

FAO No.629 of 1997 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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**FAO No.629 of 1997 (O&M)
and XOBJC-56-CII of 1997
Date of Decision : 08.04.2022**

National India Insurance Co. Ltd. ...Appellant

versus

Smt. Fajari & Others ...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ravinder Arora, Advocate for the appellant.

Mr. G. S. Bhatia, Advocate for respondent Nos.1 to 5.

ALKA SARIN, J.

The present appeal has been filed by the insurance company challenging the award dated 07.05.1996 passed by the Motor Accident Claims Tribunal, Gurgaon (for short, the 'Tribunal') on the ground that recovery rights have not been given to it. The claimant-respondent Nos.1 to 5 have filed cross-objections seeking further enhancement of the amount of compensation awarded. Present respondent No.6 was the driver of the offending vehicle, present respondent No.7 had taken the offending vehicle on superdari while present respondent No.8 was the owner of the offending vehicle.

The facts in brief are that on 15.05.1993 deceased Jalaluddin was going from village Luhinga Kalan to village Bisru on a motorcycle. His younger brother, Mohd. Ali, was riding pillion. At about 6.00 pm when they reached near village Tundalka, a Maruti van, being driven rashly and

FAO No.629 of 1997 (O&M)

negligently, came from the opposite side and struck against the motorcycle leading to the death of Jalaluddin. In the claim petition filed by the wife and children of Jalaluddin it was claimed that the Maruti van had a number plate of DL-3CA-0467 whereas it's actual number was DL-3CA-4673. The claim petition was contested by the respondents. On the basis of the pleadings of the parties and the evidence on the record, the Tribunal held that the accident took place due to the rash and negligent driving by the present respondent No.6. The Tribunal also held that the claimants were entitled to claim compensation from the driver (present respondent No.6), owner (present respondent No.8) and the insurance company (present appellant). The Tribunal awarded compensation of Rs.1,54,000/- to the claimants against the driver (present respondent No.6), owner (present respondent No.8) and the insurance company (present appellant), who were held to be liable jointly and severally, along with interest @ 12% from the date of the petition till the date of realization.

Learned counsel for the appellant-Insurance Company would contend that the Tribunal while awarding the compensation has not given recovery rights to the appellant-insurance company. According to the counsel the driver of the offending vehicle did not hold a valid driving licence and therefore the appellant-insurance company ought to have been given recovery rights. He drew the attention of the Court to the testimonies of RW2 Kusum Lata and RW3 Madan Solanki and placed reliance upon the decision by the Supreme Court in **Skandia Insurance Co. Ltd. vs. Kokilaben Chandravadan & Ors. [1987(2) SCC 654]** and **Pappu & Ors. vs. Vinod Kumar Lamba & Anr. [2018(3) SCC 208]**.

FAO No.629 of 1997 (O&M)

The driver and owner of the offending vehicle i.e. present respondent Nos.6 and 8 respectively have not contested this appeal and nobody has put in appearance on their behalf. The claimant-respondent Nos.1 to 5 have filed cross-objections seeking further enhancement of the amount of compensation awarded. According to their counsel, the Tribunal did not award future prospects and also did not award amounts under the conventional heads as per the law laid down by the Supreme Court in **Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. [2009(6) SCC 121]**; **National Insurance Co. Ltd. Vs. Pranay Sethi & Ors. [2017(16) SCC 680]** and **Magma General Insurance Co. Ltd Vs. Nanu Ram alias Chuhru Ram & Ors. [2018(18) SCC 130]**.

I have heard the learned counsel for the parties.

In the case of Skandia Insurance (*supra*) it was contended on behalf of the insurance company that since there was an exclusion clause, the insurance company would not be liable in case at the point of time when the accident occurred the person who had been driving the vehicle was not a duly licensed person to drive the vehicle and that once it was established that the accident occurred when an unlicensed person was at the wheels the insurance company would be exonerated from the liability. The Supreme Court held that in such circumstances the insurer will have to establish that the insured is guilty of an infringement or violation of a promise that a person who is duly licensed will have to be in charge of the vehicle. If the insured is not at all at fault and has not done anything he should not have done or is not amiss in any respect it cannot be posited that he has committed a breach. It is only when the insured himself places the vehicle in charge of a person who does not hold a driving licence that it can be said

FAO No.629 of 1997 (O&M)

that he is guilty of the breach of the promise that the vehicle will be driven by a licensed driver. It must be established by the insurance company that the breach was on the part of the insured and that it was the insured who was guilty of violating the promise or infringement of the contract. Unless the insured is at fault and is guilty of a breach the insurer cannot escape from the obligation to indemnify the insured and successfully contend that he is exonerated having regard to the fact that the promisor (the insured) committed a breach of his promise.

