IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-4568-2006 (O&M) and
X-objections No.8 C-II of 2007
Reserved on : September 02, 2024
Date of Decision: October 15, 2024

Vijay Kumar Bhardwaj and another ......Appellants

Vs.

Shunila and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Uday Agnihotri, Advocate
for the appellants.

Mr. Deepak Sabherwal, Advocate
for claimants/Cross objectors

Mr. Brij Bhushan Sharma, Advocate for
Mr. Deepak Suri, Advocate
for respondent -Insurance Company.

SUDEEPTI SHARMA J. (ORAL)

Vide this common judgment, this Court shall dispose of the appeal filed by the owner-driver of the offending vehicle as well as cross objections filed by the claimants.

2. The instant appeal has been preferred by the owner of the offending vehicle-respondent No.2 for setting aside the award dated 19.01.2006 passed by the learned Motor Accident Claims Tribunal, Jalandhar (for short, 'the Tribunal'), whereby the claimants were awarded compensation of Rs.6,60,000/- alongwith interest @ 9% per annum vide which the claim petition filed by the claimants-cross objectors under Section 166 of the Motor Vehicles Act, 1988 on account of death of J.R.Philip in road accident was allowed, whereas, the cross objections have been

preferred by the claimants-cross objectors for enhancement of award amount granted to them by the learned Tribunal.

FACTS NOT IN DISPUTE

3. The brief facts of the case as mentioned in the claim petition are that on 9.09.2003, J.R. Philip was going towards Focal Point (Extension), Jalandhar from his residence. One Parveen Kumar met him on the way. Both were going towards Focal Point on their respective scooters. At about 11:30 a.m. when they reached near Pathankot Chowk, in the meantime a truck bearing registration No.PB-13-D-6507 came from back side and struck at the back side of the scooter driven by J.R. Philip whereupon J.R. Philip fell down alongwith scooter on the road and his head was run over by the truck. He died on the spot. The accident took place due to rash and negligent driving of the offending truck by respondent No.1. The matter was reported to the police whereupon F.I.R. was registered against respondent No.1.

4. Upon notice of the claim petition, respondents appeared and denied the factum of accident/compensation.

5. From the pleading of the parties, the Tribunal framed the following issues:-

> *1. Whether Shri J.R. Philip died due to rash and negligent driving of truck No. PB-13-D-6507 by respondent No.1 on 9.09.2003? OPP*
>
> *2. To what amount the claimants are entitled by way of compensation and from whom? OPP*
>
> *3. Whether driver of offending vehicle was not holding a valid driving licence at the time of accident? OPR*
>
> *4. Whether the application is bad for non joinder of necessary parties? OPR*
>
> *5. Relief.*

6. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation of Rs.6,60,000/-, alongwith interest @ 9% per annum. Vijay Kumar and Vinay Kumar-owners (respondent No.2), and the National Insurance company Ltd. (respondent No.3) were jointly and severally held liable to pay the said amount. Hence, the owner-respondent No.2 filed the present appeal.

7. However, the cross objections have also been filed by the claimants-cross objectors for enhancement of the award amount.

SUBMISSIONS OF THE COUNSELS FOR THE PARTIES

8. The learned counsel for the appellants contends that the appellants had employed Baljinder Singh-respondent No.1 on his truck bearing registration No.PB-13D/6507 as driver after having verified his driving licence and his experience in driving. Since, he verified the licence of respondent No.1-Baljinder Singh therefore, the Tribunal has wrongly held that Insurance company to pay the compensation in the first instance and recover the same from respondent No.2 for committing the breach of terms and conditions of the Insurance Policy.

i) Further, learned counsel for the appellants has placed reliance on the judgment passed by Hon'ble the Apex Court in ***United India Insurance company Limited Vs. Lehru***, wherein it has been held as under:-

> *"The insurance company cannot avoid its liability towards third party on ground that the licence of the driver of the vehicle was a fake licence. In order to avoid liability under Section 149(2)(1)(ii) it must be shown that there is a 'breach' on part of the insured. To hold otherwise would lead to absurd results." It has also been that :-*
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> > *"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 driver the vehicle, he will hire the driver. It is rather strange that Insurance Companies expect owners to make enquiries with RTO's 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)."

ii) He further has placed reliance upon the judgment passed by Hon'ble the Apex Court in ***National Insurance Company Limited Vs. Swaran Singh and others,2004(3) SCC 297,*** wherein it has been held as under:-

"(iii) *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."*

9. The learned counsel for the cross objectors contends that the learned Tribunal has wrongly assessed the income of the deceased as Rs.8000/- per month, however, as per the salary certificate, the salary of the deceased was Rs.10,000/- per month .

i) He further contends that the deceased was less than 55 years of age and multiplier of 11 instead of 10 should have been applied and that no amount was granted for funeral expenses, loss of consortium, loss of estate and future prospects. Therefore, he prays that the cross objections be allowed and compensation should be enhanced as per latest law.

