IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 928 of 2017 (O&M)
Date of Decision: 7.1.2020

Amandeep Singh and another ...Appellants

Vs.

Suba Singh and others ...Respondents

2. FAO No. 942 of 2017 (O&M)

Amandeep Singh and another ...Appellants

Vs.

Kamlesh and others ...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Ms. Aashna Gill, Advocate
for the appellants.

Mr. Vivek Goyal, Advocate
for respondent Nos. 1 to 6 in FAO No. 942 of 2017.

Ms. Rajneesh Malhotra, Advocate
for respondent No.2 In FAO No. 928 of 2017 and
for respondent No.8 in FAO No. 942 of 2017.

Mr. Ashwani Talwar, Advocate
for respondent No.3 In FAO No. 928 of 2017 and
for respondent No.6 in FAO No. 942 of 2017.

RAJIV NARAIN RAINA, J. *(Oral)*

1. This order will dispose of the above-mentioned appeals as common questions of law and facts are involved in them which can conveniently be decided by a common order.

2. Having heard learned counsel for the parties at length on the insurance policy and the driving license, I have no hesitation to hold that the policy through M/s Cornation Insurance Brokers acting as

agents of United India Insurance Company Limited was fake and the cover note dated 26.11.2011 was converted into an insurance contract on 5.12.2012 when premium of Rs. 6031/- was paid on the policy in the accounts of Insurance Company. The policy was issued on 6.12.2012 after payment of premium was received. The fatal accident took place on 28.11.2012 i.e. two days before policy under which the appellants being the owner and driver of the offending vehicle claimed indemnification by skirting the liability to pay the compensation awarded by the Tribunal and want that it should be fastened on the insurer company. It is significant to note that the vehicle in the year previous to the disputed policy was insured with the National India Assurance Company Limited by a policy covering the period from 6.12.2011 to 5.12.2012 and that policy too has been found to be fake by the Tribunal after the Insurance Company led evidence to prove that it had no legal value and not binding on the insurer.

3. I would notice the submission of Ms. Gill referring to the testimony of RW-2 Ashok Kumar, Assistant Manager, New India Assurance Company Limited, Branch Office, Kurukshetra stating that he was not sure whether the cover note was forged or not but at least the same was not issued from the Branch Office of the company at Kurukshetra and where it is shown to have been issued. His testimony reads in relevant extract as follows:-

"Our Divisional Office is situated at

Karnal. I do not know Mr. Naresh Ahuja. I also do not know whether Naresh Ahuja, Development Officer, New India Assurance Company Limited is posted at Divisional Office, Karnal. It is incorrect to suggest that I am deposing falsely intentionally in this regard. It is correct that there is stamp of Naresh Ahuja at Ex. R8 at mark A. We have not verified regarding Naresh Ahuja. Volunteered verification is being done by the Divisional Office, Karnal. We have also not written any letter to Divisional Office, Karnal regarding verification. Volunteered I have only informed orally Divisional Office, Karnal that cover note Ex. R8 had not been issued from Branch Office. Kurukshetra. We did not make any complaint to the police in this regard. In this case written statement has been filed by Divisional Office, Karnal. It is incorrect to suggest that Ex.R8 was issued from our Divisional Office, Karnal. It is also incorrect to suggest that I am deposing falsely to escape from our liability.

I cannot tell whether Ex. R8 cover note is forged or not but the same has not been issued by Kurukshetra branch. I cannot say whether Ex. R8 belongs to out company or not. The cover note book bearing No. 290601 to 290725 was issued to our branch office. It is correct that when the insurance policy is in continuation and there is no claim for bonus, then the insurance company never confirms

> *regarding the previous insurance policy or the cover note. It is incorrect to suggest that Ex. R8 was issued by out agent/employee in the name of respondent No.2 to insure the tractor trolley in question owned by respondent No.2. It is incorrect to suggest that I am deposing falsely.*
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> *I visited Divisional Office, Karnal lastly about 7-8 years back so I cannot say who are working in that office now-a-days. I have also not tried to verify whether any Naresh Ahuja had been working in Divisional Office, Karnal or not."*

4. I fail to see how this testimony will effect the ultimate conclusion that the policy had not come into existence on the date the accident took place to make the insurer liable to pay the compensation. On the other hand, there is evidence of a preponderance of probabilities and highly suspicious circumstances to suggest conclusively that something was seriously remiss in the issuance of the cover note.

5. In the deposition of the same witness (Ashok Kumar) it has come out that 'this cover note was issued in the name of M/s Shri Krishna Apiaries, Amin Road Kurukshetra and through this cover note a new vehicle make/model Eicher, a goods carrying vehicle, was issued from 15.1.2010 to 14.1.2011 with the New India Assurance Company Limited, Kurukshetra'. The Insurance Company has contested the case very seriously and brought sufficient evidence on record to discredit the policy existing on the dated of the accident and has saved public money

so that it is not squandered in the hands of mischief. I can imagine the owner and driver going into damage control after the accident on 28.11.2012 involving their Tractor Trolley.

6. Mr. Talwar appearing for the United India Insurance Company Limited submits that the agent of M/s Cornation Insurance Brokers is facing criminal action on a petition filed by Insurance Company in this Court seeking direction for the investigation of the matter by the CBI so that the fraud can be unravelled in all its details. Not only is the cover note a highly suspicious document on which the Tribunal has rested its decision transferring the liability to pay compensation on the present appellants but even the driving licence is an issue which deserves attention. The driver of the offending vehicle had a licence issued from Nagaland and another from the Regional Transport Authority in Haryana.

7. Mr. Talwar explains that validity of the licence issued by Regional Transport Authority in Haryana would take the license holder beyond the age of 55 which is impermissible under the Motor Vehicle Act without a fresh licence and the procedure involved to extend the licence and this fact has been highlighted by the Tribunal in its award and I support the finding of the Tribunal. When the offending vehicle is neither insured nor the driver held a valid driving licence, the learned MACT, Kurukshetra has committed no illegality or error of fact or law or of jurisdiction or any misreading of the evidence to reach the

conclusion that neither of the Insurance Companies are liable to pay the compensation.

8. The parties have presented their calculation sheet which is taken on record as Mark 'A' and is reproduced as under:

Sr. No.	Head	Amount
1	Income per month (as per DC rates	Rs. 6,050/-
2.	Future prospects (40% of the income)	Rs.2,420 (40/100 X 6,050)
3.	Income per month with future prospects	Rs.8,470/- (6,050 + 2,420)
4.	Deduction for personal expenses (1/5th as per Sarla Verma)	Rs.1,694 (1/5 X 8,470)
5.	Income per month after deductions	Rs.6,776 (8,470 - 1,694)
6.	Income after multiplier of 16	Rs.13,00, 992/- (6,776 X 12 X 16)
7.	Loss of Estate	Rs. 15,000/-
8.	Loss of consortium	Rs. 40,000/-
9.	Funeral expenses	Rs.15,000/-

9. Accordingly, the appeals are dismissed. Needless to say, the interim order stands automatically vacated.

10. Before parting with the order, I may record that the compensation awarded by the Tribunal will have to be slightly modified in view of the decision of the Supreme Court in National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680. The compensation of Rs. 1,00,000/- each to 6 members of the family has to be set aside to tune it with the law and the appropriate amount awarded. The future prospects also have to be reduced from 50% to 40%. The suitable multiplier of 16

has been applied by the Tribunal and is affirmed.

(RAJIV NARAIN RAINA)
JUDGE

7.1.2020
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Whether speaking/reasoned : Yes
Whether reportable : Yes/No