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

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FAO-2263-1995
WITH XOBJC-38-CII-1998
Date of decision: 14.12.2023

National Insurance Company Ltd. .....Appellant

Versus

Usha Rani and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Shrenik Jain and Mr. Hari Pal, Advocates
for the appellant-Insurance Company.

Ms. Neha Jain, Advocate
for respondent Nos. 1 to 5-Cross objectors.

Respondent Nos.6 and 7 proceeded against *ex parte*
vide order dated 26.02.2015

AMAN CHAUDHARY, J.

1. Challenge in the present appeal is to the award dated 04.10.1995 passed by the learned Motor Accidents Claims Tribunal, Hoshiarpur (for short 'the Tribunal'), whereby a sum of Rs.3,00,000/- was awarded as compensation to respondent Nos. 1 to 5, on account of death of one Naresh Kumar, in a road side accident and the appellant being the insurer of the offending vehicle was held liable to make the payment. Claimant-respondent Nos. 1 to 5 have also filed cross-objections seeking enhancement of the compensation awarded to them.

2. This is a reconstructed case, as the original file was burnt in the fire that broke out in the concerned branch in the year 2011. Since the case is pending for more than 28 years, the counsel for the parties have no objection, if the same is decided on the basis of the available record.

3. Learned counsel for the appellant strenuously contends that once the original driving licence issued on 10.04.1982 was found to be fake

as per verification report Ex.R2, which was not taken into consideration by the Tribunal, the renewal thereof would not transform it to be genuine, moreover, it was on 10.03.1994, whereas the accident took place on 03.02.1994. To buttress this submission reliance is placed on the judgment of the Hon'ble Supreme Court in **Oriental Insurance Co. Ltd. Vs. Prithvi Raj** 2008 AIR (SC) 1408. Thus, the liability to pay the compensation was not of the appellant-company but that of the owner and driver.

4. Contrarily, the learned counsel appearing for the claimant-cross-objectors emphatically opposed the prayer stating that even in case the licence would have been fake, the claimants on that account cannot be made to suffer, as to check its validity, is the role and responsibility of the owner and driver and/or the insurance company itself. Reliance in this regard has been placed on the judgments in **Pepsu Road Transport Corporation vs. National Insurance Company** 2013(4) RCR Civil 273; **United India Insurance Company Ltd. vs. Lehru and others** 2003(2) RCR Civil 278, **National Insurance Company Ltd. vs. Jarnail Singh and others** 2007 (15) SCC 28, **National India Insurance Co. Ltd. vs. Smt. Fajari and others** 2022 (2) RCR Civil 999 and **Sushila Rani and others vs. Mahipal Singh and others** 2020 AAC 1353. It was further urged that the awarding of lump sum compensation of Rs.3 lac, without applying any multiplier and also not granting any on account of conventional heads, was flawed, thus, requires to be enhanced. The Tribunal also wrongly took the dependency as Rs.3000/- per month, despite the fact that the deceased, a 39 years old, was earning Rs.5000/- per month and there were five claimants-dependents being his wife, two minor sons and parents.

5. Having heard the learned counsel on either side and file perused, this Court is unable to countenance the submissions canvassed on

behalf of the appellant-Insurance company, whereas those of the respondent/Cross-objectors are found to have merit.

6. The onus to prove the driving licence produced in the claim proceedings to be fake, lays heavily upon the insurer, as held in **Magma HDI General Insurance Co. Ltd. vs. Shinder Kaur @ Surjit Kaur and others** 2019(2) Law Herald 1339, which cannot be said to have been discharged on mere surmises and conjectures, in absence of any positive evidence, which was conspicuously missing in the case at hand. The mere producing of the verification report as Ex.R2 was not sufficient, without examining the official of the licencing authority before the Tribunal to prove the same and granting an opportunity to the owner and driver to cross-examine such a witness. No question was also posed to driver-Charanjit Singh l, who appeared as RW1. Considering the above, a worthwhile reference would be to **National Insurance Co. Ltd. vs. Laxmi Narain Dhut** (2007) 3 SCC 700, wherein Hon'ble the Supreme Court held that, "Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicle by duly licenced driver or one who was not disqualify to drive at the relevant time…." Further in **Pepsu Road Transport Corporation** (supra) it was observed that, the situation would be different if at any time of the insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licencing authority or if the attention of the owner of the vehicle is otherwise invited to the allegations

