NARESH KUMAR
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO No.8475 of 2015(O&M)
Date of decision: 14.09.2022

Smt. Sunita Arora ..Appellant

Versus

Om Parkash and others ..Respondents

(2) FAO No.1049 of 2016 (O&M)

Om Parkash ..Appellant

Versus

Reliance General Insurance Compnay and others ..Respondents

(3) FAO No.8517 of 2015 (O&M)

Rajinder Singh ..Appellant

Versus

Reliance General Insurance Compnay and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arun Singal, Advocate,
for the appellant (in FAO-8475 of 2015)
for respondent no.2(in FAO-8517-2015 & FAO-1049-2016)

Mr. Abhinav Sood, Advocate, for
Mr. Vikram Singh, Advocate,
for the appellant (in FAO-1049-2016)
for Respondent no.1(in FAO-8475-2015)
for Respondent no.3(in FAO-8517-2015)

Mr. Naveen Kundu, Advocate
for the appellant (in FAO-8517-2015)
for respondent no.2(in FAO-8475-2015)
for respondent no.3 (in FAO-1049-2016)

Mr. Sanjeev Kodan, Advocate, for the Insurance Co.

ANIL KSHETARPAL, J(Oral)

1. This order shall dispose of three connected appeals arising from

a common award passed by the Motor Accidents Claims Tribunal, Panipat (hereinafter referred to as 'the Tribunal').

2. FAO No.8475 of 2015 has been filed by the claimant (Smt. Sunita Arora), whereas FAO No.8517 of 2015 has been filed by the owner of the offending truck (Sh. Rajinder Singh) and FAO No.1049 of 2016 has been filed by the driver (Sh. Om Parkash).

3. On 14.10.2009, Smt. Sunita Arora, aged about 45 years has suffered 100% disability on account of an automobile accident. The accident has rendered her crippled for her entire life. Before the accident, she was serving in M/s National Fertilizer Ltd. (N.F.L.). She was initially granted leave for some time, however, in the year 2012, she was turned out of her job. The manner in which the accident took place, the involvement of the offending vehicle and the findings of the Tribunal on the issue that the accident took place because of rash and negligent driving of Sh. Om Parkash is not disputed before this Court.

4. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book and the record of the Tribunal which was requisitioned.

5. One the one hand, the learned counsels representing the owner (Sh. Rajinder Singh) and the driver of the truck (HR-67-8273) (Sh. Om Parkash) contend that the Insurance Company has been wrongly absolved from the liability to pay the amount particularly when a valid insurance policy has been purchased by the owner. They contend that the Tribunal has erred in recording a finding that between the period 2009 to 2010, Sh. Om Parkash was not holding a valid driving licence. Besides, the learned counsel representing the owner contends that the owner, before engaging Sh.

Om Parkash as driver, verified his driving licence which was found to be validly issued by the competent authority North-West Zone, Wazirpur, Delhi. He submits that the owner has not committed any wilful violation of the terms of the policy.

6. The learned counsel representing the driver has contended that Sh. Om Parkash was issued a driving licence in the year 1992 and it was continuously and validly renewed till the date of accident. He draws the attention of the Court to Ex.RW4/1, the driving licence as well as the communication dated 08.05.2015, issued by the office of Motor Licencing Authority, Wazirpur, Delhi to that effect.

7. Per contra, the learned counsel representing the Insurance Company contends that the Tribunal has correctly absolved the company as Sh. Om Parkash did not renew the driving licence from the year 2007 to 2010. While referring to Section 15 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'), he contends that late renewal of the driving licence would not validate it from back date.

8. On the other hand, the learned counsel representing the claimant, while praying for modification, submits that the Tribunal has failed to comprehend the current position of the claimant-Smt. Sunita Arora while awarding an amount for future medical expenses, physiotherapy, attendant, enjoyment of life and increase in income due to future prospects. He further submits that the Tribunal ought to have applied the multiplier of 14 instead of 13.

9. ***<u>ISSUES WHICH ARISE FOR ADJUDICATION</u>***

9.1 Thus, the following four questions arise for adjudication:-

(1) Whether the finding of the Tribunal with regard to the

non-renewal of the driving licence between 2007 to 2010 is correct?

(2) Whether valid renewal of the driving licence at the relevant time has been proved?

(3) Whether the owner of the vehicle can be made liable particularly when before employing the driver, he had verified the driving licence issued in his favour?

(4) What should be the appropriate amount of compensation required to be awarded to the claimant?

