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

(1) FAO-5545-2005(O&M)

Sunil and another

...Appellants

Versus

Manjit Singh and others

...Respondents

(2) FAO-1217-2006(O&M)

Manjit Singh

...Appellant

Versus

Sunil and others

...Respondents

Date of Decision:-19.12.2019

**CORAM: HON'BLE MR.JUSTICE H.S.MADAAN**

Present: None for the appellants.

Mr.R.K. Bashamboo, Advocate
for the Insurance Company.

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**H.S. MADAAN, J.**

By this order, I shall dispose of two FAOs i.e. FAO-5545-2005 filed on behalf of appellants – Sunil and another and FAO-1217-2006 filed on behalf of appellant – Manjit Singh, which have arisen out of the same accident.

Briefly stated, facts of the case are that petitioner/claimant Manjit Singh son of Bal Ram, resident of village Mehandipur, Tehsil and

District Sonepat had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against the respondents i.e. Sunil – driver, Kuldeep and The Bhalout Coop. Transport Society Ltd., village Bhalaut, District Rohtak – owners, M/s GCG Finance Co. Pvt. Ltd., Rohtak – Financier and Oriental Insurance Company Ltd. - Sonepat – insurer of bus bearing registration No.HR-46B-0494 (hereinafter referred to as the offending vehicle), claiming compensation to the tune of Rs.10 lakhs on account of suffering injuries in the motor vehicular accident, which took place on 20.3.2003 on account of rash and negligent driving of the offending vehicle by respondent No.1.

As per the version of the claimant on 20.3.2003, he along with his friend Mahabir was going from Rohtak towards his village Mahendipur, District Sonepat on Hero Honda motorcycle bearing registration No.HR10B-4220; petitioner/claimant was driving the said motorcycle on which Mahabir was pillion rider; the motorcycle was being driven on left hand side of the road at a moderate speed; at about 12:00 O'clock when the motorcycle reached near village Balyana on Sonepat road, then the offending vehicle being driven by respondent No.1 in a rash and negligent manner at a high speed and in a zig-zag manner came from Rohtak side; the driver of the offending vehicle suddenly applied brakes and motorcycle hit the bus resulting in the accident; petitioner/claimant suffered serious and grievous injuries including a fracture; he was taken to PGIMS, Rohtak in a four-wheeler; after the mishap, the bus driver ran away from the spot; from PGIMS Rohtak, the petitioner/claimant was shifted to Sir Ganga Ram Hospital, Delhi, where he remained admitted from 22.3.2003 to 29.3.2003; he was medically treated there; the petitioner/claimant received a treatment from various hospitals and was still getting treatment at the time of filing of claim petition.

According to the claimant, he had spent a sum of Rs.1,80,000/- on the medicines, transportation, diet and attendant etc. He has become permanently disabled. He was a student of B.P.Ed. studying at Nagpur and on account of suffering injuries in the accident, his future career has been spoiled. FIR No.63 dated 20.3.2003 for the offences under Sections 279 and 337 IPC was registered against respondent No.1 with regard to the accident. The petitioner/claimant prayed that the claim petition be accepted.

On getting notice, all the respondents put in appearance. Respondents No.1, 2, 2-A and 2-B filed a joint written statement controverting the assertions in the claim petition contending that respondent No.1 was not challaned, rather the FIR was cancelled by the police being based upon false information furnished by the claimant; the claimant was not travelling in the bus of the respondent and the bus No.HR46B-0494 had not caused any accident; however the bus was insured with respondent No.3 – insurance company from 4.9.2002 to 3.9.2003. Refuting the remaining assertions, the answering respondents prayed for dismissal of the claim petition.

In the separate written statement submitted on behalf of respondent No.3 – insurance company, it took up the objection that respondent No.1 was not holding a valid and effective driving licence at the time of the alleged accident; as a matter of fact no such accident had taken place due to rash and negligent driving on the part of respondent No.1; the police had already cancelled the case finding that fictitious information has been given by the petitioner; as a matter of fact the bus in question was standing on the berm of road since its left side tyre had got punctured; the claimant was driving the motorcycle in a rash and negligent manner and struck his motorcycle with the stationary bus resulting in the accident; that the claim petition had been filed with an ulterior motive to extract the amount from the insurance company. In the end, such respondent prayed for dismissal of the claim petition.

