

1. **Date of decision:11.02.2015**
FAO No.1041 of 1994

SMT. SURINDER PAL KAUR AND OTHERS Appellants

VERSUS

MAJOR GEN. P. K. GUPTA AND OTHERS Respondents

2. **FAO No.1042 of 1994**

SMT. SURINDER PAL KAUR AND OTHERS Appellants

VERSUS

BHAKRA BEAS MANAGEMENT BOARD AND OTHERS

..... Respondents

3. **FAO No.1040 of 1994**

SMT. SURINDER PAL KAUR AND OTHERS Appellants

VERSUS

VED PAL AND OTHERS Respondents

4. CR No.2215 of 1994

SMT. SURINDER PAL KAUR AND OTHERSAppellants

VERSUS

VED PAL AND OTHERS Respondents

CORAM: HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present: Mr. S. D. Bansal, Advocate
for the appellants.

Mr. D. R. Bansal, Advocate
for respondent No.3 (in FAO Nos. 1041, 1042 &
CR No.2215 of 1994) and
for respondent No.5 (in FAO No.1040 of 1994)

MAHAVIR S. CHAUHAN J. (ORAL)

FAO Nos.1040 of 1994, 1041 of 1994, 1042 of 1994 and CR

No.2215 of 1994 having arisen from a common award dated 13.09.1993

passed by learned Motor Accident Claims Tribunal, Chandigarh (“the Tribunal” for short) shall stand disposed of by this common order being passed in FAO No.1041 of 1994. Facts for the sake of convenience are being taken from FAO No.1041 of 1994.

On 30.05.1991 at about 11 P.M. an accident took place at the crossing of Sectors 30 and 20 between an Ambassador Car bearing registration No.CH-01-A-7566 being driven by Ved Pal and a Maruti Van bearing registration No. CH-02-0074 being driven by Satish Kumar. Due to the impact of the accident Harminder Singh received serious injuries and later on he died while Ved Pal and P. K. Gupta received injuries and Ambassador Car bearing registration No.CH-01-A-7566 was damaged. Accordingly, four claim applications i.e. MACT Nos.143 of 1991, 144 of 1991, 145 of 1991 and 85 of 1991 were brought.

The applications were contested by the respondents by filing written statements wherein all the allegations of the applications were denied and from the pleading of the parties, learned Tribunal framed following issues:

1. Whether Shri Harminder Singh died, Sh. Ved Pal and Maj. Gen. P. K. Gupta sustained injuries and Ambassador Car No.CH-01-A-7566 was damaged because of the rash and negligent driving of Maruti Van No.CH-01-0074 driven by Satish Kumar respondent No.4? OPP
2. To what amount of compensation, if any, the claimants are entitled to and from whom? OPP
3. Relief?

Both the sides adduced evidence to their satisfaction and were heard by the learned Tribunal.

However, learned Tribunal on hearing the learned counsel for the parties in the light of evidence available on record concluded that Satish Kumar, driver of the Maruti Van bearing registration No. CH-01-0074 was author of the occurrence. Accordingly, claim application No.85 of 1991 brought to seek compensation with regard to loss of dependancy caused by death of Harminder Singh was dismissed while holding that he was not holding a valid driving licence at the time of accident and was not entitled to any compensation as the policy of insurance was an "Act only policy" while compensation was awarded in other three claim applications.

To challenge dismissal of their claim application and acceptance of other applications, claimants of claim application No.85 of 1991 and those of other three claim applications have brought three appeals while Civil Revision has been brought by claimants of MACT No.85 of 1991/92 for setting aside award dated 13/09/1993 while challenging the findings of learned Tribunal.

I have heard learned counsel for the parties, besides examining the record requisitioned from the learned Tribunal.

Learned counsel for the appellants has heavily relied upon part of statement of PW-1 Major Gen. P. K. Gupta made by him in his cross examination to the effect that the Maruti Van had already crossed more than 3/4th of the crossing when the accident occurred. By referring to this portion of the evidence, learned counsel has attempted to project that as the Maruti Van, as per admission of this witness, had already crossed 3/4th of the crossing when the occurrence took place, the driver of that Van cannot be

said to be negligent and instead Ved Pal, driver of Ambassador Car bearing registration No. CH-01-A-7566 has to be held responsible for the unfortunate occurrence. According to learned counsel, findings on issue No.1 deserve to be reversed in view of aforesaid reason and that being so, dismissal of claim application No.85 of 1991 becomes bad and acceptance of other applications cannot be sustained.

