
(2009) 06 SHI CK 0037
In the High Court Of Himachal Pradesh

Suman Lata Kuthiala and Others

APPELLANT

Vs

Piyare Lal and Others

RESPONDENT

Date of Decision : 30-06-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2)(a)(ii)

Citation : (2009) 06 SHI CK 0037

Hon'ble Judges : V.K. Ahuja, J

Bench : Single Bench

Judgement

V.K. Ahuja, J.—All the aforementioned 7 appeals and petition shall stand disposed of by this common judgment.

2. Briefly stated the facts of the case are that on 17.4.1999, one Gurdial Kuthiala was going in a car bearing No. HP 03 2527 to Hoshiarpur. The said car was being driven by Shri Gurdial Kuthiala and his family members, namely, Suman Lata Kuthiala (wife of Gurdial Kuthiala), Monica Kuthiala and Abha Kuthiala (daughters of Gurdial Kuthiala) were also traveling therein. It was further alleged that when at 10.00 p.m., the car reached at a place 5 kms. from Garshankar Police Station, the same was hit by the truck bearing No. PCH 5370 due to its rash and negligent driving by original respondent No. 2 Madan Lal. The truck was owned by original respondent No. 1 Piyare Lal. All the occupants of the car including its driver/owner Shri Gurdial Kuthiala suffered injuries. Shri Gurdial Kuthiala and Abha Kuthiala succumbed to the injuries while his wife Suman Lata Kuthiala and daughter Monica Kuthiala suffered injuries.

3. FAO No. 311 of 2005 is arising out of the claim petition No. 86-S/2 of 1999, which was filed by Suman Lata, wife of Gurdial Kuthiala, and her daughters (petitioners No. 2 to 6). They alleged that the deceased was an income tax assessee and they had claimed compensation to the extent of Rs. 25.00 lacs for the death of Gurdial Kuthiala being his legal heirs and dependants. The age of the deceased was alleged to be 58 years.

4. FAO No. 312 of 2005 is arising out of the claim petition No. 84-S/2 of 1999, which was filed by Monica Kuthiala, wherein it was alleged that she was traveling in the Maruti Car which met with the accident and she was shifted to PGI, suffered injuries, was operated upon and a rod was also put in her right arm besides bone grafting. She alleged that she has spent about Rs. 75,000/- on her treatment, remained in PGI, Chandigarh for 14 days and was still under treatment and she claimed compensation to the extent of Rs. 10.00 lacs for the injuries sustained by her in this accident.

5. FAO No. 313 of 2005 is arising out of the claim petition No. 85-S/2 of 1999, which was filed by Suman Lata Kuthiala, for compensation for the injuries sustained by her in the said accident. She alleged that she was taken in an unconscious state to PGI, Chandigarh after she was given first aid at Garhshankar. Her ribs were broken. She remained in the emergency in the PGI for 9 days and then was operated on 2.5.1999 and her leg was plastered and her right foot was also operated upon and nails were put in the fractured foot. She could not walk for four months and had been going to PGI after her discharge on 4.5.1999. She alleged that she has spent Rs. 1.00 lac for her treatment and since the accident occurred due to the rash and negligent driving of respondent No. 2, she claimed compensation to the extent of Rs. 10.00 lacs.

6. FAO No. 314 of 2005 is arising out of the claim petition No. 87-S/2 of 1999, which was filed by Suman Kuthiala claiming compensation on account of the death of her daughter Abha Kuthiala in the said accident. The age of the deceased was alleged as 17 years, who was a student and the petitioner being the mother of the deceased had claimed compensation to the extent of Rs. 10.00 lacs.

7. All the abovementioned claim petitions were consolidated by the learned Motor Accident Claims Tribunal (hereinafter referred to as the learned Tribunal) on the orders passed by this Court. On the pleadings of the parties, the following issues were settled by the learned Tribunal:

1. Whether the accident took place due to rash or negligent driving of truck No. PCH5370 by respondent No. 2 or in the alternative on account of rash or negligent driving of the Maruti Car No. HP03- 2527 by late Gurdial Kuthiala? ...OPP

2. If issue No. 1 is proved, whether the petitioners suffered injuries in the accident and is entitled to compensation, if so how much and from whom? ...OPP

3. Whether the driver of the truck did not possess a valid and effective driving license? OPR-3

4. Whether the vehicle was being driven in violation of the terms and conditions of the policy, if so its effect? ...OPR-3.

