

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

FAO NO. 3091 OF 1996 (O & M)  
DECIDED ON : 06.05.2015

Naresh Kumar  
versus  
Balwinder Singh and others  
AND  
...Appellant  
...Respondents

FAO NO. 3092 OF 1996 (O&M)

Tejinder Singh  
versus  
Balwinder Singh and others  
AND  
...Appellant  
...Respondents

FAO NO. 2759 OF 1996 (O&M)

Balwinder Singh  
versus  
Naresh Kumar and others  
AND  
...Appellant  
...Respondents

FAO NO. 3161 OF 1996 (O&M)

Balwinder Singh  
versus  
Tejinder Singh and others  
...Appellant  
...Respondents

**CORAM : HON'BLE MR. JUSTICE K. C. PURI**

Present : Mr. Saurabh Bhardwaj, Advocate and  
Mr. P. S. Rana, Advocate,  
for the appellants in  
FAO No. 3091 and 3092 of 1996.

Mr. Saurabh Garg, Advocate,  
for the appellant in  
FAO No. 2759 and 3161 of 1996.

Mr. Suman Jain, Advocate,  
for Insurance Company.

**K. C. PURI, J. (ORAL)**

Vide this common judgment, I intend to dispose of four appeals bearing **FAO No. 3091 of 1996** titled as, "**Naresh Kumar vs Balwinder Singh and others**", **FAO No. 3092 of 1996** titled as, "**Tejinder Singh vs. Balwinder Singh and others**", **FAO No. 2759 of 1996** titled as, "**Balwinder Singh vs. Naresh Kumar and others**" and **FAO No. 3161 of 1996** titled as, "**Balwinder Singh vs. Tejinder Singh and others**", as all of these appeals have arisen out of the same Award dated 24.08.1996 passed by Shri R.P.Bhasin, Motor Accident Claims Tribunal, Kurukshetra.

Briefly stated, Tejinder Singh filed MACT case No. 31 of 1994 titled as, "Tejinder Singh vs Balwinder Singh etc.", claiming compensation in respect of injuries sustained by him in a motor vehicular accident. Naresh Kumar- another injured filed MACT case No. 32 of 1994 titled as, "Naresh Kumar vs. Balwinder Singh etc.", in respect of injuries sustained by him in a motor vehicular accident.

The learned Tribunal had decided both the claim petitions vide common Award dated 24.08.1996.

The case of both set of the claimants/appellants namely Tejinder Singh and Naresh Kumar, as set forth before the Tribunal was that on 16.02.1994 at about 7.00 PM, they were returning from Jhansa to village Salpani Kalan, on motorcycle bearing registration No. DBT-5144 which was driven by Naresh Kumar-claimant, whereas Tejinder Singh-claimant was sitting as pillion rider. When they reached in the area of village Ajrana Kalan near power house, then one jeep bearing registration No. DL-2 CC/5199 being driven by respondent No.1-Balwinder Singh rashly and negligently came from the opposite side. The said jeep was being driven by Balwinder Singh-respondent No.1 on the wrong side of the road and it hit the motorcycle and caused injuries to both of the claimants. The accident took place due to rash and negligent driving of offending jeep by Balwinder Singh- respondent No.1. He ran away from the spot along with the offending vehicle after causing the accident. The claimants were removed to clinic of Dr. Madan Lal Kwatra of village Jhansa. Thereafter, they were taken to Ankur Nursing Home, Kurukshetra. FIR No.19 dated 17.02.1994 under Sections 279/337 of the Indian Penal Code was registered at concerned police station.

On 18.04.1995, learned counsel for the claimants gave up respondents No.2 and 4 and their names were struck off from the memo of parties. However, respondent No.1, 2-A Sukhdev Singh (sapurdar of the offending jeep) and the Insurance Company contested the claim petition.

In the written statement filed by respondent No.1, he denied the accident in question. It was pleaded that false case was registered against him.

Respondent No.2-A in the written statement also denied the accident. However, it was pleaded that the offending jeep was insured with National Insurance Company.

Respondent No.3-National Insurance Company in its written statement took a plea that the accident, if any, had taken place due to the negligence of Naresh Kumar-driver of the motorcycle. The factum of insurance of the offending jeep with the company was admitted but it was submitted that the Insurance Company was not liable to pay the amount of compensation as driver of the offending vehicle was not holding a valid driving licence.

No replication was filed.

