IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-1501-2017(O&M)

Jaswinder Kaur and others

...Appellants

Versus

Sukhraj Singh and others

...Respondents

(2) FAO-541-2017(O&M)

New India Assurance Company Ltd.

...Appellant

Versus

Jaswinder Kaur and others

...Respondents

Date of Decision:-23.12.2022

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.K.B. Raheja, Advocate
for the appellants in FAO-1501-2017 and
for respondents No.1 to 4 in FAO-541-2017.

Mr.Rahul Pathania, Advocate
for the appellant in FAO-541-2017.

Mr.Vinod Gupta, Advocate
for the respondent No.3 in FAO-1501-2017.

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H.S. MADAAN, J.

1. By this order, I shall dispose of two FAOs i.e. FAO-1501-2017(O&M) filed on behalf of appellants Smt.Jaswinder Kaur and others and FAO-541-2017(O&M) filed on behalf of appellant – New India Assurance Company Ltd., which have arisen out of the same award.

2. Briefly stated, facts of the case are that on 3.4.2015 Sukhraj Singh deceased son of Darshan Singh along with his uncle Bhupinder Singh @ Bhinder had gone to Engineering College, Ferozeshah to meet Balwinder Singh, a cousin brother of Bhupinder Singh on separate motorcycles; at about 9:00 a.m., deceased Sukhraj Singh riding his motorcycle bearing registration No.PB-05-W/2477 came on the main Moga Ferozepur GT Road and was proceeding towards Bus Stand, Ferozeshah and in the meanwhile, a car Make Skoda bearing Temporary No. CH-40-(T)3888 (hereinafter referred to as the offending car) was coming from Ferozepur side at a very high speed without blowing any horn being driven in a very rash and negligent manner by respondent No.1 Sukhraj Singh son of Jarnail Singh and struck against the motorcycle of the deceased, due to the accident, the deceased Sukhraj Singh fell down and suffered multiple injuries on his body; Bhupinder Singh @ Bhinder, who was present there arranged a vehicle and removed Sukhraj Singh son of Darshan Singh to the Civil Hospital, Ferozeshah, however keeping in view his serious condition, after giving first aid, he was referred to GGS Medical College and Hospital, Faridkot, where he succumbed to the injuries on that very day at about 1.05 P.M. Postmortem examination was carried out on the dead body of the deceased. FIR No.49 dated 3.4.2015 under section 304-A of IPC was registered against respondent No.1 Sukhraj Singh son of Jarnail Singh with Police Station Ghall Khurd.

3. The legal representatives of the deceased, namely, Jaswinder Kaur aged about 35 years – wife, minor daughters - Kirandeep Kaur and

Beant Kaur aged 17 years and 15 years, respectively and minor son Akashdeep Singh aged about 14 years had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against the respondents i.e. Sukhraj Singh son of Jarnail Singh – driver, Jatinder Singh – owner and New India Assurance Company Ltd. - insurer of the Skoda car in question before Motor Accident Claims Tribunal, Ferozepur (hereinafter referred to as the Tribunal). The mother of the deceased, namely, Kanwaljit Kaur was also arrayed as respondent No.4 in the said petition.

4. According to the claimants the deceased was working as Mason and was owner of 1 ½ killas of land, where he used to sow vegetables and thereafter would take the vegetables to markets for sale, in that way, he was earning an amount of Rs.28,000/- per month and the claimants were dependent upon the earnings of the deceased.

5. On getting notice, the respondents put in appearance. Respondent No.1 filed written reply taking various objections that the claim petition was not maintainable as no accident had taken place with the Skoda car being driven by respondent No.1 belonging to respondent No.2; as a matter of fact respondent No.1 was not present at the spot at the time of accident and on 3.4.2015 at about 8.00 a.m., the car of the answering respondent struck against a tree opposite main gate of Engineering college, Ferozeshah and thereafter at about 9.00 A.M., the vehicle of the deceased had met with an accident with unidentified another vehicle, in which the deceased had died and a wrong criminal case was got registered against the answering respondent to extort money. The

answering respondent had submitted an application before Senior Superintendent of Police, Ferozepur on 13.04.2015, which was marked to SHO PS Ghall Khurd for inquiry; the answering respondent was Ex-Sarpanch of village Khai Pheme Ke, Tehsil and District Ferozepur as well as Vice President of Congress Party of District Ferozepur; a false FIR was been got registered against him due to political rivalry at the instance of the then ruling party MLA. The answering respondent No.1 denied any liability to pay compensation to t he claimants.

6. The separate written statement filed on behalf of respondent No.2 is almost on the similar lines as that of respondent No.1.

