2025:PHHC:028357

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(304)

1. **FAO-2780-2019 (O&M)**

Patel Infrastructure Pvt. Ltd. **….Appellant**

Versus

Paramjit Kaur and others **….Respondents**

2. **FAO-4008-2019 (O&M)**

Paramjit Kaur and another **….Appellants**

Versus

Ramesh Kumar and others **….Respondents**

Date of decision:- 27.02.2025

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Kanwaljit Singh, Senior Advocate, with
Mr. Brij Mohan Vinayak, Advocate, and
Mr. Kunal Vinayak, Advocate for the appellants
in FAO-2780-2019 and
for respondent No.4 in FAO-4008-2019.

Mr. Vipul Sharma, Advocate
for the appellants in FAO-4008-2019 and
for respondents No.1 and 2 in FAO-2780-2019.

Mr. Lovepreet Singh, Advocate for
Mr. Sanjeev Kodan, Advocate
for the respondent-IFFCO TOKIO General Insurance Company
in FAO-4008-2019.

Mr. Sachin Ohri, Advocate
for the IFFCO TOKIO General Insurance Company Limited
in FAO-2780-2019.

Mr. Punit Jain, Advocate
for Cholamandlam General Insurance Company Limited.

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VIKAS BAHL, J. (ORAL)

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CHALLENGE/PRAYERS IN THE TWO APPEALS

1. This order will dispose of two FAOs i.e. FAO No.2780 of 2019 which has been filed by the owner i.e., Patel Infrastructure Private Limited in which challenge has been made to the award dated 10.01.2019 passed by the Motor Accident Claims Tribunal, Chandigarh (hereinafter to be referred as “the Tribunal”) to the extent that the Insurance Company i.e. IFFCO

TOKIO General Insurance Company Limited had been granted the right to recover the amount of compensation from the appellant-owner of the offending dumper; FAO No.4008 of 2019 has been filed by the claimants who are the mother and father of the deceased Surpreet Kumar @ Sagar who had died in a motor vehicular accident which took place on 29.09.2016 and the prayer in the said appeal is for enhancement of compensation awarded to the claimants. The compensation awarded in the case is to the tune of Rs.5,94,000/- along with interest at the rate of 7.5% per annum.

ARGUMENTS ON BEHALF OF THE APPELLANT/OWNER IN FAO-2780-2019

2. Learned Senior counsel for the appellant-owner in FAO No.2780 of 2019 has submitted that in para 32 of the award passed by the Tribunal, the argument on behalf of the present appellant to the effect that it was after due verification that the driver of the vehicle i.e., dumper, was appointed as a driver and due procedure was followed and even driving test was conducted, was specifically noticed. It is submitted that RW2 i.e. Avtar Singh Bamwara, Senior Manager, Mechanical, Patel Infrastructure Private Limited, Barwa had appeared in the witness-box and had specifically stated that in May, 2016, about 10 aspirants had come to their office at Barwa for the post of driver, including the driver in question i.e., Shambhu Ram who had produced his driving licence and Aadhaar Card and after finding that all the documents including the driving licence were in order, he was put on a driving test on the vehicle namely Dump Truck and the trial was taken under the supervision of Sanjay Vishwakarma-Senior Supervisor Mechanical and after he was found to be perfect in driving, relevant documents were filled up and he was employed. A copy of the Operator's

Driving Test Approval Form was exhibited as Ex.RW2/1 and the copy of recruitment recommendation intimation form was also duly exhibited on record.

3. It is further submitted that Keshubhai Mohanbhai Vadaliya, Works Manager, Patel Infrastructure Private Limited had also been examined as RW3, who had also fully supported the version of the present appellant to the effect that they had followed due procedure before employing Shambhu Ram i.e. driver of the Dumper. It is submitted that on the other hand, Insurance Company (respondent No.6 in FAO-2780-2019) has not examined any person to even remotely prove that the present appellant did not take adequate steps and employed the driver knowing that he had a fake licence nor it was their plea in the written statement that the present appellant employed the driver without carrying out due diligence. It is submitted that in spite of the said argument having been raised in para 32 of the award, same has not been specifically answered by the Tribunal and illegally recovery rights have been given to the Insurance Company (respondent No.6 in FAO-2780-2019). In support of his arguments, learned Senior Counsel for the appellant has relied upon the judgment passed by the Hon'ble Supreme Court in the case of ***IFFCO TOKIO General Insurance Company Limited Vs. Geeta Devi and others*** reported as ***2023 SCC OnLine SC 1398*** and also judgment of the Hon'ble Supreme Court in the case of ***Nirmala Kothari Vs. United India Insurance Company Limited*** reported as ***2020(4) SCC 49***.

