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

**Date of Decision: 03.08.2026**

**220-1** **FAO-209-2002 (O&M)**

**NATIONAL INSURANCE CO. LTD.**

.....Appellant

**V/S**

**JASPAL KAUR AND OTHERS**

.....Respondents

**220-2** **XOBJC-41-CII-2004 (O&M)**

**NATIONAL INSURANCE CO. LTD.**

.....Appellant

**V/S**

**JASPAL KAUR AND OTHERS**

.....Respondents

**CORAM: HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR**

Present: Mr. Daksh Mehra, Advocate for
Mr. Punit Jain, Advocate
for the appellant-Insurance Company.

Mr. Vipul Sharma, Advocate
for respondents No.1 and 2/claimants/cross-objectors.

*****

**YASHVIR SINGH RATHOR, J. (Oral)**

1. By this judgment, I shall dispose of the aforesaid appeal and cross-objections.

2. FAO-209-2002 has been instituted by Insurance Company against the Award dated 06.10.2001 decided by MACT, Chandigarh (**for short "Tribunal"**) in MACT Case No.11 of 22.01.1998 in a petition under Section 166 of Motor Vehicles Act, 1988 **(for short 'Act)** vide which a sum of Rs.1,50,000/- has been awarded as compensation to

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claimants/cross-objectors (respondents No.1 and 2) on account of the death of their son, along with interest @ 9% per annum from the date of filing of the claim petition till realization in a motor vehicular accident which took place due to rash and negligent driving on the part of respondent No.3 (respondent No.1 in the claim petition) while driving the Truck bearing No.HR-45-2521 **(for short 'offending vehicle')**, owned by respondent No.4 (respondent No.2 in the claim petition), which was insured with respondent No.3 (appellant in the present appeal) and Insurance Company has been held liable to pay the compensation to the claimants and recover the same from driver and owner of the offending vehicle as driving licence of driver was fake.

3. Cross-objections bearing No.XOBJC-41-CII-2004 have been filed by claimants Jaspal Kaur etc. in FAO-209-2002 against the award dated 06.10.2001 in MACT Case No.11 of 22.01.1998 for enhancement of compensation.

4. From the pleadings of parties, following issues were framed by the learned Tribunal:-

> *"1. Whether Kulwinder Singh died in a Motor Vehicle Accident on Panchkula to Barwala road on 14.11.1997 due to rash and negligent driving of Truck No.HR-45-2521 by Naib Singh respondent No.1? OPP*
>
> *2. Whether the claimants are entitled to compensation? If so, how much and from whom? OPP*
>
> *3. Whether respondent No.1 was not holding a valid driving licence at the time of accident? If so, to what effect? OPR3.*
>
> *4. Relief."*

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5. Thereafter, the parties led evidence in support of their case.

6. After hearing the parties and going through the material on the file, learned Tribunal awarded a sum of Rs.1,50,000/- as compensation to the claimants along with interest @ 9% per annum from the date of filing of claim petition till realization, payable by respondents No.1 and 2 jointly and severally. However, Insurance Company was directed to pay the amount to claimants but was given a right to recover the same from the owner.

7. Feeling aggrieved, the appeal in hand has been preferred by the Insurance Company and cross-objection has been filed by the claimants/respondents No.1 and 2. The material on file has been perused and parties have been heard.

8. Learned counsel for the Insurance Company argued that the impugned award is based on conjectures and surmises. The pleadings of the parties and material on file have not been appreciated in the correct perspective while directing the Insurance Company to pay compensation to claimants with a right to recover the same from the owner despite the fact that there was breach of terms and conditions of the Insurance Policy on account of the fact that driving licence produced by the driver was proved to be fake. Learned counsel further contended that the Tribunal has wrongly directed the Insurance Company to pay the compensation and then recover the same from the owner instead of completely exonerating the Insurance Company. Learned counsel contended that once the licence is proved to be fake, the Insurance Company should be

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exonerated of its liability to indemnify the insured. As such, the Award passed by the Tribunal is wrong in law and same is liable to be set aside. Learned counsel next contended that excessive compensation has also been awarded to the claimants which is also liable to be reduced. Learned counsel prayed that appeal in hand be accepted and Insurance Company be exonerated of its liability to indemnify the insured.