7. Whereas respondent No.3 insurance company in the written reply filed by it had raised preliminary objections that claim petition was false, frivolous and respondent No.1 driver of the car then having temporary No. CH-40(T)-3883 now RC No.PB05AB-2100, was not holding a valid and effective driving licence at the time of alleged accident and as such no liability could be fastened on answering respondent; the claim petition had been filed by the claimants in collusion with the owner and driver of the offending vehicle in order to extort money from the answering respondent. It was further the case of the respondent No.3 that the owner of the car had committed breach of the terms and conditions of the insurance policy since he had neither given the information of accident to the answering respondent nor submitted documents as required under Section 134-C of the Motor Vehicles Act; owner of the car was plying it in violation of Motor Vehicles Act and Rules because after lapse of statutory period, the registration certificate of

the car was not got issued from the transport authorities, therefore the owner could not bring the car on road, it being an unregistered vehicle. Refuting the remaining assertions, such respondent prayed for dismissal of the claim petition.

8. Respondent No.4 in the written reply filed by her conceded the claim of the claimants.

9. The claimants filed the rejoinder reiterating their averments as taken by them in the petition and denied the averments as taken by the respondents in the written statements.

10. From the pleadings of the parties, following issues were framed:

1. Whether Sukhraj Singh son of Darshan Singh had died on account of injuries sustained by him in a motor vehicular accident which took place on 03.04.2015 at about 9:00 a.m., in the area of opposite Engineering College, Ferozeshah due to rash and negligent driving of the car bearing temporary No.CH-34-(T)-3888 and now registration NO.PB-05-AB/211 by respondent No.1? OPP.
2. Whether the claimants are entitled to compensation, if so to what extent and from whom? OPP.
3. Whether the respondent No.1 was not having valid and effective driving licence at the time of accident? OPR-3.
4. Relief.

11. Both the parties were given opportunities to lead evidence.

12. During the course of evidence of claimants, claimant No.1

Jaswinder Kaur got her statement recorded as PW1 and vide her affidavit Ex.PA, she reiterated on oath the case of the claimants as given in the claim petition. She proved in evidence copy of Adhar Card as Ex.P1, certified copy of order dated 5.6.2015 as Ex.P2, jamabandi for the year 2011-2012 as Ex.P3 and postmortem report as Ex.P4.

The next witnesses examined by the claimants was PW2 Bhupinder Singh, who through his affidavit Ex.PB provided the eye-witness account of the incident deposing in line with the case of claimants as given in the claim petition.

With that the evidence of the claimants got concluded.

13. In rebuttal, respondent No.1 Sukhraj Singh appeared as RW1 and through his affidavit Ex.RA he deposed as per his case as given in the written reply. He proved copy of his driving licence as Ex.R1.

RW2 Jatinder Singh owner of the car, who is respondent No.2 in the claim petition through his affidavit Ex.RB deposed as per his version given in his written reply.

RW3 Jasbir Singh, Nodal Officer, Idea Cellular, C-105, Phase VII, Industrial Area, Mohali had brought the summoned call detail with tower location record of Mobile No.98787 71002 and 98557 64820 providing copy of details of mobile No. 98557 64820 for 3.4.2005 as Ex.P4 and the details of tower location as Ex.P5. He also proved copy of call details of mobile No. 98787 71002 for 3.4.2015 as Ex.R6 and tower location as Ex.R7. He placed on record photocopy of the application form in respect of mobile No.98787 71002 stating that the connection was issued in the name of Sukhraj Singh son of Jarnail Singh, resident of village Khai, Tehsil and District Ferozepur. He proved various other documents.

RW4 Shiv Kumar, Data Entry Operator, DTO Office, Ferozepur identified the signatures of Daljit Singh, Clerk on Ex.R16, who is said to have been transferred to DTO Office, Bathinda.

14. After hearing arguments, the Tribunal vide award dated 28.10.2016 granted compensation of Rs.10,14,000/- to the claimants with interest @ 9% per annum from the date of filing of the claim petition till the date of passing of award, payable by respondents No.1 to 3 jointly and severally. The manner in which the compensation is to be apportioned is also given in the award.

15. The appellants/petitioners/claimants were dissatisfied with the amount of compensation awarded to them by the Tribunal, whereas respondent insurance company was not happy with the award. They have approached this Court by way of filing separate appeals.

16. Notices of the appeals were issued to the respondents, who put in appearance through counsel.

17. Since both the appeals have arisen out of the same award, those are being taken up together for disposal.

18. I have heard learned counsel for the parties besides going through the record.

19. A perusal of the award goes to show that the Tribunal had taken the age of deceased to be 35 years and his monthly income to be Rs.6,000/- per month considering the wages payable to casual labourer at that time.

20. I find that the income of the deceased taken by the Tribunal at the rate of Rs.6,000/- per month is certainly on lower side. As per the case of the claimants, the deceased was working as a meson and owned about 1 ½ killas of land, where he was sowing vegetables, which he was selling. Though the Tribunal might not have taken the income of the deceased to be Rs.28,000/- per month in absence of any documentary evidence but then taking his income as Rs.6,000/- per month is certainly on somewhat lower side. Considering the facts and circumstances of the case, in my view it would be proper and appropriate to take monthly income of the deceased to be Rs.10,000/- per month.

21. Taking into view his age to be 35 years, in view of the judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** an addition of 40% is to be made towards future prospects. Doing that the monthly income of the deceased is taken as Rs.10,000 + 4,000 = Rs.14,000/-.

