IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(105)

FAO-853-1998(O&M)
& XOBJC-52-CII-2015
Date of Decision-24.03.2026

National Insurance Company Limited …Appellants

Versus

Labh Kaur And Others …Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present: Mr. Sandeep Suri, Advocate
for the appellant/ Insurance Company
(Through VC) .

Mr. Raghav Bali, Advocate
for Claimant/Cross-Objector

VIRINDER AGGARWAL,J.

1. This common judgment shall dispose of FAO No. 853 of 1998 and Cross-Objection No. 52-CII of 2015, as both arise out of the same award dated 06.11.1997 passed by the learned Motor Accident Claims Tribunal, Ambala. The appeal has been preferred by the Insurance Company primarily on the ground that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of the accident and, therefore, the insurer ought to have been granted recovery rights against the owner and driver of the vehicle. On the other hand, the cross-objection has been filed by the claimants, seeking enhancement of the compensation awarded by the learned Tribunal. Since the evidence, facts and the impugned award are common, both the appeal as well as the cross-objection are being adjudicated together by this common judgment.

BACKGROUND FACTS

2. The case of the claimants before the learned Tribunal was that on 20.04.1996 at about 1.30 p.m., the deceased Jasbir Singh, aged about 27 years was going on his scooter bearing registration No. CHM-8461 from village Sadhaura to his village Sardhaurai on the Sadhaura-Dosarka Road. He was driving on the correct left side of the road at a slow speed. When he reached near village Sardahari, the offending Canter (TATA-608) bearing registration No. HR-02A/0399, driven by respondent No.1 Harbans Singh in a rash and negligent manner at high speed and coming from the opposite side (Dosarka-Barara side) on the wrong side of the road, struck the scooter of the deceased, resulting in serious injuries to which the deceased succumbed at the spot. Consequently, the claimants filed the claim petition under Sections 163-A and 166 of the Motor Vehicles Act, claiming Rs.10 lacs as compensation

3. The driver (respondent No.1) and owner (respondent No.2) appeared and contested the petition. They admitted the factum of the accident but denied rash and negligent driving, alleging that the deceased himself was responsible for the accident due to his rash and negligent driving of the scooter. The insurer (appellant-National Insurance Company Limited) also contested the claim and, in addition to the defence of negligence, pleaded breach of policy conditions on the ground that the driver did not possess a valid and effective driving licence on the date of the accident to drive a heavy goods vehicle like a Canter.

4. The learned Tribunal, upon appreciating the evidence on record, concluded that the accident was the result of the rash and negligent driving of respondent No. 1 (Harbans Singh). This conclusion was founded primarily on the ocular testimony of Jasminder Singh (PW-7), whose account of the manner of

occurrence was consistent and stood duly corroborated by FIR No.69 dated 20.04.1996 (Ex.P2), the accompanying police papers and the criminal case record. The respondents failed to adduce any evidence in rebuttal; the driver did not even step into the witness box. Further, the learned Tribunal assessed the income of the deceased on the basis of salary certificate Mark-A at Rs.3,600/- per month, deducted one-third towards personal expenses and applied multiplier of 16, awarding loss of dependency of Rs.4,60,800/-. Moreover, the learned Tribunal awarded an amount of Rs.2,000/- towards funeral expenses, Rs.5,000/- towards consortium to the widow and Rs.2,500/- towards loss of estate, thereby determining total compensation at Rs.4,70,300/- with interest @ 12% per annum from the date of petition till realization. On the issue of driving licence and liability, the learned Tribunal held that the Insurance Company had failed to prove that the driver was not holding a valid and effective driving licence on the date of the accident. It was observed that the licence had earlier been issued and subsequently renewed by the competent authority and there was no evidence that the driver had been disqualified from holding the same. Consequently, the learned Tribunal concluded that no breach of the policy conditions was established and the Insurance Company was held liable to indemnify the insured and satisfy the award.