9. On the other hand, learned counsel for respondents No.1 and 2/cross-objectors argued that the impugned award vide which compensation of Rs.1,50,000/- has been awarded is based on conjectures and surmises and is liable to be modified and enhanced amount of compensation should be awarded. Learned counsel contended that the Tribunal has awarded only a lump sum compensation of Rs.1,50,000/- in total, without granting any addition towards future prospects, applying the appropriate multiplier or awarding compensation under the conventional heads and he prayed that the same be suitably enhanced. In support of his contentions, learned counsel for the appellants has relied upon *2009(6) SCC 121* ***Sarla Verma and others Vs. Delhi Transport Corporation and Another****, 2017 (16) SCC 680* ***National Insurance Co. Ltd Vs. Pranay Sethi and Other****, 2018 (4) R.C.R. (Civil) 333* ***Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram & Others****, (2021) 11 SCC 780* ***United India Insurance Co. Ltd. Vs. Satinder Kaur,*** *2025 ACJ 1624* ***Karuna Parmar Vs. Prakash Sinha and others*** *and 2024 SCC Online SC 3692,* ***Baby Sakshi Greola Vs. Manzoor Ahmad Simon.***

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10. Respondent No.1/driver had produced his licence and the same was got verified from Assistant Director, Licence, Kolkata Ex.R-6, according to which, this licence had not been issued in favour of respondent No.1 and rather, it has been issued in favour of one Nakul Sharma. Learned Tribunal came to the conclusion that the licence was fake and also did not rely upon the testimony of respondent No.2/owner when he stated that he had satisfied himself while employing respondent No.1 that he was possessing a valid driving licence and held owner and driver liable to pay compensation but directed Insurance Company to make the payment with a right to recover the same from the insured. Learned Tribunal held in Para No.22 onwards as under:-

> *"22. Licence of Respondent No.1 was got verified. Report of the Assistant Director (Licence), Kolkata is Ex.R6. A perusal of this document shows that Licence No.WB-01-038640 is fake. It is not in the name of Respondent No.1. Rather this licence stands in the name of Nakul Sharma and has not been issued to Naib Singh.*
>
> *23. Now the question is as to whether respondent No.2 can evade its liability by saying that he satisfied himself by checking the driving licence of Respondent No.1 while employing him that the licence in his possession is valid. To my mind this statement of RW1 appears to be an after-thought. Before that Respondents NO.3 had made it public by moving this Tribunal that Driving Licence WB-01-038640 is in the name of Nakul Sharma and that no such driving licence has been issued to Naib Singh. Even the report of Assistant Director is dater 24.08.2001 which is Ex.R6.*
>
> *24. Respondent No.2 stepped in the witness box on*

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*28.09.2001 and made the statement that he had satisfied himself while employing respondent No.1 as Driver with this Truck that he was possessing a valid driving licence and that he travelled with respondent No.1 and that his driving licence was checked by the police officials and no objection was raised about the genuineness of the driving licence. Before 28.09.2001, respondent No.2, respondent No.2 did not take this plea either in the written statement or otherwise. Thus, it appears to me that stand taken by respondent No.2 in his statement as RW1 is an after-thought. Moreover, respondent No.1 did not dare to appear as his own witness to state that his licence was checked by respondent No.2 at any time. Accordingly, respondent No.2 cannot wriggle out of the situation and state that he is not liable to pay the amount of compensation. Rather in such a situation, all the respondents are liable to pay the amount of compensation jointly and severally and if the amount is recovered by the claimants from Respondent No.3 alone, it can recover the same from the respondent No.2. In this view of the matter, I get support from the observations of Hon'ble Judge in the case of National Insurance Company Vs. Rani 2001 (1) RCR (Civil) 674. With utmost regard and humility to the authorities relied upon by learned counsel for respondent No.3, it is worth mentioning that in those cases the driver had not driving licence. Those cases were not of fake driving licence. Accordinly, issues No.2 and 3 are adjudicated in favour of claimants and against the respondents."*

11. However, the approach of the learned Tribunal in exonerating the Insurance Company and holding the driver and owner

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liable to pay compensation is contrary to law and is rather erroneous. Hon'ble Supreme Court in *2022 ACJ 1868,* ***Rishi Pal Singh Versus New India Assurance Company Limited and others,*** has held that owner of the vehicle is expected to check driving skills of the driver and not to run to the licensing authority to verify genuineness of the driving licence before appointing a driver and therefore, once the owner is satisfied that driver is competent to drive the vehicle, it is not expected from him to verify genuineness of the driving licence issued to the driver and the direction of 'pay and recover' given by the High Court was set aside and it was held that Insurance Company is liable to indemnify the insured and it cannot recover the amount from the owner/insured. Recently, Hon'ble Supreme Court in Law Finder Doc ID # 2790918, ***Hind Samachar Ltd. (Delhi Unit) Versus National Insurance Company Ltd. And others,*** has also held that owner of the vehicle is not expected to verify the authenticity of the driving licence from the licensing authority and he can only rely upon the licence produced by the prospective driver seeking employment. In case, Insurance Company seeks to avoid liability or to get "pay and recover rights" against the insured/owner on the ground of driving licence being fake, the Insurance Company must establish that the breach was on the part of the insured, meaning thereby, the insured had deliberately committed a breach by entrusting the vehicle to a driver who had a fake driving licence or that the owner did not employ due diligence at the time of handing over the vehicle. It has been further held that in the absence of pleading or substantiation that owner allowed the driver to

