IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1313 of 2019(O&M)

Date of Decision: October *25* , 2021.

New India Assurance Co. Ltd. ...... APPELLANT

Versus

Reetu and others ...... RESPONDENTS

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Pardeep Goyal, Advocate
for the appellant.

Mr. J.S.Lalli, Advocate
for respondents No.1 to 6/claimants.

Mr. Paras Talwar, Advocate
for respondent No.8/owner.

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LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Brief facts necessary for adjudication of this case are that, claimants filed a petition under Section 166 of the Motor Vehicles Act (for short, the 'Act') seeking compensation to the tune of Rs.50,00,000/- on account of death of Vinod Kumar, who lost his life in a motor vehicle accident which took place on 05.10.2016. FIR No.164 dated 05.10.2016 under Sections 279/304A/427 IPC (Ex.P1) was registered at Police Station Sadar, Ludhiana in respect to the incident.

Appellant-Insurance company as well as owner of the vehicle contested the claim petition filed by the claimants. Various preliminary objections were raised and averments on merit were controverted. Respondent-driver did not appear before the learned Tribunal and was proceeded *ex parte*. Respondent-owner denied involvement of the offending vehicle in the accident. Appellant-Insurance company while admitting that the offending vehicle was insured with it, pleaded violation of terms and conditions of the insurance policy. It was also contended that respondent-driver did not hold a valid driving license. Dismissal of the claim petition was prayed for.

Following issues were framed by the learned Tribunal on the basis of pleadings of the parties:-

"1. Whether Vinod Kumar son of Gulab Chand has died in motor vehicular accident dated 05.10.2016, caused due to rash and negligent driving of respondent No.1? OPP
2. Whether claimants are entitled to compensation, if so, to what extent and from whom? OPP
3. Whether present claim petition is maintainable? OPP
4. Whether respondent No.2 is not liable to identity loss as vehicle was insured with The New India Assurance Company Limited? OPR
5. Relief.

Additional issue

1. Whether vehicle bearing number PB-10FF-4352 was being plied in contravention of insurance policy? OPR (No.3)"

Evidence was led by the parties in order to substantiate their stand.

Learned Tribunal on considering the facts and evidence on record concluded that the accident in question took place due to the rash and negligent driving of oil tanker bearing registration No.PB-10FF-4352 by its driver respondent-Bhawanjot Singh @ Kala.

Learned Tribunal has assessed income of the deceased as ₹20,000/- per month (₹19,965/- rounded off). Addition at the rate of 30% was afforded towards future prospects. Deduction to the extent of 1/4th on account of personal expenses was effected. Multiplier of 13 was applied. ₹40,000/- was afforded to the claimant-widow on account of loss of consortium. ₹15,000/- each was awarded on account of funeral expenses and loss of estate. A total sum of ₹31,12,000/- was awarded to the claimants by the learned Tribunal. Additional issue was decided against the Insurance company and in favour of claimants.

Aggrieved therefrom, the present appeal has been filed by the Insurance company.

Learned counsel for the appellant-Insurance company submitted that the learned Tribunal has grossly erred in saddling the appellant with the liability in this case. It is argued that driver of the offending vehicle, respondent No.7 in this appeal, was not authorised to drive the same. The offending vehicle was an oil tanker for which a special endorsement on the driving license is required. Admittedly, said endorsement was not present on the driving license (Ex.R9) held by respondent No.9-driver. Therefore, appellant-Insurance company is liable to be exonerated from all liability in this case.

It is further submitted that excessive compensation has been awarded by the learned Tribunal. There is no evidence on record to indicate the age of the deceased and increment of 30% has been incorrectly awarded by learned Tribunal. Income has also been assessed incorrectly as the salary-slips are not authenticated, neither was Form-16 proved on record. Therefore, no reliance should have been placed on the salary certificates (Ex.P10 to P13), produced by CW2 Prabhpreet Singh. In the alternate, learned counsel for the appellant prays for affording recovery rights to the appellant-Insurance company. It is thus prayed that this appeal be allowed.