ARGUMENTS ON BEHALF OF IFFCO TOKIO GENERAL INSURANCE COMPANY LTD. IN FAO-2780-2019

4. Learned counsel for the IFFCO Tokio General Insurance Company Ltd. (respondent No.6 in FAO-2780-2019), on the other hand, has submitted that in the present case, there is no dispute about the fact that licence of the driver was not valid and the said fact was proved beyond doubt by the Local Commissioner Report which had been duly produced on record. It is further submitted that the only plea taken by the present appellants in their written statement was to the effect that the driving licence was valid and once the said plea has been found to be false, then no further plea could be raised by the appellant and thus, on the said short ground alone, the award of the Tribunal, more so, on the aspect of granting recovery rights deserves to be upheld.

ARGUMENTS ON BEHALF OF THE CLAIMANTS/APPELLANTS IN FAO-4008-2019

5. Learned counsel for the appellants in FAO-4008-2019 has submitted that in the present case, compensation under the head of "consortium" had not been paid to the claimants whereas an amount of Rs.96,000/- on the said account was payable to the claimants. It is submitted that on accounts of loss of estate and funeral expenses only an amount of Rs.15,000/- each had been awarded whereas an amount of Rs.18,000/- each is required to be awarded on the said accounts. It is submitted that in the present case, the Tribunal had fallen in error in applying the multiplier before giving the benefit of future prospects to the claimants whereas the multiplier was to be applied after the benefit of future prospects was given to the claimants.

6. Learned counsel for the appellants has submitted that the

income which had been assessed in the present case by the Tribunal is Rs.5000/- per month whereas the deceased was 17 year old boy who was studying in 12th standard and thus, his income at least should have been assessed at the rate of Rs.10,000/- per month. It is submitted that the additional amount of compensation be paid to the appellants along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realisation.

ARGUMENTS ON BEHALF OF THE INSURANCE COMPANIES IN FAO-4008-2019

7. Learned counsel for the respondents-Insurance Companies (i.e. respondents No.2 and 5 in FAO-4008-2019), on the other hand, has submitted that since a semi skilled worker is to be paid Rs.8234/- thus, highest amount that the appellants can claim in FAO-4008-2019 with respect to income is Rs.9000/- per month. It is submitted that the interest sought to be applied by the appellants at the rate of 7.5% per annum is highly excessive and at best, rate of interest at the rate of 6% per annum on the additional amount of compensation can be granted to the claimants.

REBUTTAL ARGUMENTS/REVISED CHART PRESENTED ON BEHALF OF THE CLAIMANTS/APPELLANTS IN FAO-4008-2019

8. Learned counsel for the appellants, keeping in view the objection with respect to the income raised by the learned counsel for the Insurance Companies, has submitted the revised chart which is reproduced hereinbelow:-