<u>CONTENTIONS</u>

5. Learned counsel for the appellant-Insurance Company contends that the learned Tribunal erred in fastening liability upon the insurer. It is argued that respondent No.1 (driver) was not holding a valid and effective driving licence to drive the offending vehicle on the date of the accident and, therefore, there was a clear breach of the terms and conditions of the insurance policy. It is

further submitted that the learned Tribunal wrongly relied upon the subsequent renewal of the licence and ignored that the driver was not authorised to drive the class of vehicle involved in the accident. On this basis, it is prayed that the liability fastened upon the Insurance Company be set aside and the same be shifted upon the driver and owner of the vehicle.

6. Learned counsel for the cross-objectors (claimants) seek enhancement of the compensation on the grounds that the learned Tribunal adopted a conservative approach in assessing the income of the deceased, failed to account for future prospects and inflation, applied an inadequate multiplier considering the young ages of the deceased, and did not award sufficient amounts towards loss of consortium, funeral expenses, and mental agony. They pray for the compensation to be enhanced with higher interest.

OBSERVATIONS AND FINDINGS

7. I have heard learned counsel for the parties and have perused the entire record, including the impugned award. At the outset, it deserves to be noticed that the findings recorded by the learned Tribunal on the issue of negligence are correctly based on the evidence available on record and do not call for any interference by this Court. The controversy raised in the cross-objection pertains to the quantum of compensation, whereas in the appeal, the principal question that arises for determination relates to the extent of liability of the appellant-Insurance Company.

Cross-Objections: Enhancement of Compensation

8. Turning first to the cross-objection filed by the claimants seeking enhancement of compensation, as directed to be dealt with prior to the main

appeal. The learned Tribunal's assessment of compensation in the case of deceased Jasbir Singh, appears somewhat conservative in light of the principles laid down by the Hon'ble Supreme Court for determining just compensation under Section 166 of the Motor Vehicles Act, 1988.

9. Thus, the compensation requires reassessment strictly in terms of the principles laid down by Hon’ble the Supreme Court in ***National Insurance Co. Ltd. v. Pranay Sethi*, 2017 (16) SCC 680, *Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram, 2018 (18) SCC 130*** **and** ***Sarla Verma v. DTC, 2009 (6) SCC 121***, wherein the framework for computation of “loss of dependency” by addition towards future prospects as per the nature of employment, deducting personal expenses of deceased, and applying appropriate multiplier on the basis of age of the deceased, and standardized amounts for conventional heads such as loss of estate, funeral expenses and loss of consortium, has been settled. The present matter, therefore, call for recalculation of the amount under each of these heads by applying the correct deduction on basis of dependency and correct multiplier relatable to the age of the deceased and by granting the admissible sum towards consortium and other conventional heads as mandated in the aforesaid decisions. The reassessment is structured as under:

REASSESSED COMPUTATION

Particulars	Award by Tribunal (₹)	Reassessed Award (₹)
Monthly Income (Certificate Mark-A)	3,600/-	3,600/-
Income With Future Prospects (50%)	x	**5,400/- (3600 + 1800)**
After Deduction (5 Dependents)	1200/- (1/3rd for personal expenses)	4,050/- (1/4th for personal expenses)
Annual Contribution To Family	28,800/-	**48,600/-**

	(2400 x 12)	(4,050 x12)
Multiplier **(age 27 yrs)**	16	**17**
Loss Of Dependency	4,60,800/-	**8,26,200/-** **(48,600 × 17)**
Spousal Consortium	5000/-	40,000/-
Parental Consortium (2 Children)	x	80,000/-
Filial Consortium	x	80,000/-
Funeral Expenses	2000/-	15,000/-
Loss Of Estate	2500/-	15,000/-
Total	4,70,300/-	**₹10,56,200/-**

10. Resultantly, the compensation awarded by the learned Tribunal vide award dated 06.11.1997 is enhanced from ₹4,70,300/- to ₹10,56,200/-. The enhanced amount shall carry interest at the rate of 7% per annum from the date of filing of the claim petition till realization.

