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

Decided on : 05.07.2022

FAO-2499-2014 (O&M)

M/s Shri Jai Shiv Shankar Bhole BKO, Nalru ...... Appellant

Versus

National Insurance Co. Ltd. and others ...... Respondents

FAO-2500-2014 (O&M)

M/s Shri Jai Shiv Shankar Bhole BKO, Nalru ...... Appellant

Versus

National Insurance Co. Ltd. and others ...... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Rishav Jain, Advocate
for the appellant.

Mr. Lalit Garg, Advocate
for the insurance company.

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Manjari Nehru Kaul, J.(Oral)

CM-8815-CII-2014 in FAO No.2499-2014
CM-8820-CII-2014 in FAO No.2500-2014

At the outset, learned counsel for the appellant submits that he does not wish to press the present applications.

Accordingly, the present applications stand dismissed as not pressed.

Main case

This order shall dispose of two appeals i.e. FAO Nos.2499 and 2500 of 2014 as both of them have been filed against the same award dated

14.05.2013 passed by the Motor Accident Claims Tribunal, Patiala. Brief facts of the case are taken from FAO No.2499 of 2014.

Instant appeal has been preferred by the owner of the offending vehicle i.e. Tipper against the award dated 14.05.2013 passed by Motor Accident Claims Tribunal, Patiala (hereinafter called as 'the Tribunal') in a claim petition under Section 166 of Motor Vehicles Act, 1988 wherein claimant(s) was awarded compensation on account of death of Gurnam Singh and Lalwinder Singh (hereinafter referred to as 'deceased) in a road accident, which took place on 17.05.2010:-

Compensation awarded for the death of Gurnam Singh

Sr. No.	***Head***	***Amount***
1	Monthly income	Rs.7,500/-
2	Annual income (Rs.7,500 x 12)	Rs.90,000/-
4	Deduction towards personal expenses (1/3)	Rs.30,000/-
5	Annual Dependency (Rs.90,000-Rs.30,000)	Rs.60,000/-
6	Multiplier	5
7	Total dependency (Rs.60,000 x 5)	Rs.3,00,000/-
8	Loss of consortium	Rs.5,000/-
9	Funeral expenses	Rs.5,000/-
	Total compensation	Rs.3,10,000/-

Compensation awarded for the death of Lalwinder Singh

Sr. No.	***Head***	***Amount***
1	Monthly income	Rs.9,000/-
2	Annual income (Rs.9,000 x 12)	Rs.1,08,000/-
4	Deduction towards personal expenses (1/3)	Rs.36,000/-
5	Annual Dependency (Rs.1,08,000-Rs.36,000)	Rs.72,000/-
6	Multiplier	12
7	Total dependency (Rs.72,000 x 12)	Rs.8,64,000/-
8	Loss of consortium	Rs.5,000/-

Sr. No.	***Head***	***Amount***
9	Funeral expenses	Rs.5,000/-
	Total compensation	Rs.8,74,000/-

The Tribunal held that the claimants were entitled to amount of compensation along with interest @ 7.5% p.a. from the date of filing of the petition till its realization, which was to be paid by the Insurance Company at the first instance and thereafter would be entitled to recover the awarded amount from respondent No.2.

In the claim petition filed under Section 166 of Motor Vehicles Act, it was claimed that on 17.05.2010, both the deceased Lalwinder Singh and Gurnam Singh were going towards Cheeka on motorcycle bearing registration No.PB-11-Y-7255 being driven by Lalwinder singh while Gurnam Singh was pillion rider. The offending vehicle came from behind in a rash and negligent manner and suddenly took a turn towards village Dhanori. Even though deceased Lalwinder Singh tried his best to avoid colliding with the offending vehicle, however, he was unsuccessful. Resultantly, his motorcycle hit the offending vehicle from its rear side. Both the deceased on account of the collision fell down and and on account of the serious injuries received, died at the spot. FIR No.177 dated 17.05.2010 under Sections 279/304-A IPC was registered at Police Station Samana.

Learned counsel for the appellant-owner of the offending vehicle has vehemently argued that the Tribunal's findings on issue No.3 were erroneous. He submits that the Tribunal erred in holding that since the driver of the offending vehicle was not holding a valid and effective license at the time of accident in question, the insurance company was liable to recover the amount of compensation from the appellant. He thus, prays that the recovery rights, which have been given to the insurance company be set aside. In support of his submissions, learned counsel has placed reliance on the judgment of Hon'ble Apex Court in Pappu and others versus Vinod Kumar Lamba and another, 2018(2) RCR (Civil) 42.

Learned counsel for the insurance company has vehemently opposed the submissions made by counsel for the appellant by submitting that the Tribunal had not erred in granting recovery rights to the Insurance Company in view of the fact that the driving license of the driver of the offending vehicle was fake and thus, not valid. It is further submitted that being the owner of the offending vehicle, appellant was expected to verify the validity and genuineness of the driving license of his employee i.e. driver before employing him and in case he had failed to do so, he could not be absolved of his liability.

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

In the case in hand, the respondent-Insurance Company has taken the defence that the driving license of the driver of the offending vehicle was fake and thus, they were not liable to indemnify the insured. This Court, however, does not concur with the submissions made by learned counsel for the insurance company. Merely because the driving license of the driver of the offending vehicle was found to be fake and thus, not valid, would not be a sufficient ground to absolve the insurance company of its liability to indemnify the insured or for that matter even against a third party. Hon'ble Supreme Court in ***National Insurance Co. Ltd. vs. Swaran Singh and others, 2004(2) RCR (Civil) 114*** has held that "to avoid its liability towards the insured, the insurer would first have to prove that the insured was guilty of negligence i.e. he had failed to exercise reasonable care in the matter of fulfilling the condition of the insurance policy regarding the use of vehicles by duly licensed driver."

Insurance Company in the instant case has failed to discharge its onus qua the above. They were unable to bring to the notice of this Court any material on record from which it could be even remotely inferred that there had been any negligence or willful breach by the owner of the offending vehicle. Still further, in the evidence led the appellant-owner categorically deposed that before appointing the driver, the appellant had satisfied himself qua his driving license as well as his driving skills.

As a sequel to above, the instant appeal(s) stand(s) allowed. The directions of the Tribunal allowing respondent No.1-Insurance Company to recover the amount of compensation from the appellant is set aside. It is clarified that respondent No.1-Insurance Company shall be liable for the awarded amount.

05.07.2022 **(MANJARI NEHRU KAUL)**
sonia **JUDGE**

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