

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

Inder Pal Singh and Ors.Respondents

Inder Pal Singh and Ors. ...Respondents

Mr. Neeraj Khanna, Advocate for
Mr. R.N. Singla, Advocate
for respondent No.3-Insurance Company in FAO-3616-2009.

The present appeal has been preferred by the owner of the offending vehicle against the award dated 19.03.2009 passed by the Motor

Accident Claims Tribunal, Ambala (hereinafter referred to as the 'Tribunal') as well as the order dated 18.03.2011 passed by the Tribunal dismissing the application for setting aside the *ex-parte* proceedings dated 02.03.2009 and *ex-parte* award dated 19.03.2009.

The brief facts relevant to the present *lis* are that the claimant-respondent Nos.3 to 7 herein filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, for grant of compensation on account of death of Mam Chand in a motor vehicle accident on 27.07.2007. The driver of the offending vehicle (respondent No.1 herein) filed a written statement raising various pleas. The owner of the offending vehicle (appellant herein) also filed his written statement. Written statement was also filed by the insurance company (respondent No.2 herein). It was *inter-alia* averred in the written statement by the insurance company (respondent No.2 herein) that the driver of the offending vehicle (respondent No.1 herein) was not holding a valid and effective driving licence and route permit. The Tribunal on the basis of the pleadings and the evidence led, held that the driver was holding two driving licences - one for light motor vehicles (LMV) and one for heavy motor vehicles (HMV) - and that a person can hold only one licence and hence it was held that the licence qua heavy motor vehicles (Ex.RW3/A) was a forged and fabricated document. On the basis of the findings, the insurance company (respondent No.2 herein) was not held liable. After leading evidence, the owner of the offending vehicle (appellant herein) was proceeded against *ex-parte* and the award was passed on 19.03.2009. Thereafter, an application for setting aside the *ex-parte* proceedings as well as *ex-parte* award dated 19.03.2009 was filed which application was dismissed vide order dated 18.03.2011. The award dated 19.03.2009 as well

as the order dated 18.03.2011 dismissing the application for setting aside the *ex-parte* proceedings have been challenged in the present appeal.

Learned counsel for the appellant has relied upon the judgment of a Division Bench of this Court in the case of **United India Insurance Company Limited Vs. Raj Rani [1996 (2) PLR 495]** to contend that when two driving licences are produced by the driver, it is for the insurance company to verify both the licences. The question whether there is a violation of the Motor Vehicles Act, 1988 by holding two driving licences would be addressed by the authorities and the same cannot be pleaded as a breach of terms and conditions of the insurance policy thereby absolving the insurance company of its liability.

Per contra, learned counsel for the insurance company (respondent No.2 herein) has vehemently argued that the insurance company has rightly been absolved inasmuch as the driver of the offending vehicle (respondent No.1 herein) was holding two driving licences which was a violation of the law.

Heard.

In the present case the offending vehicle was a heavy motor vehicle and the driver (respondent No.1 herein) produced 2 driving licences, one was for light motor vehicles and one was for heavy motor vehicles. The Tribunal has, on the basis of conjectures and in the absence of any evidence, returned a finding that the licence (Ex.RW3/A) for heavy motor vehicles was a forged and fabricated document. A Division Bench of this Court in the case of **Raj Rani** (supra) has held as under :

“10. In our considered view, the Claims Tribunal has rightly held that the Insurance company has failed to prove that driving licence Exhibit R-1 was a forged or

fabricated document. It was duly issued and renewed by the District Transport Officer, Patiala, till October 5, 1996, covering the period of accident. The Insurance Company got verified licence Mark R-1 through its surveyor. Hence the Tribunal rightly held that on the date of accident the driver was having a valid driving licence.”

In the present case also, only the licence of light motor vehicles (Ex.R1) was got verified by the insurance company (respondent No.2 herein). There is nothing on the record to show that the driving licence (Ex.RW3/A) for the heavy motor vehicles was forged and fabricated. Hence, keeping in view the law laid down by the Division Bench of this Court in the case of **Raj Rani** (supra), it was incumbent on the insurance company (respondent No.2 herein) to have got verified the licence for heavy motor vehicles and also produce on the record the relevant evidence to show that the same was forged and fabricated. Merely because a person was holding two driving licences cannot be a ground for absolving the insurance company (respondent No.2 herein). The question whether there is a violation of the Motor Vehicles Act, 1988 by holding two driving licences is an issue to be addressed by the authorities and cannot be made a ground for absolving the insurance policy of its liability once the licence is not found to be forged and fabricated.