22. The number of dependent family members in this case comes out to be five, i.e. four of the claimants and 5th being mother of the deceased, who is arrayed as proforma respondent No.4. Therefore, in terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** where the number of dependent family members are 4 to 6, deduction towards self-expenses is to be taken as 1/4th. Doing that the dependency of claimants comes out to Rs.10500/- (14000 - 3500)/- per month, annual dependency comes out to Rs. 10500 x 12 = Rs.1,26,000/-.

23. The Tribunal has used multiplier of 16, which keeping in

view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs. 1,26,000 x 16 = 20,16,000/-.

24. Under the conventional heads, the Tribunal has awarded Rs.25,000/- towards funeral expenses and Rs.1,00,000/ to petitioner No.1 Jaswinder Kaur, who is widow of deceased as consortium amount.

25. However, the legal position in that regard has been clarified in subsequent judgment by the Apex Court i.e. ***Magma General Insurance Co.Ltd. Versus Nanu Ram alias Chuhru Ram & Ors., 2018(4) RCR(Civil) 333***, wherein it was observed that amount of Rs.40,000/- each is to be awarded to every claimant for filial consortium and in view of judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors.(supra)***, which provides that while working out the compensation payable under the conventional heads, namely, loss of estate, loss of consortium and funeral expenses, amount of Rs.15,000, Rs.40,000/- and Rs.15,000/-, respectively should be awarded.

26. Doing that the compensation payable is worked out to be Rs.22,46,000/- (20,16,000+40000+40000+40000+40000+40000+15000+15000), payable by respondents No.1 to 3 jointly and severally.

27. In this way, the enhanced amount comes out to Rs.12,32,000/- (22,46,000 – 10,14,000).

28. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.12,32,000/-.

29. The Tribunal has apportioned the compensation between all

the claimants in equal shares. However, considering the fact that claimant No.1 Jaswinder Kaur has been rendered as a widow on accounting of loosing her husband in the motor vehicular accident and would be required to run the household affairs managing food, clothing for herself and her children and education for her children, she deserves to be granted more share in the compensation. Accordingly her share is enhanced to 40% of the compensation amount, whereas remaining claimants No.2 to 4 would get 20% of the compensation amount each. They are minors, therefore their shares be deposited in the form of FDR with some nationalized bank for the period till they attained majority.

30. With such modification, the ***FAO-1501-2017*** is allowed partly with costs.

31. The stand of the appellant insurance company in FAO-541-2017 is that at the time of accident, the car in question was having temporary registration number and after lapse of statutory period, the regular registration number of the car was not got issued within time, as such the car could not have been taken on road and if it was so done by the owner – insured, then he himself is liable and insurance company has no liability to pay any compensation. In support of that contention, learned counsel for the appellant insurance company has referred to judgment ***Narinder Singh Versus New India Assurance Co. Ltd. and others, 2014 ACJ 2421*** wherein it was observed that using a vehicle on public road without registration is an offence punishable under Section 192 and a fundamental breach of terms and conditions of the policy and the owner is not entitled to be reimbursed by the insurance company for

damage of the vehicle in accident.

32. This judgment does not help the appellant – insurance company in any manner because that related to own damage claim and not the claim payable to a third party. It was observed in the judgment in question that when a vehicle is being used without registration and it meets with an accident, the insurance company is not liable to pay compensation. But liability of the insurance company towards third party claim remains and the insurance company can certainly not repudiate claim for that very reason.

33. Learned counsel for the respondents/claimants has referred to few judgments in support of his contentions that the insurance company is not absolved of its liability under these circumstances. The first judgment referred to by him was ***National Insurance Company Ltd. Versus Jaspal Kaur @ Jaspreet Kaur @ Jass and others***, FAO No.2749-2016(O&M) decided on 27.8.2016 by this Court, wherein it was observed that in terms of Section 149 of the Motor Vehicles Act, 1988 non registration of the vehicle is not one of the defences enumerated under Section 149(2) of the Act and that non-registration of the vehicle does not amount to breach of terms of the insurance policy.

Counsel for the claimants has further referred to judgment ***Joby Thomas and others Versus Annamma Augustine and Ors.***, MACA No.3041-2009 decided on 17.3.2010 by Kerala High Court, wherein it was observed that mere non registration of the motor vehicle does not amount to a violation of conditions of policy under Section 149 of the Act and it does not absolve the insurance company of its liability.

He also pressed in service ***National Insurance Company Ltd. Versus Kamal Kishore and others***, FAO(MVA) No.564 of 2018 decided on 5.7.2019 by Himachal Pradesh High Court, wherein it was observed that on the ground of lapse of temporary registration of vehicle, the insurance company cannot be exonerated from liability in case of third party risk.

34. Therefore, the verdict given by the Tribunal in that regard is correct and no interference is called for. The insurance company can certainly be not absolved of its liability to pay compensation to claimants, who are third party for any alleged violation of terms and conditions.

35. ***FAO-541-2017*** filed on behalf of the insurance company stands dismissed.

23.12.2022 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No