5. Whether the petition is bad for non joinder of the legal heirs of Gurdial Kuthiala, who after the said Gurdial Kuthiala, have become owners of the

car? ...OPR-3 & 4.

6. Whether the petition is not maintainable? ...OPR-4.

7. Whether the car was being driven in contravention of the terms and conditions of the policy? ..OPR-4.

8. Whether deceased Gurdial Kuthiala did not possess a valid and effective driving license? ..OPR-4.

9. Whether the petition is collusive, as alleged? ..OPR-4.

10. Relief.

8. In four cases, the learned Tribunal awarded the compensation to the petitioners as under:

Suman Lata and others on account of the death of Gurdial Kuthiala = Rs. 7,78,000/-

Monica Kuthiala for the injuries suffered by her = Rs. 20,600/-

Suman Lata for the injuries sustained by her = Rs. 63,225/-

Suman Lata on account of the death of her daughter Abha Kuthiala = Rs. 5,000/-

9. Being aggrieved by the said award passed by the learned Tribunal in all the aforesaid four petitions, appeals have been preferred by the aggrieved persons, namely, the petitioners, Suman Lata for herself as well as on account of the death of her daughter Abha Kuthiala, Monica Kuthiala for the injuries sustained by her, and Suman Lata and others on account of the death of Gurdial Kuthiala, being his legal heirs.

10. FAO No. 376 of 2005 has been filed by respondent No. 1 Piyare Lal, owner of the truck, as against the award passed by the learned Tribunal, vide which, though the claim petition was allowed and respondent No. 3 Insurance Company was directed to pay the compensation in the first instance, but the respondents No. 1 and 5 i.e. Piyare Lal and Indian Road Line being the owners were held liable to pay the same to the Insurance Company. Similarly, FAOs No. 377 of 2005 and 378 of 2005 have been filed by the original respondents No. 1 and 5/ owners as against the similar orders passed against them.

11. Another petition under Article 227 of the Constitution of India being CMPMO No. 156 of 2006 has also been filed by the petitioners Piyare Lal and The Indian Road Line for setting aside the award dated 22.6.2005 passed in MAC Petition No. 87-S/2 of 1999 and it was prayed that liability be fastened on the Insurance Company to indemnify the insured.

12. The record of the case was summoned. I have heard the learned Counsel for the parties and have gone through the record of the case.

13. The submissions made by the learned Counsel for the appellant/claimants in

all the four appeals were that the learned Tribunal had not granted adequate compensation and the pleas raised separately in all the cases shall be referred below while deciding their respective appeals. However, common point involved in all these cases was that the compensation awarded was inadequate, which deserves to be enhanced accordingly.

14. On the other hand, the submissions made by the learned Counsel for the owners were that adequate compensation has been awarded in view of the facts and circumstances of the case. In regard to the four appeals/petition preferred by the owner of the vehicle, it was submitted that the Insurance Company had failed to prove that the license was fake. There was no wilful breach on the part of the owner which was proved by the Insurance Company. It was also submitted that there were no pleadings of the Insurance Company that the owner had the knowledge that the license was fake and he had not taken reasonable steps to satisfy himself and, therefore, once the Insurance Company had failed to prove that the license was fake and that the owner had the knowledge that it was fake, the liability to pay the compensation was upon the Insurance Company and the findings of the learned Tribunal to the contrary that the Insurance Company shall be entitled to recover the amount from the owners are liable to be set aside.

15. I will firstly take up the compensation awarded in each of the cases and thereafter the question of liability of the Insurance Company or the owners shall be considered.

