

(2016) 01 SHI CK 0066

In the High Court Of Himachal Pradesh

Case No : FAO No. 347 of 2014 and CO No. 18 of 2015

Oriental Insurance Company Limited

APPELLANT

Vs

Aman Mittal and Others

RESPONDENT

Date of Decision : 08-01-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, Section 149(2), Section 149(2)(a)(ii),
Section 158(6), Section 166(4)

Citation : (2016) AAC 565 : (2016) 2 ACC 660 : (2017) ACJ 449 : (2016) ILRHP
377 : (2016) 1 SimLC 576 : (2016) 2 TAC 649

Hon'ble Judges : Mansoor Ahmad Mir, C.J.

Bench : Single Bench

Advocate : G.C. Gupta, Senior Advocate and Meera Devi, Advocate, for the
Appellant; Ashok Tyagi, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J.

1. Appellant-insurer has called in question the judgment and award, dated 05.07.2014, made by the Motor Accident Claims Tribunal-II, Sirmaur District at Nahan, H.P. (for short "the Tribunal") in MAC Petition No. 17-N/2 of 2009, titled as Aman Mittal versus Shri Aman Kumar Bansal and others, whereby compensation to the tune of Rs. 10,78,100/- with interest @ 7.5% per annum from the date of the claim petition till its final realization came to be awarded in favour of the claimant-injured and against the insurer (for short "the impugned award").

2. The insurer, by the medium of this appeal, has questioned the impugned award on the ground that the amount awarded is excessive and the claimant-injured was also negligent.

3. The claimant-injured has also questioned the impugned award, by the medium of cross-objections on the ground of adequacy of compensation.

4. The driver and owner-insured of the offending vehicle have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

5. In order to determine the appeal as well as the cross-objections, it is necessary to give a brief resume of the facts of the case, the womb of which has given birth to the instant case.

6. Aman Mittal, i.e. the claimant-injured, became the victim of a traffic accident on 21.12.2008, at about 10.00 P.M. at Village Dhaulakuan, Tehsil Paonta Sahib, which was caused by driver, namely Shri Bhura Ram, while driving motor cycle, bearing registration No. HP-18B-1234, rashly and negligently, hit the claimant-injured, who was walking on the correct side of the road, sustained injuries, was immediately taken to a Private Clinic at Paonta sahib, thereafter to Himalayan Hospital Doiewala, Dehradun wherefrom was referred to PGI, Chandigarh, where he remained under treatment for pretty long time, as he was in coma.

7. The claimant-injured, after long-drawn treatment, has filed claim petition through his wife, Mamta Mittal, and claimed compensation to the tune of Rs. 20,00,000/-, as per the break-ups given in the claim petition.

8. The claim petition was resisted by the respondents on the grounds taken in the respective memo of objections.

9. Following issues came to be framed by the Tribunal on 15.03.2010:

"1. Whether the accident took place due to the rash and negligent driving of respondent No. 2 Bhura Ram while driving motorcycle No. HP-18B-1234 and that the petitioner Aman Mittal sustained in the said accident? OPP

2. If issue No. 1 is proved to what amount of compensation the petitioner is entitled to and from whom? OPP

3. Whether driver Bhura Ram of motorcycle No. HP-18B-1234 did not possess a valid and effective driving license at the time of accident? OPR-3

4. Whether motorcycle No. HP-18B-1234 was being plied in violation of terms and conditions of the insurance policy? OPR-3

5. Whether the petition has been filed by the petitioner in collusion with respondent Nos. 1 and 2, if so to what effect? OPR-3

6. Whether the petition is not maintainable? OPR-3

7. Relief."

10. Claimant-injured has examined Dr. Mohit Gupta as PW-1, HC Desh Raj as PW-2, Shri Kulwant Singh as PW-3 and his wife, Smt. Mamta Mittal, herself appeared in the witness box as PW-4. The insurer has examined SI Sucha Singh as RW-1, Shri Naveen Sharma as RW-2 and Shri A.S Vaish as RW-3.

11. Parties have also placed on record disability certificate (Ext. PW-1/A), copy of

FIR (Ext. PW-2/A), medical bills/cash memos (Ext. P-1 to P-159), investigation report (Ext. RW-3/A), copy of driving licence (Ext. RY), insurance policy (Ext. RX) and report of investigation relating to the driving licence (Mark-A).

