(2012) 09 P&H CK 0267

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO No. 654 and 655 of 1989 with X Obj No. 111 -CII of 1989

Manjit Kaur		APPELLANT
	Vs	
H.S. Atwal and Others		RESPONDENT

Date of Decision: Sept. 28, 2012

Acts Referred:

- Motor Vehicles Act, 1988 - Section 149(4), 149(5), 157

Citation: (2013) 169 PLR 267 : (2013) 2 RCR(Civil) 558

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: L.M. Suri, with Mr. M.S. Uppal, for the Appellant; Parveen Kumar Kataria for Respondent Nos. 1 and 2 and Mr. R.K. Bashamboo, for the Respondent

Final Decision: Allowed

Judgement

K. Kannan, J.

The appeals are for enhancement of compensation sought at the instance of the legal representatives of the deceased-persons, who were travelling on a scooter. The subject matter of appeal in FAO No. 654 of 1989 is at the instance of the wife and three children of a male aged 47 years (said to be 42 years at the time of trial), who was an Assistant Registrar in Punjabi University, Patiala. FAO No. 655 of 1989 is with reference to death of a male aged 60 years, who was his father and travelling as a pillion rider in the scooter. The accident had taken place by collision of scooter with jeep originally belonged to the 1st respondent. On the date of accident on 21.03.1987, it was brought out on evidence that the vehicle had been transferred to the 2nd respondent but the insurance company had not been informed about the date of transfer and the policy of insurance which the 1st respondent had taken, had not stood transferred by any notice. At the trial, the claimant, who is the appellant in FAO No. 654 of 1989 sought to contend that her husband was 42 years of age and he was earning Rs. 3272/- per month. The Tribunal rejected the contention regarding the age by pointing out that even when the official record

from the Punjabi University was brought to prove the income of the deceased, nothing was elicited about the age. The Tribunal, therefore, rejected the contention and took the age of her husband as 47 years of age, as stated in the petition and proceeded to assess the compensation that he was 47 years. For the income of Rs. 3272/- per month, the Tribunal assessed the contribution to the family at Rs. 1,000/- per month and applied a multiplier of 18, brought out a further deduction for a lump sum payment of 20% and afforded to the claimants a compensation of Rs. 1,73,000/-. In this case, the issue of negligence of the driver of the jeep was taken as established and the arguments of the respective counsel was only with reference to the quantum and the liability with reference to the exclusion of the claim against the insurer. This was on a finding that the report secured by a local commissioner for verifying the genuineness of a driving licence alleged to have been issued to the driver from the State of Assam brought out a fact that the licence was not true. The Tribunal, therefore, found that the insurance company could not be made liable and made the owner respondent No. 1 as fully liable.

2. The cross appeal has been filed by the 1st respondent contending, inter alia, that the liability could not have been cast on the 1st respondent for alleged violation of terms of policy that the driver did not have valid driving licence failing to apply a fundamental precept that the burden of proof of violation of terms of policy was always on the insurer and the insurer did not produce appropriate evidence to discredit the value of the driving licence. It was his further contention that the report of the local commissioner could not have been taken as evidence for it was not accepted as evidence but was merely assigned a mark in view of the fact that the person, who gave the report was not examined nor was an appropriate opportunity given to the owner to cross-examine the commissioner on the report, which he had filed. Learned counsel appearing for the 1st respondent would also contend that even if the vehicle had been transferred, the liability must still be taken as fully established, for even u/s 103-A of the Motor Vehicles Act of 1939, a liability to a third party was never excluded against the insurer. The 1st respondent would also make further submission with reference to the quantum assessed and urge that the age as assessed by the Tribunal at 47 for the deceased was correct and the multiplier could have been only 13.