From the pleadings of parties, following issues were framed :-

- 1) Whether the accident on 16.02.1994 at about 7.00 PM near power house in the area of village Arjana Kalan took place due to rash and negligent driving of respondent No.1-Balwinder Singh driver of Jeep No. DL-2CC/5199 ? OPP
- 2) If Issue No.1 is proved, to what amount of compensation the petitioners are entitled and from whom ? OPP
- 3) Whether the petition is bad for non-joinder of necessary parties and mis-joinder of parties ? OPR3

- 4) Whether respondent No.1 was not holding valid driving license at the time of the accident and as such, respondent No.3 is not liable to pay the compensation ? OPR3
- 5) Relief.

The learned Tribunal after appraisal of the evidence, decided Issue No.1 in favour of the claimants and it was held that finally it is proved that the vehicle was insured with respondent No.3 at the time of accident but since Jai Mata Leasing Pvt. Ltd. has been given up and as such, the Insurance Company is not liable to pay any amount of compensation. On the analogy that Insurance Company has to indemnify the owner, the claimant Tejinder Singh was held entitled to claim ₹68,600/- and claimant Naresh Kumar was held entitled to claim ₹36,000/- but the liability to pay the said amount was upon respondent No.1-driver of offending vehicle.

Feeling dissatisfied with the above said Award dated 24.08.1996, Balwinder Singh-respondent No.1 driver of the offending jeep filed two appeals bearing FAO No. 2759 of 1996 and FAO No.3161 of 1996 absolving him from his liability, whereas Naresh Kumar filed FAO No. 3091 of 1996 and Tejinder Singh filed FAO No. 3092 of 1996, for enhancement of compensation.

Learned counsel for the appellant-Balwinder Singh has submitted that the vehicle was duly insured. The appellant cannot be held liable for paying whole of the amount of compensation merely on the ground that the claimants have given up the owner of the

offending jeep.

Learned counsel for the claimants Naresh Kumar and Tejinder Singh have prayed for enhancement of compensation and have submitted that inadvertently the owner was give up before the Tribunal, assuming that Sukhdev Singh, who has taken the vehicle on sapurdari, has been arrayed. It is further submitted that the application has been moved before the Tribunal for recalling the order vide which the owner has been give up.

Learned counsel for the claimants have further submitted that the courts are meant to advance the cause of justice and not to thwart it. A party cannot be non-suited on technical grounds. It is further prayed that either the Insurance Company should be held liable or if there technical objection that the owner has been given up, in that case, the case be remanded back for afresh decision.

Learned counsel for the Insurance Company has submitted that the insurance company is not liable to pay compensation as the owner has been given up.

I have given my thoughtful consideration to the rival submissions made by both the sides and have gone through the records carefully.

Learned Tribunal, after adjudication has returned the findings on Issue No.1 in favour of the claimants. The Insurance Company has not been held liable on the ground that owner of the offending jeep has been given up.

The stand taken by the claimants before the Tribunal is that Jai Mata Leasing Pvt. Ltd., registered owner of the offending jeep

bearing No. DL-2CC-5199 has been given up on the assumption that Sukhdev Singh who has taken the jeep on sapurdari, has been arrayed as party and as such, the Insurance Company would be held liable. It is further submitted that the application was also moved before the Tribunal for recalling the order of giving up respondents No.2 and 4.

The courts are meant to advance the cause of justice and not to thwart it. Technically in case a registered owner is given up in that case, the Insurance Company cannot be held liable, but it is also settled law that technicalities can never be hurdle in dispensing the real justice. Respondents No.2 and 4 seems to have been given up in advertently on the assumption that Sukhdev Singh, who has taken the vehicle in question on sapurdari, has been arrayed as party.

Otherwise also, Motor Vehicles Act is a welfare legislation and the balance always tilt in favour of the claimants. In case Jai Mata Leasing Pvt. Ltd. i.e respondent No.2 before the Tribunal would not have been given up, in that case, Balwinder Singh- respondent No.1 can be held liable jointly or severally with owner and Insurance Company.

So keeping in view the above discussion, I deem it a fit case to remand the case to the Tribunal to decide the case afresh after giving notice to respondents No.2 and 4 i.e. Jai Mata Leasing Pvt. Ltd and Sukhdev Singh, who have been inadvertently given up by the claimants.

Consequently, all the four appeals stand accepted. The cases are remanded back to the Tribunal to decide afresh after issuing

notices to respondents No.2 and 4. The parties are directed to appear before the Tribunal on 29.05.2015. The file of the Tribunal, if any, be sent well before the date fixed. Some files have been burnt in the fire incident of this court. If the file of Tribunal has also been burnt in that incident, the same may be reconstructed by the Tribunal with the assistance of the parties and the Tribunal shall proceed in accordance with law.

All the four appeals stands disposed of accordingly.

**MAY 06, 2015**  
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**(K. C. PURI)**  
**JUDGE**