

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****234****Date of decision: 20.01.2026****FAO-3762-2018(O&M)****Rajeev Gupta****...Appellant(s)****Vs.****Balwanti & Others****...Respondent(s)***********FAO-7192-2018(O&M)****Balwanti & Anr.****...Appellant(s)****Vs.****Anil Kumar & Others****...Respondent(s)***********CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:-** Mr. Piyush Aggarwal, Advocate
for the appellant/owner.Mr. P.S. Sullar, Advocate
for the appellant/claimant.Mr. Sandeep Suri, Advocate
for respondent No.4/Insurance Company.*********NIDHI GUPTA, J.****FAO-3762-2018**

Present appeal has been filed by the owner of the TATA-909

bearing registration No.HR-55-Q-5718 (hereinafter referred to as "the



offending vehicle”) against the Award dated 26.02.2018 passed by Motor Accident Claims Tribunal, Karnal(hereinafter ‘the learned Tribunal’) whereby Claim Petition No.178 dated 19.02.2014 filed under Sections 166 and 140 of the Motor Vehicles Act, by the claimants/respondents No.1 to 3 herein has been allowed and the claimants have been awarded compensation of Rs.12,84,568/- along with interest @ 6% per annum.

FAO-7192-2018

Present appeal has been filed by the claimants No.1 and 2/parents of the deceased, seeking enhancement of compensation of Rs. 12,84,568/- awarded by the learned Tribunal vide Award dated 26.02.2018 passed in Claim Petition No.178 dated 19.02.2014 filed under Sections 166 and 140 of the Act.

Both the present appeals are being disposed of by this common order as both emanate from common Award dated 26.02.2018; passed in same Claim Petition; and in respect of the accident dated 19.11.2013; between same parties; and facts and issues involved in both the cases are identical. For the sake of brevity, facts are being drawn from, and parties are being referred to as per their status in FAO-3762-2018.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and oral & documentary evidence adduced by the parties concluded that the deceased Vicky @ Ricky had died due to injuries suffered by him in a motor vehicular accident that took place on 19.11.2013



due to the rash and negligent driving of the offending vehicle being driven by respondent No.5, owned by the appellant, and insured by respondent No.4. Vide the impugned Award, liability to pay the compensation amount has been fixed upon the appellant and the respondent no.5 on the ground that the Driver of the offending vehicle/respondent no.5 herein, did not possess a valid Driving Licence at the time of accident. Accordingly, Recovery rights were granted to the Insurance Company against the owner/appellant, and respondent no.5. The said compensation has been awarded along with interest @ 6% per annum.

LIABILITY TO PAY COMPENSATION:

3. Learned counsel for the appellant/owner of the offending vehicle submits that the learned Tribunal is in error in holding the appellant liable to pay the compensation as, the appellant had clearly stated that at the time of employing the driver, the owner-appellant had taken his Driving Test. It is submitted that the owner had also checked the Driving Licence held by the driver and it was found that he was holding a valid Driving Licence. The owner had employed the driver in the year 2011. The Driving Licence had been issued in the year 2010. The accident had taken place three years thereafter on 19.11.2013. As such, there was nothing more that the owner-appellant could have done to verify that the driver was competent to drive the offending vehicle. It is submitted that as appellant



had taken all steps required as per law and by way of abundant caution, liability to pay compensation could not have been affixed upon him.

4. Per contra, learned counsel for the Insurance Company vehemently opposes the submissions advanced on behalf of the owner and submits that the owner in his written statement has nowhere pleaded that he had taken the driving test of the driver. It is submitted that therefore, learned counsel for the owner is arguing beyond the pleadings. Learned counsel for the Insurance Company further draws the attention of this Court to Para 39 of the impugned Award wherein the learned Tribunal has recorded that the owner had failed to specify as to on which date, month or year or at which place, he had taken the driving test of the driver before employing him as a Driver upon his canter. It is submitted that therefore, the learned Tribunal was not in error in affixing the liability to pay the compensation amount upon the owner. Learned counsel for the Insurance Company also draws the attention of this Court to the findings as recorded in Para 37 of the impugned Award, wherein the Insurance Company had duly taken the objection before the Tribunal that the driver was having a fake Driving Licence (Ex.R7). It is contended that therefore, the liability has been correctly fixed upon the owner-appellant and respondent no.3.

5. The aforesaid submissions of learned counsel for the Insurance Company are vehemently opposed by learned counsel for the owner to submit that the owner had done all within his ability and control under law



to ensure that the driver possessed a valid Driving Licence. Learned counsel further relies upon judgment of the Hon'ble Supreme Court in "**National Insurance Co. Ltd. Vs. Swaran Singh & Others**" (2004) 3 SCC 297, Law Finder Doc ID # 66307, to buttress his submission.