3. As regards the claim relating to FAO No. 654 of 1989, 1 find that the assessment of compensation has been grossly inadequate. There is a clear method of determining compensation elucidated through the judgment of the Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and therefore, I will assess the compensation by taking the income at Rs. 3272/- per month, apply a 30% in crease of the prospect of future increase, adopting a deduction of 1/4th and take the dependence as Rs. 3190/-. I will apply a multiplier of 13 and take the loss of dependence at Rs. 5,74,236/-. I would also make provision for loss of consortium at Rs. 5,000/- for the wife and Rs. 2500/- for each one of the children for loss of love and affection. I will provide Rs. 5,000/- towards loss of estate

and Rs. 2500/- towards funeral expenses. The total compensation payable would be Rs. 5,94,236/-, rounded off to Rs. 5,94,250/-.

4. As regards the claim in FAO No. 655 of 1989, the Tribunal assessed the compensation for the widow at Rs. 36,000/-, taking the contribution to the family at Rs. 300/-per month and adopting a multiplier of 10. The evidence on behalf of the claimant was that her husband was running a poultry farm and was earning Rs. 2,000/- per month. Learned counsel appearing on behalf of the respondents would contend that there was no proof at all for such an income. I cannot believe that a person could have lived with any dignity by a paltry sum of Rs. 300/- per month even in the year 1987. I will take the contribution to the family at Rs. 750/-, adopt a multiplier of 9 and take the loss of dependence at Rs. 81,000/-. I will also provide for the conventional heads of claim relating to loss of consortium to the wife, loss to estate and funeral expenses to an aggregate amount that will be payable to Rs. 1 lac. The compensation assessed already at Rs. 30,000/- shall, therefore, stand enhanced to Rs. 1 lac.

5. As regards the issue of liability, the contention is that at the relevant time when the accident took place, there had been a transfer of vehicle by the 1st respondent to the 2nd respondent and the fact of transfer was not communicated to the insurance company. The insurance company would, therefore, contend that in terms of Section 103-A of the Motor Vehicles Act, 1939, a duty which was on the registered owner to communicate with the insurance company had not been complied and consequently the contract of insurance would not provide for indemnity for the transferee as well. Learned Senior Counsel appearing on behalf of the claimants would join issue on this aspect and contend that where the transfer was in favour of the driver Karamjit himself, it ought not to be material at all. The learned counsel would also refer me to a decision rendered by Division Bench of this Court in New India Assurance Co. Ltd. Vs. Moti Ram and Others where liability of a driver could be attached to the owner by the principle of vicarious liability and when the owner had a right of indemnity through a contract of insurance, the transfer by the owner to a driver cannot relieve the insurer of the liability by the only fact that the fact of transfer was not communicated. The logic of making an insurer under a contract of insurance is on the principle that the insured obtains a full cover for his own act or the act of an agent which is normally specifically stipulated under the contract of insurance itself. When the owner transfers it to the driver and an accident takes place at the instance of such driver not in his capacity as such but as an owner himself then the contract of insurance cannot be applied to such a person as well. However, judicial discipline requires that I conform to what the Division Bench says and therefore, I would apply the said decision as governing the same. Even otherwise on a point of law urged, the insurance company''s liability for the act of transferor, who had not informed about the transfer to the insurance company in so far as the third party claims are concerned has been dealt with by the Supreme Court in G. Govindan Vs. New India Assurance Co. Ltd. and Others, . The point of law

that was raised was the issue of liability under the Motor Vehicles Act and the effect of the transfer of an insured vehicle when no application or information had been given u/s 103A of the Act when a third party claim was pursued. The Supreme Court held that the insurance company would still be liable and Section 103-A enacted a principle which is made explicit through the specific clause providing for a deemed transfer u/s 157 of the Motor Vehicles Act, 1988. The defence of the insurance company cannot, therefore, be that the insurance company would be exonerated by the fact that the transfer of ownership of the vehicle was not informed by the transferee or the transferor or by the insured transferor.