10. ***DISCUSSION BY THIS COURT***

ISSUE NO.(1), (2) AND (3)

10.1 It may be noticed here that the first 3 issues are required to be examined in the context of liability of the owner of the vehicle to pay the amount. Before absolving the Insurance Company, the Court is required to examine "As to whether the owner is guilty of violation of the terms of the policy or not? In that context, the Hon'ble Supreme Court, while interpreting the provisions of the Act, has laid down the law. In the present case, Sh. Om Parkash was issued a driving licence on 03.04.1992. With effect from 03.04.1996, he was permitted to drive heavy transport vehicle. The accident took place on 14.10.2009. As per Ex.RW4/1, a copy of the driving licence, the driving licence was renewed on 22.06.2007 and it was valid upto 21.06.2010 which covers the date of accident. The Motor Licencing Officer was summoned who deposed that the driving licence was not renewed between 2007 to 2010, however, thereafter the driver has produced a communication Ex.RW3/B from the office of Motor Licencing Office, North West Zone, Wazirpur, Delhi, wherein it has been stated that due to some technical error, which occurred at the time of transfer to an outsource company i.e. from HCL to DIMTS, there was some loss of data. It has been certified that the licence of Sh. Om Parkash continued to be renewed between the year 2007 to 2010.

10.2 It may be noticed here that it is the primary responsibility of the Insurance Company to prove that the driver was not holding a valid driving licence. In this case, both the owner and the driver have produced sufficient evidence to prove that the driving licence was validly renewed, at the relevant time.

10.3 The learned counsel representing the Insurance Company relies upon the judgment passed in ***Beli Ram vs. Rajinder Kumar and another, 2020 AIR (Supreme Court) 4453***, to contend that the owner has the responsibility to ensure that the driving licence is duly renewed in time by the driver. In that case, the beneficiary was the driver of the vehicle himself. In that context, the Hon'ble Supreme Court made such observations. Moreover, in the instant case, the driving licence has been proved to be duly renewed. In any case, the liability of the owner is required to be examined in the context of violation of terms of the policy. Hence, the aforesaid judgment with greatest respect has no application.

10.4 The Tribunal has wrongly held that the driving licence issued by the Delhi Licensing Agency in favour of Sh. Om Parkash was not valid on 14.10.2009, i.e. the date of accident. In fact, there was confusion and lack of clarity with regard to validity of the licence. Sh. Om Parkash was undisputedly issued a licence on 03.04.1992 which was valid till 03.04.1996. Thereafter, there is a record available which proves that Driving Licence No.C08062001246212 was issued on 22.06.2007 which was valid upto

21.06.2010. Sh. Om Parkash was permitted to driver motorcycle as well as heavy transport vehicle. In the Tribunal's record, the driving licence is Ex.RW4/1. The aforesaid driving licence has been proved by RW3-Sh. Shailender Pal Singh, Motor Licensing Officer, North West-I, Wazirpur, Delhi. He was examined as a Court witness. He categorically stated that the record of renewal of the driving licence was previously not available at the level of the Zonal office and he has obtained the same from Central Agency, NIC which is maintaining the central server of Transport Department (Headquarter). He has stated that the NIC is the only competent authority to bring out the old record from the computer. He is categoric that the driving licence in favour of Sh. Om Parkash son of Sh. Narayan Dutt was issued on 22.06.2007 which was valid upto 21.06.2010. He has also proved Ex.R7 issued by Transport Department, Government of National Capital Territory of Delhi with respect to driving licence issued to Sh. Om Parkash. In the aforesaid driving licence, it has been certified that the said driving licence was issued on 22.06.2007 which was valid upto 25.08.2010. Therefore, the licence was, again, renewed. In such circumstances, the Tribunal wrongly recorded a finding that since the licence was subsequently renewed with effect from 25.08.2010 by depositing penalty amount of Rs.200/-, therefore, there was no valid driving licence in favour of the driver on the relevant date of accident. RW3-Sh. Shailender Pal Singh, Motor Licensing Officer, North West-I, Wazirpur, Delhi, has categorically stated that the information/data for renewal of the driving licence had to be retrieved by National Information Centre(NIC) because there was some change in the agency responsible for data entry. It has also come on record that the Licensing Authority, Ashok Vihar, subsequently merged in Licensing Authority, Wazirpur. RW3-Sh. Shailender Pal Singh, is a Motor Licensing Officer, who is an official of the Delhi Transport Department. The correctness of his statement on the basis of the official record could not be ordinarily doubted. The Insurance Company did not produce any positive record to prove that the licence issued to Sh. Om Parkash was not validly renewed at the relevant time or the deposition of Sh. Shailender Pal Singh is not correct. The mere payment of penalty of Rs.200/- is not sufficient to doubt the correctness of the statement given by RW3-Sh. Shailender Pal Singh. Therefore, the finding of the Tribunal on the non-renewal of licence is wrong and hence set aside.

10.5 Keeping in view the aforesaid discussion, the findings of the Tribunal absolving the Insurance Company are set aside.Therefore, the first two issues stand substantially answered and question No.3 is rendered academic.