Claim Petition No. 85-S/2 of 1999:

16. Petitioner Suman Lata Kuthiala had claimed compensation to the extent of Rs. 10.00 lacs for the injuries suffered by her in the said accident. The learned Tribunal has referred to the statement of petitioner Suman Lata Kuthiala, who has placed on record receipt Ext.PB for Rs. 920/- of Chandigarh Clinical Laboratory, and other receipts Exts.PC to PF for Rs. 75/-, Rs. 25/-, Rs. 75/- and Rs. 50/-, were also placed on record. It was observed that there was no proof of the transportation charges incurred by the petitioner. In regard to the loss of earnings due to injuries, the petitioner had remained admitted from 17th April, 1999 to 4th May, 1999 for about 18 days, though the learned Tribunal held that it was for 10 days. Thereafter, she remained confined to bed for 5 months. The learned Tribunal observed that since she was a house wife and there is nothing to show what loss the woman suffered due to her confinement to the bed and, therefore, for six months, she remained under treatment, a sum of Rs. 4,000/- per month was granted and in all Rs. 24,000/- were granted. It was held that since the petitioner did not suffer any disability, she was not entitled to any future loss of earnings. In regard to the attendant charges, and rightly so, the learned Tribunal observed that the petitioner would be entitled to a sum of Rs. 12,000/- for six months, at the rate of Rs. 2,000/- per month.

17. In regard to the pain and sufferings that she suffered fracture, nails were inserted and 50-60 stitches were applied on her, the learned Tribunal granted Rs.

15,000/- for pain suffering. The discussion made by the learned Tribunal, on the basis of the evidence, was not disputed, but it was disputed that the compensation was not correctly awarded for the loss of earnings to the family as well as on account of pain and suffering.

18. The services are performed by a house wife to the family and in case she has no fixed income, her income has to be assessed generally by the Court and even if it is assessed at the lowest, it has to be assessed at the rate of Rs. 5,000/-per month, which comes to Rs. 30,000/- for six months and, therefore, the compensation awarded under this head is enhanced from Rs. 24,000/- to Rs. 30,000/-. In regard to the pain and sufferings, the learned Tribunal has granted a sum of Rs. 15,000/- only for the pain caused to the petitioner due to fracture, insertion of nail etc. and admittedly she had remained on bed for a period of six months. Therefore, the compensation awarded at the rate of Rs. 2,500/- per month for pain and suffering cannot be said to be adequate. In my view, the petitioner was entitled to a sum of Rs. 10,000/- per month for pain and suffering and the amount awarded under this head is enhanced from Rs. 15,000/- to Rs. 60000/-.

19. The petitioner had also claimed that she remained in the house of her brother-in-law at Parwanoo and had been going regularly to PGI but had failed to prove any receipts for transportation and was not awarded any compensation. I am of the opinion that she is entitled to a sum of Rs. 5,000/- in all for the visits to PGI, though there is no specific evidence. Thus, the total enhanced compensation, which shall be payable to the petitioner Suman Lata on account of the injuries sustained by her, pain and suffering, loss of income, transportation charges etc. is Rs. 1,07,000/-.

Claim Petition No. 84-S/2 of 1999:

20. This claim petition was filed by Monica Kuthiala. It was observed by the learned Tribunal that the claimant/petitioner has placed on record receipts Exts.PC, PD, PE and PF, for Rs. 50/-, Rs. 50/- and Rs. 500/-, in all for Rs. 600/-. No amount was granted for transportation charges. A reference was made to the statement of PW-2 Monica Kuthiala that due to fracture in her right hand and injury on forehead, she remained admitted at PGI for 25 days and therefore, it was observed that she remained admitted in the hospital for about one month. Thus, for loss due to earnings, a sum of Rs. 4,000/- was awarded by the learned Tribunal, which amount deserves to be enhanced to Rs. 10,000/- since she could not do any work for one month due to the injuries. No amount was awarded for future loss of earnings since the petitioner had not suffered any disability and rightly so. In regard to the attendant charges, she was granted a sum of Rs. 2,000/- for attendant for one month and since she remained admitted in the hospital for one month, the said sum awarded does not call for any enhancement. However, in regard to pain and sufferings, she remained under treatment and had suffered fracture. She was awarded a sum of Rs. 10,000/-, which deserves to be enhanced to Rs. 20,000/-. Thus, in all, the said claimant is

held entitled to a sum of Rs. 32,000/-.

Claim Petition No. 87-S/2 of 1999:

21. Before I refer to the evidence and the pleadings, I am constrained to remark that the learned Tribunal has proceeded in a slipshod and casual manner and had not observed that it was a case of death of Ms. Abha Kuthiala. A reference has been made by the learned Tribunal as if it was an injury case and finally a sum of Rs. 5,000/- has been granted. The casual approach made by the learned Tribunal has to be condemned but since the Presiding Officer has already retired, no further comments are being made.

