113

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : 01.08.2025

FAO-3389-2019 (O&M)

Bharti AXA General Insurance Company Ltd. ....Appellant

Versus

Bijender and others ...Respondents

FAO-3408-2019 (O&M) with XOBJC No.245 of 2019 (O&M)

Bharti AXA General Insurance Company Ltd. ....Appellant

Versus

Angoori and others ...Respondents

FAO-537-2020 (O&M)

Bijender and others ....Appellants

Versus

Anil and others ....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Ankur Gupta, Advocate
for the appellant in FAO Nos.3389 and 3408 of 2019 and
for respondent No.3 in FAO No.537 of 2020.

Mr. Ajay Jain, Advocate for
respondents No.1 to 6 in FAO No.3389 of 2019 and
for cross-objectors/respondents No.1 to 3 in FAO-3408-2019 and
for the appellant in FAO No.537 of 2020.

Mr. Sunil Kumar Bhardwaj, Advocate
for respondents No.7 & 8 in FAO No.3389 of 2019 and
for respondents No.4 & 5 in FAO No.3408 of 2019.

PANKAJ JAIN, J. (ORAL)

By way of instant judgment, I intend to dispose off three cross-appeals and a cross-objection directed against the same award dated 10.04.2019 passed by MACT, Jind.

2. The *lis* has arisen out of a motor-vehicular accident, dated 19.04.2016 in which one Ramphal, aged 52 years along with his mother Shanti Devi, aged 78 years, lost their lives.

3. Two separate claim petitions were filed by the claimants seeking compensation on account of death of Ramphal and Shanti Devi. The Tribunal allowed both the petitions.

4. In claim petition w.r.t. to death of Ramphal, the claimants were held entitled to compensation of Rs.17,75,760/-. In the other claim petition pertaining to death of Shanti Devi, the claimants were held entitled to compensation of Rs.1,35,000/-.

5. FAO No.3389 of 2019 and FAO No.3408 of 2019 are at the behest of Insurance Company claiming recovery rights impugning the findings recorded by the Tribunal on Issue No.5. In FAO No.3389 of 2019 the Insurance Company also has sought deduction of 50% of the family pension, which the family continues to get post-death of Ramphal. In the said appeal, the claimants have filed cross-objections seeking enhancement of compensation.

6. The third appeal i.e. FAO No.537 of 2020 is at the behest of the LRs of Shanti Devi, seeking enhancement of compensation.

7. Counsel for the Insurance Company has drawn attention of this Court to the findings on Issue No.5 and submits that the same are result of misreading of ratio of law laid down by Supreme Court in the **National Insurance Co. Ltd vs. Swaran Singh and others, 2004(2) RCR (Civil) 114**. He submits that in order to enure benefit of the ratio of law laid down in ***Swaran Singh's*** case (supra) the least that was expected of the owner was to appear in witness box and state on oath that at the time of employing respondent No.1-driver, he had seen his driving licence and satisfied himself w.r.t. genuineness thereof. He submits that in the absence of owner stepping into the witness-box, the finding recorded by the Tribunal, cannot be sustained.

8. Per contra, counsel for the driver and owner submits that in fact no finding has been recorded by the Tribunal w.r.t. the licence being invalid/ fake. He further submits that driver appeared in the witness-box and stated that his licence was genuine and valid.

9. I have heard counsel for the parties and have carefully gone through records of the case.

10. In order to appreciate the rival contentions, it will be apt to peruse the ratio of law laid down by Supreme Court in ***Swaran Singh's*** case (supra), which reads as under:

> "xxxx xxxx xxxxx
> (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 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 defence available to the insured 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.

11. In the present case, it has come on record that the driving licence possessed by the driver of the offending vehicle was issued by Licencing Authority, Nagaland. Local Commissioner was appointed. RW-2 (Local Commissioner) submitted his report as Exhibit R-2. As per the same, the licence tendered by respondent No.1 i.e. driver was found to be fake. Tribunal while recording the aforesaid circumstances, held that it was for the Insurance Company to prove that insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling condition of insurance policy regarding use of vehicle by duly licensed driver.

12. In the considered opinion of this Court, the Tribunal misdirected itself in ignoring that the initial onus to prove due diligence was upon the owner. He was required to discharge the onus by stepping into the witness-box to prove that he exercised reasonable care. It was only thereafter that the burden to rebut the same would have shifted upon the insurance company. It being matter of record that the owner never entered into the witness-box, the findings on Issue No.5 cannot be sustained and need to be modified to the extent that the liability to pay the compensation is of the driver and owner of the vehicle i.e. respondents No.7 and 8.