Issue No. 1:

12. The Tribunal, after scanning the evidence, oral as well as documentary, held that the claimant-injured has proved that driver-Bhura Ram had driven the offending vehicle rashly and negligently at the relevant point of time, hit the claimant-injured, who was walking on the correct side of the road, sustained injuries and became permanently disabled. Neither the driver of the offending vehicle nor any of the parties have questioned the said findings. Accordingly, the findings returned by the Tribunal on issue No. 1 are upheld.

13. The following two points are to be determined in order to decide the appeal as well as the cross-objections:

"(i) Whether the amount awarded is adequate or otherwise?

(ii) Whether the insurer came to be rightly saddled with liability?"

14. Before I determine the said issues, it is profitable to determine how to assess compensation in injury cases?

15. It is beaten law of land that for assessing compensation in injury cases, the Court has to make guess work.

16. The Apex Court in case titled as R.D. Hattangadi versus M/s. Pest Control (India) Pvt. Ltd. & others, reported in , AIR 1995 SC 755, had discussed all aspects and laid down guidelines how guess work is to be done and how compensation is to be awarded under various heads. It is apt to reproduce paras 9 to 14 of the judgment hereinbelow:

"9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include: (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

10. It cannot be disputed that because of the accident the appellant who was an active practising lawyer has become paraplegic on account of the injuries sustained by him. It is really difficult in this background to assess the exact amount of compensation for the pain and agony suffered by the appellant and for having become a life long handicapped. No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame.

11. In the case *Ward v. James*, 1965 (1) All ER 563, it was said:

"Although you cannot give a man so gravely injured much for his "lost years", you can, however, compensate him for his loss during his shortened span, that is, during his expected "years of survival". You can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet Judges and Juries have to do the best they can and give him what they think is fair. No wonder they find it well-nigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The Judges have worked out a pattern, and they keep it in line with the changes in the value of money."

12. In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.

13. This Court in the case of *C.K. Subramonia Iyer v. T. Kunhikuttan Nair*, , AIR 1970 SC 376, in connection with the Fatal Accidents Act has observed (at p. 380):

"In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable."

14. In *Halsbury's Laws of England*, 4th Edition, Vol. 12 regarding non-pecuniary loss at page 446 it has been said:--

"Non-pecuniary loss : the pattern. Damages awarded for pain and suffering and loss of amenity constitute a conventional sum which is taken to be the sum which society deems fair, fairness being interpreted by the courts in the light of previous decisions. Thus there has been evolved a set of conventional principles providing a provisional guide to the comparative severity of different injuries,

and indicating a bracket of damages into which a particular injury will currently fall. The particular circumstances of the plaintiff, including his age and any unusual deprivation he may suffer, is reflected in the actual amount of the award. The fall in the value of money leads to a continuing reassessment of these awards and to periodic reassessments of damages at certain key points in the pattern where the disability is readily identifiable and not subject to large variations in individual cases."

17. The said judgment was also discussed by the Apex Court in case titled as Arvind Kumar Mishra versus New India Assurance Co. Ltd. & another, reported in , 2010 AIR SCW 6085, while granting compensation in such a case. It is apt to reproduce para-7 of the judgment hereinbelow:

"7. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was in so far as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered. In some cases for personal injury, the claim could be in respect of life time's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases - and that is now recognized mode as to the proper measure of compensation - is taking an appropriate multiplier of an appropriate multiplicand."

18. The Apex Court in the case titled as Ramchandrapa versus The Manager, Royal Sundaram Alliance Insurance Company Limited, reported in 2011 AIR SCW 4787, also laid down the guidelines for granting compensation. It is apt to reproduce paras 8 and 9 of the judgment hereinbelow:

"8. The compensation is usually based upon the loss of the claimant's earnings or earning capacity, or upon the loss of particular faculties or members or use of such members, ordinarily in accordance with a definite schedule. The Courts have time and again observed that the compensation to be awarded is not measured by the nature, location or degree of the injury, but rather by the extent or degree of the incapacity resulting from the injury. The Tribunals are expected to make an award determining the amount of compensation which should appear to be just, fair and proper.

9. The term "disability", as so used, ordinarily means loss or impairment of earning power and has been held not to mean loss of a member of the body. If the physical efficiency because of the injury has substantially impaired or if he is unable to perform the same work with the same ease as before he was injured or

is unable to do heavy work which he was able to do previous to his injury, he will be entitled to suitable compensation. Disability benefits are ordinarily graded on the basis of the character of the disability as partial or total, and as temporary or permanent. No definite rule can be established as to what constitutes partial incapacity in cases not covered by a schedule or fixed liabilities, since facts will differ in practically every case."

