IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. FAO No.358 of 2018 (O&M)

Ravinder Singh

… Appellant

Versus

National Insurance Co. Ltd. & others

… Respondents

2. FAO No.474 of 2018 (O&M)

Urmila Devi & another

… Appellants

Versus

Malkit Singh & others

… Respondents

3. FAO No.5967 of 2018 (O&M)

Malkit Singh

… Appellant

Versus

Urmila Devi & others

… Respondents

Date of decision: 22nd August, 2022

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Surinder Mohan Sharma, Advocate
for owner and driver of the offending vehicle.

Mr. Rajneesh Malhotra, Advocate for the Insurance Co.

Mr. Kapish Singla, Advocate for
Mr. Ashit Malik, Advocate for the claimants.

MANJARI NEHRU KAUL, J.

CM-1295-CII-2018 in FAO-358-2018

In view of the averments made in the application and in the interest of justice, the same is allowed and the delay of 15 days in filing the appeal is condoned.

Main case

The above detailed three appeals are an outcome of award dated 21.08.2017 passed by the learned Motor Accident Claims Tribunal, Kurukshetra, whereby the claimants were awarded following compensation on account of the death of Ram Dhari in a motor vehicular accident which took place on 01.07.2015:

Sr. No.	Head	Amount
1.	Monthly income	₹ 10,200/-
2.	Deduction towards personal expenses @ 1/3	₹ 3,400/-
3.	Dependency @ 2/3	₹ 6,800/-
4.	Annual dependency (₹ 6,800 x 12)	₹ 81,600/-
5.	Multiplier	11
6.	Total amount (81,600 x 11)	₹ 8,97,600/-
7.	Loss of consortium	₹ 1,00,000/-
8.	Funeral expenses	₹ 25,000/-
	Total compensation	**₹ 10,22,600/-**

The amount of compensation was ordered to be paid along with interest @ 7.5% p.a. from the date of institution of the claim petition till realization of the amount.

Since all these appeals have arisen out of a common award, involving the same parties, they are thus being taken up together for decision by way of this common judgment.

FAO No.358 of 2018 has been filed by Ravinder Singh owner of the offending vehicle whereas FAO No.5967 of 2018 has been preferred by Malkit Singh, driver of the offending vehicle. They both have challenged the Award whereby it was ordered that the Insurance Company/respondent shall pay the entire amount of compensation to the claimants with liberty to recover the same from driver and owner of the offending vehicle, jointly and severally.

It has been submitted that the report of a Local Commissioner was placed on record along with the statement of R.K. Khalko, Assistant Grade-I, Licensing Branch (Renewal), office of RTO Raipur Chandigarh qua the driving license of the driver of the offending vehicle, Malkit Singh son of Dalip Singh however, the Tribunal has failed to appreciate the said report in the right perspective and had thus erred in granting recovery rights to the Insurance Company/respondent. Learned counsel vehemently contended that as per R.K. Khalko, driving license bearing No. M/4652/87 belonging to Malkit Singh was not found entered in the relevant register maintained by the Licensing Authority in "M Series" but he admitted that the Licensing Authority was left with only one register of "M Series" of the year 1987 as the other registers of "M Series" had rotted. He further submitted that the driving license of Malkit Singh which was initially issued by the Licensing Authority at Raipur in the year 1987, was periodically renewed by the authorities concerned in Haryana. In support, he has drawn the attention of this Court to (Annexure A1-Colly) wherein the said fact stands reflected. Learned counsel further submitted that at the time of employing Malkit Singh, the owner Ravinder Singh had made a reasonable enquiry qua genuineness of his driving license and also tested his driving skills. Therefore, the Insurance Company was wrongly exonerated from its liability.

The appellant/claimants in FAO No.474 of 2018 are the widow and son of deceased Ram Dhari. They are seeking enhancement of the amount of compensation as the learned Tribunal failed to grant any compensation under the head of future prospects. While inviting attention of this Court to the well settled law in **'National Insurance Co. vs. Pranay Sethi' 2017 SCC 270,** learned counsel submits that the claimants are entitled to an addition of 10% to the income on account of future prospects as the deceased was 52 years old.

Learned counsel for the Insurance Company has opposed the prayer and submissions of the learned counsel representing the owner of the offending vehicle and claimants. Learned counsel has argued that the Tribunal rightly granted recovery rights to the Insurance Company in the wake of the report of the Licensing Authority Ex.R4 qua there being no records pertaining to the driving license of the driver of the offending vehicle. He, however conceded that the claimants would be entitled to 10% increase towards future prospects.

I have heard learned counsel for the parties and perused the relevant material on record.

This Court concurs with the submissions made by learned counsel for the claimants that they ought to have been granted compensation qua future prospects in view of the ratio of law as laid down in **Pranay Sethi's case (supra)**. Since the learned Tribunal has not granted any compensation with respect to future prospects, the claimants would stand entitled to 10% increase in the income towards this head. Accordingly, the amount of compensation is reassessed as follows:-

Sr. No.	**Head**	**Amount**
1.	Monthly income	₹ 10,200/-
2.	Future prospects @ 10%	₹ 1,020/-
3.	Annual income (11,220 x 12)	₹ 1,34,640/-
4.	Deduction towards personal expenses @ 1/3	₹ 3,740/-
5.	Dependency @ 2/3	₹ 7,480/-
6.	Annual dependency (₹ 7,480 x 12)	₹ 89,760/-
7.	Multiplier	11
8.	Total amount (89,760 x 11)	₹ 9,87,360/-
9.	Loss of consortium	₹ 1,00,000/-
10.	Funeral expenses	₹ 25,000/-
	Total compensation	**₹ 11,12,360/-**

Out of the total amount awarded, appellant No.2 son shall be entitled to ₹ 3,26,000/- and the remaining amount is ordered to be paid to appellant No.1 widow. The appellants would also be entitled to interest @ 7.5% p.a. as awarded by the Tribunal till the date of realization.

This Court also concurs with the submissions made by the learned counsel for the appellant/owner that the Tribunal erred in granting recovery rights to the Insurance Company. Once it is not disputed rather it is a matter of record that the driving license of the driver of the offending vehicle, Malkit Singh had been periodically renewed by the authorities concerned in Haryana coupled with the report of the Local Commissioner that only one register of 'M Series' for the year 1987 was available in Raipur as the other registers had rotted, a safe inference can be drawn that the driving license of Malkit Singh was a valid license issued by the authorities in Raipur and it cannot be inferred that the driving license of Malkit Singh was a fake one. Even otherwise, merely because the driving license of the driver of the offending vehicle was found to be fake, it would not be a sufficient ground to absolve the Insurance Company of its liability. 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.

Accordingly, appeals filed by owner and driver are allowed and Insurance Company is held liable to pay the compensation.

Statutory amount of ₹ 25,000/- deposited by the appellants/owner/driver be returned to the owner/driver.

As a sequel to the above, all the three appeals are hereby disposed of and the award stands modified accordingly.

(MANJARI NEHRU KAUL)
JUDGE

August 22, 2022
rps

Whether speaking/reasoned Yes/No

Whether reportable Yes/No