13. The Insurance Company is first required to pay the compensation to the claimants and shall have a right to recover the same from respondents No.7 and 8 i.e. driver and owner, who are held liable jointly and severally.

14. Coming on to the cross-objections filed by the claimants, this Court finds that keeping in view the ratio of law laid down by Supreme Court in the case **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, (2009)6 SCC 121, National Insurance Company Limited vs. Pranay Sethi and others, (2017) 16 SCC 680** and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others – Civil Appeal No.9581 of 2018,** ***decided on*** **18.09.2018**, the award needs to be modified and the compensation needs to

be re-worked in the case of Ramphal. In addition to the amount already given, the claimants are also held entitled for Rs.15,000/- for loss of estate.

15. The issue regarding setting off the amount being received by the claimants as family pension after the death of Ramphal, the same shall be adjudicated by the Executing Court in terms of ratio of law laid down by Supreme Court in the case of **'National Insurance Company Ltd. vs. Birender and others 2020(1) RCR Civil 694**, wherein it was observed as under:

> "18. As a matter of fact, in the present case, the High Court committed manifest error in assuming that the respondent Nos. 1 and 2 would be eligible to receive financial assistance under the 2006 Rules. The eligibility to receive such financial assistance has been spelt out in Rule 3 of the 2006 Rules read with the provision of Pension/Family Pension Scheme, 1964. It appears that major sons and married daughters are not included in the definition. However, we need not dilate on that aspect in the present proceedings any further. It has come in the evidence of Gobind Singh, Clerk in SDM Office (PW-1) that the legal representatives of the deceased have not submitted any request for getting financial assistance till he had deposed. Indeed, respondent No. 1, who had entered the witness box, did depose that they had applied for getting salary of their deceased mother. The fact remains that there is no clear evidence on record that respondent Nos. 1 and 2 are held to be eligible to get financial assistance or in fact, they are getting such financial assistance under the 2006 Rules. The High Court, therefore, instead of providing for deduction of the amount receivable by the legal representatives of the deceased on this count (under the 2006 Rules), from the compensation amount, should have independently determined the compensation amount and ordered payment thereof subject to legal representatives of the

deceased filing affidavit/declaration before the executing Court that they have not received nor would they claim any amount towards financial assistance under the 2006 Rules, so as to become entitled to withdraw the entire compensation amount.

xxxx xxxx xxxx

22. xxxxxxx The respondent Nos. 1 and 2, therefore, can be permitted to withdraw the compensation amount only upon filing of an affidavit-cum-declaration before the executing Court that they have not received nor would claim any amount towards financial assistance under the 2006 Rules and if already received or to be received in future on that account, the amount so received will be disclosed to the executing Court, which will have to be deducted from the compensation amount determined in terms of this order. The compensation amount, therefore, be paid to the respondent Nos. 1 and 2 subject to the above and upon giving an undertaking before the executing Court to indemnify the insurance company (appellant) to that extent."

FAO-537-2020 (O&M)

16. Shanti Devi died at the age of 78 years. Tribunal held the claimants entitled for an amount of Rs.1,35,000/- granting the three children an amount of Rs.1,20,000/- for loss of parental consortium and Rs.15,000/- for funeral expenses.

17. In the considered opinion of this Court, the Tribunal erred in denying the appropriate compensation to the claimants. Shanti Devi was a guide and mentor to the family in this old age. Her notional **income is assessed to be Rs.10,000/- per month** in light of her contribution to the family. Keeping in view her age, **multiplier of 5** will be applicable. Since

this Court has assessed the income of Shanti Devi notionally, no future prospect or deduction is required to be applied. The Tribunal has rightly awarded a sum of Rs.40,000/- to the three children. Rs.15,000/- on account of funeral expenses has been rightly awarded. In addition thereto, **Rs.15,000/-** on account of **loss of estate** is also awarded. The enhanced compensation shall carry interest @ 7% per annum from the date of filing of the claim petition till the date of actual realization.

18. With the aforesaid modification in the impugned award, the instant three appeals as well as cross-objections, are disposed off.

19. Pending application(s), if any, shall also stand disposed off.

20. A copy of this order be kept on the files of other connected cases.

August 01, 2025 **(Pankaj Jain)**
Dpr **Judge**

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