Per contra, learned counsel for respondents No.1 to 6/claimants argued that age of the deceased is very well proved from the evidence on record. Aadhar Card of the deceased (Ex.P14) reflects his year of birth to be 1968. As per the post-mortem report (Ex.P2), deceased was 47 years old. Furthermore, income of the deceased was not taxable, therefore, Form-16 was not prepared. It is thus submitted that learned Tribunal has correctly assessed the compensation.

Learned counsel for the respondent No.8, owner of the offending vehicle, submitted that absence of endorsement on the driving license cannot entitle the Insurance company to escape its liability, in any manner. The driver of the offending vehicle was holding a valid driving license at the time of accident and the accident did not have any co-relation with the endorsement in question. Thus, the Insurance company is not entitled to any recovery rights. It is thus prayed that this appeal be dismissed.

Heard learned counsel for the parties and have gone through the file as well as the record of this case with their able assistance.

As per averments in the claim petition, the accident was caused due to the rash and negligent driving of the oil tanker bearing registration No.PB-10FF-4352 by its driver, respondent No.7. Oil tanker struck against Activa scooter on which Vinod Kumar (deceased) was travelling. Vinod Kumar (deceased) fell on the road and his head was crushed under the tyre of the tanker. He died at the spot. Argument raised by learned counsel for the appellant that there is a fundamental breach of the conditions of policy which entitles the Insurance company to repudiate the claim is without merit. It is not denied that driver of the offending vehicle had a valid and subsisting driving license to drive the Heavy Transport Vehicle, which is valid upto 22.08.2032 (Non-Transport), 02.02.2020 (Transport) (Ex.R2). Absence of the endorsement on the driving license in compliance with the provisions of Section 14 of the Motor Vehicles Act, 1988 read with rule 9 of the Central Motor Vehicle Rules, 1989 is pleaded. Similar controversy had come up for adjudication before a co-ordinate Bench of this Court in FAO No.1210 of 2014 (National Insurance Co. Ltd. v. Harbans Kaur and others) decided on 26.03.2018. Co-ordinate Bench while dealing with this issue observed as under:-

> "The question that now arises would be whether such a breach of not having obtained necessary endorsement as required under sub-Rule (3) of Rule 9 of the Rules, is so fundamental as to have contributed to the cause of accident. The answer, at the outset, appears to be in the negative. It is nobody's case that the accident took place because of dangerous or hazardous substance being carried in the vehicle. On the contrary, there is no challenge to findings of the Tribunal that the accident occurred due to negligence

in driving the offending tanker. In the given scenario, carrying or non-carrying of dangerous or hazardous substance has no nexus with cause of accident that occurred due to rash and negligent driving of the vehicle by its driver. In this view of the matter, it can safely be held that the breach complained of by the insurer is not so fundamental as is found to have contributed to the cause of accident.

This apart, perusal of Rule 9 of the Rules would make it evident that before a driver can file an application for obtaining necessary endorsement as required under sub-rule (3) of Rule 9 of the Rules, he is to undergo some training for a period of two to three days but the same does not deal with the professional skill of driving. With regard to professional skill of driving, it has already been clarified by the licensing authority at the time of granting licence to the driver authorizing him to drive a transport vehicle. When the facts and circumstances of the present case are examined in the light of judgment of Hon'ble the Apex Court in **Swaran Singh's case** (supra) coupled with the discussion made hereinbefore, I am inclined to agree with what has been held by the Division Bench of the Madhya Pradesh High Court in **Baghelkhand Filling Station and another's case** (supra) and Gujarat High Court in **Amarshi Punchanbai Patel and others' case** (supra). This Court in **Rajesh Singh's case** (supra) has neither adverted to judgment of Hon'ble the Supreme Court in **Swaran Singh's case** (supra) nor judgments by the High Courts of Madhya Pradesh and Gujarat. In this view of the matter, insurance company can neither escape its liability to pay compensation nor press for right of recovery merely for want of endorsement required under Rule 9(3) of the Rules on the licence held by driver of the offending vehicle."

