208 (1 of 2)

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

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1. **FAO No.3753 of 2015 (O&M)**
Date of Decision : 26.03.2019

United India Insurance Company Ltd.

Appellant

Versus

Pooja and others

Respondents

2. **FAO No.3135 of 2015 (O&M)**

Pooja and others

Appellants

Versus

Jujhar Singh and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ram Avtar, Advocate
for the appellant [in FAO No.3753 of 2015]
for respondent No.2 [in FAO No.3135 of 2015].

Mr. Shakti Kaushik, Advocate
for the appellants [in FAO No.3135 of 2015]
for respondents No.1, 2, 4 and 5
[in FAO No.3753 of 2015].

Mr. A.K. Kansal, Advocate
for respondent No.1 [in FAO No.3135 of 2015]
for respondent No.6 [in FAO No.3753 of 2015].

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AVNEESH JHINGAN, J (Oral):

The award dated 20.01.2015 passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri [for brevity 'the Tribunal'] has been assailed by filing two separate appeals. One appeal has been filed by the insurer of Tractor bearing registration No. HR-02AA-0302 [hereinafter referred to as 'offending vehicle'] and another by the claimants.

The grievance raised in the appeal filed by insurer of the offending vehicle is with regard to quantum of compensation and that Driving Licence produced by the driver of offending vehicle was not genuine.

The claimants have filed the appeal seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The facts with regard to the accident are not in dispute amongst the parties. A motor vehicular accident took place on 07.12.2013 due to rash and negligent driving of the offending vehicle. In the said accident, Bir Singh aged 48 years lost his life. FIR No.234, dated 08.12.2013 was registered at Police Station Sadar, Yamuna Nagar. The Tribunal held the owner, driver and insurer of the offending vehicle jointly and severally liable to pay the compensation.

In the claim proceedings, it was proved that the deceased was working as a Teacher in a Government School and was drawing a salary of ₹40,740/- per month. The Tribunal after deducting the Income Tax payable, considered the salary for calculating the compensation. 1/3rd of the salary was awarded as future prospects; 1/3rd deduction for self-expenses was made as the deceased was survived by three dependents and multiplier of '13' was applied. The Tribunal awarded a sum of ₹52,70,980/- alongwith interest @ 7.5% per annum. The amount awarded included ₹1,00,000/- for loss of consortium, ₹25,000/- for funeral expenses and ₹5,000/- for loss of estate.

During the pendency of the appeal, insurer of the offending vehicle had moved an application for producing additional evidence i.e. verification report with regard to Driving Licence produced by the driver of the offending vehicle.

Heard learned counsel for the parties and perused the relevant record.

Learned counsel for the insurer contends that the deceased was an employee of Haryana Government and his legal heirs have got financial assistance under *Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006* [hereinafter referred to as 'Rules'] and the same is required to be deducted in consonance with the decision of the Supreme Court in ***Reliance General Insurance Co. Ltd. Vs. Shashi Sharma and others JT 2016 (12) SC 409.*** He further contends that the amounts awarded under the conventional heads are on the higher side. The grievance raised is that the Driving Licence produced was fake, as per verification report annexed with the application, hence recovery rights be granted to the insurer.

Learned counsel for the claimants states that the amounts under the conventional heads are on the lower side as no amount for loss of love and affection has been awarded.

Learned counsel appearing for the owner-cum-driver of the offending vehicle defends the award and argues that onus to prove the fact that Driving Licence was fake is on the Insurance Company and it had not produced any evidence in this regard before the Tribunal. He relies upon the findings recorded by the Tribunal recorded in paragraph 23 of the award, wherein it has been recorded that issue No.3 with regard to violation of terms & conditions of the Insurance Policy was not pressed by the insurer of the offending vehicle.

The Tribunal relied upon the decision of the Division Bench of this Court in FAO No.1322 of 2010, ***Reliance General Insurance Company Limited Vs. Purnima and others,*** decided on 21.12.2012, to hold that amount received under the Rules is not to be deducted.

The Supreme Court, in ***Shashi Sharma's case*** (supra), has held that financial assistance received under the Rules is liable to be deducted. Since, the deduction of amount received would need certain factual aspects to be considered for which evidence would be required, the matter with regard to quantum of compensation is remitted back to the Tribunal to be decided afresh after affording opportunity to the parties to adduce fresh evidence in support of their claims.

It is clarified that dispute is with regard to conventional heads and financial assistance received, the said part would be reconsidered by the Tribunal.

The application filed under Order XLI Rule 27 of the Code of Civil Procedure, 1908 for producing additional evidence is dismissed. The counsel for the insurer fails to show any steps taken in the claim proceedings for verification of the Driving Licence, rather the findings recorded by the Tribunal show that the Driving Licence was accepted by the insurer. The law is settled that the onus with regard to the fact that Driving Licence produced before the Tribunal was fake, was on the insurer. The issue so framed was never pressed before the Tribunal. Reliance in this regard is placed on the decision of the Supreme Court in ***National Insurance Co. Ltd. Vs. Swaran Singh and others, AIR 2004 SC 1531,*** wherein it was held as under:-

> *"The summary of our findings to the various issues as raised in these petitions are as follows:*
>
> *(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.*

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163 A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

<u>(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.</u>

(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or

breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under section 149(2) of the Act.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The claims tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.

(xi) The provisions contained in sub-section (4) with proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims."

(emphasis supplied)

In view of law laid down by the Supreme Court, there is no occasion to allow the application and to consider the verification report.

With regard to quantum of compensation, the parties are directed to appear before the Tribunal on 09.05.2019.

Both the appeals are disposed of accordingly.

[AVNEESH JHINGAN]
JUDGE

March 26, 2019
pankaj baweja

1. Whether speaking/ reasoned : Yes
2. Whether reportable : No