19. The Apex Court in case titled as Kavita versus Deepak and others, reported in , 2012 AIR SCW 4771, also discussed the entire law and laid down the guidelines how to grant compensation. It is apt to reproduce paras 16 & 18 of the judgment hereinbelow:

"16. In Raj Kumar v. Ajay Kumar , (2011) 1 SCC 343, this Court considered large number of precedents and laid down the following propositions:

"The provision of the motor Vehicles Act, 1988 ("the Act", for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.

The heads under which compensation is awarded in personal injury cases are the following:

"Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

17.

18. In light of the principles laid down in the aforementioned cases, it is suffice to say that in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily, efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and inability to lead a normal life and enjoy amenities, which would have been enjoyed but for the disability caused due to the accident. The amount awarded under the head of loss of earning capacity are distinct and do not overlap with the amount awarded for pain, suffering and loss of enjoyment of life or the amount awarded for medical expenses."

20. Keeping in view the tests laid down by the Apex Court and the other High Courts, as discussed hereinabove, it is to be seen as to what amount of compensation, the claimant is entitled to.

21. The claimant-injured has suffered permanent disability to the extent of 75%, in terms of the disability certificate, Ext. PW-1/A, read with the statement of Dr. Mohit Gupta (PW-1). The said injury has shattered his physical frame, his future, income, taken away his amenities of life and has deprived him of charmful life.

22. It is apt to record herein that the statement of Dr. Mohit Gupta (PW-1) is in Hindi. It would be profitable to reproduce the English version of his statement herein:

"Stated that I am posted as Orthopaedic Surgeon at Regional Hospital, Nahan. I have brought the summoned record. On 24.04.2010, Board of Doctors was constituted, of which I was also a member. Shri Aman Mittal, s/o Shri Krishan Kumar, VPO Majra, Tehsil Paonta Sahib was medically examined by the Board of Doctors and issued certificate Ext. PW-1/A in which it was found that applicant-Aman Mittal has sustained 75% permanent disability with respect to head injury and right hemiplegia. Ext. PW-1/A contains my signatures in red circle-A, signatures of Dr. Amit Mangla in circle-B and signatures of Dr. Ajay Gupta in circle-C. The 75% disability is related to whole body of the applicant.

xxx by all respondents xxx

I have never treated the applicant. It cannot be said, without any record, as to

how old are the injuries."

23. While going through the statement of Dr. Mohit Gupta, he has categorically stated that the claimant-injured has suffered 75% permanent disability in relation to head injury and right hemiplegia. The said injury has affected his entire body, which is suggestive of the fact that the said injury has affected his earning capacity in toto.

24. Perusal of the disability certificate, Ext. PW-1/A and the statement of the wife of the claimant-injured, Smt. Mamta Mittal (PW-4) do disclose that the unfortunate claimant-injured has lost the power of speech and hearing, which is permanent in nature and non-progressive. It has also been recorded in the disability certificate that the condition of the claimant-injured is not likely to be improved, thus, he has become permanently dependent. Neither he can speak nor hear, rendering him deaf and dumb. Meaning thereby, he has become a burden on his family members.

25. In view of the pleadings of the parties, oral as well as documentary, and the record, the claimant-injured has to suffer throughout his life due to the said injury. The said injury has also affected his matrimonial life/home.

26. The Tribunal has made discussions from para 32 to para 39 and granted compensation to the tune of Rs. 10,78,100/- under various heads, which appears to be meager for the following reasons:

27. The claimant-injured, immediately after the accident, was taken to a Private Clinic at Paonta Sahib, thereafter to Himalayan Hospital, Doiewala, Dehradun and was referred to PGI, Chandigarh, was in coma and remained admitted w.e.f. 22.12.2008 to 12.03.2009. He was in the hospital for about three months. He has lost the income for the said period. Not only he has lost the income for the said period, but the injury has affected his future income throughout his life.

28. It has been pleaded in the claim petition that the claimant-injured was running a Karyana shop and was earning Rs. 12,000/- per month.

29. The Tribunal has lost sight of the fact that the wife of the claimant-injured, who has filed the claim petition, has also undergone pain and sufferings and only she must be knowing under what circumstances she had filed the claim petition and how she had looked-after her husband.

30. I deem it proper to quote the idiom "only the wearer knows where the shoe pinches". In this backdrop, the claimant-injured and his family members, particularly, his wife, are the best persons who are knowing how they have suffered and how they are suffering.