10. Per contra, learned counsel for the respondent-Insurance Company, however, vehemently argues that the award has rightly been passed and the amount of compensation as assessed by the learned Tribunal has rightly been granted.

11. I have heard learned counsel for the parties and perused the whole record of this case.

12. The relevant paragraphs of the award dated 19.01.2006 is as under:-

> *"22. Respondent insurance company examined Clerk a from DTO Office, Hoshiarpur in order to prove that Baljinder Singh was not holding an effective and valid driving licence on the date of this accident. As per the record brought by this witness the Driving Licence of Baljinder Singh bearing No.6759/REN was renewed 11.9.2003. This witness has also proved on the on record that the old licence No.3845/R/99/00 stood in the name of Kundan lal son of Milkhi Ram.*
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> *23. The learned counsel for respondent No.2 Shri S.K.Verma Advocate has submitted that Darshan Lal a witness from the DTO office Hoshiarpur, could not produce that licence bearing No.3845/R/99/00, therefore, the benefit of the same should be given to respondent No.1 and 2. He has next submitted that this witness has admitted in cross-examination that he cannot say if the licence was originally issued by*

the Transport Authority of District Hoshiarpur or some authority. The learned counsel has contended strenuously that keeping in view cross-examination of this witness coupled with the factum that he could not produce the licence No.3845/R/99/00 despite his cross-examination having been deferred on the date for the said purpose, it cannot be held that Baljinder Singh was not holding a valid driving on 9.9.2003. The next submission made by the learned counsel that it is quite possible that Baljinder Singh might have obtained the earlier licence from some other authority than DTO Hoshiarpur and that is why licence bearing No.3845/R/99/00 does not stand in the name of Baljinder Singh as per the record produced by the witness. The last submission made by the learned counsel is that since Baljinder Singh was given employment by respondent No.2 after seeing his licence and his experience in driving, respondent No.2 cannot be held guilty of committing breach of the terms and conditions of the insurance policy in order to allow the insurance company to wriggle out of its liability or to recover the amount of compensation from respondent No.2 after payment thereof to the applicants.

24. On the other hand, the learned counsel for respondent No.3 has submitted that keeping in view the statement of Darshan Lal, RW2, Baljinder Singh was not holding a valid driving licence on the date of accident and, therefore, the insurance company may be liable to pay compensation to the applicants but the Insurance company can recover the said amount from the insured in view of the judgment of the Supreme Court of India in New India Assurance Co. Ltd. Versus Kamla and others. 2001 ACJ 843.

25. Balinder Singh has not stepped into the witness box in order to depose with regard validity of his driving licence. There is no evidence on the record as to from where Baljinder Singh got any driving licence prior to the renewed licence issued by DTO Hoshiarpur on 11.9.2003. Even respondent Vijay Kumar Bhardwaj has not appeared in the dock in order to say as to what facts were verified by him before giving employment to respondent Baljinder Singh tto drive the truck owned by him. Therefore. no such contention of the *counsel for respondents no.1 and 2 can be accepted that either Baljinder Singh was holding a valid driving licence or respondent No.2 cannot be fastened with the liability because he employed Baljinder Singh after due verification. The respondent insurance company has been successful in proving on the record that Baljinder Singh was not holding a valid driving licence on the date of accident i.e. on 9.9.2003. Though the insurance company is liable to pay the amount of compensation to the third party but at the same time, the insurance company can recover the same from respondent No2. 'For committing the each of the terms and conditions of the insurance policy. With these observations, issue No.3 is decided in favour of respondent No.3 and against respondent No.2. "*