6. I have heard learned counsel for the owner of the offending vehicle and the Insurance Company. As regards the question of liability, I find merit in the submissions advanced on behalf of the owner-appellant.

7. The reasoning of the learned Tribunal in affixing liability upon the owner/appellant, is as follows: –

"39. However, the said contention of Id. counsel for respondent no.2 is unsustainable in view of the fact that no such facts had been pleaded by respondent no.2 in his written statement. In other words, the evidence led by respondent no.2 in the form of his oral evidence by stepping into the witness-box as RW2 is beyond pleadings. Besides, respondent no.2 has failed to specify as to on which date, month or year or at which place he had taken the driving test of respondent no.1 before employing him as a driver upon his canter. In other words, the evidence of respondent no.2 as RW2 is vague, indefinite and beyond pleadings."

8. However, the above said view of the learned Tribunal does not stand scrutiny, for the reasons given herein below.

9. It has been contended on behalf of the Insurance Company that liability has been correctly affixed upon the owner as he had not pleaded in his written statement that he had taken driving test of the driver;



and there is no evidence on record to show that the owner had actually taken driving test of the driver as date, month, year, time, place, etc. of driving test is not mentioned. However, the said arguments are liable to be rejected because at time of employing respondent no.5 or even at the time of filing of written statement, the owner could not have guessed/anticipated/ known that the driving license would be found to be fake, and that liability would be affixed upon him. Accordingly, the owner had merely pleaded in his written statement that the driver *"is having valid and effective driving licence."* It is only when enquiry was conducted and upon investigation by the Insurer, it was found that the driving license was fake that the fact came to the knowledge of the appellant. Accordingly, in his Affidavit of Evidence (Ex.RW2/A), the owner has categorically stated that the appellant has taken driving test before employing Anil and had clearly stated that he *"has taken the driving test of Anil before employing Anil i.e. respondent No.1 for driving Canter and he was found to have sound knowledge of driving canter and he has shown his driving licence to the deponent and has told that it was genuine and obtained after due compliance of the requisite rules under the M.V. Act. There was no reason to disbelieve him and in view of the test taken by the deponent. That Anil respondent No.1 had told that he was driving the transport vehicle since 2010 regularly..."*. Clearly, at the time of employing the Driver, the appellant could not have known any better. Thus, all that has to be shown is that the



owner had taken due care and caution before employing the Driver. From the above facts, the same is proved. No evidence to the contrary has been led by the Insurer. A perusal of the record shows that during cross-examination, even no suggestion was put by the Insurer to the Owner that due care and caution was not taken.

10. In such circumstances, reference may be made to a three-Judge Bench of the Hon'ble Supreme Court in **Swaran Singh (supra)**; wherein it is held as under: -

"110. The summary of our findings to the various issues as raised in these petitions is 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 defences) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor 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. 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 there under 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.”

(emphasis supplied)

11. The above view has been reiterated in case of **“Pepsu Road Transport Corporation Vs. National Insurance Company” (2013) 10 SCC 217**, where in it is held that:-

“10. In a claim for compensation, it is certainly open to the insurer under Section 149(2) (a)(il) to take a defence that the driver of the vehicle involved in the accident was not duly



proved that the licence possessed by the driver was a fake one, whether there is liability licensed. Once such a defence is taken, the onus is on the insurer. But even after it is on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh case". If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the Insurance Company is not liable for the compensation.

11. On facts, in the instant case, the appellant employer had employed the third respondent Nirmal Singh as driver in 1994. In the process of employment, he had been put to a driving test



and he had been imparted training also. The accident took place only after six years of his service in PRTC as driver. In such circumstances, it cannot be said that the insured is at fault in having employed a person whose licence has been proved to be fake by the Insurance Company before the Tribunal. As we have already noted above, on scanning the evidence of the licensing authority before the Tribunal, it cannot also be absolutely held that the licence to the driver had not been issued by the said authority and that the licence was fake. Though the appellant had also taken a contention that the compensation is on the higher side, no serious attempt has been made and according to us justifiably, to canvas that position". (Emphasis added)

12. Reliance may be placed upon most recent judgment of Hon'ble Supreme Court in **Hind Samachar Ltd. (Delhi Unit) v. National Insurance Company Ltd., (SC) : Law Finder Doc ID # 2790918**, wherein it is held that:-

"A. Motor Vehicles Act, 1988 Sections 149, 166 Fake driving licence - Liability of insurer - Held, insurance company must prove absence of due diligence by owner while employing driver or entrusting vehicle - No obligation on vehicle owner to verify authenticity of driving licence with licensing authority - High Court erred in inferring collusion between owner and driver in absence of evidence - "Pay and recover" directions issued by High Court set aside.