22. The learned Tribunal observed in para 40 of the impugned judgment that there is no proof that any amount was spent by petitioner Abha since there are no receipts and cash memos and hence she is not entitled to any amount under this head. The learned Tribunal has failed to appreciate that Abha Kuthiala had died in the accident and claim petition was preferred by her mother. Similarly, it was observed that she was not entitled to any transportation charges, but since she died unfortunately, there was no question of any transportation charges. In regard to the head loss of earnings due to injuries, the learned Tribunal observed in para 44 that there is no material on record that she was also hospitalized due to the injuries sustained by her or was unable to do her routine work. Therefore, she was not held entitled to any amount under this head. There could not have been any proof for loss of earnings due to the injuries since Abha Kuthiala had died in the accident. Similarly, it was observed that since there was no future loss of earnings, she was not entitled to any amount. In para 48 of the impugned award, it was observed that she would not be entitled to attendant charges as she never remained hospitalized. Finally, the learned Tribunal observed in para 51 that for the injuries suffered by Abha Kuthiala, a sum of Rs. 5,000/- shall be sufficient to meet her requirements. This unfortunate discussion only fortifies my above observations that the learned Tribunal was in a hurry to dispose of the case without looking into the facts of the case.

23. Once the claimant i.e. the mother of the deceased was entitled to a sum of Rs. 50,000/- as no fault liability without proof of anything, at least a sum of Rs. 50,000/- ought to have been granted by the Court as in the case of no fault liability. However, keeping in view the fact that the deceased was a girl of 17 years and without distinction if the deceased was a boy or a girl, and she was student but there is nothing to show as to her achievements in her career. She may have become a gazetted officer or so keeping in view the status of her father who was an income tax payee and she was a girl of the age of 17, I am of the opinion that the claimant (mother of the deceased) is entitled to a sum of Rs. 70,000/- + Rs. 5,000/- as funeral charges for the death of Abha Kuthiala caused in the accident. I am making a reference to the decision of this Court in Oriental Insurance Co. Ltd. Vs. Gian Chand and Others, in which this Court had granted a sum of Rs. 70,000/- as compensation for the death of a 7th class student aged 13 years and the claimants, who were the parents, were granted this sum. Thus,

the claimant in this claim petition is held entitled to a sum of Rs. 75,000/-.

Claim Petition No. 86-S/2 of 1999:

24. Coming to the case of the claimants on account of the death of Gurdial Kuthiala, the deceased was a business man and an income tax payee. According to the evidence, he was earning about Rs. 4-5 lacs per annum. The learned Tribunal had referred to the income tax returns of the deceased Exts.PS to PZ and Ext.PAA. PW-9 Nikka Ram, Assistant from the Income Tax Office, has proved that these statements are true copies of the statements furnished by the deceased in their evidence. The learned Tribunal had concluded that the deceased was earning Rs. 4-5 lacs per annum and his wife was getting about Rs. 20,000/- per month from the business of the firm of her husband to run the kitchen. The business is being presently run by a Manager and since the income tax returns showed that rather the earnings had increased in the next year, the learned Tribunal concluded that since a Manager will have to be engaged at the rate of Rs. 8,000/- per month or say at Rs. 96,000/- per annum, therefore, the loss of dependency to the petitioners can be taken at Rs. 96,000/- per annum. In the case of even a labourer, the dependency is taken, keeping in view the daily wages a labourer gets and accordingly considering 1/3rd money which he spends normally on himself, a sum of Rs. 4,000/- is taken as the monthly loss. However, since the deceased was running the business and a Manager may have to be employed whose wages cannot be assessed at Rs. 8,000/-per month, as assessed by the learned Tribunal, I am of the opinion that the loss of dependency per month should be taken at Rs. 15,000/- and the annual loss can be said to be at Rs. 1,80,000/-, deducting the amount deceased would have spent for himself.