13. A perusal of the award shows that respondent- Vijay Kumar Bhardwaj (appellant herein, who is owner of the offending vehicle) has failed to appear before the Ld. Tribunal to testify regrading the purported verification of facts prior to employing respondent-Baljinder Singh (driver of the offending vehicle) as a driver of the offending vehicle. Consequently, the arguments put-forth by respondent/appellant-Vijay Kumar Bhardwaj that Baljinder Singh-driver was employed after due verification, cannot be accepted. Further, it is a settled proposition of law as held by the Hon'ble the Supreme Court in ***Parminder Singh Vs. New India Assurance Co. Ltd. & Ors., 2019 ACJ 2401***, wherein it was held that if the driver of the offending vehicle does not possess a valid driving license, the principle of `pay and recover' can be ordered to direct the insurance company to the pay the victim, and then recover the amount from the owner of the offending vehicle, the relevant paragraph of the same is reproduced as under:-

"*7. On the issue of liability to pay the compensation awarded, we affirm the view taken by the High Court that the Respondent - Insurance Company is absolved of the liability to bear the* *compensation, as evidence has been produced from the office of the Regional Transport Office to prove that the drivers of the two offending trucks were driving on the basis of invalid driving licenses. It is also relevant to note that the owners and drivers of the offending trucks have not appeared at any stage of the proceedings, including this Court.*

7.1. This Court in Shamanna & Ors. v. The Divisional Manager, The Oriental Insurance Co. Ltd. & Ors., (2018) 9 SCC 650 held that if the driver of the offending vehicle does not possess a valid driving license, the principle of `pay and recover' can be ordered to direct the insurance company to the pay the victim, and then recover the amount from the owner of the offending vehicle."

14. Further, the Hon'ble Apex Court in ***Oriental Insurance Company Ltd. Vs. Prithvi Raj, 2008 ACJ 733*** wherein it has been held that fake driving licence renewed by Licensing Authority will remain fake. Renewal cannot take away effect of fake licence and transform a fake licence as genuine. The relevant paragraph of the same is as under:-

*"8. This Court had occasion to deal with a similar issue in **National Insurance Co. Ltd. v. Laxmi Narain Dhut, 2007(2) RCR (Civil) 345 : 2007(1) RAJ 956 (SC) : (2007(3) SCR 579).** It was inter alia held as follows :*

"8. Section 149 of the Act relates to duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. The language of the provision is clear that it only relates to third party risk. The corresponding provision in the Old Act is Section 96. Section 166 of the Act relates to

application for compensation. The same corresponds to Section 110-A of the Old Act. Section 168 of the Act relates to award of the Claims Tribunal which corresponds to Section 110-B of the Old Act. Section 170 deals with impleadment of the insurer in certain cases. Section 149 of the Act needs to be noted in full. The same reads as follows :

"149. Duty of Insurers to satisfy judgments and awards against persons insured in respect of third party risks. - (1) If, after a certificate of insurance has been issued under sub-section (3) of Section 147, in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of Sub-section (1) of Section 147 (being a liability covered by the terms of the policy) or under the provisions of Section 163-A) is obtained against any person insured by the policy then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoid or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments. (2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party

thereto and to defend the action on any of the following grounds, namely :-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely :-

(i) a condition excluding the use of the vehicle -

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of dis-qualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where any such judgment as is referred to in sub-section (1) is obtained from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of Section 13 of the Civil Procedure Code, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable

to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment were given by a Court in India:

Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

(4) Where a certificate of insurance has been issued under Sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to he covered by a policy under clause (b) of sub-section (1) of section 147, be of no effect :

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall he entitled to recover the excess from that person.

(6) In this section the expression "material fact" and "material particular" means, respectively a fact or particular of such a nature as to influence the judgment of a prudent insurer in

determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(7) No insurer to whom the notice referred to in sub-section (2) or Sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in Sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be.

Explanation : For the purposes of this section, "Claims Tribunal" means a Claims Tribunal constituted under Section 165 and "award" means an award made by that Tribunal under Section 168."

"9. In Swaran Singh's case (supra) on which learned counsel for the parties have placed reliance undisputedly related to a case under Section 149 of the Act. This Court elaborately dealt with the scope and ambit of Sections 147 and 149 of the Act and after tracing the history of compulsory insurance and the rights of the third parties, held that the concerned cases were mainly concerned with third party rights under the policy. It was held in that context that any condition in the policy whereby the right of the third party is taken away would be void, as noted in para 23 of the judgment.