"CALCULATION OF COMPENSATION AS PER

NIC VS. PRANAY SETHI, 2017 ACJ 2700

1.	*Date of Accident:*	*29.09.2016*

2.	*Name of the deceased: Surpreet Kumar @ Sagar Age: 17 Y* *Occupation/Employment/Education: Student of 12th Standard (Arts)* *Income: Pleaded 20,000/- p.m. Assessed Rs.5,000/- p.m.*		
3.	*Claimants* *Name Relation* *1. Paramjit Kaur Mother* *2. Balwinder Kumar Father*		
		MACT	*As per Pranay Sethi*
4.	*Income Assessed*	*5000*	*9,000*
5.	*Future Prospects*	*40% 2000*	*40% 3600*
6.	*Total Monthly Income*	*5000*	*12,600*
7.	*Total Annual Income*	*60000*	*1,51,200*
8.	*Deduction*	*½ 30000*	*½ 75,600*
9.	*Annual Dependency*	*30000*	*75,600*
10.	*Multiplier*	*18*	*18*
11.	*Total Dependency*	*5,64,000* *(5,40,000 + 24000)*	*13,60,800*
12.	*Parental/Filial Consortium*	*--*	*96,000*
13.	*Loss of Estate*	*15,000*	*18,000*
14.	*Funeral Exp. & Trans.*	*15,000*	*18,000*
15.	*Loss of Consortium*	*--*	*--*
16.	*Total compensation*	*5,94,000* *Interest @ 7.5% p.a.*	*14,92,800*
Enhancement			***8,98,800*** ***Interest @ 7.5% p.a.***

Submitted by
Vipul Sharma (Advocate for appellants)"

ANALYSIS AND FINDINGS

9. This Court has heard learned counsel for the parties and has perused the record/paperbooks.

10. The present appeals arise from the award dated 10.01.2019 passed by the Tribunal in the accident which had taken place on 29.09.2016 due to which as many as 9 persons died and many got injured. The present appeals have arisen out of the award vide which compensation was awarded to the claimants with respect to the death of Supreet Kumar @ Sagar, who had also died in the said accident. Two offending vehicles in the present

cases were Eicher Canter bearing registration No.HP-71-2429 which was being driven by Ramesh Kumar and was also owned by him and was insured by Cholamandalum General Insurance Company Limited and the second offending vehicle was a Dumper bearing registration No.HR-39-D-2524 which was being driven by Shambhu Ram and was owned by Patel Infrastructure Pvt. Ltd. and was insured by IFFCO Tokio General Insurance Company Ltd.

11. The Tribunal on 18.08.2017 had framed the following issues: -

> *"1. Whether the accident in question resulting into death of Surpreet Kumar @ Sagar, has occurred due to composite rash and negligent driving of vehicle bearing no. HR-71-2429 by respondent no.1 and vehicle bearing no.HR-39-D-254 by respondent no.3 ? OPP.*
>
> ***2. If issue no.1 is proved in affirmative, whether the claimant is entitled for compensation, if so, how much and from whom? OPP.***
>
> ***3. Whether respondents no.1 & 3 were not holding an effective and valid driving licence at the time of accident ? OPR.***
>
> *4. Whether there was no valid and effective route permit of vehicle at the time of accident? OPR*
>
> *5. Relief."*

12. Under issue No.1, the drivers of the vehicles bearing HP-71-2429 as well as that of HR-39-D-2524 were held liable to the extent of 50% each. Issue No.4 was not pressed by the respondents before the Tribunal and was thus decided against both the insurance companies being not pressed. The findings on the said issues No.1 and 4 have not been challenged before this Court. It is the findings under issues No.2 and 3 which have been challenged before this Court and the same are being dealt with hereinafter.

(A) Issues No.2 and 3

(i) Finding regarding right of IFFCO Tokio General Insurance

Company Ltd. to recover the compensation from the appellant/owner in FAO-2780-2019.

13. Under issues No.2 and 3, the first moot point which arises for consideration is as to whether the Insurance Company (respondent No.6 in FAO-2780-2019) could be exonerated from its liability, as has been done by the Tribunal, on the finding that the driving licence was found to be fake.

14. With regard to the above, it would be relevant to note that the owner of the vehicle (dumper) i.e., the appellant in FAO-2780-2019 had led positive evidence to show that the owner had followed due procedure in order to ensure that the driver-Shambhu Ram was competent to drive the vehicle in question. The owner had examined Avtar Singh Bamwara, Senior Manager, Mechanical, as RW-2, whose examination-in-chief, in the form of affidavit is Ex.RW2/A. The said witness had specifically stated that in May, 2016, about ten aspirants had come to the office of the appellant for the post of driver and Shambhu Ram was among them and the said Shambhu Ram had produced his driving licence and Aadhar Card and after seeing that the said documents were in order, he was put on a driving test on the vehicle, which was a Dump Truck and the trial was taken under the supervision of Sanjay Vishwakarma, Senior Supervisor Mechanical and after the trial, the said Shambhu Ram was found fit to drive the vehicle. It was further stated by RW2 that the Driving Test Approval Form of Shambhu Ram was filled up by Sanjay Vishwakarma and the copy of the same was duly exhibited on record as Ex.RW2/1. The said witness (RW2) proved on record the copy of the recruitment recommendation intimation form, copy of the ID Card of Shambhu Ram as well as the copies of Aadhar Card and the driving licence

