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

232

FAO-249-1996 WITH
XOBJC-95-CII-2014
Date of decision: 20.12.2023

United India Insurance Company

....Appellant

Versus

Darshna Devi and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

*****

Present : Mr. S.P. Dhamija, Advocate for the appellant-Insurance Company

Mr. D.D. Bansal, Advocate for respondent Nos.1 to 6

Mr. D.S. Nain, Advocate for respondent No.9

*****

AMAN CHAUDHARY. J.

1. Challenge in the present appeal is to the Award dated 17.10.1995 passed by the learned Motor Accident Claims Tribunal, Sangrur (for short 'the Tribunal') vide which a sum of Rs.1,34,400/- alongwith interest @ 12% per annum, had been awarded to the claimant-respondent Nos.1 to 7 and the appellant being the Insurance Company is held liable to pay the same.

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 the last more than 27 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 would contend that since the driver of the truck-respondent No.8 was not holding a valid driving licence at the time of

accident, the insurance company was not liable to pay compensation. Even otherwise, the compensation awarded to the claimant is on the higher side, as such, the cross-objections are liable to be dismissed.

4. Learned counsel for respondent No.9 on the other hand stated that the owner had seen the licence of the driver and its renewal before employing him, besides having checked his driving skills. No accident had taken place, during the period of more than one year and six months, while he was working, which was sufficient to hold the Insurance company liable. Therefore, the award by the Tribunal be maintained as regards this finding is concerned.

5. Learned counsel for respondent No.1 to 6-claimants though does not dispute the contributory negligence but presses for enhancement of compensation submitting that the deceased being 25 years, as per the postmortem report, the multiplier applied by the Tribunal is on the lower side. Moreover, nothing has been awarded towards funeral expenses, loss of estate and loss of consortium to the family members.

6. After having heard the learned counsel for the parties at length, this Court is unable to countenance the submissions canvassed on behalf of the appellant-Insurance company, whereas finds strength in those of the respondent/Cross-objectors.

7. So as to proceed further in the matter, notably the Tribunal took into consideration the statement of RW-2 Umesh Goel, owner of the vehicle in question, that he employed Balwinder Singh, as driver after verifying his licence and at the time of appointing him, got his driving conducted wherein he was found absolutely perfect. No accident, prior to the one in question, had taken place

during the period of about 1-1½ years of his service. He also checked the renewal endorsement Ex.R-2. The Tribunal thus as regards the allegations of license to be fake observed that “Admittedly, the interrogatories were with regard to whether any driving licence was issued in the name of Balwinder Singh. As per these interrogatories the licence No.B-13460-85 does not exist in the driving register for the year 1985. But as per the licence Ex. R-1 the driving licence was issued on 28.10.1985 and it was valid upto 27.10.1989. It was renewed upto 26.10.1991. There is no evidence on the record that this renewal was not done by the licencing authority, Cuttack. Consequently it was held that “From the evidence on the record, it shows that the insured has taken every precaution before handing over the vehicle to Balwinder Singh, respondent No.1. When the insured is not guilty of violation of the condition, then the insurance company can not be escaped its liability.” Considering the above, a worthwhile reference can be made to **Pepsu Road Transport Corporation vs. National Insurance Company** 2013(4) RCR Civil 273, wherein Hon’ble the Supreme Court observed that the owner of the vehicle, when he hires a driver, has to check whether the driver has a valid driving licence. Thereafter, he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person, who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licencing authority before hiring the services of the driver. 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. Further in **National Insurance Co. Ltd. vs. Laxmi Narain Dhut** (2007) 3 SCC 700, it was 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…" The observations made in **United India Insurance Company Ltd. vs. Lehru and others** 2003(2) RCR Civil 278, were 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 **National India Insurance Co. Ltd. vs. Smt. Fajari and others** 2022 (2) RCR Civil 999, a case wherein 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 while dismissing the appeal and allowing enhancement of compensation in terms of the cross-objections filed by the claimants, observed 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.

8. Hon'ble the Supreme Court in **Rishi Pal Singh vs. New India Assurance Co. Ltd and Others**, 2022 LiveLaw (SC) 646 had observed and held that once the owner has satisfied himself of the competence of the driving skill of the driver by putting him to a test, regarding which he deposed in the proceedings, the insurance company could not be absolved of its liability on the ground that he did verify the genuineness of the driving licence issued to the driver, as this was not expected from him to do.

9. As a fall out of the above, there is no error in the findings of the Tribunal holding the Insurance company liable to pay the compensation as also the deceased having contributed to the accident, he being equally negligent, while crossing the road, when the accident occurred.

10. Now coming down to the plea for enhancement of compensation by the cross-objector-claimant-respondents. Evidently, there was no income proof of the deceased, thus the Tribunal taking his vocation being running a meat shop and assessing it to be as Rs.2000/- per month cannot be faulted with. Gainfully

referring to the dictum of law 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, the claimant-respondents are held entitled to grant of future prospects to the extent of 40%, he being self-employed and also for compensation under the conventional heads i.e. Rs.36,000/- for funeral expenses and loss of estate; Rs.2,40,000/- (48,000 x 5) for filial consortium to five minor children and Rs.48,000/- loss of consortium to wife. Since the deceased was 25 years of age, multiplier of 18 should be applied and there being six claimant/dependents, the deduction of 1/4th, at the least, ought to be made towards his personal expenses.

11. As a corollary, the total compensation under the head of dependency comes to Rs.4,53,600/- (2000 (monthly income) + 40% (towards future prospectus) - 1/4th (Deduction) 12 x 18 (multiplier), out of which, as it being a case of contributory negligence, the claimants are entitled to Rs.2,26,800/- (50%) +3,24,000/-(conventional heads). Thus, the enhanced compensation of Rs.4,16,400/-, over and above the amount of Rs.1,34,400/- 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 claimant-respondent Nos. 1 to 6 in equal share, 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. It is also made clear that the share of respondent No.7, the mother of deceased, who is stated to have died, will be equally disbursed to claimant-respondent Nos. 1 to 6.

12. Sequentially, the appeal filed by the insurance company deserves to be and is hereby dismissed. However, the cross-objections of the claimant-respondents Nos.1 to 6 are partly allowed by modifying the award to the extent aforesaid.

(AMAN CHAUDHARY)
JUDGE

20.12.2023
M.Kamra

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