10. In paras 69 and 70 the principles were culled out in the following terms :

"The Insurance Company is required to prove the breach of the condition of the contract of insurance by cogent evidence. In the

event the Insurance Company fails to prove that there has been breach of conditions of the policy on the part of the insured, the Insurance Company cannot be absolved of its liability. This Court did not lay down a degree of proof, but held that the parties alleging the breach must be held to have succeeded in establishing the breach of the condition of the contract of insurance, on the part of the Insurance Company by discharging its burden of proof. The Tribunal, must arrive at a finding on the basis of the materials available on the records".

11. In para 110 also the summary of the findings were recorded which reads as follows :

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the said Act.

(iii) 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.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefore would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in

respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured.

(x) The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in sub-section (4) with the proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims".

12. At this juncture, it would be necessary to test the logic behind Section 149 of the Act. The conditions under the said provision relate only to third party risks and claims.

17. Section 149 is part of Chapter XI which is titled "Insurance of Motor Vehicles against Third Parties". A significant factor which needs to be noticed is that there is no contractual relation between the insurance company and the third party. The liabilities and the obligations relatable to third parties are created only by fiction of Sections 147 and 149 of the Act.

18. It is also to be noted that the terms of the policy have to be construed as it is and there is no scope for adding or subtracting something. However liberally the policy may be construed, such liberalism cannot be extended to permit substitution of words which are not intended. (See ***United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal, 2005(1) RCR (Civil) 217 : (2004(8) SCC 644*** *and* ***Polymat India (P) Ltd. v. National Insurance Company Ltd. and Ors., (2005(9) SCC 174).***

19. The primary stand of the insurance company is that the person driving the vehicle did not have a valid driving license. In Swaran Singh's case (supra) the following situations were noted :

(i) the driver had a license but it was fake;

(ii) the driver had no license at all;

(iii) the driver originally had a valid license but it had expired as on the date of the accident and had not been renewed;

(iv) the license was for a class of vehicles other than that which was the insured vehicle;

(v) the license was a learner's license.

Category (i) may cover two types of situations. First, the license itself was fake and the second is where originally that license is fake but there has been a renewal subsequently in accordance with law.

20. Chapter II contains Sections 3, 4 and 5 of the Act relating to licensing of drivers driving the motor vehicles.

24. In the background of the statutory provisions, one thing is crystal clear i.e. the statute is beneficial one qua the third party. But that benefit cannot be extended to the owner of the offending vehicle. The logic of fake license has to be considered differently in respect of third party and in respect of own damage claims.

*25. It would be appropriate to take note of what was stated in **Complete Insulations (P) Ltd. v. New India Assurance Co. Ltd., (1996(1) SCC 221).** In paras 9 and 10 it was observed as follows:*

"9. Section 157 appears in Chapter XI entitled "Insurance of Motor vehicles against Third Party Risks" and comprises Sections 145 to 164. Section 145 defines certain expressions used in the various provisions of that Chapter. The expression "Certificate of Insurance" means a certificate issued by the authorised insurer under Section 147(3). "Policy of Insurance" includes a certificate of insurance. Section 146(1) posits that "no person shall use except as a passenger, or cause or allow

any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this chapter". Of course this provision does not apply to vehicles owned by the Central or State Government and used for Government purposes not connected with any commercial enterprise. This provision corresponds to Section 94 of the old Act. Section 147 provides that the policy of insurance to be issued by the authorised insurer must insure the specified person or classes of persons against any liability incurred in respect of death of or bodily injury to any person or damage to any property of a third party as well as against the death of or bodily injury caused to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. This provision is akin to Section 95 of the old Act. It will be seen that the liability extends to damage to any property of a third party and not damage to the property of the owner of the vehicle, i.e., the insured. Sub-section (2) stipulates the extent of liability and in the case of property of a third party the limit of liability is Rupees six thousand only. The proviso to that sub-section continues the liability fixed under the policy for four months or till the date of its actual expiry, whichever is earlier, Sub-section (3) next provides that the policy of insurance shall be of no effect unless and until the insurer has issued a certificate of insurance in the prescribed form. The next important provision which we may notice is Section 156 which sets out the effect of the certificate of insurance. It says that when the insurer issues the certificate of insurance, then even if the policy of insurance has not as yet been issued the insurer shall, as between himself and any other person except the insured be deemed to have issued to the insured a policy of insurance conforming in all respects with the description and particulars stated in the certificate. It is obvious on a plain reading of this provision that *the legislature was anxious to protect third-party interest. Then comes Section 157 which we extracted earlier. This provision lays down that when the owner vehicle in relation whereto a certificate of insurance is issued transfers to another person the ownership of the motor vehicle, the certificate of insurance together with the policy described therein shall be deemed to have been transferred in favour of the new owner of the vehicle with effect from the date of transfer. Sub-section (2) requires the transferee to apply within fourteen days from the date of transfer to the insurer for making necessary changes in the certificate of insurance and the policy described therein in his favour. These are the relevant provisions of Chapter XI which have a bearing on the question of insurer's liability in the present case.*