6. The insurance company has a second string to the bow, as it were, to contend that if at all any liability were to be cast on the insurer, it should still have a right of recovery from the insured-owner in view of the fact that the driver at the time of the accident did not have a valid driving licence and it was specifically brought out in evidence that the licence was a fabricated one. Learned counsel appearing on behalf of the 1st respondent would contend that the burden of proof is always on the insurance company to show that there was a breach of terms of policy and therefore, the insurance company was required to prove that the driving licence was not genuine. In this case, such an attempt was sought to be made by the insurer by having a local commissioner appointed, who claimed to have collected the statements from the witnesses at the DTO Guwahati, Assam that the particular licence number which was recited in the copy of the driving licence produced before the Court did not pertain to an issue in favour of Karamjit Singh. Learned counsel appearing on behalf of the respondent driver has surely a point that the burden of proof was on the insurance company but the point to be examined is whether such a burden had been appropriately discharged in this case. It had been a prevalent practice of this Court by an administrative instruction sent by the Registrar General of this Court to all Subordinate Judges and Tribunals that in cases where the licences are required to be verified from far off places like Cuttack, Hyderabad, Guwahati, Nagaland etc. it is not necessary to summon the witnesses from these respective licensing authority but the Court would save judicial time by having a local commissioner appointed with authority to collect evidence from the office of the licensing authority. It is true that judicial function cannot be controlled by administrative instructions but it is merely to bring out a fact that the Court had not done something which was outside the realm of adopted practice in these Courts. Again the Motor Vehicles Act allows for certain flexibility in the approach relating to collection of evidence and conduct of procedure and the usual trappings of the strict rigmarole of CPC would not apply to the proceedings before the Motor Accident Claims Tribunal. As a matter of elementary procedure, the commissioner could not have collected the evidence of witnesses from the licensing authority without putting the driver on notice of the fact of the date when he was visiting the office of the licensing authority and without letting him know about the date when the statements were elicited from witnesses. The report filed in the Court had been

marked as R1 but subject to objection from the driver since the statements had been admittedly recorded by the local commissioner in the absence of the driver. The Court was conscious about the technical lapse of what the local commissioner had failed to do and therefore, proceeded to examine whether the licence could be said to have been established otherwise. In this case, the licence was said to have been issued from the DTO Guwahati, Assam. The copy of the licence had been produced before the Court and the driver was cross-examined on this aspect. The Tribunal has observed that even if there was an objection regarding the report of the local commissioner, the statement of Karamjit Singh himself could be linked up on the aspect of validity of the licence. He had stated in the cross-examination that he did not know where Guwahati was situate and that all what he knew was that it was in India. He also admitted that he did not ever appear before the licensing authority at all. A person that cannot remember whether he appeared before any authority to secure a driving licence and a person, who probably did not go out of frontiers of Punjab that he had secured a licence from Guwahati was surely exposing himself that he was producing a document, which was not genuine. It does not require elaborate forensic skills of reasoning that even if the Tribunal eschewed the report of the local commissioner, the evidence of the driver himself brings out the fact that the licence cannot be true. Learned counsel appearing on behalf of the driver pleads with passion that it was possible in parts of Punjab to secure driving licence even without going to the driving licence office. I would find this contention to be outlandish to deserve to be rejected as a submission that makes violence to the provisions of the Motor Vehicles Act and the Rules that set out a procedure for securing a licence by personal appearance and test of driving skills. I would hold therefore that the driving licence produce was not a genuine one and the burden that was cast on the insurer gets discharged by the quality of evidence adduced by the driver himself.

7. All these would only mean that the insurance company would still be liable consistent with the reasoning already made about the fact of transfer and the contract of insurance that admittedly existed for the vehicle that was involved in the accident. However, in terms of the judgment of the Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, where the driving Licence is fake, the liability shall be on the insurer in terms of Section 149(4) proviso and 149(5) and by invoking the principle of law laid down by the Supreme Court in New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., the insurance company would pay the amount and recover the same from the respondent Nos. 1 and 2 namely the insured and the subsequent transferor. The appeals by the claimants are allowed to the above extent and the cross objection stands dismissed. Having regard to the subsequent pronouncements and the reduction of the bank rate of interest for the additional amount of compensation that is provided, the interest shall be at 6% from the date of the petition till the date of payment.