that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licencing authority. If despite such information with the owner that the licence possessed by his driver was fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation. In **Lehru and others** (supra), it had been observed that the breach of contract by owner of the insured vehicle must be established by the insurance company as also that the vehicle was knowingly and intentionally handed over to a driver not holding any valid licence to drive such a vehicle, without which breach of condition of policy cannot be attributed to the insured. If the licence held by the driver seems to be valid, the owner is not expected to make a roving enquiry to find out its validity. This Court in **Fajari and others** (supra)**,** a case where the appellant Insurance company had contended that while awarding compensation, the Tribunal had not given recovery rights as the driver of the offending vehicle did not hold a valid driving licence, had dismissed the appeal and allowed enhancement of compensation in terms of the cross-objections filed by the claimants, by observing that the appellant insurance company cannot absolve itself from its liability of paying the compensation since it failed to prove the insured/owner was guilty of negligence and failed to reasonable care in the matter of fulfilling the condition of the policy regarding use of a vehicle by a duly licenced driver or one who was not disquality to drive at the relevant time.

7. Thus, in the present case, the appellant having not been able to prove beyond doubt that the driver did not possess a valid driving licence or that the insured was negligent in any manner or intentionally handed over to

a driver not holding any valid licence to drive such a vehicle or that his attention having been invited to the licence issued to the driver employed by him being fake, he did not get it verified from the licencing authority. As a fallout of the above discussion, the appeal is found to be sans merit.

8. The judgment relied upon by the learned counsel for the appellant being distinguishable on facts, is thus not applicable.

9. There is no dispute that the death of Naresh Kumar occurred in a motor vehicular accident due to the negligence of respondent No.6-driver of the offending truck, thus not warranting further scrutiny. Now coming down to the plea raised for enhancement of compensation by the cross-objector- claimant- respondent Nos. 1 to 5, a profitable reference can be made to the dictum laid down in **Sarla Verma and others vs. Delhi Transport Corporation and another,** 2009(3) RCR (Civil) 77, **National Insurance Company Limited vs. Pranay Sethi and others** 2017(4) RCR (Civil) 1009 and **Janabai vs. ICICI Lambord Insurance Co. Ltd.,** (2022) 10 SCC 512, consequentially whereupon, the claimants are hereby held entitled to grant of future prospects to the extent of 40%, he being self-employed and also for the compensation under the conventional heads i.e. Rs.36,000/- for funeral expenses and loss of estate; Rs.96,000 (48000 x 2) for filial consortium to two minor children, Rs.48000/- for filial consortium to parents and Rs.48,000/- for loss of consortium to wife. The deceased was 39 years of age, as such the multiplier of 15 should be applied. Further, there being five dependents at the relevant time, the deduction on account of his personal expenses ought to be taken as 1/5th. The income of the deceased taken by the Tribunal to the tune of Rs.5000/- is not disputed.

10. As a corollary thereto, the total compensation comes to Rs.12,36,000/- (5000 (monthly income) + 40% (towards future prospectus) -

1/5th (deduction towards personal expenses) 12 x 15 (multiplier) + Rs.2,28,000/- (conventional head). Thus, the enhanced compensation of Rs.9,36,000/-, over and above the amount of Rs.3,00,000/- already awarded by the Tribunal, alongwith interest at the rate of 7.5% per annum from the date of filing of the cross-objection, till its realization, shall be paid to the claimants as ordered by the Tribunal, within a period of 2 months from the date of receipt of a certified copy of this judgment, failing which, the amount shall accrue an interest as awarded by the Tribunal.

11. Accordingly, the appeal filed by the insurance company deserves to be and is hereby dismissed. However, the cross-objections of the claimant-respondent Nos.1 to 5 are partly allowed and the award passed by the Tribunal stands accordingly modified to the extent aforesaid.

14.12.2023 **(AMAN CHAUDHARY)**
Hemant **JUDGE**

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