10. There can be no doubt that the said chapter provides for compulsory insurance of vehicles to cover third-party risks. Section 146 forbids the use of a vehicle in a public place unless there is in force in relation to the use of that vehicle a policy of insurance complying with the requirements of that chapter. Any breach of this provision may attract penal action. In the case of property, the coverage extends to property of a third party i.e. a person other than the insured. This is clear from Section 147(1)(b)(i) which clearly refers to "damage to any property of a third party" and not damage to the property of the 'insured' himself. And the limit of liability fixed for damage to property of a third party is Rupees six thousand only as pointed out earlier. That is why even the Claims Tribunal constituted under Section 165 is invested with jurisdiction to adjudicate upon claims for compensation in respect of accidents involving death of or bodily injury to persons arising out of the use of motor vehicles, or damage to any property of a third party so arising, or both. Here also it is restricted to damage to third-party property and not the property of the insured."

26. The restrictions relating to appeal in terms of Section 173(2) does not apply to own damage cases.

38. The inevitable conclusion therefore is that the decision in Swaran Singh's case (supra) has no application to own damage cases. The effect of fake license has to be considered in the light of what has been stated by this Court in On ***New India Assurance Co., Shimla v. Kamla and Ors., 2001(3) RCR (Civil) 716 : (2001(4) SCC 342).****ce the license is a fake one the renewal cannot take away the effect of fake license. It was observed in Kamla's case (supra) as follows :*

"12. As a point of law we have no manner of doubt that a fake licence cannot get its forgery outfit stripped off merely on account of some officer renewing the same with or without knowing it to be forged. Section 15 of the Act only empowers any Licensing Authority to "renew a driving licence issued under the provisions of this Act with effect from the date of its expiry". No Licensing Authority has the power to renew a fake licence and, therefore, a renewal if at all made cannot transform a fake licence as genuine. Any counterfeit document showing that it contains a purported order of a statutory authority would ever remain counterfeit albeit the fact that other persons including some statutory authorities would have acted on the document unwittingly on the assumption that it is genuine".

39. As noted above, the conceptual difference between third party right and own damage cases has to be kept in view. Initially, the burden is on the insurer to prove that the license was a fake one. Once it is established the natural consequences have to flow."

9. The above aspects were highlighted recently in Laxmi Narain Dhut case (supra).

10. In the instant case, the State Commission has categorically found that the evidence on record clearly *established that the licensing authority had not issued any license, as was claimed by the Driver and the respondent. The evidence of Shri A.V.V. Rajan, Junior Assistant of the Office of the Jt. Commissioner & Secretary, RTA, Hyderabad who produced the official records clearly established that no driving license was issued to Shri Ravinder Kumar or Ravinder Singh in order to enable and legally permit him to drive a motor vehicle. There was no cross examination of the said witness. The National Commission also found that there was no defect in the finding recorded by the State Commission in this regard.*

15. On the touchstone of hearinabove discussed findings and judicial precedents, the findings given by Ld. Tribunal, Jalandhar qua granting recovery rights to Insurance Company-respondent No.3 are hereby affirmed.

16. Now coming to the cross-objections, a perusal of the award reveals that the Ld. Tribunal has rightly assessed the income of the deceased to the tune of Rs.8,000/- per month. However, the Tribunal has erred in applying multiplier of 10 instead of 11.

i) Further, no amount was granted for future prospects, loss of estate, loss of consortium and for funeral expenses. Therefore, it requires indulgence of this Court.

SETTLED LAW ON COMPENSATION

17. Hon'ble Supreme Court in the case of ***Sarla Verma Vs. Delhi Transport Corporation and Another*** **[(2009) 6 Supreme Court Cases 121]**, laid down the law on assessment of compensation and the relevant paras of the same are as under:-

"***30***. *Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in*

Trilok Chandra, the general practice is to apply standardised deductions. Having a considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

***31**. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.*

***32**. Thus even if the deceased is survived by parents and siblings, only d the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.*

*   *   *   *   *   *

__42.__ We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas[3], Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.