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drive a vehicle knowing the licence to be fake, or failed to employ due diligence in the driver's employment/entrustment, the High Court erred in issuing pay and recover directions against the insured-owner. It has been further held that Insurance Company must prove the willful breach of the policy condition i.e. entrusting the vehicle to a driver without a valid licence by the insured in case it wants right of recovery against the insured, even if the driver's licence is fake.

12. Respondent No.2/owner while appearing in the witness box has also stated on oath that he had seen the driving licence of respondent No.1/driver and he was satisfied that driver was possessing a valid and effective driving licence. He had travelled with respondent No.1 when the licence was checked by the police officials and no objection was raised about its genuineness. However, the Tribunal ignored the testimony of respondent No.2 in this regard on flimsy grounds with the observations that this plea had been taken by him subsequently after 28.09.2001 and no such plea has been taken in the written statement and his stand as RW1 is an afterthought. However, this fact was not required to be pleaded as it was specifically pleaded in the written statement that driver possessed a valid and effective driving licence. The owner was not required to plead that he had verified the licence from the Licensing Authority. On the other hand, Insurance Company has failed to establish that there was any willful default on the part of the insured and the breach of terms and conditions of the Insurance policy. In these circumstances, Insurance Company cannot be absolved of its liability to indemnify the

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insured and the finding of the Tribunal whereby Insurance Company has been exonerated of its liability is thus liable to be reversed and it is ordered accordingly and Issue No.3 is decided against the Insurance Company and it is held that respondents No.1 to 3 shall be liable to pay compensation to the claimants, jointly and severally.

***Analysis and assessment of compensation in XOBJC-41-CII-2004 in FAO-209-2002, National Insurance Co. Ltd. Vs. Jaspal Kaur and others , arising out of MACT Case No.11 of 22.01.1998 :-***

13. Coming to the assessment of compensation, the concept of `just compensation' has been elaborated by Hon'ble Supreme Court in **2009(1) RCR (Civil) 867 (SC), Syed Basheer Ahamed and Others Vs. Mohd. Jameel and Another**, and it has been held that while assessing compensation in a motor accident claims case, the Tribunal should award compensation which appears to be just. The expression "which appears to be just" vests a wide discretion in the Tribunal in the matter of determination of compensation. Nevertheless, the wide amplitude of such power does not empower the Tribunal to determine the compensation arbitrarily, or to ignore settled principles relating to determination of compensation. It has been further held that although the Act is a beneficial legislation, it can neither be allowed to be used as a source of profit, nor as a windfall to the persons affected nor should it be punitive to the persons liable to pay compensation and that determination of compensation must be based on certain data establishing reasonable nexus between the loss incurred by the victim or dependents. It has been

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further held that misplaced sympathy, generosity and benevolence cannot be the guiding factors for determining the compensation. As such, compensation is required to be assessed by taking into consideration above-said parameters.

14. As per the version of the claimants, on 14.11.1997 at about 11:00 PM, the deceased, Kulwinder Singh, was riding his bicycle from Panchkula to village Mankia. He was riding ahead of Gurpal Singh and Santokh Singh. In the meantime, Truck bearing No. HR-45-2521, driven rashly and negligently by Naib Singh (respondent No.1), came from the opposite direction and hit the bicycle. The deceased fell on the road, was dragged by the vehicle, and the truck turned turtle over him, causing his death on the spot. In this regard, an FIR was registered on 14.11.1997 at Police Station Chandi Mandir based on the statement of Gurpal Singh. The claimants further stated that the deceased was a student of IXth Class and was expected to earn at least Rs.3,000/- per month but the Tribunal has awarded only a lump sum compensation of Rs.1,50,000/-, which is grossly inadequate.

