

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R-834

FAO No.2778 of 2013

Date of Decision : 31.01.2023

Rekha Rawat and Others

....Appellants

VERSUS

Balwinder Singh and Others

....Respondents

R-834-1

FAO No.2844 of 2013

M/s Royal Sundaram Alliance Insurance Co. Ltd.

....Appellant

VERSUS

Rekha Rawat and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashwani Arora, Advocate
for the appellants in FAO-2778-2013 and
for respondent nos.1 to 3 in FAO-2844-2013.

Mr. Varun Sharma, Advocate for
Mr. Ashwani Talwar, Advocate
for respondent no.3-Insurance Company in FAO-2778-2018
and for the appellant in FAO-2844-2013.

Mr. D.K. Prajapati, Advocate
for respondent no.3-Insurance Company in FAO-2778-2013.

ALKA SARIN, J. (Oral)

By this common order, the above-captioned two appeals are
being disposed off.

FAO No.2844 of 2013

The present appeal has been preferred by the Insurance
Company aggrieved by the fact that the recovery rights have not been given
to it.

Learned counsel for the Insurance Company would contend that
the only grievance of the appellant-Insurance Company is that the recovery
rights have not been given to the appellant-Insurance Company, which ought

to have been given in view of the fact that the driver of the offending vehicle was holding two driving licences.

None has put in appearance on behalf of the owner and driver of the offending vehicle and they are accordingly proceeded against exparte.

Heard.

In the present case, the driver of the offending vehicle was holding two driving licenses. The argument of learned counsel for the appellant-Insurance Company that the driver cannot hold two driving licenses and hence the Insurance Company cannot be held liable deserves to be rejected. In case of **United India Insurance Company Limited vs. Raj Rani [1996 (2) PLR 495]**, a Division Bench of this Court 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.”

Hence, keeping in view the law laid down in case of **Raj Rani** (*supra*), it was incumbent on the Insurance Company to get the license verified and to produce on record the evidence to show that the same was forged and fabricated. Further, in the present case the owner of the offending

vehicle stepped into the witness-box and stated that he had employed the driver after verifying his driving licence.

In case of **United India Insurance Co. Ltd. v. Lehu and Others, [2003(3) SCC 338]** it has been held as under :

“20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The insurance company would not then be absolved of liability. If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly, even in such a case the insurance

company would remain liable to the innocent third party, but it may be able to recover from the insured.”

In case of **Pappu & Ors. vs. Vinod Kumar Lamba & Anr.** [(2018) 3 SCC 208], Hon’ble Supreme Court followed the conclusion reached in the decision in **National Insurance Company Ltd. vs. Swaran Singh & Ors.** [(2004) 3 SCC 297] wherein it was inter-alia held that *“The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. 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 vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time”.*

In view of the settled law, the appeal filed by the Insurance Company stands rejected.

FAO No.2778-2013

The present appeal has been preferred by the claimants aggrieved by the quantum of compensation awarded to them by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as the ‘Tribunal’) on account of death of Jagat Singh Rawat (hereinafter referred to as the ‘deceased’) in a motor vehicle accident with Canter No.HR-45-0259

(hereinafter referred to as the 'offending vehicle'). The factum of the accident is not in dispute and hence, the facts are not being reproduced for the sake of brevity.

Learned counsel for the appellant-claimants would contend that the income of the deceased has been taken as Rs.14165/- per month, which has not been challenged by the Insurance Company in their appeal (FAO No.2844 of 2013). However, an amount of Rs.3000/- which is reflected in the income tax returns for the assessment year 2008-09 produced on record as Ex.P11 has not been considered. Learned counsel for the appellant-claimants has further relied upon the judgment of the Hon'ble Supreme Court in case of **United India Insurance Co. Ltd. vs. Indiro Devi & Ors. [2018 (3) RCR (Civil) 455]** to contend that the income tax returns are not to be ignored. It is further contended that in view of the law laid down in the cases of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**, **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130]** and **N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021 (4) RCR (Civil) 642]**, the amount awarded under the conventional heads as well as under the head of loss of consortium are also on the lower side and further that on addition of Rs.3000/- per month to income of the deceased, an addition of 40% towards loss of future prospects would be required to be made.

Learned counsel for respondent no.3-Insurance Company has vehemently contended that the income of the deceased has already been assessed as Rs.14165/- per month and that there was no evidence to the

effect that Rs.3000/- was being earned by the deceased. It is further the contention that though the employer has stepped into the witness-box as PW-4, however, the income tax returns did not reflect that this amount had been paid to the deceased.