18. Hon'ble Supreme Court in the case of ***National Insurance Company Ltd. Vs. Pranay Sethi & Ors.*** **[(2017) 16 SCC 680]** has clarified the law under Sections 166, 163-A and 168 of the Motor Vehicles Act, 1988, on the following aspects:-

(A) Deduction of personal and living expenses to determine multiplicand;

(B) Selection of multiplier depending on age of deceased;

(C) Age of deceased on basis for applying multiplier;

(D) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, with escalation;

(E) Future prospects for all categories of persons and for different ages: with permanent job; self-employed or fixed salary.

The relevant portion of the judgment is reproduced as under:-

"***52.*** *As far as the* ***conventional heads*** *are concerned, we find it difficult to agree with the view expressed in Rajesh[2]. It has granted Rs.25,000 towards funeral expenses, Rs 1,00,000 towards loss of consortium and Rs 1,00,000 towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said* *heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.*

* * * * *

59.3*. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*

59.4*. In case the deceased was self-employed (or) on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of*

40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

59.5. *For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paras 30 to 32 of Sarla Verma[4] which we have reproduced hereinbefore.*

59.6. *The selection of multiplier shall be as indicated in the Table in Sarla Verma[1] read with para 42 of that judgment.*

59.7. *The age of the deceased should be the basis for applying the multiplier.*

59.8. *Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs. 15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."*

19. Hon'ble Supreme Court in the case of **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & Others [2018(18) SCC 130]** after considering **Sarla Verma (supra)** and **Pranay Sethi (Supra)** has settled the law regarding consortium. Relevant paras of the same are reproduced as under:-

*"**21**. A Constitution Bench of this Court in Pranay Sethi[2] dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his*

family. With respect to a spouse, it would include sexual relations with the deceased spouse.

*21.1. **Spousal consortium** is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation".*

*21.2. **Parental consortium** is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".*

*21.3. **Filial consortium** is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.*

***22**. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.*

***23**. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who* *lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium.*

***24**. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "loss of consortium" as laid down in Pranay Sethi[2]. In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs 40,000 each for loss of filial consortium.*

20. In view of the above, the present appeal is ***dismissed*** being devoid of any merits. However, the cross-objections bearing No. X-Obj-8C-II-2007 filed by the claimants, are ***allowed***. Accordingly, as per the settled principles of law as laid down by Hon'ble Supreme Court as mentioned above, the appellants – cross objectors are held entitled to the enhanced amount of compensation as calculated below:

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.8000/-
2	Future prospects @ 10%	Rs.800/- (10% of 8000)
3	Deduction towards personal expenditure ¼	Rs.2200/- (¼ of 8800) (8000+800)
4.	Total Income	Rs.6600/-(8800-2200)
4	Multiplier	11
5	Annual Dependency	Rs.8,71,200/- (6600 X 12 X 11)
6	Loss of Estate	Rs.18,000/-
7	Funeral Expenses	Rs.18,000/-
8	Loss of Consortium	Rs.1,92,000/-

	Parental : 48,000/- x 2 Spousal : 48,000/- x 1 Filial : Rs. 48,000/- x 1	
	Total Compensation	**Rs.10,99,000/-**
	Amount Awarded by the Tribunal	**Rs.6,60,000/-**
	Enhanced amount	**Rs.4,39,200/-**

21. So far as the interest part is concerned, as held by Hon'ble Supreme Court in ***Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma*** **2019 ACJ 3176** and ***R.Valli and Others VS. Tamil Nandu State Transport Corporation*** **(2022) 5 Supreme Court Cases 107,** the amount so calculated shall carry an interest @ 9% per annum from the date of filing of the claim petition, till the date of realization.

22. The Insurance Company is directed to deposit the awarded amount alongwith interest with the Tribunal within a period of two months from the date of receipt of copy of this judgment. The Tribunal is directed to disburse the same to the cross objectors/claimants in their bank account as per ratio settled in the award dated 19.1.2006. The Cross Objectors/claimants are directed to furnish their bank accounts detail to the Tribunal.

23. Respondent No.3-Insurance Company is entitled to recover the enhanced amount of compensation from respondent No. 2/appellants i.e. owner of the offending vehicle.

24. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

October 15, 2024
sonia arora Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No