/getting the licence verified from that authority. That exercise has not been undertaken.

Similar argument of the Insurance Company was repelled by this Court in **New India Assurance Company Limited Versus Vijay Kumar and Ors. 2015(8) R.C.R.(Civil) 596** :

> "***13.*** *Learned counsel for the appellant has submitted that findings of the Tribunal on issue No.2 are wrong. Vijay Kumar was permanent resident of District Kurukshetra and he is alleged to have been issued licence from Nagaland. The said licence cannot be said to be a valid document. Normally, the licence is issued at a place where the driver ordinarily resides. The ordinary residence of Vijay Kumar driver was Village Niwarsi, Police Station Ladwa, District Kurukshetra and as such, the learned Tribunal has wrongly decided issue No.2 against the insurance company.*

> ***14.*** *I have considered the said submission but do not find any force in that submission.*
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> ***15.*** *It is settled law that onus to prove that driver was not holding a valid driving licence lies on the insurance company. The driver has produced the driving licence. The insurance company has not summoned any one from Nagaland Transport Authority to prove that the said licence is invalid. The driver Vijay Kumar has also stated that he has been visiting and plying vehicle at Nagaland and as such there is no abnormality in issuing the licence by Nagaland Transport Authority. The fact remains that onus is on the insurance company to prove that Vijay Kumar was not having a valid driving licence and insurance company has failed to discharge the onus of that issue. So, the finding on issue No.2 stands affirmed. "*

A licence issued by a licensing Authority would remain valid till it is revoked by the authority or nullified in any other appropriate proceedings.

Section 19 of the Motor Vehicles Act, 1988 empowers the licensing authority to disqualify the holder of the licence or to revoke the licence after giving opportunity of being heard. The fact that a licence has been obtained by misrepresentation or fraud is a ground for disqualifying or revoking the licence. But in the present case, there is no evidence to the effect that the licence has in fact been obtained by misrepresentation or fraud.

The argument of the Ld. Counsel that the licence is to be treated to be invalid as it is not in the Smart Card Format as directed by the Transport Commissioner, Nagaland also cannot be accepted. As per the notification of the State of Nagaland dated 1.8.2014 the driving licence holders having booklet or on any manual formats other than *Smart Card* were to report to office for the purpose of digitizing their data and subsequent issue in *Smart Card* format. The exercise was to be completed before 01.12.2014. Thereafter driving licences other than in *Smart Card Format* would be treated as cancelled. The accident, in this case had occurred on 01.07.2014 i.e. much before 01.12.2014, which according to the notification, was the last date for getting the Driving License digitized. Thus, the driving licence produced on record is to be treated as valid.

The next submission regarding grant of higher 'future prospects' @ 50% instead of 40% has to be accepted in view of the decision of the Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others** **(2017) 16 SCC 680.** The amount awarded under conventional heads is also on higher side. Deceased Rakesh was pleaded to be involved in agricultural work and running a dairy farm i.e. self-employed. Accordingly, in view of the decision in **Pranay Sethi's** case, the compensation is re-assessed as under:-

Sr.No.	**Heads**	**Calculation (In Rs.)**
(i)	Monthly Income	4500/-
(ii)	40% of above (i) to be added as future prospects (deceased aged 30 yrs.)	4500+(4500x40/100) = 6300/-
(iii)	Loss of income (1/4th of (ii) deducted as personal expenses of the deceased – four dependents)	6300-(6300x1/4)= 4725/- per month
(iv)	Loss of dependency after multiplier of 17 is applied	4725x12x17= 9,63,900/-
(v)	Loss of consortium (exclusively for the widow of deceased)	40,000/-
(vi)	Loss of Estate	Rs.15,000/-
(vii)	Funeral Expenses	Rs.15,000/-
	Total	***Rs.10,33,900/-***

Hence, the appeal is partly allowed. The Award of the Tribunal is modified only to the extent that the claimants – respondents are held entitled to total compensation of Rs.10,33,900/-, that is, Rs.2,48,800/- (1282700-1033900) less than the amount awarded by the Tribunal.

The appeal has been disposed of without notice to the respondents – claimants to avoid unnecessary delay and expenses. A copy of this order be conveyed to the claimants-respondents No.1 to 4. In the event of the said respondents having any objection, they may file application to that effect. On receipt of any such application, the same be listed for hearing.

It is made clear that this order has been passed on an appeal filed by the Insurance Company without hearing the claimants and is confined to the contentions raised herein. It is without prejudice to the rights of the claimants to separately agitate for enhancement on any other ground that may be available to them.

April 25, 2018

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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No