Heard.

The Tribunal in the present case awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Annual Income of the deceased after deduction of tax	Rs.168952
2	Annual Income after addition of 50% towards loss of future prospects	Rs.254428
3	Annual dependency of the claimants after deduction of 1/3 rd	[254428 - 84809] = Rs.169619
4	Multiplier of 16	[169619 x 16] = Rs.2713904
5	Loss of Consortium	Rs.10000
6	Loss of Estate	Rs.5000
7	Funeral expenses	Rs.5000
	Total Compensation	Rs.2733904

In the case of **Indiro Devi** (*supra*) it has been held as under :

“9. We have given our anxious consideration to this contention. There is no doubt that if the salary certificate is taken into account the salary of the deceased should be taken as Rs.1,06,176/- since the gross salary was Rs.8848 per month. That, however, in our view does not mean that the income of the deceased as stated in the Income Tax return should be totally

ignored. It is not possible to agree with the observation of the Tribunal that it was necessary for the claimants to “explain the said contradiction” between two figures of income. The claimants had led reliable evidence that the deceased had returned an income of Rs.2,42,606/- for the assessment year 2004-05. This piece of evidence has not been discredited. Indeed, it was possible that the deceased had income from other sources also. There is nothing in the law which requires the Tribunal to assess the income of the deceased only on the basis of a salary certificate for arriving at a just and fair compensation to be paid to the claimants for the loss of life.”

The income tax returns (Ex.P11) clearly reflects that the deceased was earning Rs.36000/- per annum as a part time accountant. There is no reason for this Court to disbelieve the said income tax returns. In fact nothing has been pointed out by learned counsel for respondent no.3- Insurance Company to show that the income tax returns cannot be relied upon. The income of the deceased is accordingly assessed as Rs.17165/- per month (Rs.14165 + Rs.3000/-). Since the addition towards loss of future prospects already stands awarded *qua* Rs.14165/- per month, the same is not being interfered as the Insurance Company has not raised a challenge to the same in their appeal. An addition of 40% is made to Rs.3000/- per month, which is taken as additional income of the deceased.

A perusal of the award reveals that the amount awarded by the

Tribunal under the conventional heads as well as under the head of loss of

consortium is on the lower side. Accordingly, as per the law laid down by the Hon’ble Supreme Court in the cases of **Magma General Insurance Company Limited** (*supra*) and **N. Jayasree** (*supra*), the claimant-appellants would be entitled to an amount of Rs.16500/- towards loss of estate and Rs.16500/- towards the funeral expenses. Claimant-appellant no.1, i.e. the wife of the deceased, would be entitled to an amount of Rs.44000/- towards loss of spousal consortium. Claimant-appellant nos.2 and 3, who are the children of the deceased, would be entitled to an amount of Rs.44000/- each towards the loss of parental consortium.

In view of the above, the enhanced amount of compensation to which the appellant-claimants are entitled is re-calculated as under :

Sr. No.	Heads	Compensation Awarded
1	Annual Income of the deceased	[14165 x 12] = Rs.169980
2	Additional annual income of the deceased	[3000 x 12] = Rs.36000
3	Future prospects @ 50% on Rs.169980/-	[169980+84990] = Rs.254970
4	Future prospects @ 40% on Rs.36000/-	[36000+14400] = Rs.50400
5	Total annual income of the deceased	[254970+50400] = Rs.305370
6	Annual dependency of the claimants after deduction of 1/3 rd	[305370 - 101790] = Rs.203580
7	Multiplier of 16	[203580 x 16] = Rs.3257280
8	<u>Loss of Consortium</u> (i) Parental (2 children) (ii) Spousal	Rs.88000 (44000 x 2) Rs.44,000 (Total Rs.132000)
9	Loss of Estate	Rs.16,500
10	Funeral Expenses	Rs.16,500
	Total Compensation	Rs.3422280

	Amount Awarded by the Tribunal	Rs.2733904
	Enhanced amount	Rs.688376

The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 6% from the date of filing of the claim petition till realization of the entire amount. The amount shall be apportioned equally amongst the claimant-appellants as directed by the Tribunal.

In view of the above discussion, the appeal filed by the insurance company is dismissed and the appeal filed by the claimants is allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

31.01.2023
jk

(ALKA SARIN)
JUDGE

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