IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on: 22.07.2022
Pronounced on: 03.08.2022

1. FAO-6759-2010

Ranjit Kaur and others **..... Appellants**

versus

Jarnail Singh and others **...... Respondents**

2. FAO-1277-2011

Kulbir Singh **..... Appellant**

versus

Ranjit Kaur and others **...... Respondents**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Gurcharan Dass, Advocate
for the appellants in FAO-6759-2010 and
for respondents No.1 to 4 in FAO-1277-2011.

Mr. Sham Lal Bhalla, Advocate
for the appellant in FAO-1277-2011 and
for respondent No.3 in FAO-6759-2010.

Mr. S.S. Swaich, Advocate with
Mr. Abhey Sher Singh, Advocate
for respondent No.1 in FAO-6759-2010 and
for respondent No.5 in FAO-1277-2011.

Mr. Karminder Singh, Advocate
for respondent No.2 in FAO-6759-2010 and
for respondent No.6 in FAO-1277-2011.

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PANKAJ JAIN, J.

These two appeals are directed against award dated 21.04.2010 passed by Motor Accident Claims Tribunal, Fatehgarh Sahib (hereinafter referred to as 'Tribunal').

2. FAO-1277-2011 is at the behest of owner of the vehicle. He is aggrieved by the impugned award to the extent he has been saddled with the ultimate liability as the driving licence of respondent No.5 has been proved to be fake. The other appeal i.e. FAO-6759-2010 has been preferred at the behest of the claimants seeking modification of the award.

3. Both the appeals arise out of common award and involve common set of facts, thus they are being adjudicated together.

4. The claim petition was filed under Section 166 of the Motor Vehicles Act, wherein the claimants (appellants in FAO-6759-2010) prayed for grant of compensation on account of death of Charanjit Singh (since deceased) in a motor vehicular accident dated 03.01.2007.

5. As per the claim petition, while the deceased was riding scooter No. PB-23-A-3064, it struck truck No.HR-37-A-8801 which was parked on the road without parking lights. The deceased received multiple injuries including head injury, resulting in his death. FIR No.1 dated 04.01.2007 under Sections 283, 304-A and 427 IPC, at Police Station Khamanon was registered in this regard.

6. The claim was contested by the respondents. On the basis of the pleading of the parties, following issues were framed by the Tribunal:-

> "1. Whether on 3.1.2007 at about 8.15 PM near Boparai Dhaba, Khamanon Charanjit Singh son of Gurbax Singh died due to the rash and negligent driving of truck No. HR-37-A-8801 by respondent No.1 ? OPP
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> 2. Whether the driver of the offending truck was not holding a valid and effecting driving licence as well as the offending vehicle was not holding a valid registration certificate, fitness certificate, route permit at the time of accident? OPR-2
>
> 3. To what amount of compensation the claimants are entitled to and from whom? OPA.

4. Relief."

7. In appeal No.6759-2010, the primary dispute relates to issue No.3.

8. Counsel for the claimants asserts that the income of the deceased has been assessed to be Rs.4,000/- per month, whereas he was earning Rs. 20,000/- per month. He claims that the deceased was agriculturist and his income has been proved on record by the oral testimony of CW-2 Ranjit Kaur. He further claims that the claimants are entitled for future prospects @ 40%, as the deceased was 32 years of age. It has also been asserted that meagre sums of Rs.2,000/- and Rs.5,000/- have been awarded for funeral expenses and for loss of consortium respectively. Accordingly, he prays for enhancement of the said amounts in view of law laid down by Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others 2017 (16) SCC 680** and **Magma General Insurance vs. Nanu Ram 2018 (4) RCR (Civil) 333.**

9. Counsel for the respondents are not in a position to deny the entitlement of the claimants for enhanced amount under the conventional heads and future prospects. However, they assert that there is no documentary evidence on record in form of revenue record or any other document to substantiate the plea of the deceased being agriculturist. Counsel further asserts that in the absence of there being any evidence on record with respect to the land holding at the hands of the deceased or evidence with respect to the agriculture produce having been sold by him, the income of the deceased cannot be enhanced merely on the basis of oral testimony of Ranjit Kaur.

10. Counsel appearing for the appellant in FAO-1277-2011 disputes finding with respect to issue No.2 and relies upon law laid down by Apex Court in **Pepsu Road Transport Corporation vs. National Insurance Company,** reported as **2013 (10) SCC 217** and that in **Ram Chandra Singh vs. Rajaram and others**,

reported as **2018 (8) SCC 799** to assert that the mere fact that the driving licence is fake *per se* would not absolve the insurer. Insurer in order to get absolved of the liability is required to establish that the insurer was negligent and was aware of the fact that the licence was fake and still permitted the driver to drive the vehicle.