25. Coming to the question of multiplier, the learned trial Court had referred to the decision of the Apex Court in *Susamma Thomas*" case but had not mentioned the age of the deceased or multiplier applied. However, I may mention that the multiplier of 12 was applied when the age was 39. The age of the deceased was alleged to be 58 years. The learned Tribunal held that keeping in view Schedule II of Section 163-A of the Motor Vehicles Act, the multiplier of 8 should be applied. This Court in a decision in *Bimla Dubey and Others Vs. Himachal Road Transport Corporation and Another*, had applied the multiplier of 7 keeping in view the age of the deceased as 52. However, keeping in view the fact that the learned Tribunal had referred to the Schedule under the Motor Vehicles Act and had applied the multiplier of 8, the said multiplier cannot be said to be inappropriate and calls for no reduction and accordingly, by applying the multiplier of 8, the compensation so enhanced comes to Rs. 14,40,000/- (Rs. 1,80,000 x 8 = Rs. 14,40,000/-). In addition to this, the claimants are also entitled to a sum of Rs. 10,000/- for loss of consortium, which shall be payable to the widow of the deceased, namely, Suman Lata Kuthiala, only and Rs. 5,000/- for funeral charges. Thus, the claimants are held entitled to a sum of Rs. 14,55,000/-.

26. I will now take up the appeals filed by the owners against the award of the

learned Tribunal vide which the Insurance Company has been permitted to claim the compensation from the owners.

27. The first ground taken by the learned Counsel for the appellants/owners was that the Insurance Company had failed to prove that the license was fake. On this point, I may refer to the evidence led by the respondents/Insurance Company that they have proved that the license in question was fake. A perusal of the record shows that the respondent/Insurance Company had examined number of witnesses to prove that the license was fake.

28. RW-2 Arun Bhardwaj, Assistant Manager, National Insurance Company, has stated that as per their record, the insured owner of the truck had given them information that the truck at the time of the accident was being driven by Madan Lal son of Shri Atma Ram. The Insurance Company had got verified the driving license, the copy of which was supplied to them by the insured through our Surveyor Charanjit Singh of Jammu and as per his report, the driving license was found to be not genuine. He further stated that the said Charanjit Singh had supported his report with the certificate issued by Registration and Licensing Authority, Jammu, which is Mark A and the report of Charanjit Singh is Mark B. He stated that the insured owner has violated the terms of the insurance policy, the copy of which has been proved, having the terms and conditions, as Ext.R-1.

29. RW-3 Charanjit Singh is the said Surveyor about whom RW-2 Arun Bhardwaj had stated. He stated that he had verified the copy of the driving license Mark-C supplied to him. He stated that he visited the office of RLA Jammu and moved an application for confirmation regarding the issuance of this driving license by the said office. After verifying the facts from the records of RLA, Jammu, issued the certificate Ext.R-2 that this license was not issued to Madan Lal son of Atma Ram by RLA, Jammu. On the basis of the certificate Ext.R-2, he issued the report Ext.R-3 to the Divisional Office, Jammu.

30. RW-4 Kamal Kumar is from the office of RLA, Jammu, who has also given license number. RW Rajiv Kumar, Junior Assistant, office of RTO, Jammu, who was examined, on commission, has produced the record from their office and stated that according to their record, the license against this number was issued in favour of one Mohd. Sharief and no license was issued in the name of Madan Lal, from their office. He had produced the original record also and has proved the certificate Ext.R-2.

31. To rebut this evidence, respondent Indian Road Line has examined Tarlochan Singh as RW-1, who stated that they had verified the genuineness of the license from RLA Hoshiarpur. He admitted that he is not aware if the original license of the said Madan Lal was issued from RLA, Jammu.

32. The evidence led by the respondents/ Insurance Company, as discussed above, has also been discussed by the learned Tribunal, who came to the conclusion and rightly so that the license, in question, was proved to be fake.

33. The next ground taken by the learned Counsel for the respondents No. 1 and 5 i.e. the owners is that the Insurance Company has failed to prove that there was wilful breach on the part of the owner. It was also submitted that there was no pleadings by the Insurance Company that the owner had the knowledge that the driving license, which the driver was possessing, was a fake license, who got the verification of the said license done and since there was nothing to show that the license in question was fake and the owner was not knowing that the license was fake, therefore, the Insurance Company is liable to pay the compensation.

34. On the other hand, the learned Counsel for the Insurance Company has supported the impugned award for the reasons given therein supplementing it by the submission that there was no specific pleadings of the owners that the license was not fake or that they had verified it or that they had satisfied themselves by taking a test at the time of recruitment of the driver i.e. respondent No. 2 and as such, the judgment passed by the learned Tribunal holding that the Insurance Company can recover this amount calls for no interference.