of Shambhu Ram, which documents were duly exhibited on record. The copy of national permit was also duly produced on record as Ex.RW2/7. The relevant portion of his examination-in-chief is reproduced as under: -

> "***I, Avtar Singh Bamwara, Senior Manager****, Mechanical, Patel Infrastructure Pvt. Ltd, Barwa, Tehsil Siwani District Bhiwani, Haryana, do hereby solemnly affirm and declare as under:*
>
> *That I am working as Senior Manager, Mechanical, Patel Infrastructure Pvt Ltd. Barwa, Tehsil Siwani District Bhiwani, Haryana. Our company has got a large fleet of heavy vehicles comprising Dump Trucks, Heavy Duty Vehicles, MTV and LTV for which we have engaged a number of drivers to operate those vehicles.* ***In the month of May, 2016, about ten aspirants came to our office at Barwa, Tehsil Siwani, District Bhiwani for the post of driver and Shambhu Ram, respondent No.5 was also one amongst them. Like other candidates, Shambhu Ram also produced his driving license and Aadhar card. After finding the documents of Shambhu Ram to be in order, on close scrutiny and proper checking, he was put on driving lest on vehicle namely Dump Truck and the trial was taken under the supervision of Sanjay Vishwakarma- Senior Supervisor Mechanical. After the trial, Shambhu Ram was found to be perfect in driving the said vehicle. As per procedure of the Company. Operator's Driving Test Approval Form of Shambhu Ram was filled up by Sanjay Vishwakarma who signed the said form in the relevant column in my presence and the said form was also authenticated by me under my signatures on 18.5.2016. Thus Shambhu Ram was found to be fit in driving the vehicle and the Operator's Driving Test Approval Form was presented to Sh. Rajesh Sharma- Project Manager, who also signed it on the next date and the said form was forwarded to the head office of the company of Anand Gujrat through site HR Department.*** *The Employee ID was issued by the Head Office relating to the approval of the appointment of Shambhu Ram as a Driver and only thereafter he was allowed to ply the vehicle and he continued to drive and operate the vehicle perfectly and competently without any fault, complaint or even without any minor accident.* ***I have brought the original documents relating to the employment of Shambhu Ram as driver. The copy of the Operator's Driving Test***

Approval Form is correct as per the original and is Ex.RW2/1. The copy of the recruitment recommendation intimation form which is correct as per the original and is Ex.RW2/2 and Ex.RW2/2x. The project Manager issued the format for ID Card of Shambhu Ram under his signature on 18.5.2016. the copy of which is Ex.RW2/3 which was also signed by Shambhu Ram. *As per procedure of the company details of Shambhu Ram as our employee were maintained in a concerned form namely employees details which was also signed by Shambhu Ram, copy of which is correct as per the original and is Ex.RW2/4.* ***The self attested copy of Aadhar Card of Shambhu Ram and copy of his driving License are Ex.RW2/5 and Ex.RW2/6, respectively. The driving licence produced by Shambhu Ram on the face of it looked to be genuine and only thereafter, he was put on test for his driving skill. Thus the respondent No.5 was employed as driver with the company after satisfying itself that he has got a genuine license and is capable of driving the vehicle competently and diligently.*** *The company as such has not caused any breach of policy conditions. The concerned vehicle falsely had named in the alleged accident had valid national permit part A and part B which have brought today with me, copy of which is correct and is Ex.RW2/7.* ***At the time of employing the driver, we took due care that the license is genuine and did not appear to be fake or forged on the face of it.*** *As such we have not breached any term of the insurance policy. The vehicle No.HR39D 2524 was duly insured, having valid Registration Certificate and Route Permit.*

That the alleged accident was not at all caused due to negligent or reckless driving of the vehicle No.HR-39D 2524 belonging to the respondent NO.4, Company Driven by the driver. I have been authorised to appear and depose in the present case on behalf of the company as per the authority letter dated 13.04.2018, which is Ex.RW2/8."

