



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

119

Date of decision : 03.03.2025

1. FAO-4605-2017 (O&M)

New India Assurance Comp. Ltd.

..... Appellant

versus

Pooja and others

..... Respondents

2. FAO-2966-2017

Pooja and another

..... Appellants

versus

Anil and others

..... Respondents

3. FAO-4239-2017 (O&M)

Bhateri and another

..... Appellants

versus

Anil and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. S.P. Arora, Advocate
for the appellant in FAO-4605-2017
for respondent No.4 in FAO-2966-2017 and
for respondent No.3 in FAO-4239-2017.

Mr. Narender Kaajla, Advocate
for the appellants in FAO-4239-2017.

Mr. Amarjit Singh, Advocate
for the appellants in FAO-2966-2017 and
for respondents No.1 and 2 in FAO-4605-2017.

Mr. Jainainder Saini, Advocate
for respondent No.4 in FAO-4605-2017.



PANKAJ JAIN, J. (ORAL)

1. These three appeals pertain to the same accident arisen out of two different petitions filed under Section 166 of the Motor Vehicles Act, 1988 by the claimants.
2. Claim petition bearing No.59 of 2015 was filed by widow and minor daughter of deceased-Virender. MACT petition No.127 of 2016 was preferred at the behest of mother of the deceased-Virender along with his minor daughter Varsha. FAO No.2966 of 2017 was filed by Pooja-widow and Varsha. FAO No.4239 of 2017 is at the behest of the other set of the claimants i.e. Bhateri and Varsha.
3. The claimants are in appeal questioning the quantum of compensation awarded by the Tribunal and pray for enhancement. FAO No.4605 of 2017 is at the behest of the insurer, claiming that the insurance company ought not have been fastened with the liability, as driver was not holding a valid license.
4. None of the appellant has disputed the findings recorded by the Tribunal qua issue No.1. In view of above, findings recorded by the Tribunal on issue No.1 holding that the deceased-Virender died in a motor vehicular accident dated 13.06.2015 caused by the rash and negligent driving of Anil while driving offending vehicle pick-up dala bearing No.HR-39C/7380 is affirmed.
5. Appellant-insurance company has assailing finding on issue No.3 claiming that the driving license produced on record Ex.R-3



being not on smart card, is not a valid driving license. Counsel for the appellant is not in a position to dispute that no evidence was led by the insurance company to prove that the license was fake. Merely for the reason that the driving license was issued by State of Nagaland, the same cannot be held to be a fake driving license. This Court in **FAO No.2379 of 2013 titled as ‘National Insurance Company Ltd. vs. Ravinder Kaur and others’** decided on 05.02.2025 dealt with the issue and observed as under:-

“9. The provision uses two different expressions i.e. ‘ordinarily resides’ and ‘carries on business’. From perusal of Ex.R-2, it is evident that the driver was ordinarily resident of Bathinda. However, there is no evidence to show that he was not carrying on business in Nagaland. It is the appellant-the insurer, who is claiming breach of the contract. Likewise, there is no evidence to show that case of licensee does not fall within Section 9(1)(ii). It is the appellant who avers and alleges breach of conditions of insurance.

10. Onus was upon the appellant-insurer to prove that the driving licence was unlawfully renewed. No evidence was led by the insurance company to discharge the said onus. Reliance upon observations made in the case of **Kuljeet Singh (supra)** is misplaced. In the said case, licence clerk from the licencing authority was examined. He produced the record and it is thereafter that the Court invoke Section 9 to hold that the licence was not lawfully renewed.

11. The plea raised is not based upon any evidence. The evidence led by the appellant remained discrepant before the Tribunal.”

6. Same is the view formulated by Coordinate Bench in **FAO-3596-2017** titled as **‘New India Assurance Company Ltd. vs. Smt.**



Veena Devi and others' decided on 07.12.2022 and *FAO-3244-2016* titled as '*Ombir and another vs. SBI General Insurance Company Ltd. and others*' decided on 22.02.2019. Apart therefrom, there is no evidence to prove that insured was negligent. Reference can be made to following observations made by Supreme Court in *National Insurance Co. Ltd. v. Swaran Singh reported as (2004) 3 SCC 297:-*

“(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 defence(s) 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.”