In **United India Insurance Co. Ltd. v. Lehu and Others** [2003(3) SCC 338] the Supreme Court discussed the ratio in Skandia Insurance case (supra) and held that :

“20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The insurance company would not then be

FAO No.629 of 1997 (O&M)

absolved of liability. If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive.

More importantly, even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured.”

Even in the case of Pappu (supra) the Supreme Court followed the conclusions reached in an earlier decision in **National Insurance Company Ltd. vs. Swaran Singh & Ors. [2004(3) SCC 297]** wherein it was inter-alia held that *“The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in subsection (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time”*.

In the present case it was held by the tribunal that the driving licence was fake the appellant-insurance company has been unable to prove that the owner of the offending vehicle (present respondent No.8) was aware that the licence of the driver (present respondent No.6) was fake and despite

FAO No.629 of 1997 (O&M)

that it permitted him to drive. The owner of the vehicle had stepped into the witness box as RW1 and was cross-examined by the counsel for the insurance company, no suggestion was put to the owner that he was aware that the licence was fake and he was aware of the same.

The appellant-insurance company has failed to prove that the insured (owner) was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time. In this scenario, this Court finds no merit in the submissions made by learned counsel for the appellant-insurance company. The appellant-insurance company cannot absolve itself from its liability of paying the compensation. Resultantly, the appeal deserves to be dismissed.

Coming to the cross-objections filed by the claimant-respondent Nos.1 to 5, it is noticed that the Tribunal took the income of the deceased as Rs.1,600/- per month and 1/4th was deducted towards personal expenditure. The annual income was thus assessed as Rs.14,400/-. The age of the deceased was taken as 50 years and a multiplier of 10 was applied. Compensation of Rs.1,54,000/- was awarded which included Rs.10,000/- towards loss of estate, funeral expenses, etc. Nothing was awarded towards future prospects. Counsel for the claimant-respondent Nos.1 to 5 would contend that no amount has been awarded towards future prospects and further no spousal and parental consortium has been awarded as per the law laid down by the Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi and Ors. [2017(16) SCC 680]** and **Magma General Insurance Co. Ltd Vs. Nanu Ram alias Chuhru Ram & Ors., [2018(18) SCC 130]**. Learned counsel has further relied upon the judgment in N.

FAO No.629 of 1997 (O&M)

Jayasree & Ors. vs. Cholamandalam MS General Insurance Company Ltd. [2021(4) RCR (Civil) 642] to contend that the claimant-respondent Nos.1 to 5 would be entitled to a 10% increase on the amounts under the conventional heads as laid down in the case of **Pranay Sethi** (supra).

The deceased in the present case was aged 37 years and is survived by his wife, three minor children and one major child. The minor children have their entire life ahead of them. Their education has to be taken care of as well as the living expenses of all the claimants. A perusal of the award further reveals that no amount has been granted towards the future prospects and the amount awarded under the conventional heads is also not in consonance as per the law laid down by the Supreme Court in the cases of **Pranay Sethi** (supra) and **Magma General Insurance** (supra). The multiplier applied is also incorrect.

8. In view of the above, taking the income of the deceased as Rs.1,600/- per month, the compensation is re-worked is as under :

Income Per Month	Rs.1,600/-
Annual Income	Rs.19,200/- (1600 x 12)
Income after 1/4 th deduction	Rs.14,400 (19200 - 4800)
Income after adding future prospects (@ 40%)	Rs.20160/- (14400 + 5760)
Multiplier (15)	Rs.3,02,400/- (20160 x 15)
Loss of Estate	Rs.16,500/-
Funeral Expenses	Rs.16,500/-

FAO No.629 of 1997 (O&M)

Loss of Consortium :	
Spouse	Rs.44,000/-
Parental	Rs.1,76,000/-
Total Compensation	Rs.5,55,400/-

14. The appeal filed by the insurance company qua the quantum of compensation was dismissed vide order dated 06.03.2014, passed by this Court.

In view of the above the appeal by the insurance company is dismissed, the cross-objections filed by the claimant-respondent Nos.1 to 5 are allowed and the award passed by the Tribunal stands accordingly modified. The enhanced amount of compensation shall attract interest @ 9% per annum from the date of the claim petition till the date of payment. Since all the claimant-respondent Nos.1 to 5 would be major now, they would all be entitled to equal shares in the enhanced amount of compensation without it being kept in a FDR.

Disposed off accordingly. Pending applications, if any, also stand disposed off.

April 08, 2022
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(ALKA SARIN)
JUDGE

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