

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

**FAO NO. 5439 OF 2003 (O&M)
DECIDED ON : 22.07.2015**

Oriental Insurance Company Limited

...Appellant

versus

Devinder Kaur and others

...Respondents

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

Present : Mr. Ashwani Talwar, Advocate,
for the appellant.

K. C. PURI, J.

The Insurance Company has directed this appeal against the Award dated 15.09.2003 passed by Shri Harbans Lal, Motor Accident Claims Tribunal, Hoshiarpur, vide which the claim petitions preferred by both the set of claimants were accepted.

Devinder Kaur-widow, Sikander Singh-minor son, Kamaljit Kaur-minor daughter and Swaran Kaur-mother of deceased Karam Singh filed MACT Case No. 95 of 2001 seeking compensation to the tune of ₹15 lacs on account of death of Karam Singh in a motor vehicular accident. They also preferred MACT Case No. 96 of 2001 seeking compensation to the tune of ₹16,000/- on account of damage caused to the scooter of deceased in the said accident.

Brief facts as gathered from the record are that on 05.10.2001 Karam Singh deceased and his brother were coming from Jalandhar Cantt to their village Wada Makha. Karam Singh was on ten days' casual leave. He was driving the scooter bearing registration No. PB-54-5674 (Bajaj Chetak) while his brother Om Gopal was pillion rider. At about 4.15 PM, when they reached in the area of village Ralhan, deceased Karam Singh stopped his scooter as there was traffic jam on the road and Om Gopal alighted from the scooter and moved backwards. In the meantime, one truck bearing registration No. PAT-4191 came from behind i.e Jalandhar side being driven rashly and negligently and without blowing any horn. He struck his truck in the scooter of deceased due to which the deceased suffered grievous injuries on the head and other parts of the body. The scooter was also badly damaged. Karam Singh died at the spot. The said truck also struck against the cycles of Harbans Lal and Jaspreet due to which they also suffered injuries.

Upon put to notice, respondents No.1 and 2 did not appear before the Tribunal and as such, they were proceeded ex parte.

Respondent No.3 filed written statement pleading therein that Tarlok Singh-driver of the offending truck was not holding a valid driving license. It was further pleaded that the offending vehicle was not insured with the insurance company. The other averments were denied.

From the pleadings of parties, following issues were framed in MACT No. 95 of 2001:-

i) Whether Karam Singh died in motor vehicle accident which took place on 05.10.2001 at about 4.15 PM in the area of village Ralhan on account of rash and negligent driving of truck bearing No. PAT-4191 by respondent No.1 ? OPA

2) Whether respondent No.1 was not holding any valid driving license at the time of accident ? OPR 3

3) To what amount of compensation, the claimants are entitled and from whom ? OPA

4) Relief.

Whereas following issues were framed in MACT No. 96 of 2001 :-

1) Whether the accident took place due to rash and negligent driving of truck bearing registration No. PAT-4191 by respondent No.1 resulting into damage to scooter No. PB-54-5674 ? OPA

2) Whether the driver respondent was not holding a valid driving license at the time of accident ? OPR 3

3) To what amount of compensation the claimants are entitled and from whom ? OPA

4) Relief.

Since both the claim petitions were the result of same accident, as such, the Tribunal decided both the petitions vide common Award.

The learned Tribunal, after adjudication, accepted both the claim petitions with costs and awarded a sum of ₹5,61,720/- to

claimants Devinder Kaur, Sikander Singh, Kamaljit Kaur and Swaran Kaur. The Tribunal also awarded ₹11,900/- in favour of claimant-Devinder Kaur as damage caused to the scooter.

Feeling dissatisfied with the above said Award dated 15.09.2003 passed by Motor Accident Claims Tribunal, Hoshiarpur, the Insurance Company has preferred this appeal.

I have heard learned counsel for the appellant and have gone through the record carefully.

Respondents No.5 and 6 duly served through publication in the newspaper "The Tribune" but none has appeared on their behalf. So, they are proceeded ex parte.

The only point urged during the course of arguments is that the vehicle in question is stated to have been insured on 05.10.2001 at 9:00 AM, whereas the accident is stated to have taken place on the same day at 4.50 PM. It is further submitted that in fact the owner of the offending vehicle has colluded with Ashok Kumar. It is further submitted that on the said date i.e 05.10.2001, said Ashok Kumar was on leave and as such, it is not possible for him to sell the insurance policy. It is also contended that the amount of premium was deposited on 08.10.2001, much after the accident and as such, the Insurance Company is not liable.

I have considered the submissions made by learned counsel for the appellant but I do not find any force in the same.

The accident has taken place at 4.50 PM on 05.10.2001 whereas the cover note of the insurance policy has been stated to be issued at 9:00 AM on the same day. The onus lies very

heavily upon the Insurance Company that there is fraud upon the company. The Insurance Company has failed to prove the factum of fraud by the owner of the offending vehicle or by the Development Officer. RW-2 B.C.Gaur, during his cross-examination has stated that Ashok Kumar is still working in the company. In case Ashok Kumar is a privy to the fraud perpetuated by owner, in that case, the Insurance Company should have taken action against Ashok Kumar. Once the cover note is issued then the onus lies upon the Insurance Company to prove that the same is result of fraud.

Learned counsel for the appellant could not point out any document on file that any action has been taken against Ashok Kumar by the Insurance Company. There is nothing on file to show that the insurance policy was cancelled at any stage.

In view of the above discussion, I have no hesitation in holding that the appeal is without any merit and the same stands dismissed.

JULY 22, 2015
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(K. C. PURI)
JUDGE