35. In support of his submissions, the learned Counsel for the appellant/owners had relied upon the following decisions:

36. The decision in *New India Assurance Company v. Baldev Raj and Ors.* Latest HLJ 2006 (HP) 394, of our own High Court was relied upon, in which a decision of the Apex Court was cited in *National Insurance Company Ltd. v. Swaran Singh and Ors.* 1(2004) CLT 1 . The observations made in para 7 of the judgment of the High Court are relevant and are being reproduced below:

However, the reversal of the finding of Tribunal that the licence was valid on account of genuine renewal, will not itself absolve the appellant of its liability to pay compensation money. The insurer, in addition to alleging and proving that the driver of the vehicle did not possess a valid driving licence, was also required to plead or establish that the insured was guilty of negligence and failed to exercise reasonable care in the manner of fulfilling the condition of the policy regarding use of vehicles by duly licenced driver or one who was not disqualified to drive the vehicle at the relevant time.

37. The decision in *National Insurance Company v. Bhagwan Dass and Ors.* Latest HLJ 2004 (HP) 571, was also relied upon. It was held therein that to avoid its liability towards the insured, the Insurance Company has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the conditions of the policy regarding the use of vehicles by duly licenced driver. The Insurance Company must not only establish the available defences but must also establish breach on the part of the owner of the vehicle, the burden of proof whereof would be on it.

38. Reliance was also placed upon the decision in *United India Insurance Company Ltd. Vs. Lehu and Others,* . The observations made in para 20 are relevant and are being reproduced below:

When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. It is rather strange that Insurance Companies expect owners to make enquiries with RTO's which are spread all over the country whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of S.149(2)(a)(ii). The Insurance Company would not then be absolved of liability. If it ultimately turns out that the licence was fake the Insurance Company would continue to remain liable unless then prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured.

39. Reliance was also placed upon the decision in National Insurance Co. Ltd. Vs. Swaran Singh and Others, , wherein it was held that the only situation in which the insured may avoid its liability to third party victims is the situation in which the conditions u/s 149(2)(b) obtained. In every case so much of the policy as purports to restrict the insurance of the persons insured thereby shall, as respects third party claims, be of no effect. Therefore, it would seem that even if the insurer succeeds in respect of its defence in terms of Section 149(2)(a), including terms relating to driving licences set out below, it would only be able to avoid its liability under the insurance contract to the insured and not to third parties.

40. In the present case, the Insurance Company in its reply as respondent No. 3 had pleaded that they are not liable to pay the compensation since the insured was not possessing valid registration certificate of the vehicle and the vehicle was being driven by a driver who was not holding a valid and genuine driving license. Thus, respondent No. 3 had pleaded that the driver was not having a valid driving license which stands proved also from the evidence, as discussed above.

41. It has to be seen as to whether respondents No. 1 and 5 have been able to plead and prove that they had taken all care and caution that the driver was possessing a valid driving license. It was also required of them to have pleaded and proved that they satisfied themselves by seeing the driving license that it appeared to be valid one and that they had also taken a due test of the driver to satisfy themselves that he knew driving.

42. Respondent No. 1 Piyare Lal was originally impleaded as respondent No. 1/ owner of the vehicle. In the replies filed by respondent No. 1 to all the claim petitions, it was denied by him that he is the owner of the said truck, rather it was pleaded that the owner of the truck was M/s Indian Indian Road Lines, Hoshiarpur.

43. Thereafter, on an application filed under Order 1 Rule 10 of the Code of Civil Procedure, the said M/s Indian Road Lines was impleaded as respondent No. 5 and respondent No. 2 and respondent No. 5 filed joint replies in all the claim petitions. In the replies so filed, they pleaded that respondent No. 5 is the owner of the truck.

44. A perusal of these replies and pleadings made by respondents No. 1 and 5 shows that no specific plea was ever taken that the driver i.e. respondent No. 2 was employed by whom, whether by the Chairman of the Company or its partners and that they had satisfied themselves that the license appeared to be genuine and that they had taken due test of the driver. Thus, there were no specific pleadings of the owners at any time that they took all reasonable precautions to see that the license was genuine or appeared to be genuine and also took a driving test of the driver.