11. Per contra, counsel for insurer Mr. Karminder Singh while supporting the finding recorded by the Tribunal argues that once the licence of the driver was found to be fake, insurance company gets automatically absolved of its liability. In support of his contention, he relies upon '**Krishnanunni vs. R. Balasubramanian and others'** reported as **2021 AAC 931** and judgment rendered by Bombay High Court in '**Reliance General Insurance Co. Ltd. vs. Smt. Kirati Jigar Jhaveri and others'** reported **as 2021(3) AIR Bom.R 522.**

12. I have heard counsel for the parties and have gone through the record of the case.

13. Since, no party disputes issue No.1, the finding with respect to the same is maintained.

14. On issue No.2, Tribunal held that:-

> “xx xx xx
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> The insurance company has taken up specific plea that the original driving licence in the hands of Jarnail Singh was fake one. To prove this fact the counsel for the insurance company has examined RW-2 Bal Krishan Thakur, Junior Assistant Registering and Licencing Authority, Solan who has produced the record regarding issuance of driving licence from 1.1.1992 to 31.12.1992. As per this record the driving licences were issued with Sr. No. 1 to 623. He categorically stated that no driving licence with Sr. No. 23232/Solan/dated 18.10.92 was issued in the name of Jarnail Singh son of Kesar Singh. Rather he stated that on 17.10.1992 and 18.10.1992 no driving licence was issued. Therefore, the original driving licence standing in

> the name of respondent No.1 was a fake document. The subsequent renewal of driving licence does not make it a genuine document. Therefore, from the evidence it is clear that at the time of accident, Jarnail Singh respondent No.1 was not holding a valid and effective driving licence. As the offending truck was insured with respondent No. 2 insurance company, so respondent No. 2 is liable to make payment of compensation but thereafter insurance company is entitled to recover the amount from the insured as per the provision of Section 174 of Motor Vehicle Act."

15. The law w.r.t. liability of the insurer in a case where driving licence possessed by the driver of the offending vehicle is found to be fake, is no more *res integra*. Apex Court in Ram Chandra Singh's case (supra) held that:-

> "xx xx xx
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> 11. Suffice it to observe that it is well established that if the owner was aware of the fact that the licence was fake and still permitted the driver to drive the vehicle, then the insurer would stand absolved. <u>However, the mere fact that the driving licence is fake, per se, would not absolve the insurer. Indubitably, the High Court noted that the counsel for the appellant did not dispute that the driving licence was found to be fake, but that concession by itself was not sufficient to absolve the insurer."</u>

16. In the present case, RW-2/A stated that before handing over the truck to the driver, he satisfied himself that the driver was in possession of a valid licence and was a competent driver. He thus discharged initial onus.

17. So far as the judgments relied upon by counsel for the insurer are concerned, the same are not applicable in the present case. In the case of Krishnanunni (supra), driving licence was not produced despite there being direction by the Tribunal. Resultantly, the High Court of Kerala found that adverse

inference under Section 114(g) of the Indian Evidence Act, 1872 ought to have been drawn against the driver/owner. Thus, it being a case where no licence was produced, the same will not be applicable in the present case. In Reliance General Insurance Co. Ltd. (supra), Bombay High Court relied upon ratio of law laid down in Pepsu Road Transport Corporation vs. National Insurance Company Ltd. reported as 2013 ACJ Supreme Court 2440 and it was held that:-

> "xx xx xx
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> 23. <u>The law is well settled that it was incumbent upon the appellant-insurer to show that the owner of the offending tanker had engaged services of Driver of the offending tanker willfully despite knowing that his driving licence is fake</u>. D.W.2-Pallavi admits in her cross-examination that the appellant had not issued any notice to the Driver of the offending tanker for producing the driving licence. This clearly means that the appellant had not made any attempt to verify the genuineness of the driving licence of the offending tanker."

Consequently, the appeal was dismissed. In the preset case insurer has not lead any evidence to show that the owner engaged services of driver despite knowing that licence was fake.

18. As per settled law, mere fact that the driving licence is fake, will not axiomatically lead to the conclusion that insurer is absolved of its liability. Once owner satisfies himself with the competence of the driver and the driver is in possession of licence, he is not required to verify the genuineness of the licence from the licensing authority. Once owner discharges initial onus and asserts that he satisfied himself that the driver was in possession of a valid licence and was a competent driver, the burden shifts on the insurer. Insurer in order to absolve its liability, is required to prove that the owner of the vehicle engaged services of the driver willfully despite knowing that his driving licence is fake. Resultantly,

finding recorded by the Tribunal on issue No.2 is found to be in teeth of the law laid down by Apex Court in Ram Chandra Singh's case (supra). Consequently, the same is reversed. Issue No.2 is decided accordingly. The insurer is held to be liable to indemnify the insured.

19. Coming on to the finding on issue No.3 by the Tribunal, there is no evidence on record to show that the deceased was agriculturist earning Rs.20,000/- per month as claimed. No documentary evidence with respect to land holding in the hands of the deceased has been brought on record. Consequently, the income as assessed by the Tribunal as Rs.4,000/- per month is maintained. Following dictum of Pranay Sethi's case (supra), the claimants are held entitled to 40% future prospects which need to be added to the income. Multiplier of 17 has been rightly awarded by the Tribunal. Keeping in view the number of dependents, 1/3rd deduction has been rightly applied. The compensation awarded under the conventional heads needs to be modified. Funeral expenditure is enhanced from Rs.2,000/- to Rs.15,000/-. The claimants are also held entitled for an amount of Rs.44,000/- each for loss of consortium. Claimants are further awarded a sum of Rs.15,000/- for loss of estate.

20. As a sequel of the discussion hereinabove, the appeal preferred by owner i.e. FAO-1277-2011 is allowed. Statutory amount of Rs.25,000/- deposited by the appellant is ordered to be refunded. Finding on issue No.3 has been modified. Compensation to be calculated as per the modified award and paid to the claimants alongwith interest @ 6% per annum from the date of filing the claim petition till the date of actual realization.

21. Ordered accordingly. Needless to say any amount already paid shall be set off and adjusted.

22. Since the main appeals have been decided, the pending civil miscellaneous applications, if any, also stand disposed off.

(PANKAJ JAIN)
JUDGE

03.08.2022

Dinesh Whether speaking/reasoned Yes

Whether Reportable : Yes