In view of the above, the award passed by the Tribunal dated 19.03.2009 stands modified to the extent that the insurance company (respondent No.2), driver (respondent No.1) and the owner (appellant) are held jointly and severally liable to pay the compensation.

FAO-3616-2009

The present appeal has been filed by the claimant-appellants herein for enhancement of the compensation. The Tribunal while assessing the age of the deceased as 40 years and income as Rs.5,000/- per month, has awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income of the deceased	Rs.5,000/-
2	1/3 rd deduction towards personal expenses	Rs.3,300/- (5000-1700)
2	Annual income of the deceased	Rs.39,600 (3300x12)
3	Multiplier 12	Rs.4,75,200/- (39600x12)
4	Total dependency	Rs.4,75,200/-
5	Loss of Estate	Rs.2,500/-
6	Funeral expenses	Rs.2,000/-
7	Consortium	Rs.5,000/-
8	Grand Total	Rs.4,84,700/-
	Interest	7.5% per annum

Learned counsel for the claimant-appellants would contend that the age of the deceased was 36 years. It is further the contention that the multiplier of ‘12’ has wrongly been applied inasmuch as the same ought to have been ‘15’ keeping in view the age of the deceased. Learned counsel for the claimant-appellants would further contend that even the deduction of 1/3rd is not as per the settled law and keeping in view the dependents, 1/4th cut ought to have been applied. It is further the contention that no amount has been awarded towards future prospects and the amounts under the conventional heads and consortium are also on the lower side. In support of his contentions, learned counsel for the claimant-appellants has relied upon the judgments of the Hon’ble Supreme Court in the cases of **Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. [2009 (3) RCR (Civil) 77];**

National Insurance Company Limited Vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]; Magma General Insurance Co. Ltd. V. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 1] and N. Jayasree and Ors Vs. Cholamandalam MS General Ins. Co. Ltd. [2021 ACJ 2685].

Per contra, learned counsel for respondent No.3-insurance company has contended that already sufficient amount has been awarded and there is no scope of enhancement.

Heard.

In the present case the age of the deceased was 36 years as per the post mortem report Ex.P-2. In the absence of any evidence to the contrary, the age of the deceased is taken as 36 years. As per the law laid down in the cases of **Sarla Verma** (supra), **Pranay Sethi** (supra), **Magma General Insurance Co. Ltd.** (supra) and **N. Jayasree** (supra), since there are 5 claimants/dependents in the present case, a cut of 1/4th ought to have been applied. Further, keeping in view the age of the deceased, an addition of 40% ought to have been made towards future prospects. Multiplier of ‘12’ has wrongly been applied inasmuch as a multiplier of ‘15’ ought to have been applied as per the age of the deceased. Further, the claimant-appellants would be entitled to an amount of Rs.16,500/- towards loss of estate, Rs.16,500/- towards funeral expenses and Rs.44,000/- each under the head of consortium. Accordingly, the modified amounts as awarded are as under:

Sr. No.	Heads	Compensation Awarded
1	Monthly income of the deceased	Rs.5000/-
2	Annual income of the deceased	[5000 x 12] =Rs.60,000/-
3	Deduction 1/4 th	[60000-15000] =Rs.45000/-
4	Future Prospects @ 40%	[45000+18000]= Rs.63000/-
5	Multiplier of 15	[63000x15] = Rs.945000/-
6	Loss of estate	Rs.16,500/-

7	Funeral expenses	Rs.16,500/-
8	Loss of Consortium : Parental Filial Spousal	Rs.132000/- (44000x3) Rs.44000/- Rs.44000/- (Total Rs.2,20,000/-)
9	Total Compensation	Rs.11,98,000/-
	Amount Awarded by the Tribunal	Rs.4,84,700/-
	Enhanced amount	Rs.7,13,300/-

The enhanced amount of compensation shall carry interest @ 7.5% from the date of filing of the claim petition till realization. Out of the amount awarded, barring under head of consortium, the claimant-appellant No.5 i.e. mother of the deceased would be entitled to 10% of the amount and the remaining amount would be shared equally between claimant-appellant Nos.1 to 4. Additionally, all the claimant-appellants would be entitled to Rs.44,000/- each towards parental, spousal and filial consortium.

In view of the above discussion, the award passed by the Tribunal is modified, accordingly.

Both the appeals are disposed off accordingly. Pending applications, if any, also stand disposed off.

24.01.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO