IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 20.05.2019

FAO No.5966 of 2013 (O&M)

Ram Phal ... Appellant

Versus

Vikas and others ... Respondents

FAO No.5988 of 2014 (O&M)

Vikas ... Appellant

Versus

Mangat Ram and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Prateek Mahajan, Advocate
for the owner.

Mr. Amit Singla, Advocate
for the claimant.

Mr. RK Bashamboo, Advocate
for the insurance company.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.5966 of 2013 and 5988 of 2014 as these have emerged out of the same award dated 18.05.2013 passed by the Motor Accidents Claims Tribunal, Fatehabad whereby compensation has been assessed on account of injuries sustained by Vikas in a motor vehicular accident that took place on 15.10.2011.

FAO No.5966 of 2013 has been filed by Ram Phal, registered owner of offending vehicle namely Mahindra Pick-up bearing No.HR-39A-7628 whereas the other appeal has been preferred by the claimant seeking enhancement of compensation.

FAO No.5966 of 2013

Counsel for the appellant would inform that the appeal has been preferred to assail findings of the Tribunal exonerating the insurance company of liability to pay compensation on the premise that licence possessed by Mangat Ram, driver of offending vehicle was not issued by Licensing Authority, Dehradun and as such, the same is proved to be fake. It is argued that licence of Mangat Ram was purportedly issued by Licensing Authority, Dehradun in the year 1978 and subsequent thereto, it was renewed for three times by the Licensing Authority, Hisar.

Ram Phal appeared in the witness box and stated on oath that when he employed Mangat Ram as driver of offending vehicle, he had checked his driving licence and even sought necessary verification from Licensing Authority, Hisar and found his licence to be genuine. It is further argued that keeping in view testimony of Ram Phal, he cannot be branded to have breached terms and conditions of the insurance policy, therefore, the insurance company cannot escape liability to pay compensation by way of indemnification of the insured in discharge of its liability under contract of insurance, admittedly, entered between the parties.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal with regard to driving licence as Ram Phal has not verified the licence from Licensing Authority, Dehradun. It is further argued that renewal of a fake licence would not cure the inherent defect and as such the Tribunal has rightly exonerated the insurance company of liability to pay compensation in view of the provisions of Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act').

I have heard counsel for the parties, perused the paper book and records, particularly testimony of Ram Phal RW2.

Ram Phal tendered into evidence his duly sworn affidavit RW2/A by way of examination in chief. A relevant extract from paras 2 and 3 of the affidavit, reads as follows:-

> That I have appointed Mangat Ram son of Hari Singh Caste Nayak resident of Village Durazanpur Tehsil and District Hisar as driver upon my above said vehicle in the month of July, 2011. I have seen the driving licence of said Mangat Ram renewed by RTA Office Hisar. He was having licence to drive transport vehicle. I have verified the licence from the RTA Office, Hisar and found it genuine one and driver Mangat Ram was eligible to drive transport vehicle.
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> That Mangat Ram was no where objected and challened by police while he was employed as driver upon my above said vehicle regarding the genuineness of his driving licence.

In his cross examination by counsel for the insurance company, he had stated that driving licence was originally issued by Licensing

Authority, Dehradun (Uttrakhand). He did not try to verify the fact regarding the issuance or non-issuance of said licence from Dehradun, Uttrakhand. Counsel for the insurance company has failed to cite any judgment that obligates the insured to verify the licence from the authority by which the same was issued or renewed. When testimony of Ram Phal is examined in the light of judgment of Hon'ble the Supreme Court **Pepsu Road Transport Corporation Vs. National Insurance Co. Ltd., 2013(4) RCR (Civil) 273,** it is difficult to sustain findings of the Tribunal that either the insured is guilty of breaching the terms and conditions of insurance policy or the insurance company can escape liability to pay compensation by way of indemnification of the insured, therefore, findings of the Tribunal that only driver and insured are liable to pay compensation or the insurance company is absolved of liability to pay compensation are modified to the effect that the driver, owner and insurer of the offending vehicle would be jointly and severally liable to pay compensation to the claimant.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms.

FAO No.5988 of 2014

The Tribunal awarded Rs.6,55,640/-, detailed hereunder:-

Reimbursement of medical expenses	Rs.3,66,000/-
Loss of future income on account of disability	Rs.2,24,640/-
Disability and loss of amenities of life	Rs.60,000/-
Pain and sufferings and special diet	Rs.5000/-

Counsel for the appellant/claimant would argue that compensation allowed by the Tribunal under various heads except reimbursement of medical expenses is grossly inadequate and needs enhancement. It is argued that the injured aged about 19 years suffered disability to the extent of 41% but the Tribunal has assessed annual loss of income only to the tune of Rs.12,480/- by considering notional income of the victim at Rs.5300/- per month.

Counsel representing the insurance company, on the contrary, has supported assessment made by the Tribunal.

Dr. Tarun Sapra PW2 was examined and he deposed that the injured remained admitted in Sapra Multispeciality Hospital, Hisar from 15.10.2011 to 06.11.2011 and again from 18.07.2012 to 22.07.2012. As such, the injured got treatment as an indoor patient for a period of about 1 month. Keeping in view the period of treatment as an indoor patient coupled with nature of injuries sustained by the victim i.e. fracture of right femur with vascular injury with foot drop, the appellant shall be entitle to a sum of Rs.50,000/- for pain and sufferings. He is awarded an amount of Rs.10,000/- for special diet and services of an attendant.

The Tribunal has awarded Rs.3,66,000/- towards medical expenses, based upon the bills, and the same is affirmed.

Dr. TR Mittal was examined to prove disability suffered by the victim and disability certificate is Ex.P84. He has deposed that on 31.10.2012, x-ray down showed union with implant in situ. 80% loss of right ankle movement, loss of sensation below knee complete, stiffness present at all foot joints and knee. The disability was assessed to the extent of 41%. The Tribunal has assessed notional income of the victim at Rs.5300/- per month on the basis of minimum wage of an unskilled worker at the relevant time. The criteria adopted by the Tribunal for assessing loss of future income to the tune of Rs.2,24,640/- is not clear. In view of nature and extent of disability suffered by the victim aged about 19 years coupled with opinion of the medical board that disability is permanent and functional, the entire disability to the extent of 41% shall be taken into consideration for assessing loss of future income. Accordingly, loss of future income qua disability is assessed at Rs.4,69,368/- (5300 x 12 x 18 x 41%).

The Tribunal has awarded a sum of Rs.60,000/- towards disability and loss of amenities of life and the same is affirmed. The claimant shall be entitle to sum of Rs.5000/- for expenses on transportation. He is awarded Rs.1 lakh for loss of matrimonial prospects.

Total compensation is Rs.10,60,368/- and the additional amount is Rs.4,04,728/- (10,60,368 - 6,55,640), payable with interest @ 7.5% per annum from the date of petition till realization, to be invested in fixed deposit for a period of three years.

The appeal is partly allowed in the aforesaid terms.

20.05.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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