B. Motor Vehicles Act, 1988 - Vicarious liability of vehicle owner - Held, owner is vicariously liable for negligence of driver - Submission of driving licence by owner does not indicate collusion - Driver's absence in proceedings may be due to fear



of prosecution and does not impute wrongdoing to owner - Insurance company failed to prove breach of policy conditions by owner.”

13. The record reveals that in the present case also, the driver of the offending vehicle did not put in appearance and was proceeded against ex parte. However, in terms of the above judgment, liability could not have been fixed upon the appellant/owner; and recovery rights could not have been granted against him.

14. Thus, from the above noted factual and legal position it is clear that the learned Tribunal was in error in affixing liability to pay compensation upon the appellant. Therefore, the said finding of the Tribunal is set aside and it is held that it is the Insurance Company who is liable to pay the impugned compensation amount. Accordingly, FAO-3762-2018 filed by the owner of the offending vehicle stands **allowed** as above.

QUANTUM:

15. As regards, quantum of compensation, the FAO-7192-2018, has been filed by the in claimants seeking enhancement of compensation.

16. Learned counsel for the appellants seeks enhancement of compensation by submitting that the income has been assessed on lower side as the deceased was an agriculturist and was also doing business of property dealing thereby earning Rs. 16,500/- p.m. The amounts awarded under the conventional head are liable to be enhanced. The interest ought to have been granted @12% p.a. It was further submitted that the Tribunal



failed to consider that the deceased was only earning son of the claimant No. 1 & 2, and was 20 years of age at the time of accident. Moreover, the consortium has been granted only in favour of claimant No.3/widow of deceased. It is accordingly prayed that the appeal be allowed and the compensation be enhanced.

17. Per contra, learned counsel for the Insurance Company opposes submissions of the claimant. Learned counsel submits that the impugned Award suffers from no error; and the present appeal deserves to be dismissed.

18. I have heard learned counsel for the parties. I find merit in the submissions advanced on behalf of the claimants.

19. It was the pleaded case of the claimants before the learned Tribunal that prior to the accident, deceased was an agriculturist and was also doing business of property dealing thereby earning Rs. 16,500/- p.m. However, the claimants had failed to lead any evidence in this regard. The claimants have also failed to produce any ITR or Bank Statement. As such, the Tribunal had assessed notional income of the deceased as that of an unskilled labourer as Rs.6025/- per month on the basis of DC rates. I find no error in the same.

20. Age of the claimant was determined to be 20 years at the time of accident, on the basis of PMR (Ex.P123), Accordingly, the learned Tribunal had correctly applied multiplier of 18. Impugned Award shows that



nothing has been given to the claimants No.1 and 2 by way of Consortium.

It is undisputed fact on record that deceased was only son of claimants No.1 and 2, aged merely 20 years as per PMR Ex. P/123 at the time of accident.

As per settled law parents are entitled to filial consortium for the loss of their child, and denial thereof would amount to grave injustice.

21. In view of the facts noted above, compensation payable to the claimants is re-assessed in the following manner:-

Sr. No.	Head of Compensation	Amount as awarded by Ld. Tribunal	Amount ought to be enhanced by High Court
1.	Income	Rs.6025/-	Rs.6025/-
2.	Future Prospects 40% (6025+2410)	Rs.8435/-	Rs.8435/-
3.	Deduction 1/3 rd (8435/-2812/-)	Rs.5623/-	5623/-
4.	Multiplier	18	18
5.	Loss of dependency (5623 x18 x12)	Rs.12,14,568/-	Rs.12,14,568/-
6.	Loss of Consortium towards claimant No.2/widow	Rs.40000/-	Rs.40000/-
7.	Filial Consortium	NIL	(Rs.40,000/- each) Rs.80,000/-
8.	Loss of Estate	Rs. 15000/-	Rs. 15000/-
9.	Funeral expenses	Rs.15000/-	Rs.15000/-
	Total	Rs.12,84,568/-	Rs.13,64,568/-



22. In view of the above discussion, both the appeals **FAO-3762-2018** and **FAO-7192-2018** stand **allowed**; and Insurance Company is directed to make payment of above enhanced compensation of Rs.13,64,568/- to claimants within the period of 8 weeks from the date of order.

23. Pending application(s) if any also stand(s) disposed of.

20.01.2026

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No