7. In view of above, findings on issue No.3 need no interference and are hereby affirmed. Appeal i.e. FAO-4605-2017 filed by the insurance company is ordered to be dismissed.



8. Both the sets of claimants are legal heirs of deceased-Virender who died at the age of 22 years. Tribunal assessed compensation as per the following tabulation:-

Sr.No.	Heads of claim	
1	Income	₹9,000/- per month
2	1/3rd deducted as personal expenses of the deceased	₹9,000 - ₹3000 = ₹6000/-
3	Compensation after applying multiplier of 18	₹6000X12X18 = ₹12,96,000/-
4	Loss of consortium	₹1,00,000/-
5	Loss of love & affection, care and guidance for minor children	₹1,00,000/-
6	Transportation and funeral expenses	₹25,000/-
7	Medical Expenses	₹32,671/-
8	Total compensation awarded	₹15,53,671/-

9. Counsel for the claimant-appellant has assailed the findings recorded by the Tribunal vis-a-vis income of the deceased. It has been contended that the deceased was holding diploma in electric trade and was earning an amount of Rs.25,000/- being self employed. Tribunal, in the absence of there being any evidence led by the claimants to prove income of Rs.25,000/- per month, assessed the deceased as a skilled labour and assessed his monthly income as per the minimum wages notified by State @ Rs.9,000/- per month. Counsel for the appellant relies upon ratio of law laid down by Supreme Court in the case of *Kandasami & Ors. vs. Lindabriyal & Anr. reported as 2023 ACJ 1653*, wherein while assessing the income of the deceased who had completed his B.Tech course in computer applications, the Supreme Court assessed his income as Rs.25,000/-. Further reliance is being placed upon ratio of law laid down by Coordinate Bench in



FAO No.3702 of 2017 titled as '*United India Insurance Co. Ltd. vs. Darshana & Ors.*' decided on 17.02.2025, wherein Coordinate Bench assessed income of deceased who was studying in 11th standard at the time of accident as Rs.15,000/-.

10. I have heard counsel for the parties and have carefully gone through the records of the case.

11. In the considered opinion of this Court, it stands proved on record that the deceased was holding diploma in Electric Engineering and was self employed doing his own business. Thus, this Court finds that the notional income of the deceased as assessed by the Tribunal as a daily wager cannot be sustained. Taking a conservative estimate, keeping in view the date of accident i.e. 13.06.2015, income of the deceased is assessed at Rs.20,000/-. Deduction on 1/3rd needs to be applied to calculate the dependency. In view of ratio of law laid down by Supreme Court in the case of '*National Insurance Company Limited vs. Pranay Sethi and others*', (2017) 16 SCC 680, 40% future prospects need to be added. Deceased was 22 years of age, multiplier of 18 has been rightly applied by the Tribunal. For loss of estate, the claimants have been awarded a sum of Rs.1,00,000/- which is reduced to Rs.18,150/-. Funeral expenses of Rs.25,000/- are maintained. Medical expenses of Rs.32,671/- have been awarded on actual basis. The same are maintained. The claimants i.e. Pooja, Varsha and Bhateri are held entitled for a sum of Rs.48,400/- each on account of loss of consortium.



12. Claimants are held entitled to interest @ 9% per annum from the date of filing of the application till the date of actual realization. Apportionment of the awarded amount shall abide by the observations made by the Tribunal in para 24 of the impugned award. 50% of the compensation amount for which Varsha minor child has been held entitled, shall be deposited in the fixed deposit with the nationalized bank and shall be released to her only on attaining the age of majority.

13. With the aforesaid observations, the present appeals are disposed off.

14. A photocopy of this order be placed on the files of other connected cases.

15. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

**(PANKAJ JAIN)
JUDGE**

03.03.2025

Dinesh

Whether speaking/reasoned

Yes

Whether Reportable :

No