45. To substantiate their allegations, respondents No. 1 and 5 had examined RW-1 Tarlochan Singh, who stated that he was the Chairman of the Company. Madan Lal was engaged by them as a driver, who was holding a driving license. He stated that they had checked the driving license of the driver at the time of engagement and also judged about his competence to drive a truck. In cross examination, he admitted that he did not know if the original license was issued from RLA, Jammu. He denied the suggestion that they knew that Madan Lal did not know driving. It is clear from above discussion that it was never pleaded by the owner that this Chairman Tarlochan Singh had recruited the driver, seen the driving license or had taken any test of the driver. Two tests are required to be taken by the owners to satisfy themselves about the driver, as held in the above decision, one that the driving license appeared to be genuine and that they had taken a test of the driver to satisfy themselves that he knew driving. I agree that the owner is not required to satisfy himself if the license was actually issued from the licensing authority or not, but he must state that the driving license appeared to be genuine and he satisfied himself about the competence of the driver. There is nothing in the statement of RW-1 Tarlochan Singh that he was the person who appointed the driver or took his test or satisfied himself about the license, which appeared to be genuine. He never pleaded these facts and rather the facts were pleaded by respondent No. 1, who claimed himself to be a partner of the firm, but the Company/respondent No. 5 has examined Tarlochan Singh as RW-1, who never filed any reply and claimed himself to be the Chairman of the Company. In the absence of any pleadings having been made that Tarlochan Singh was the Chairman of the Company, or say, the person to engage the drivers and had engaged the said driver, the only conclusion which can be drawn is that the owners failed to prove that they satisfied themselves about the genuineness of the driving license or took a test of the driver. The observations made in United India Insurance Company v. Lehu Ram reproduced above clearly apply to the present facts that the owner has to satisfy himself about the genuineness of the driving license and the competency of the driver to drive the vehicle and then it could be said that there was no breach of Section

149(2)(a)(ii). The evidence led by the owners/respondents No. 1 and 5 does not satisfy the said test. Therefore, I find no reason to disagree with the findings of the learned Tribunal, who had fastened the liability on the owner as well as on the Insurance company and has permitted the Insurance Company to recover the amount from the owners subsequently.

46. In view of the above discussion, accordingly hold that there is no merit in the appeals and petition filed by the owners which are dismissed with costs. The appeals filed by the claimants are allowed and they are held entitled to enhanced compensation as under, alongwith interest as awarded by the learned Tribunal:

FAO No. 311 of 2005 (Claim Petition No. 86-S/2 of 1999):

Suman Lata Kuthiala and others on account of the death of Gurdial Kuthiala: Rs. 14,55,000/-.

47. The learned Tribunal observed that at the time of institution of the petition, petitioners No. 2 and 5, namely, Shailja Kashyap and Gaurja Banta, were married. As such, they were not held entitled for any compensation being not dependant upon the deceased, which observations of the learned Tribunal do not call for an interference by this Court.

48. Out of the total amount of compensation, a sum of Rs. 12.00 plus interest as awarded by the learned Tribunal shall be payable to Suman Lata Kuthiala (widow). The remaining amount shall be apportioned in equal shares between petitioners No. 3, 4 and 6. However, it is clarified that in case any of these petitioners/daughters have been married by this time, the amount shall be payable to their mother Smt. Suman Lata Kuthiala. It is also ordered that before releasing amount in favour of petitioners No. 3, 4 and 6, they shall file their respective affidavits stating therein that they are still unmarried. Half of the amount shall only be payable in cash to petitioners No. 3, 4 and 6 and rest shall be invested as per order of the learned Tribunal.

FAO No. 312 of 2005 (Claim Petition No. 84-S/2 of 1999):

Monica Kuthiala, on account of injuries Suffered by her: Rs. 32,000

FAO No. 313 of 2005 (Claim Petition No. 85-S/2 of 1999):

Suman Lata Kuthiala, on account injuries suffered by her: Rs. 1,07,000/-

FAO No. 314 of 2005 (Claim Petition No. 87-S/2 of 1999):

Suman Lata Kuthiala on account of the death of Abha Kuthiala: Rs. 75,000/-

49. All the appeals stand disposed of accordingly.