15. From the above-said evidence, it is apparent that the appellant/owner had taken due care of all the aspects before employing the said Shambhu Ram as driver. Nothing has been pointed out by the learned counsel for the respondents from the cross-examination of the said witness

so as to put a dent on the evidence given by the said witness in his examination-in-chief.

16. To the similar extent was the evidence of Keshubhai Mohanbhai Vadaliya, who was working as Works Manager with the owner company and who had appeared in the witness box as RW-3. Even in his examination-in-chief, which was in the form of an affidavit RW3/A, he had reiterated the averments made by RW-2 in his examination-in-chief. Nothing has been pointed out from his cross-examination also by the learned counsel for the respondents to put a dent in his examination-in-chief.

17. The IFFCO Tokio General Insurance Company, who was respondent No.5 before the Tribunal, had filed its written statement and in para 3 of the preliminary objections had only raised the plea that the driver-Shambhu Ram was not having a valid licence and as has been fairly admitted by the learned counsel for the said insurance company, there was no plea raised by the said insurance company in their written statement that the appellant/owner did not conduct due diligence while employing the driver Shambhu Ram. Moreover, it is also not in dispute that there was no witness examined by the insurance company (respondent No.6 in FAO-2780-2019) on the said aspect.

18. The Hon'ble Supreme Court in the case of ***IFFCO TOKIO General Insurance Company Limited Vs. Geeta Devi and others, (supra),*** which was the case of the same insurance company as the present insurance company (respondent No.6 in FAO-2780-2019), had observed that no person employing a driver would undertake a verification exercise to the

effect that they would check the driving licence from the concerned transport authority and would be satisfied with the production of the licence seemingly issued by the competent authority, the validity of which licence has not expired. It was further observed that in a case where the driving licence was found to be fake, the question that arises would be whether the insurer could prove that the owner was guilty of willful breach of the conditions of the insurance policy and that it was for the insurer to prove that the insured (owner) did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver. The Hon'ble Supreme Court while deciding the said matter in favour of the owner (therein) and against the insurance company had observed that the insurance company in the said case had not even raised the plea that the owner of the vehicle (therein) allowed the driver therein to drive the vehicle knowing that his licence was fake and thus, the claim of the insurance company therein that they have the right to recover the compensation from the owners of the vehicle therein, owing to a willful breach of the condition of the insurance policy to ensure that the vehicle was driven by a licenced driver, is without pleading and proof and was accordingly rejected. It was observed that the said legal proposition is now well settled and it was indeed shocking that insurance companies deem it appropriate to raise such pleas as a matter of course.

19. It would be relevant to note that the said observations were made with respect to the same insurance company i.e. IFFCO Tokio General Insurance Company Limited, which is the contesting respondent No.6 in the present case (i.e. FAO-2780-2019). It is not in dispute that even the policy

which was in question in the above-said case before the Hon'ble Supreme Court was similar as in the present case. As has been stated herein above, which fact has not been disputed before this Court, that the said respondent-Insurance company in the written statement did not even raise the plea that the owner of the vehicle had made the driver Shambhu Ram drive the vehicle (Dumper) knowing his licence was fake nor the insurance policy in the present case required the vehicle owner to undertake verification of the driving licence of the driver from the concerned RTO. Thus, the judgment of the Hon'ble Supreme Court in the above-said case applies on all fours in the present case. The relevant portion of the said judgment is reproduced herein-below:-

