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

**FAO No.6633 of 2014 (O&M)**
**Date of decision: 19.12.2019**

Lakhmitter Singh
....Appellant

Versus

United India Insurance Company Ltd. and others
....Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. Bikramjit Bajwa, Advocate,
for the appellant.

Mr. Karan Choudhary, Advocate,
for respondent No.7.

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**RITU BAHRI J. (Oral)**

**CM No.26870-CII of 2014**

Receipt dated 14.11.2014 (Annexure A-1) is taken on record.

Misc. application stands disposed of accordingly.

**FAO-6633-2014**

Lakhmitter Singh-appellant (owner of offending vehicle) has come up in appeal against the award dated 04.10.2013 passed by the Motor Accident Claims Tribunal, Gurdaspur (hereinafter referred to as 'the Tribunal'), whereby compensation of Rs.6,50,000/- has been awarded in favour of the claimant-respondent Nos.2 to 6 (herein) on account of death of Sarlok Singh in a motor vehicular accident which took place on 22.10.2010.

Brief facts of the case are that on 22.10.2010, Sarlok Singh (since deceased) along with Karandeep Singh-claimant No.5 (respondent No.6 herein) was coming back from village Nawan Pind Jhawar on a

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motorcycle. Gurmukh Singh was following them on a separate scooter. When they reached near the turn of village Jiwanwal, a truck bearing No. PB-05-F-9694, being driven by Manjeet Singh @ Pamma-respondent No.7 (respondent No.1 in claim petition) in a rash and negligent manner, came and struck against the motorcycle of Sarlok Singh, as a result of which, Sarlok Singh received multiple injuries and died. With regard to the accident, FIR No.157 dated 22.10.2010 was registered at Police Station, Sadar, Gurdaspur.

On the basis of evidence led by the parties, Tribunal came to a conclusion that the accident had taken place on account of rash and negligent driving of the offending vehicle by its driver and thus, returned finding on issue No.1 in favour of the claimants. This finding was rightly given on the basis of deposition of Gurmukh Singh (AW-2), who was eye witness of the accident and on whose statement, FIR Ex.C2 was registered. Further, the claimants have proved on record postmortem report Ex.C1. Deceased was running a shop of repairing of electric implements. In the absence of any documentary proof, income of deceased was assessed as Rs.5000/- per month, out of which, one-fourth amount was deducted towards his personal expenses. By doing so, remaining income came to Rs.3750/- per month i.e. Rs.45,000/- per annum. The deceased was 45 years of age at the time of death/accident. Accordingly, multiplier of 14 was applied. After applying the multiplier of 14, dependency of claimants came to Rs.6,30,000/- (45,000 x 14). In addition to this, Rs.10,000/- were awarded on account of funeral expenses and Rs.10,000/- as loss of consortium to the widow-claimant No.1. Hence, the claimants-respondent Nos.2 to 6 were found entitled to a total compensation of Rs.6,50,000/-

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along with interest at the rate of 6% per annum from the date of filing of the petition till realization. On an application moved by the Insurance Company, Sh. Rajinder Pal Singh, Advocate, was appointed as Local Commissioner to verify the genuineness of the driving licence of Manjit Singh-respondent No.1 (in claim petition) from the Licensing Authority, Gwalior. The said Local Commissioner, vide his report dated 09.09.2013, had submitted that he verified the driving licence of Manjit Singh from the office of RTO, Gwalior and as per record, his driving licence was found to be fake. Keeping in view the report of the Local Commissioner and the judgment passed by Hon'ble the Supreme Court in ***United India Insurance Company Ltd. vs. Lehru and others,*** 2003 ACJ 611, the Tribunal held that at the first instance, Insurance Company will make payment of compensation to the claimant and thereafter, it can recover the same from the insured. Feeling dissatisfied with the impugned award, owner-appellant has filed the present appeal.

The appellant is not challenging the finding given by the Tribunal on issue No.1 that the accident had taken place on account of rash and negligent driving of the offending vehicle by its driver-Manjit Singh @ Pamma (respondent No.1 in claim petition), as FIR Ex.C2 was registered against him. The challenge is to the finding given on issue Nos.2 & 3, where the insurance company-respondent No.1 (herein) has been given recovery rights to recover the amount of compensation from the insured i.e. present appellant (owner).

Learned counsel for the appellant, while referring to the judgment passed in ***Lehru's*** case (supra) has argued that the recovery rights can only be given to the Insurance Company, if it is found that the

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owner/insured was aware of the fact that the driver had a fake driving licence and still had allowed the driver to drive the offending vehicle. In this backdrop, there would be a breach of Section 149 (2) (a) (ii) of the Motor Vehicle Act. Reliance has been placed on another judgment passed by Hon'ble the Supreme Court in ***National Insurance Company Ltd. vs. Swaran Singh and others,*** 2004 (2) RCR (Civil) 114

I have heard learned counsel for the appellant and perused the case file.

The appellant was the owner of offending vehicle, which was insured with respondent No.1-Insurance Company. Decision given in ***Swaran Singh's*** case (supra) has been followed by this Court in ***Libra Bus Service (P) Ltd., Malerkotla vs. Pushpa Devi and others,*** 2010 (5) RCR (Civil) 616, ***United India Insurance Company Ltd. vs. Amin Chand and others,*** 2006 (3) RCR (Civil) 814 and ***New India Assurance Company ltd. Vs. Gurvinder Kaur and others,*** 2006 (2) RCR (Civil) 125, wherein it has been consistently held that the owner cannot be expected to make enquiry from the office of RTO to verify, whether licence of the driver is valid or not. If a driver is found to have a fake driving licence, it will not be amounting to willful breach of the conditions of insurance policy.

However, in the present case, driver and owner were proceeded against exparte before the Tribunal and the owner had never appeared to state that he had seen the driving licence of the driver. Before the Tribunal, insurance company had got appointed a Local Commissioner, who after visiting Gwalior, had submitted his report dated 09.09.2013 to the effect that the driving licence of the driver was found to be fake. Hence, the owner (appellant herein) must have seen the driving licence of Manjeet

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Singh while appointing him as driver, but he had not visited Gwalior to verify the same. At that time, he had accepted his driving licence to be correct. The ratio of the aforesaid judgments are fully applicable to the facts of the present case. In the light of these judgments, it is held that by appointing Manjit Singh as driver, there was no breach of condition of the insurance policy on the part of owner-appellant as per section 149 (2) (a) (ii) of the Motor Vehicle Act. The appellant was not expected to visit Gwalior in order to verify the driving licence of Manjeet Singh-driver. Therefore, the finding given by the Tribunal on issue Nos.2 & 3 are modified to the effect that all the respondents i.e. owner, driver and insurance company are jointly and severally held liable to pay compensation to the claimant. Since the vehicle was insured on the date of accident, United India Insurance Company Ltd.-respondent No.1 herein (respondent No.3 before the Tribunal) will indemnify the award.

Resultantly, the impugned award is modified to the extent that the amount of compensation shall be paid by the United India Insurance Company-respondent No.1 (respondent No.3 before the Tribunal) only and it shall not recover the same from the owner (appellant) of offending vehicle.

Allowed in the aforesaid terms.

**(RITU BAHRI)**
**JUDGE**

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

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