31. Unfortunately, the Tribunal, while assessing the loss of income, has lost sight of the entire facts of the case, particularly, the disability certificate, Ext. PW-1/A and the statement of Dr. Mohit Gupta (PW-1).

32. The Tribunal has recorded that the claimant-injured has failed to prove that

he was earning Rs. 12,000/- per month. The said fact was not in dispute. The driver, owner-insured and the insurer have not disputed the same. However, if the Tribunal would have exercised guess work, it could have been safely said and held that the claimant-injured would have been earning not less than Rs. 5,000/- even had he been a labourer. Unfortunately, the claimant-injured has lost power of speech and hearing, which has permanently affected his earning capacity.

33. The multiplier method is the best method for assessing compensation in view of the Second Schedule appended with the Motor Vehicles Act, 1988 (for short "MV Act") read with the ratio laid down by the Apex Court in the case titled as Sarla Verma (Smt.) and others versus Delhi Transport Corporation and another, reported in , AIR 2009 SC 3104, upheld by a larger Bench of the Apex Court in the case titled as Reshma Kumari & others versus Madan Mohan and another, reported in , 2013 AIR SCW 3120, and Munna Lal Jain & another versus Vipin Kumar Sharma & others, reported in , 2015 AIR SCW 3105.

34. Admittedly, the age of the claimant-injured was 27 years at the time of the accident. The multiplier of "16" is just and appropriate in terms of the judgments (supra).

35. Thus, the claimant-injured is held entitled to compensation to the tune of Rs. 5,000/- x 12 x 16 = Rs. 9,60,000/- under the head "loss of income".

36. The disability certificate, Ext. PW-1/A read with the statement of PW-1, Dr. Mohit Gupta, and the other documents on the file, do disclose that the claimant-injured has to undergo treatment throughout his life and by guess work, it can be safely held that the claimant-injured is entitled to Rs. 1,00,000/- under the head "future treatment". But, unfortunately, the Tribunal has awarded Rs. 30,000/- under the head "future treatment", which is too meager. Accordingly, the claimant-injured is held entitled to Rs. 1,00,000/- under the head "future treatment".

37. The claimant-injured has placed on record disability certificate, Ext. PW-1/A and the medical bills/cash memos, Ext. P-1 to P-159. While examining the bills/cash memos and making calculations, it appears that the claimant-injured has spent Rs. 1,79,089/- for his treatment. PW-4, Smt. Mamta Mittal, has also stated that she has not maintained the entire record of bills. At least, Rs. 2,00,000/- should have been awarded under the head "medical expenses". However, the Tribunal has awarded only Rs. 1,79,100/- under the head "medical expenses", which is maintained.

38. The claimant-injured was in coma and in that condition, he was referred to PGI, Chandigarh, remained admitted for about three months, was bed ridden for at least seven-eight months at home also and virtually was in the same condition for a pretty long time. He was advised future treatment also and has to attend the hospital from time to time.

39. The Tribunal has awarded Rs. 21,000/- under the head "attendant charges"

perhaps keeping in view the fact that the claimant-injured required attendant only for seven months, but, it has lost sight of a very important factor that the unfortunate claimant-injured has lost the power of speech and hearing forever, became a deaf and dumb person. Can we say that a deaf and dumb person do not require any attendant. Rather, such a person requires an attendant/guide throughout his life. No doubt, the claimant-injured is having a wife, who will look after him. But she has also to look after other household/domestic works. Exercising guess work, Rs. 1,00,000/- is awarded under the head "attendant/guide charges".

40. Admittedly, the claimant-injured was taken to a Private Clinic at Paonta Sahib, thereafter to Dehradun wherefrom he was referred to PGI, Chandigarh, where he remained admitted for three months, thus, would have spent considerable amount on transportation charges. Also, his wife, family members and relatives would have come to attend him and will have to attend him for future treatment/follow-ups at PGI, Chandigarh. The Tribunal has awarded Rs. 20,000/- under the head "transportation charges", which is too meager. Accordingly, the claimant-injured is at least held entitled to Rs. 30,000/- under the head "transportation charges".

41. As discussed hereinabove, the claimant-injured has undergone pain and sufferings during the period he was admitted in the hospital, during follow-ups and has to undergo pain and sufferings throughout his life. A person, who was quite healthy, suddenly is deprived of power of speech and hearing, rendering him deaf and dumb, has to go through all odds of life and has to be dependent throughout. Thus, Rs. 1,00,000/- is awarded under the head "pain and sufferings undergone" and Rs. 1,00,000/- under the head "future pain and sufferings".