Co-ordinate Bench has rightly referred to the Division Bench judgment of the Madhya Pradesh High Court (Jabalpur Bench) in **Baghelkhand Filling Station and another Vs. Brijbhan Prasad and others**, ***2006 ACJ 2503***. Hon'ble Supreme Court **in National Insurance Company Ltd. Vs. Swaran Singh and others,** ***2004(2) RCR (Civil) 114***, has held as under:-

> "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."

It is a matter of record that FIR No.164 dated 05.10.2016 under Sections 279/304A/427 IPC (Ex.P1) was registered against the respondent/driver and he was facing criminal prosecution. Driver did not appear before the learned Tribunal and was proceeded *ex parte*. Thus, learned Tribunal has correctly held Vinod Kumar had died in motor vehicle accident which took place on 05.10.2016 due to rash and negligent driving of the offending vehicle by its driver and that the appellant-Insurance company is liable to indemnify the insured. Insurance company can, thus, not be exonerated of its liability due to absence of endorsement on the driving license of the driver of the offending vehicle.

Perusal of the evidence on record reveals age of the deceased to be about 48 years. Deceased was claimed to be working as a Surveyor with M/s Punjab Auto Check and Valuers, New Shimla Puri, Ludhiana. Salary certificates (Ex.P10 to P13) of the deceased are on record. CW2 Prabhpreet Singh has specifically deposed that deceased-Vinod Kumar worked for the Firm for four years. Salary certificates of the deceased for all the years were placed on record and CW2 Prabhpreet Singh identified signatures of the partners of the firm on the said salary certificates. Perusal of the record further reveals that audited balance sheet (Ex.P17) of the Firm with which the deceased was working as well as income tax returns of the Firm for the assessment year 2016-2017 are on record. Therefore, argument of learned counsel for the appellant-Insurance company that even existence of the employer firm of the deceased is suspect, is clearly without any basis. To say that Form-16 has not been placed on record, is again not a ground to discard the evidence on record in the given factual matrix. Income of the deceased has, thus, been correctly assessed by the learned Tribunal as ₹20,000/- per month (19,965/- rounded off).

As age of the deceased was 48 years old at the time of accident, multiplier of 13 has been correctly applied. Deduction at the rate of 1/4th on account of personal expenses is also rightly effected. ₹40,000/- on account of loss of consortium and ₹15,000/- each on towards funeral expenses and loss of estate are also rightly afforded. Since, the deceased was on a fixed salary, therefore, addition in income has to be afforded at the rate of 25% and not 30% on account of future prospects in terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others,**

2017(16) SCC 680.

Compensation awarded to claimants/respondents No.1 to 6 is consequently reworked as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	20,000 per month i.e., 2,40,000 per annum
2.	Deduction of 1/4th	2,40,000 – (2,40,000 x 1/4) = 1,,80,000
3.	Total income after addition at the rate of 25% on account of future prospects	1,80,000 + (1,80,000 **x** 25%) = 2,25,000
4.	Dependancy after applying a multiplier of 13	(2,25,000 **x** 13) = 29,25,000
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of consortium	40,000
	Grand Total	Rs.29,95,000/-

Claimants shall be entitled to interest on the amount of compensation at the rate of 6.5% per annum, instead of 9% per annum from the date of filing of the petition till realization. Ratio of apportionment and manner of disbursement shall remain the same as determined by the learned Tribunal.

With the said modification in the impugned award dated 12.10.2018 passed by the learned Motor Accident Claims Tribunal, Ludhiana, the present appeal is disposed of.

(LISA GILL)
JUDGE

October *25* , 2021.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No