**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.2108 of 2018 (O&M)
Date of Decision: May 04, 2018

Future General India Insurance Company Ltd. ...Appellant

Versus

Sarita 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 stated in the application, the delay of 47 days in filing the appeal is condoned.

The Future General India Insurance Company Limited has filed the present appeal challenging the award dated 14.9.2017 passed by the Motor Accident Claims Tribunal, Panipat (for short 'the Tribunal').

Brief facts as disclosed in the claim petition are that on 1.7.2014 at about 8.30 pm in the area of village Balana, a vehicular accident took place involving Tractor No.HR-06R-4865 (herein for short 'the offending vehicle'), wherein, Rakesh Kumar and Vishal Kumar lost their lives. 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 Vishal Kumar, the Tribunal assessed the income of deceased Vishal Kumar at

Rs.9256/- per month, awarded addition of 50% towards future prospects, deducted 1/3rd towards his personal expenses, applied the multiplier of 18 (deceased aged 20 years). The loss of dependency was assessed at Rs.19,99,296/-. Amount of Rs.1,00,000/- towards 'loss of consortium', Rs.25,000/- as 'expenses for last rites', Rs.40,000/- towards 'loss of love and affection' and Rs.5,000/- for 'loss of estate' was also awarded. In all, compensation of Rs.21,69,296/- (rounded off at Rs.21,69,300/-) along with interest was awarded.

Ld. Counsel for the appellant – Insurance company has challenged the impugned award on three grounds; (i) that the offending vehicle has been wrongly implicated in the accident, (ii) 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.* and (iii) the amount of compensation is on higher side and not in accordance with the decision in **National Insurance Company Ltd. Vs. Pranay Sethi and others (2017) 16 SCC 680.**

I have heard Ld. Counsel for the appellant – Insurance Company and perused the records with his assistance.

To prove the accident, PW1 Balwinder Singh was examined before the Tribunal, who filed affidavit Ex.PW1/A giving details of the accident. He stated that the accident was caused due to rash and negligent driving of the offending vehicle by respondent No.3. Further, FIR No.107 dated 2.7.2014 under Sections 279, 337 and 304-A IPC was registered in

Police Station Israna against respondent No.3 – Sandeep. The Police investigated the matter and submitted its report under Section 173 Cr.P.C. challaning respondent No.3. Further, the Trial Court also found a prima facie case against the said respondent and he was charge-sheeted for the offence.

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.*
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> ***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 last argument that the Tribunal has not assessed compensation in view of the decision of the Hon'ble Supreme Court in **Pranay Sethi's case** (supra) deserves acceptance.

Accordingly, the compensation is re-assessed as under:-

Sr.No.	**Heads**	**Calculation (In Rs.)**
(i)	Monthly Income	9256/-
(ii)	40% of above (i) to be added as future prospects (deceased aged 20 yrs.)	9256+(9256x40/100) = 12958.4
(iii)	Monthly dependency (1/3rd of (ii) deducted as personal expenses of the deceased - two dependants)	12958.4-(12958.4x1/3)= 8638.93
(iv)	Loss of dependency after multiplier of 18 is applied	8638.93x12x18= 1866009.6 (rounded off at Rs.1866100/-

(v)	Loss of Consortium (Exclusively payable to the widow of deceased)	Rs.40,000/-
(vi)	Loss of Estate	Rs.15,000/-
(vii)	Funeral Expenses	Rs.15,000/-
	Total	***Rs.19,36,100/-***

Hence, the appeal is allowed. The Award of the Tribunal is modified to the extent that the claimants – respondent are held entitled to total compensation of Rs.19,36,100/-, that is, Rs.2,33,200/- (2169300-1936100) 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 expense. A copy of this order be conveyed to the claimants-respondents No.1 and 2. 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 ground that may be available to them.

May 04, 2018 **(HARINDER SINGH SIDHU)**
gian **JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No