ISSUE NO.(4)

10.6 Now let's take up the appeal filed by the claimant.

10.7 The Tribunal has awarded the amount under the following heads:-

Heads	**Amount awarded by the Tribunal**
Medical Expenses	Rs.38403/-
Physiotherapy	Rs.50,000/-
Attendant	Rs.50,000/-
Pain and suffering	Rs.1,00,000/-
Special diet and transportation	Rs.1,00,000/
Loss of income	Rs.53,574x12x13=83,57,544/-

10.8 In order to prove her case, the claimant has examined PW8-Dr. Anshul Gupta and PW9- Dr. Sanjay Aggarwal.

10.9 Dr. Anshul Gupta is a consultant in Sir Ganga Ram Hospital, New Delhi. He states that the claimant remained admitted in the said hospital from 17.10.2009 to 22.12.2009, where she was operated for her left fronto temporal contusion haetoma. He further stated that at the time of discharge, though the patient was conscious, but she was having weakness in the right side of her body and she occasionally understood or followed simple commands. He deposed that the claimant is under his constant follow-up since then and she was last examined on 30.07.2013.

10.10 Dr. Sanjay Aggarwal, Neuro Surgeon, Dr. Prem Hospital, Panipat, has deposed that the claimant was admitted in their hospital on 14.10.2009, with alleged history of road accident. She was unconscious and was having a lacerated wound over right parieto occipital region. On CT Scan, subarachnoid haemorrhage with contusion with brain oedema was observed. The claimant has also produced the disability certificate issued by Board of Doctors of PGIMS, Rohtak, certifying that she is 100% disabled.

10.11 Though, substantial portion of her expenses on medical treatment was borne by her employer, namely, National Fertilizer Limited, however, the Tribunal has awarded Rs.38,403/- towards her medical expenses. The Tribunal has failed to comprehend that she not only requires medication but also regular physiotherapy and care throughout her life. She will need the services of an attendant for her entire life. At the time of accident, she was the mother of two dependent minor children. Now, she has herself become dependent for the rest of her life. Thus, in such circumstances, this court finds it appropriate to assess the future medical expenses at Rs.5,00,000/-. For physiotherapy and attendant, she will be entitled to a total amount of Rs.2,00,000/-.

10.12 Similarly, the Tribunal has awarded Rs.1,00,000/- towards special diet and transportation. It is observed that she will have to make repeated rounds to the hospital as and when required for her remaining life. Therefore, this court considers it appropriate to increase the amount of special diet and transportation to Rs.2,00,000/-.

10.13 Further, the Tribunal has committed an error in taking her income as Rs.53,574/- in the year 2012, being the last drawn salary in the year 2012. Whereas, at the time of accident, she was drawing Rs.43,821/-. Further, the Tribunal has failed to take into account the increase in the income on account of future prospects as it is evident in the present case that her salary increased by Rs.10,000/- within a period of 3 months.

10.14 Hence, while taking the income as Rs.43,821/-, she shall be entitled to increase @ 30% on account of increase in the income due to future prospects. The Tribunal, after holding that she was 45 years of age at the time of an accident, applied multiplier of 13 which should have been 14.

10.15 Moreover, the entire life of the claimant as well as her family has undergone a significant change. Though, it is not possible to assess the compensation on account of suffering due quality of life she is forced to live, however, while assessing the compensation, the amount has to be realistic. Within a short time, the medical expenses as well as all other amenities of life have become expensive. The treatment from Sir Ganga Ram Hospital itself costs a fortune. Despite being alive, she is unable to enjoy and live her life fully. Accordingly, under the head of pain and suffering, a sum of Rs.2,00,000/- is being awarded. Another sum of Rs.1,00,000/- is being awarded under the head of loss of love and affection.

10.16 In view of the above discussion, issue no.4 is answered in the favour of the claimant.

11. In view of the aforesaid discussion, the award passed by the learned Tribunal is modified and the compensation awarded is increased by Rs.21,12,962/-. Details of the same are as under:-

Heads	***Compensation awarded by MACT***	***Compensation awarded by High Court***
Income Taken	Rs. 53574/- per month	Rs.43821/- per month
Future prospects	NIL	Rs.13146+43821=56967.3/- awarded @ 30%
Annual loss of income	Rs.53574x12x13=83,57,544 (Multiplier =13)	Rs.56967.3x12x14=95,70,506/- (Multiplier =14)
Medicine	Rs.38,403/-	Rs.38,403/-
Future Medical Expenses	NIL	Rs.5,00,000/-
Attendant and Physiotherapy	Rs.50,000/-+50,000	Rs.2,00,000/-
Special diet and transportation	Rs.1,00,000/-	Rs.2,00,000/-
Pain and suffering	Rs.1,00,000/-	Rs.2,00,000/-
Loss of love and affection	NIL	Rs.1,00,000/-
Total compensation awarded	**Rs.86,95,947-00**	**Rs.1, 08, 08, 909-00**

12. The enhanced amount shall carry an interest @ 8% from the date of filing of the claim petition till its realization.

13. With these observations, the appeals are allowed.

14. All the pending miscellaneous applications, if any, are also disposed of.

September 14, 2022 **(ANIL KSHETARPAL)**
nt **JUDGE**

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