> *" xxx xxx xxx*
>
> *5. On behalf of the petitioner-insurance company, it was argued that the hearsay evidence of the widow of the vehicle owner was accepted as the biblical truth by the High Court without any corroboration thereof. This argument was advanced in the context of the deceased vehicle owner having taken a driving skill test of Ujay Pal prior to his employment as a driver.* ***It is pointed out that his widow admitted that she had not seen any such test being taken and that her late husband had merely told her so and, further, the inescapable fact also remains that the driving licence of Ujay Pal, the driver of the vehicle, was a fake one.***
>
> *xxx xxx xxx*
>
> *8. As regards the contention that the driver of the vehicle was not duly licensed as he possessed a fake license, it may be noted that neither Section 149(2)(a)(ii) of the Act of 1988 nor the 'Driver Clause' in the subject insurance policy provide that the owner of the insured vehicle must, as a rule, get the driving licence of the person employed as a driver for the said vehicle verified and checked with the concerned transport authorities.* ***Generally, and as a matter of course, no person employing a driver would undertake such a verification exercise and would be satisfied with the production of a licence issued by a seemingly***

competent authority, the validity of which has not expired. It would be wholly impracticable for every person employing a driver to expect the transport authority concerned to verify and confirm whether the driving licence produced by that driver is a valid and genuine one, subject to just exceptions. In fact, no such mandatory condition is provided in any car insurance policy and it is not open to the petitioner-insurance company, which also did not prescribe such a stringent condition, to cite the failure of the deceased vehicle owner to get Ujay Pal's driving licence checked with the RTO as a reason to disclaim liability under the insurance policy.

9. In effect and in consequence, the petitioner-insurance company cannot blithely claim that the deceased vehicle owner did not conduct due diligence while employing Ujay Pal as a driver, by now insisting upon a condition which was neither prescribed in the statute nor in the insurance policy. More so, an unrealistic condition that every person employing a driver must get the driving licence of such driver verified and confirmed by the RTO concerned, irrespective of the actual necessity to do so.

xxx xxx xxx

14. ***More recently, in Ram Chandra Singh V. Rajaram, the issue before this Court was whether an insurance company could be absolved of liability on the ground that the insured vehicle was being driven by a person who did not have a valid driving licence at the time of the accident. This Court found that no attempt was made to ascertain whether the owner was aware of the fake driving licence possessed by the driver and held that it is only if the owner was aware of the fact that the licence was fake but still permitted such driver to drive the vehicle that the insurer would stand absolved. It was unequivocally held that the mere fact that the driving licence was fake, per se, would not absolve the insurer.***

15. Applying the aforestated edicts to the case on hand, it may be noted that the petitioner-insurance company did not even raise the plea that the owner of the vehicle allowed Ujay Pal to drive the vehicle knowing that his licence was fake. *Its stand was that the accident had occurred due to the negligence of the victim himself. Further, the insurance policy did not require the vehicle owner to undertake verification of the driving licence of the driver of the vehicle by*

getting the same confirmed with the RTO. ***Therefore, the claim of the petitioner-insurance company that it has the right to recover the compensation from the owners of the vehicle, owing to a willful breach of the condition of the insurance policy, viz., to ensure that the vehicle was driven by a licenced driver, is without pleading and proof.***

16. As already pointed out supra, once a seemingly valid driving licence is produced by a person employed to drive a vehicle, unless such licence is demonstrably fake on the face of it, warranting any sensible employer to make inquiries as to its genuineness, or when the period of the licence has already expired, or there is some other reason to entertain a genuine doubt as to its validity, the burden is upon the insurance company to prove that there was a failure on the part of the vehicle owner in carrying out due diligence apropos such driving licence before employing that person to drive the vehicle. Presently, no evidence has been placed on record whereby an inference could be drawn that the deceased vehicle owner ought to have gotten verified Ujay Pal's driving licence. Therefore, it was for the petitioner-insurance company to prove willful breach on the part of the said vehicle owner. As no such exercise was undertaken, the petitioner-insurance company would have no right to recover the compensation amount from the present owners of the vehicle. *The impugned order passed by the Delhi High Court holding to that effect, therefore, does not brook interference either on facts or in law.*

17. These legal propositions being so well settled, it is indeed shocking that insurance companies deem it appropriate to raise such pleas as a matter of course, without reference to the facts of the given case and/or the evidence available therein, and also consider it necessary to carry such matters in appeal till the last forum, unmindful of the wastage of valuable curial time and effort!

