

**(2014) 03 P&H CK 0142**

**In the Punjab And Haryana At Chandigarh**

**Case No : F.A.O. Nos. 2370 of 1998 and 173 of 1999 (O and M)**

Munni Devi

APPELLANT

Vs

Farid Khan

RESPONDENT

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**Date of Decision : 26-03-2014**

**Acts Referred:**

**Citation : (2014) 4 RCR(Civil) 53**

**Hon'ble Judges : Jitendra Chauhan, J**

**Bench : Single Bench**

**Advocate : Kapil Aggarwal, Advocate for the Appellant; V. Ramswaroop, Advocate for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

Jitendra Chauhan, J.—Two appeals, as noticed above, are being disposed of by this single judgment, having arisen out of the impugned Award dated 03.08.1998, passed by the learned Motor Accident Claims Tribunal, Narnaul. The learned counsel for the claimant-appellants contends that the compensation awarded by the learned Tribunal is on the lower side and deserves to be enhanced.

2. The learned counsel for the appellant-Insurance Company contends that the liability has been wrongly fastened upon the appellant-insurance company in view of the fact that the respondent-driver was not holding valid licence to drive the offending vehicle.

3. There is no assistance on behalf of the respondents-driver and owner.

4. I have heard learned counsel for the parties and perused the record.

5. As far as the appeal bearing FAO No. 173 of 1999, preferred by the insurance company, is concerned, it is not in dispute that the offending vehicle i.e. the truck was insured from the appellant-company. The petitioner placed on record Ex. PC, photocopy of the driving licence of the respondent-driver, which reveals

that it was issued for HMV w.e.f. 24.08.1994. However, the appellant-company got the same verified from the Licensing Authority, Delhi, and as per the report Ex. R2, the licence was issued only for driving the LMV. The original driving licence was not placed on record. In the considered opinion of this Court, the learned Tribunal erred in relying upon the photocopy of the driving licence, Ex. PC, and ignoring the evidence led by the insurance company in the form of letter from the licensing authority.

6. Hon'ble the Apex Court, in *S. Iyyapan Vs. United India Insurance Company Ltd. and Another*, has held that even if it is proved that the driver was not holding valid driving licence to drive the commercial vehicle, the insurer cannot escape from its liability. However, the insurer has every right to proceed against the insured for recovery of the amount in the event of violation of any conditions of the insurance policy.

7. In this view of the matter, this Court is of the considered opinion that in the absence of specific endorsement to drive a commercial vehicle, it can be safely held that the driver was not holding a valid licence to drive the vehicle involved in the accident i.e. the truck. Therefore, there is apparent violation of the terms and conditions of the insurance policy.

8. Accordingly, the appellant-Insurance Company is granted recovery rights against the respondents-owner and driver on the principle of "pay and recover".

9. The statutory amount, if any, deposited at the time of filing this appeal, be placed at the disposal of the learned Tribunal for reimbursement.

10. As far FAO No. 2370 of 1998, preferred by the claimants for enhancement of the amount of compensation, is concerned, deceased, Krishan Kumar, was 34 years of age at the time of his death. He was a sculptor and used to build idols of Gods in different temples. He left behind four dependents, including wife and three minor children. The learned Tribunal has applied 1/3rd deduction, which ought to have been 1/4th in view of the law laid down in *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*, It is ordered accordingly. Another increase of 50% is ordered towards future prospects of the deceased following the principle of law laid down in *Rajesh and Others Vs. Rajbir Singh and Others*, . In this way, the amount of compensation under the head of dependency comes to Rs. 1,500/- + 50% X 12 X 16 = Rs. 3,24,000/-, as against the amount of Rs. 1,92,000/-, assessed by the learned Tribunal. Furthermore, the claimant-wife of the deceased shall be entitled to an amount of Rs. 1,00,000/-, towards loss of consortium, whereas, the claimant-children of the deceased shall also be entitled to a sum of Rs. 1,00,000/-, for loss of love, care and guidance.

11. In view of the above, the claimant-appellants are held entitled to enhanced amount of compensation of Rs. 3,32,000/- [1,32,000/- (enhancement towards loss of dependency) + Rs. 1,00,000/- (loss of consortium, payable to the wife of the deceased only) + Rs. 1,00,000/- (loss of love, care and guidance, payable to the children of the deceased, in equal shares)], as indicated above, over and

above the amount already awarded by the learned Tribunal, which shall be payable within a period of 45 days from the date of receipt of a certified copy of this judgment, failing which, they shall also be entitled to interest as indicated in the award i.e. 7.5% per annum, from the date of filing the present appeal, till its realization. With the aforesaid modification in the impugned award, the present appeals are partly allowed.