Issues on merits were framed and the parties were afforded adequate opportunities to lead evidence.

After hearing arguments, the Tribunal decided issue No.1 in favour of the petitioner and against the respondents holding that the accident took place due to rash and negligent driving on the part of respondent No.1 while plying the bus No.HR46-B-0494 and had caused the injuries on the person of the petitioner. Issue No.2 was decided holding that the petitioner/claimant was entitled to get compensation of Rs.2,11,704/- with interest @ 6% per annum from the date of filing of the claim petition till realization and the issue was decided in favour of the petitioner and against respondents No.1 to 2(B). Issue No.3 was decided holding that the licence of respondent No.1 – Sunil Kumar was not renewed and he was not having any licence to drive the bus on the alleged date of accident i.e. on 20.3.2003, therefore, respondent No.3 – insurance company was exonerated from any liability to pay compensation. Issue No.4 was decided in favour of the petitioner and against respondent finding that the claim petition was maintainable.

As a result of findings on all the issues, Motor Accidents Claims Tribunal, Sonepat (hereinafter referred to as the Tribunal) allowed the claim petition partially with costs against respondents No.1 to 2(B) and compensation to the tune of Rs.2,11,704/- along with interest @ 6% per annum from the date of filing of the petition till the date of actual realization was awarded to the petitioner, payable by respondents No.1 to 2(B) jointly and severally.

The petitioner/claimant felt aggrieved by the award since according to him the amount of compensation awarded was on lower side and insurance company had been wrongly exonerated by the Tribunal. Whereas respondents No.1 and 2 had filed a separate appeal submitting that the claim petition was wrongly accepted and they had been burdened with liability to pay compensation without any justification, whereas exonerating the insurance company of any liability.

Notices of the appeals were issued to the respondents. However, only insurance company put in appearance through counsel. Later on, there was no representation on behalf of appellants.

I have gone through the record of the case.

The claimant has moved CM-2394-CII of 2019 in FAO-1217-2006 under Order 41 Rule 27 CPC seeking permission to lead additional evidence in the shape of disability certificate vide which he has been 32% permanent disabled.

I find that that this application does not deserve to be accepted; firstly for the reason that the accident had taken place on

20.3.2003; the petitioner had got his disability assessed from the Medical Board and produced his disability certificate in evidence, which was considered and compensation was accorded accordingly. New disability certificate is dated 24.12.2018 that has been issued after more than 15 years of the accident and more than 15 years of issuance of the first disability certificate, which was issued on 9.7.2003. It is difficult to connect such certificate dated 24.12.2018 with the injuries suffered in the road side accident more than 15 years earlier. Allowing production of this certificate would mean to putting the clock back and resulting in a *de novo* trial, which is uncalled for.

The application is, therefore, dismissed.

As far as the finding recorded by the Tribunal on issue No.1 that respondent No.1 – Sunil Kumar was author of the accident by his rash and negligent driving of the offending bus resulting in causing injuries to the petitioner/claimant is concerned, the finding is proper and appropriate and does not call for any interference. While coming to this conclusion, the Tribunal has taken into consideration the ocular evidence provided by petitioner/claimant – Manjit Singh, who had got his own statement recorded as PW4 submitting his affidavit Ex.PW4/A deposing in consonance of his case as given in the claim petition. The fact that FIR No.63 dated 20.3.2003 for the offences under Sections 279 and 337 IPC has been registered against respondent No.1 – Sunil Kumar with Police Station Sadar, Rohtak Ex.P17 has also been taken into consideration so has been the fact that Sunil Kumar – respondent No.1 had not appeared in the witness-box so as to corroborate the version of the respondents that as a matter of fact the bus in question was lying parked on the katcha berm of the road and petitioner/claimant by driving his motorcycle in wrongful manner had hit the stationary bus resulting in the accident in which he had received injuries. The Tribunal had further noted that there is not an iota of evidence to show that this FIR has been cancelled by the police. Therefore, the finding recorded by the Tribunal on issue No.1 is affirmed.