18. The special leave petition is accordingly dismissed."

20. To the similar effect is the judgment of the Hon'ble Supreme Court in the case of ***Nirmala Kothari (supra).*** In the said case also, it was observed by the Hon'ble Supreme Court that the licence of the driver therein, at the time of accident, was invalid/fake, however the onus of

proving that the insured did not take adequate care and caution to verify the genuineness of the licence or was guilty of willful breach of the conditions of the insurance policy, lies on the insurer. It was further observed that while hiring a driver, the employer is expected to verify if the driver has a driving licence and if the driver produces a licence which on the face of it looks genuine, then, the employer is not expected to further investigate into the authenticity of the licence and in case the employer finds the driver to be competent, then, the insurance company would be liable. It was observed that it is only in a situation where the Insurance Company is able to prove that the owner/insured was aware that the licence was fake or invalid and still permitted the said person to drive, the insurance company would no longer continue to be liable. No contrary judgment on the said aspects have been cited by the counsel for the respondents. Thus, the moot issue which arises in the present case stands fully answered in favour of the appellant/owner.

21. In the present case, as has been stated hereinabove, the appellant/owner had led positive evidence including the statements of RW-2 and RW-3 to show that due diligence was exercised by the appellant including taking the driving test of Shambhu Ram and seeing his licence before employing him. On the other hand, it is neither the case of IFFCO Tokio General Insurance Company Ltd. in its written statement nor there was any evidence led by the said insurance company to even remotely show that the appellant had permitted the driver of the Dumper to drive the same in spite of having knowledge that his licence was fake. In the said circumstances, the finding of the Tribunal under issues No.2 and 3 to the

effect that IFFCO Tokio General Insurance Company Ltd. has a right to recover the amount of compensation from the owner, is perverse and against settled law and deserves to be set aside and is accordingly set aside. It is held that the said insurance company does not have any right to recover the amount from the owner/appellant in FAO-2780-2019 and the finding on the said issues No.2 and 3 accordingly stands modified.

(ii) Additional compensation payable to the claimants/appellants in FAO-4008-2019

22. The other issue which arises for consideration in the present cases is the amount to which the claimants/appellants in FAO-4008-2019 are entitled to. Before giving a finding on the said aspect, it would be relevant to refer to the judgments of the Hon'ble Supreme Court laying down the principles on the basis of which the amount of compensation is to be calculated. Hon'ble the Supreme Court in para 42 of ***Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and another, reported as (2009) 6 SCC 121*** had observed as under:-

> *"We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with* ***an operative multiplier of 18 (for the age groups of 15 to 20*** *and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."*

23. A perusal of the above would show that for the age of 17 years, multiplier of '18' is to be applied, which has been rightly applied in the

revised chart submitted by the counsel for the claimants.

24. The Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others, reported as (2017) 16 SCC 680***, has held as under:-

> *"59.In view of the aforesaid analysis, we proceed to record our conclusions:-*
>
> *59.1 The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.*
>
> *59.2 As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.*
>
> *59.3 While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*
>
> ***59.4 In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years.*** *An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.*
>
> *59.5 For determination of the multiplicand, the deduction for*

> *personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.*
>
> ***59.6 The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.***
>
> ***59.7 The age of the deceased should be the basis for applying the multiplier.***
>
> ***59.8 Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.***
>
> *60. The reference is answered accordingly. Matters be placed before the appropriate Bench."*

25. A perusal of the above judgment would show that it was observed by the Hon'ble Supreme Court that addition of some percentage of the actual salary to the income of the deceased towards future prospects was also required to be taken into consideration. The chart as reproduced in para 42 of the judgment of ***Sarla Verma's case*** (Supra) was approved and a total amount of Rs.70,000/- on conventional heads namely loss of estate, loss of consortium or funeral expenses was also mentioned which is required to be enhanced at the rate of 10% in every three years.