The contention is being resisted on behalf of the respondent-insurer on the plea that in the circumstances appearing on record, it is clearly established that Satish Kumar, driver of the Maruti Van, and not Ved Pal, driver of the Ambassador Car, was responsible for the unfortunate occurrence and in view thereof legal heirs of Harminder Singh are not entitled to any compensation as the policy of insurance is an "Act only policy" and the deceased Harminder Singh being owner of the car (Exhibit R-1), his legal heirs are not entitled to any compensation as has been held in **"Ningamma Vs. United India Insurance Co. Ltd 2009(8)JT 262(SC)"**.

Further, according to learned counsel for the respondent-insurer, in view of the fact that Satish Kumar, driver of Maruti Van has shied away from the witness stand a presumption adverse to the case pleaded on behalf of the present appellants have to be raised and, therefore, the appellants have no right to challenge grant of compensation in favour of the applicants in the other claim applications except claim application No.85 of 1991.

Nothing more has been urged on either side.

Only point to be adjudicated upon in the present appeals and Civil Revision is who authored the occurrence in question Ved Pal or Satish Kumar. Answer to the question, in my view, has to be in agreement with what has been held by the learned Tribunal.

On behalf of the appellants in claim applications Nos. 143, 144 and 145 of 1991, Major Gen. P. K. Gupta, who, admittedly, was one of the occupants of the two vehicles, viz., Ambassador Car bearing registration No. CH-01-A-7566, has been examined as PW-1. He has very categorically stated that Ambassador Car had almost crossed more than half of the crossing when the Maruti Van coming from Sector-26 side had hit against the Ambassador Car. His statement to this effect finds sufficient corroboration in the evidence of PW-4 Ved Pal, driver of the Ambassador Car. As pointed out by learned counsel for the appellants, PW-1-Major Gen. P. K. Gupta, no doubt has stated in his cross examination that the Maruti Car had already crossed more than 3/4th of the crossing when the accident occurred but this statement cannot work to the benefit of the appellants because in the very next breath, he has clarified that the Ambassador Car had already entered the crossing when the Maruti Car was 20 yards away from it. Further, statement made by this witness in cross examination has to be read in conjunction with what has been stated by him in his chief examination. His statement also finds support from the statement of PW-4 Ved Pal, driver of the Ambassador Car. If the two statements are weighed together, there remains nothing to doubt that the Ambassador Car had already crossed best part of the crossing when it was hit by the Maruti Car. In such circumstances, driver of the Ambassador Car cannot be held liable for the unfortunate occurrence.

Another circumstance that is found against the plea put-forth on behalf of the appellants is their failure to examine Satish Kumar, driver of the Maruti Car, in which Harinder Singh deceased was travelling. Non-examination of Satish Kumar, driver, leads to the inference that case

pleaded by the appellants has remained unproved.

Even otherwise non-examination of Satish Kumar, driver, amounts to with-holding of best evidence from the Tribunal and for that reason also an adverse inference is bound to be raised against the plea put-forth on behalf of the appellants, in terms of illustration (g) appended to Section 114 of Indian Evidence Act, 1872.

Further, it has also come on record that an FIR was recorded against Satish Kumar, driver of the Maruti Van. Though from the record it is not borne out as to what happened to the criminal proceedings arising out of the First Information Report but going by the normal cycle of events, it can be easily inferred that the First Information Report must have resulted either in Satish Kumar facing criminal proceedings or filing of an untraced report in view of failure of the investigating agency to trace out said Satish Kumar. Be that as it may, the fact remains that criminal proceedings were launched against Satish Kumar, driver of the Maruti Van which also leads to a presumption that said Satish Kumar was responsible for causing the occurrence out of which the instant appeals/revision have arisen.

In view of the reasons discussed, I do not find any reason to interfere with the findings recorded by the learned Tribunal and in the consequence, all the appeals as also the civil revision petition fail and are, accordingly, dismissed. However, parties are left to bear their own costs.

(MAHAVIR S. CHAUHAN)
JUDGE

February 11, 2015
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