11. Accordingly, the cross-objection is **allowed**, and the compensation stands enhanced as aforesaid.

Appeals by Insurer: Liability under Insurance Policy

12**.** The principal contention raised by the appellant-Insurance Company is that the driver of the offending vehicle was not holding a valid and effective driving licence on the date of the accident i.e. 20.04.1996 and, therefore, there was a breach of the terms and conditions of the insurance policy.

13. In order to substantiate the said plea, the Insurance Company examined officials from the concerned licensing authorities and produced the relevant record pertaining to the driving licence of respondent No.1 Harbans Singh. Subhash Chander (RW-1), Licence Clerk from the office of the S.D.M., Naraingarh, deposed that as per the official record, driving licence No. 664/NG/88 issued in the name of Harbans Singh authorised him to drive motorcycle, car and jeep and was valid up to 31.03.1993. He further stated that

there was no entry in the relevant register showing any renewal thereafter. Further, Ram Sarup (RW-4), Clerk from the office of the Regional Transport Authority, Ambala, also produced the official record relating to the driving licence. He deposed that the licence had been renewed only up to 10.01.1996, and thereafter it was again renewed for the period 25.09.1996 to 24.09.1999. He further confirmed in his cross-examination that there was no renewal of the licence between 10.01.1996 and 25.09.1996, which included the date of accident i.e. 20.04.1996.

14. From the aforesaid evidence, it clearly emerges that although the driver had earlier been issued a driving licence, the same had expired on 10.01.1996 and was renewed only subsequently on 25.09.1996. Consequently, on the date of the accident, the driver was not holding a valid and effective driving licence. In view of the evidence led by the Insurance Company through the concerned officials and the official records of the licensing authorities, this Court finds merit in the contention raised by the insurer that respondent No.1 was not duly licensed to drive the offending vehicle on the date of the accident. The absence of a valid and effective driving licence on the relevant date clearly constitutes a breach of the terms and conditions of the insurance policy.

15. It is well settled by a catena of judgments of the Hon'ble Supreme Court, including **New India Assurance Co. Ltd. v. Kamla Devi and others, 2001 (4) SCC 342, National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 and *Shamanna v. Divisional Manager the Oriental Insurance Co. Ltd.* 2018 (9) SCC 650** that even where the insurer succeeds in establishing a breach of policy conditions on account of the driver not holding a valid and effective driving licence, the insurer cannot ordinarily be absolved of its

statutory liability towards third-party claimants. In such circumstances, the principle of "pay and recover" is applied, whereby the insurer is directed to satisfy the award in the first instance and thereafter recover the amount from the owner and driver of the offending vehicle.

16. Applying the aforesaid settled principles to the facts of the present case, since the Insurance Company has successfully established that respondent No.1 was not holding a valid and effective driving licence on the date of the accident, the owner committed a breach of the policy conditions by permitting such driver to operate the vehicle. Consequently, while the Insurance Company shall remain liable to satisfy the award in the first instance for the benefit of the claimants, it shall be entitled to recover the amount so paid from the owner and driver of the offending vehicle in accordance with law.

17. Accordingly, the appeal filed by the appellant-Insurance Company is **allowed** to the limited extent that the insurer shall have the right to recover the amount of compensation from the owner and driver of the offending vehicle. However, in view of the settled principle governing motor accident claims, the Insurance Company shall first satisfy the award for the benefit of the claimants and thereafter shall be entitled to recover the amount so paid from respondent No.1 (driver) and respondent No.2 (owner) of the offending vehicle, in accordance with law.

18. The cross-objection filed by the claimants seeking enhancement of compensation stands allowed, and the compensation awarded by the learned Tribunal vide award dated 06.11.1997 is enhanced from ₹4,70,300/- to **₹10,56,200/-**, along with interest @ 7% per annum from the date of filing of the claim petition till realization.

19. Since the main case has been decided, pending miscellaneous application(s), if any, stands also disposed of.

20. The photocopy of this judgment be placed on the files of connected cases.

24.03.2026 **(VIRINDER AGGARWAL)**
Poonam **JUDGE**

(i) Whether speaking/reasoned : Yes/No
(ii) Whether reportable : Yes/No