26. The Hon'ble Supreme Court in "***Magma General Insurance Company Limited*** ***Vs.*** ***Nanu Ram alias Chuhru Ram and others", reported as (2018) 18 SCC 130*** had further observed that in death case, under the head of loss of consortium, the parents of the deceased are entitled to be awarded loss of consortium under the head of filial consortium and

children are entitled to parental consortium. To the widow, spousal consortium is to be given. Relevant portion of the said judgment is reproduced hereinbelow:-

> *"21. A Constitution Bench of this Court in Pranay Sethi dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium. In legal parlance, "consortium" is a compendious term which encompasses'spousal consortium', 'parental consortium', and 'filial consortium'. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.*
>
> *21.1 Spousal consortium is generally defined as rights pertaining to the relationship of a husband wife which allows compensation to the surviving spouse for loss of "company, society,co-operation, affection, and aid of the other in every conjugal relation."*
>
> *21.2 Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."*
>
> *21.3 Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.*
>
> *22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world over have recognized that the value of a*

child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium. Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count 5. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium.

24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in Pranay Sethi (supra). In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs.40,000 each for loss of Filial Consortium."

27. In the abovesaid judgment, an amount of Rs.40,000/- each was awarded to the father and sister of the deceased and thus, the amount of consortium awarded was made dependent upon the number of claimants/legal representatives.

28. As has been detailed hereinabove, after taking into consideration the objections raised by the learned counsel for the insurance companies, learned counsel for the appellants/claimants have submitted a

revised chart showing that the appellants/claimants are entitled to an additional amount of Rs.8,98,800/- alongwith interest @ 7.5% per annum. This Court is of the opinion that the revised chart submitted by the learned counsel for the appellants/claimants, which is reproduced in the earlier part of the present order, takes into consideration the objections raised by the learned counsel for the insurance companies and is in accordance with law. In the said chart, the amount of Rs.96,000/- (there being two claimants, and after taking into consideration 10% increase after every three years) has been rightly stated to be the amount due under the head of "consortium", which had not been granted by the Tribunal. Even the amount on accounts of loss of estate and funeral expenses has been rightly stated to be Rs.18,000/- each (after taking into consideration the aspect of 10% increase) instead of Rs.15,000/- each, which had been granted by the Tribunal. The income is rightly assessed as Rs.9,000/- per month as the deceased was a 17 year old boy who was studying in 12th class and thus the notional income of Rs.9,000/- per month has been rightly mentioned in the revised chart. It has also not been disputed that as per settled law the multiplier has to be applied after taking into consideration the benefit of future prospects which had not been done by the Tribunal. Accordingly, the claimants are entitled to an additional amount of Rs.8,98,800/- alongwith interest @ 7.5% per annum from the date of filing of the claim petition till the date of actual payment within a period of six weeks from today.

CONCLUSION

29. Keeping in view the above-said facts and circumstances, FAO-2780-2019 filed by the appellant/owner is partly allowed and the recovery

rights which had been given to the insurance company (respondent No.6 in FAO-2780-2019) is set aside and it is held that the said insurance company would have no right to recover from the appellant/owner. FAO-4008-2019 is also partly allowed and the award dated 10.01.2019 is modified and the insurance companies (i.e. IFFCO Tokio General Insurance Company Ltd. and Cholamandalum General Insurance Company Limited) are directed to pay to the claimants an additional amount of Rs.8,98,800/- alongwith interest @ 7.5% per annum from the date of filing of the claim petition till the date of actual payment, in the proportion 50:50 (equally) within a period of six weeks from today.

30. At this stage, learned senior counsel for the appellant in FAO-2780-2019 has submitted that the appellant had deposited an amount of Rs.25,000/- at the time of filing of the appeal and since the appellant/owner has not been held liable to pay any amount, thus, the office of the Registrar of this Court be directed to return the said amount. The said aspect could not be disputed and accordingly, the amount of Rs.25,000/- which had been deposited by the appellant alongwith the present appeal is ordered to be returned to the appellant. The office of the Registrar of this Court would return the same on the moving of an application by the appellant in the said regard.

February 27, 2025 **(VIKAS BAHL)**
naresh.k/pawan **JUDGE**

Whether speaking/reasoned:- Yes
Whether reportable:- Yes