42. The claimant-injured was 27 years of age at the time of the accident. Meaning thereby, he was at budding age, had just started his career and matrimonial life. But, unfortunately, this accident has shattered his physical frame, destroyed his matrimonial home, also affected his career throughout and stands deprived of the amenities of life. At least, 2,00,000/- would have been awarded under the head "loss of amenities", but the Tribunal has awarded Rs. 1,00,000/- under the said head, which is, accordingly, maintained.

43. Having said so, the claimant-injured is held entitled to the enhanced compensation to the tune of Rs. 9,60,000/- + Rs. 1,00,000/- + Rs. 1,79,100/- + Rs. 1,00,000/- + Rs. 30,000/- + Rs. 1,00,000/- + Rs. 1,00,000/- + Rs. 1,00,000/- = Rs. 16,69,100/- with interest as awarded by the Tribunal.

44. Now, the question is - who is to be saddled with liability?

45. The Tribunal has saddled the insurer with liability. Learned counsel for the insurer has not questioned the said fact.

Issues No. 3 and 4:

46. Both these issues are interlinked and interdependent, I deem it proper to

determine both these issues together.

47. It was for the insurer to plead and prove that the driver of the offending vehicle was not having a valid and effective driving licence to drive the same at the relevant point of time, has not led any evidence to prove the said fact. However, the driving licence of the driver of the offending vehicle is on the record as Ext. RY, the perusal of which does disclose that the driver was having a valid and effective driving licence at the relevant point of time.

48. The insurance policy of the offending vehicle is also on the record as Ext. RX, perusal of which does disclose that the offending vehicle was not being driven in violation of the terms and conditions of the insurance policy. The factum of insurance is also not in dispute.

49. Even otherwise, it was for the insurer to discharge the onus, has not discharged the same, thus, cannot seek exoneration.

50. The Apex Court in the case titled as National Insurance Co. Ltd. versus Swaran Singh and others, reported in , AIR 2004 Court 1531, has laid down principles, how can insurer avoid its liability. It is apt to reproduce relevant portion of para 105 of the judgment herein:

"105.....

(i).....

(ii).....

(iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2) (a) (ii) of Section 149, have 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 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 duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability, must not only the available defence(s) raised in the said but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefore would be on them.

(v).....

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches

on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149(2) of the Act."

51. It would also be profitable to reproduce para 10 of the judgment rendered by the Apex Court in Pepsu Road Transport Corporation versus National Insurance Company, reported in , (2013) 10 Supreme Court Cases 217, herein:

"10. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh case. If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the Insurance Company is not liable for the compensation."

52. Having said so, the findings returned by the Tribunal on issues No. 3 and 4 are upheld.

Issue No. 5:

53. It was for the insurer to prove that there is collusion between the claimant-injured, the owner-insured and the driver of the offending vehicle. I wonder how this question was raised before the Tribunal knowing that the unfortunate victim was in coma, stands deprived of power of speech and hearing and suffered not only 75% permanent disability, but has virtually suffered 100% disability. However, the insurer has not led any evidence to prove the said issue and has failed to discharge the onus. Accordingly, the findings returned by the Tribunal on issue No. 5 are also upheld.

Issue No. 6:

54. It appears that the insurer has taken a plea that the wife of the injured was not competent to file claim petition. MV Act stands amended in the year 1994 and has gone through a sea change. Even a police report under Sections 158(6) and 166(4) of the MV Act can also be treated as a claim petition. The wife of the injured has seen and is witnessing the condition of her husband. Not only the injured has suffered but she has also lost her prime youth, her matrimonial life and amenities of life because of the injuries suffered by her husband. Thus, the claim petition was maintainable and the Tribunal has rightly decided issue No. 6 in favour of the claimant and against the insurer.

55. Having said so, the Tribunal has rightly saddled the insurer with liability.

56. Having glance of the above discussions, the amount of compensation is enhanced, the impugned award is modified, the appeal is dismissed and the cross-objections are allowed, as indicated hereinabove.

57. The insurer is directed to deposit the enhanced awarded amount before the Registry of this Court within eight weeks. The Registry is directed to release the amount deposited in favour of the claimant-injured in the following manner:

58. 50% of the deposited amount shall be invested in Fixed Deposits for a period of ten years and 50% be released in favour of the claimant-injured through payee's account cheque or by depositing the same to his bank account.

59. The enhanced awarded amount be also released in the same manner and method.

60. Send down the record after placing a copy of the judgment on Tribunal's file.