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**(2016) 08 UK CK 0013**

**In the Uttarakhand High Court**

**Case No : Appeal from Order No. 210 of 2010**

Nattha Singh

APPELLANT

Vs

Oriental Insurance Company Limited

RESPONDENT

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**Date of Decision : 09-08-2016**

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 147, Section 163, Section 166, Section 178

**Citation :** (2017) AAC 346 : (2016) 4 TAC 185

**Hon'ble Judges :** Servesesh Kumar Gupta, J.

**Bench :** Single Bench

**Advocate :** Mr. Lalit Belwal, Advocate, for the Appellant; Mr. V.K. Kohli, Senior Advocate assisted by Mr. I.P. Kohli, Advocate, for the Respondent No. 1; Mr. Sayed Nadim, Advocate, for the Respondent Nos. 2 to 5

**Final Decision :** Allowed

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## **Judgement**

Servesesh Kumar Gupta, J. - Both these appeals are being taken up together for adjudication as those have assailed the same judgment and order of Tribunal rendered on 26.04.2010 in MACP No. 311 of 2008.

2. A.O. No. 210 of 2010 has been preferred by owner and driver of the offending vehicle No. HR31-GA-0896 because the liability of the award has been fastened upon them instead of on the insurance company while the AO No. 187 of 2010 has been presented by the dependants of the deceased Sri Gurmeet Singh seeking enhancement of the award.

3. It is not disputed that the accident occurred on 14.03.2008 at 4.00 AM, while Sri Gurmeet Singh (deceased) running in his late thirties, was struck off by the truck when he was going on his motorcycle No. UP 04-B-5769. The accident was so dreaded that Mr. Singh succumbed to his injuries within an hour of the accident at the spot itself.

4. The truck was covered with the insurance policy but the learned Tribunal was of the view that since driver of such offending vehicle Mr. Jeet Singh did not have

an effective license to drive the heavy transport vehicles and the owner of such vehicle was quite irresponsible in employing such a driver, hence the liability has been fastened upon them.

5. Insurance company produced Form No. 54, issued by the Licensing Authority, U.S. Nagar, which reveals that the driving license (bearing No. 4333/Imphal/2003), issued on 12.05.2003 and valid till 11.05.2006 to drive the motorcycle, LMV and auto rickshaw, was renewed w.e.f. 12.05.2006 to 11.05.2009 and a new number viz. 2882/T/USN/06 was assigned to such license. So, the learned Senior Counsel on behalf of the insurance company has strenuously argued that such a license, issued from Imphal (Manipur) to drive motorcycle + LMV + auto rickshaw, was renewed from the U.S. Nagar Transport Authority, which could have enabled Mr. Jeet Singh to drive only such vehicles, as indicated.

6. Since the stress was being laid on behalf of the driver before the Tribunal that his license was renewed not only to drive these aforementioned vehicles but it was meant to drive heavy goods vehicle as well, so, the original register of the licensing authority was summoned in the Court below and the view was expressed that the addition of the words "heavy goods vehicles" has been made between first two lines which appears to have been done after the accident.

7. Therefore, the Tribunal did not believe on the factum that Mr. Jeet Singh was having a valid license to drive the heavy goods vehicles and this was the cause for fastening the liability upon the appellants, herein.

8. In this Court, the original register of the licensing authority has again been called, which has been brought by Mr. Nand Kishore, ARTO (Admin.), and this Court scrupulously looked upon the entries on the relevant page, where the renewal of driving license of Mr. Jeet Singh has been countenanced.

9. I feel that the view of Tribunal is quite erroneous and perhaps because it has escaped the attention from the photocopy of the original license of Mr. Jeet Singh issued from Imphal itself. Page No. 5, where the endorsement of its validity, renewal as well as additions or subtractions are made, the same authority which has issued the license in Imphal under the same signature and seal, has made the license of Mr. Jeet Singh effective to drive the heavy transport vehicle w.e.f. 20.07.2004. While the said license was produced for renewal before the Licensing Authority in Udham Singh Nagar Office on 04.05.2006, the concerned official of such authority, when allotting the new driving license No. 2882 and renewing it w.e.f. 12.05.2006 to 11.05.2009, could not meticulously notice the endorsement made by Mr. L.V. Singh, Licensing Officer of Imphal about the endorsement of heavy transport vehicles at page No. 5 of such license. When such slackness was noticed by the official concerned, he rectified the mistake and made the endorsement of heavy goods vehicle in the original register between two lines because such endorsement could not have suitably been added in the circumstances as is manifested from the original record of the Licensing Authority.

10. Learned Senior Counsel has again stressed that the photocopy of driving license is not admissible in the evidence.

It has been a settled proposition of law while deciding these matters that the strict norms of the Evidence Act, which are followed in order to make any particular document admissible, are not followed like a Civil or Criminal matters, until and unless, there seems to be an apparent doubt in the genuineness of the documents. Therefore, I feel that appeal (AO No. 210 of 2010) should be allowed and the liability should be shifted on the insurance company from that of the owner and driver of the offending vehicle.

11. Now, I come to another appeal (AO No. 187 of 2010), filed by the claimants, which has vehemently been argued by learned counsel for the dependants that the Tribunal has committed an error in evaluating the whole compensation on the notional income of the deceased, because he was employed as a Foreman-Welder in a firm of Gurupal Agricultural Works and as per the record of the firm, which is the computer generated, there is a mention of many other employees showing their names, monthly pay and other particulars. The salary of the deceased Mr. Gurmeet Singh has been displayed as Rs. 9,000/- per month for the months of January and February, 2008.

12. That apart, the owner of the firm has been produced before the Court below as PW5, who has proved this computer generated record as well as separate certificate issued under his seal and signature on 30.04.2008 showing the monthly salary of the deceased to be Rs. 9,000/-. Otherwise also, I feel that the deceased, a 39 years old man, was not simply a labourer but he was a skilled person doing the work of welding in the firm under the name and style of Gurupal Agricultural Works at Rudrapur.

13. Assailing such certificate on the ground that it has not been verified from the Office of Employees State Insurance or some Labour Department, again loses its weight because the owner of the firm has not been cross-examined on the point as to why he did not get his firm registered in such Labour Department. Therefore, I accept this certificate and determine the monthly salary of deceased to be Rs. 9,000/-.

14. This way, his annual income comes to Rs. 1,08,000/-. Since, he was having wife and two children as well as an old father, hence, it would be proper to deduct one-third of his whole salary towards personal expenses and thus, the base amount comes to Rs. 72,000/-. As per the celebrated Sarla Verma Case, the proper multiplier would have been "15".

This way, the amount of compensation comes to Rs. 10,80,000/- (72000 x 15). The compensation awarded on other scores is not disturbed by this Court.

15. In view of what has been set forth above, I modify and enhance the amount of award from Rs. 4,17,000/- to Rs. 10,92,000/- (Rupees ten lakh and ninety two thousand only) along with 6% simple annual interest thereon from the date

of filing the Claim Petition.

16. Both these appeals stand allowed in the above terms.

Let a copy of this judgment along with LCR be sent back to the court concerned.

Amount of statutory deposit, if lying in any of the appeals, be also remitted to the concerned Tribunal.