Now coming to the finding on issue No.2, vide which a sum of Rs.2,11,704/- has been awarded to the claimant as compensation, I find that the compensation so awarded is on the lower side. According to PW1 Dr.H.R. Singhal, who had proved the disability certificate Ex.P1, a medical Board had examined the petitioner/claimant on 9.7.2003 finding that there was paresis right upper limb with stiffness left knee and the disability was 68%. The Tribunal has awarded a sum of Rs.68,000/- to the petitioner towards permanent disability. I find that the amount so awarded is inadequate. The Apex Court in ***Master Mallikarjun Versus Divisional Manager, The National Insurance Company Ltd. and another, 2014(14) SCC 396*** has given the parameters for awarding of compensation in case of permanent disability, though it can be said that the judgment relates to a child and permanent disability calculated would mean disability qua the entire body but even then in the present case with disability of 68% being there, the petitioner/claimant who was a student of B.P.Ed. would not be able to pursue the games and physical activity like a normal human being and he needs to be properly compensated on account of such disability suffered. The old formula for determination of compensation was Rs.2,000/- for 1% of disability. Using that yardstick even, though the same is not made applicable now, the compensation can be worked out to Rs.1,36,000/-. The Court is to see the functional disability i.e. how much loss of income is occasioned to the petitioner/claimant during his life time. The petitioner/claimant happened to be a young man and a student. He has been rendered a cripple for remaining part of his life. Therefore, it would be proper and appropriate to grant him compensation of **Rs.2,50,000/-**.

The Tribunal has awarded a sum of Rs.5,000/- only under the head of pain and suffering. The said compensation is on very low side and the same is enhanced to **Rs.35,000/-**.

On account of medical treatment, considering the medical bills produced on record by the claimant Ex.P18 to Ex.P61, a sum of Rs.1,38,704/- has been awarded by the Tribunal. While granting such reimbursement towards medical treatment, the Tribunal has not taken into view the fact that many a times, the record of various amounts spent on purchase of medicines in the form of bills, receipts, cash memos etc. is not kept or at times it gets misplaced or lost and no amount has been awarded towards future medical expenses. Thus, the compensation under that head is enhanced to **Rs.1,75,000/-**.

No amount has been awarded by the Tribunal towards transportation charges. Keeping in view the period of hospitalization and nature of injuries and that claimant would have gone to the hospital for follow up treatment also, a sum of **Rs.25,000/-** is awarded to him on account of transportation.

Similarly, no amount has been awarded towards special diet.

A person suffering injuries does need special diet for early and proper recovery. A award a sum of **Rs.30,000/-** under that head.

The claimant having suffered injuries did require help of an attendant during the period of his hospitalization and then going to hospital for follow up treatment. A sum of **Rs.30,000/-** is accordingly awarded to the appellant/claimant on that score.

The claimant on account of injuries suffered by him would not be able to walk, run or sit as he was prior to the accident. A sum of Rs.35,000/- each (total **Rs.70,000/-**) is awarded to him on account of loss of amenities and loss of expectation of life.

Thus the total amount of compensation comes out to Rs.6,15,000/-.

The finding on this issue is modified accordingly.

Now coming to issue No.3 regarding the liability part. The Tribunal made respondents No.1 to 2(B) liable to pay the compensation amount to the claimant for the reason that Sunil Kumar – respondent No.1 was not having a legal and valid driving licence at the time of accident. But then if we see the record, RW1 Rajesh Kumar, Clerk, DTO Office, Jind had brought the summoned record stating that in terms of such record the driving licence of Sunil Kumar – respondent No.1 was renewed on 14.5.2002 and was valid up to 13.5.2005, copy of driving licence being Ex.R1 and copy of renewal register being Ex.R2. He gave number of the last renewal from RTO, Rohtak as 3513 RT/96. The accident in this case had taken place on 20.3.2003 i.e. within the period of renewal. RW2 Har Pal Singh, Clerk, DTO Office, Rohtak had brought the summoned record pertaining to serial No.3513 of 1996 stating that as per record at Serial No.3513 of 1996 driving licence of Rajesh Kumar son of Ram Lal was renewed by DTO, Rohtak, which is valid from 27.1.2003 to 26.1.2006. In his cross examination, he stated that he could not recognize the signature on Ex.R3 and could not say by whom it was issued. He stated that in his register, there were many pages which were blank and only members were written and the register was in torn condition. He further stated that there were many registers in their office in which they maintained the record.