15. Hon'ble Supreme Court in **Karuna Parmar's case (supra)** while relying upon judgment rendered by the Hon'ble Supreme Court in **Baby Sakshi Greola's case (supra),** has held that minimum wages payable to a skilled worker in the concerned State have to be taken into consideration while assessing income in the case of death of a child because that would be the minimum amount which a child would have earned on attaining the age of majority. In the present case, deceased was

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17 years of age and the accident had taken place on 14.11.1997 and during those days, minimum wages earned by a skilled person were around Rs.2,700/- per month and accordingly, income of deceased is taken as **Rs.2,700/- per month**.

16. Since deceased was 17 years of age, 40% amount has to be added to the monthly income of the deceased towards future prospects in view of law laid down in **Pranay Sethi's case (supra),** which takes his income to **Rs.3,780/- (Rs.2,700/- + Rs.1,080/-).**

17. The claim petition has been filed by mother and father of the deceased. As per law laid down in 2025 Livelaw (SC) 309, **Sadhana Tomar & Ors. Vs. Ashok Kushwaha & Ors**, father has to be treated as financially dependent upon his deceased son. Accordingly, it is held that deceased has left behind two dependents. Deceased was a bachelor and as such, 50% of the income thus has to be deducted towards personal and living expenses in view of law laid down in **Sarla Verma's case (supra).** After deducting the same, the **monthly loss of dependency** comes out to **Rs.1,890/- (Rs.3,780/- − Rs.1,890/-)** and the **annual loss of dependency** comes out to **Rs.22,680/- (Rs.1,890/- × 12)** to which multiplier of 18 has to be applied as per law laid down in **Sarla Verma's case (supra)** and the total loss of dependency comes out to **Rs.4,08,240/- (Rs.22,680/- × 18).**

18. As per law laid down in **Pranay Sethi's case (supra)** a sum of Rs.70,000/- is payable towards conventional heads i.e. Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- on account of funeral expenses. However, the judgment in

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**Pranay Sethi's case (supra)** was passed in the year 2017 and taking into consideration the price index prevalent in the year 1997, when the accident took place, the claimant No.1 is held entitled to a sum of Rs.20,000/- towards loss of consortium, Rs.7,500/- for funeral expenses and Rs.7,500/- for loss of estate. Likewise, claimant No.2 is also held entitled to a sum of Rs.20,000/- for filial consortium.

19. Accordingly, the compensation to be awarded to the appellants/claimants is assessed as under:-

| **S.No.** | **Under Head** | |
|---|---|---|
| 1. | Age of deceased | 17 years |
| 2. | Monthly income of deceased | Rs.2,700/- per month |
| 3. | Future prospects @ 40% | Rs.1,080/- |
| 4. | Total income | Rs.3,780/- |
| 5. | Number of dependents | 2 |
| 6. | Deduction towards personal expenses of the deceased (50%) | Rs.1,890/- |
| 7. | Monthly loss of dependency | Rs.1,890/- |
| 8. | Annual loss of dependency | Rs.22,680/- (Rs.1,890/- × 12) |
| 9. | Multiplier | 18 |
| 10. | Loss of dependency | Rs.4,08,240/- (Rs.22,680/- × 18) |
| 11. | Compensation under conventional heads to claimant No.1- mother | Rs.35,000/- |
| 12. | Compensation to claimant No.2- father (loss of filial consortium) | Rs.20,000/- |
| | **Total Compensation** | **Rs.4,63,240/-(rounded off to Rs.4,63,500/-)** |

20. Resultantly, the appeal filed by the Insurance Company stands dismissed while cross-objection regarding enhancement of compensation filed by respondents No.1 and 2/claimants/cross-objectors is partly allowed and claimants/cross-objectors are held entitled to a sum of **Rs.4,63,500/-** as compensation. The enhanced compensation thus

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comes out to **Rs.3,13,500/- (Rs.4,63,500/- – Rs.1,50,000/-)** over and above the compensation awarded by the Tribunal alongwith interest at the rate of **9%** per annum from the date of filing of claim petition i.e. 22.01.1998, till realization, payable by respondents No.1 to 3 i.e. driver, insured and insurer, jointly and severally. During the pendency of the appeal, claimant No.2, who was the father has died and the entire amount of compensation shall be paid to claimant No.1-mother.

21. Registry is directed to email the authenticated copy of the award to the respondent Insurance Company in terms of directions issued by the Hon'ble Supreme Court in Writ Petition (Civil) No.534 of 2020 titled **Bajaj Allianz General Insurance Company Versus Union of India and others,** decided on 16.03.2021 and Insurance Company shall comply with the directions as issued under Clause (F) of the said judgment.

22. Pending miscellaneous application(s), if any, shall also stand disposed of.

**(YASHVIR SINGH RATHOR)**
**JUDGE**

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Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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