Therefore, the deposition of RW2 Har Pal Singh was not sufficient to arrive at a conclusion that licence possessed by Sunil Kumar was not genuine more particularly when RW1 Rajesh Kumar had stated in his cross-examination that the licence is renewed after verification. The DTO Office renewing the driving licence is supposed to verify from the issuing office as to whether the licence in question has been issued by that office or not and it is not that the licence is renewed in a mechanical manner. The Tribunal clearly fell in error in coming to the conclusion that Sunil Kumar was not having any licence to drive the bus on the alleged day of accident.

In ***United India Insurance Company Ltd. Versus Lehru and Ors, 2003(2) RCR(Civil) 278*** by the Apex Court wherein while dealing with the liability of insurer in a claim petition when driving licence of the driver of the vehicle was found to be fake, it was observed that breach of contract by owner of insured vehicle must be established by the insurance company to avoid its liability with regard to third party claim. The Insurance Company can recover from the owner only if it is proved that the vehicle was knowingly and intentionally handed over to a driver not holding any valid licence to drive such vehicle and if the licence held by the driver seems to be valid on the face of it, the owner is not expected to make a roving inquiry to find out its validity and that without proving knowledge and intention of the owner, breach of conditions of policy cannot be attributed to the insured.

Then in ***National Insurance Co. Ltd. Versus Swaran Singh and others, 2004 ACJ 1*** wherein answering a question, whether insurance company in order to avoid its liability towards insured has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling conditions of the policy regarding driving of vehicle by a duly licensed driver or one who was not disqualified to drive at the relevant time, in affirmative, it has been observed that mere absence, fake or invalid licence or disqualification of the driver for driving, are not in themselves defences available to the insurance company.

In ***Pepsu Road Transport Corporation Versus National Insurance Company, 2013(4) RCR(Civil) 273***, it was observed that when an accident is caused by a driver, who possessed a fake driving licence, the insurance company is liable to pay compensation and not the owner of the vehicle.

On the other hand, learned counsel for the respondent No.3 – insurance company has argued that once the licence possessed by the driver was found to be fake, the subsequent renewal would not make it valid and the owner insured has failed to explain as to what care and caution was taken by him to ascertain that the licence possessed by the driver was valid, therefore the terms and conditions of the insurance policy that the insured vehicle should be driven by a proper driver were violated absolving the insurance company liable to pay compensation.

After hearing the learned counsel for the parties, going through the judgments referred to by learned counsel for the appellant and perusing the record, I find that the Tribunal was not justified in granting recovery rights to the insurance company.

The onus of proving the issue No.3 whether the respondent No.1 was not holding a valid driving licence at the time of accident was on the insurance company. But then the crucial evidence that respondent No.2 – owner of the vehicle had knowingly and intentionally handed over the vehicle to respondent No.1 not holding any valid licence to drive such vehicle is missing. The licence possessed by respondent No.1 on the face of it seems to be valid and the owner could not have any suspicion regarding the same since it was renewed from time to time by various offices of the licensing authority. Therefore, it cannot be taken to be breach of the terms and conditions of the insurance policy relieving the insurance company of any liability to pay compensation. Rather the liability of insurance company is there and it is not entitled to get any recovery rights from the insured.

It is not established on record that Sunil Kumar – respondent was not holding a valid and effective driving licence at the time of accident, in the process any violation of the terms and conditions of the insurance policy took place, resulting in insurance company being absolved of its liability to pay compensation. Therefore, I find that respondents No.1, 2, 2(A) along with respondent No.3 – insurance company are jointly and severally liable to pay the compensation amount. Consequently, the finding of the Tribunal on issue No.3 is reversed and issue is decided against respondent No.3.

The finding on issue No.4 does not call for any interference.

Thus, ***FAO-5545-2005*** filed on behalf of the driver and owner stands allowed partly.

The Tribunal has awarded a sum of Rs.2,11,704/-. In that way, the additional amount comes to Rs.4,03,296/-(6,15,000 - 2,11,704). The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization of the additional amount of Rs.4,03,296/-, payable by respondents No.1, 2, 2-A and 3 jointly and severally.

With such modification, the ***FAO-1217-2006*** filed on behalf of claimant/petitioner Manjit Singh is allowed partly.

Since the main appeals were allowed partly, the miscellaneous application, if any, stands disposed of accordingly.

19.12.2019 **(H.S.MADAAN)**
Brij **JUDGE**

**Whether reasoned/speaking : Yes/No**

**Whether reportable : Yes/No**