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

(1) FAO No. 4339 of 2013(O&M)
Date of Decision: 29.01.2015

The Oriental Insurance Company Limited
... Appellant
vs.

Smt. Rakhi Devi and others
... Respondents

(2) FAO No. 4340 of 2013(O&M)

The Oriental Insurance Company Limited
... Appellant
vs.

Avtar Singh and others
... Respondents

(3) FAO No. 4341 of 2013(O&M)

The Oriental Insurance Company Limited
... Appellant
vs.

Charno and others
... Respondents

(4) FAO No. 4342 of 2013(O&M)

The Oriental Insurance Company Limited
... Appellant
vs.

Nasib Singh and others
... Respondents

(5) FAO No. 4343 of 2013(O&M)

The Oriental Insurance Company Limited

... Appellant
vs.

Janak Kaur and others
... Respondents

(6) FAO No. 4344 of 2013(O&M)

The Oriental Insurance Company Limited

... Appellant

vs.

Jasbir Kaur and others

... Respondents

(7) FAO No. 4781 of 2013(O&M)

New India Assurance Company Limited

... Appellant

vs.

Jasbir Kaur and others

... Respondents

(8) FAO No. 4782 of 2013(O&M)

New India Assurance Company Limited

... Appellant

vs.

Smt. Rakhi Devi and others

... Respondents

(9) FAO No. 4783 of 2013(O&M)

New India Assurance Company Limited

... Appellant

vs.

Avtar Singh and others

... Respondents

(10) FAO No. 4784 of 2013(O&M)

New India Assurance Company Limited

... Appellant

vs.

Smt. Charno and others

... Respondents

(11) FAO No. 4785 of 2013(O&M)

New India Assurance Company Limited

... Appellant

vs.

Nasib Singh @ Naseeb Singh and others

... Respondents

(12) FAO No. 4786 of 2013(O&M)

New India Assurance Company Limited

... Appellant

vs.

Janak Kaur and others

... Respondents

(13) FAO No. 4951 of 2013(O&M)

Nasib Singh @ Naseeb Singh

... Appellant

vs.

Surinder Singh and others ... Respondents

1.Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2.To be referred to the Reporters or not? Yes/No
3.Whether the judgment should be reported in the digest? Yes/No

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Argued by:- **Mr. Sanjiv Pabbi, Advocate
for Oriental Insurance Company Ltd.**

**Mr. R.S. Madan, Advocate
for The New India Assurance Company Limited.**

**Mr. Sanjay Jain, Advocate
for respondent Ram Karan.**

**Mr. Inderjeet Sharma, Advocate
for claimants Rakhi Devi & Ors.**

**Mr. N.K. Babyan, Advocate for
Ms. Sanamjeet Kaur, Advocate
for the appellant Nasib Singh.**

ANITA CHAUDHRY, J.

All the aforesaid appeals are directed against the awards dated 18.05.2013 passed by the Motor Accident Claims Tribunal, Panchkula (for brevity, the 'MACT') in different claim petitions which had arisen out of the same accident. Six appeals have been preferred by Oriental Insurance Company, insurer of canter while six appeals by New India Assurance Company Limited, insurer of truck. One appeal is by Naseeb Singh claimant seeking enhancement. I propose to dispose all the appeals by this common order.

The facts of the case, in brief, are that on 19.08.2010 Nasib Singh, Jai Singh, Satnam Singh, Pakhar Singh, Milkhi Singh, Sarabjeet Singh, Avtar Singh were coming from village Chakraut after purchasing apple in a Canter No. HP09A-1885 driven by Ajay Kumar towards Chandigarh. The canter dashed into the rear portion of a parked truck trolla bearing registration No. HR63-C-8196 near Prem Nagar, District Shimla. The result of the thrust was so strong that the truck trolla moved ahead and struck against a Bolero jeep parked ahead. Thereafter, the canter went off the road and fell in a ditch. Pakhar Singh and Jai Parkash died at the spot on account of the injuries. Milkhi Singh, Satnam Singh and driver of the canter Ajay Kumar succumbed to the injuries during treatment. Nasib Singh and Avtar Singh suffered injuries. FIR No. 66 dated 19.08.2010 was registered at Police Station Kotkhai, under Sections 279 and 304-A IPC against Ajay Kumar driver of the canter.

The Canter was owned by Surinder Singh and it was insured with the Oriental Insurance Company Limited, while the truck trolla No. HR63-C-8196, was owned and driven by Ram Karan and insured with The New India Assurance Company Limited.

It was claimed that the accident had occurred due to rash and negligent driving of the canter driver. It was pleaded that the truck trolla was wrongly parked and without any indicator on the metalled road. Six claim petitions were filed by the legal heirs of the deceased and the injured, claiming compensation on account of death of Jai Singh, Pakhar Singh, Milkhi Singh and Sanam Singh and two by injured Avtar Singh and Nasib Singh claiming compensation for the injuries received in the accident.

In all the cases, Surender Singh, the owner of the canter denied that the accident occurred due to the negligence of his driver and took the plea that the accident took place due to wrong parking of the truck trolla on the road.

The insurance company of canter, namely, Oriental Insurance Company took the plea that the vehicle in question was not insured with it on the date of accident and they were not responsible to indemnify the owner. It was further claimed that the driver was not holding a valid driving licence and the canter was driven in violation of terms and conditions of policy as besides the driver, eight other persons were travelling in the said canter which was insured for commercial purposes and all the eight passengers were gratuitous passengers. It was also claimed that the driver of the canter was under the influence of liquor at the time of accident.

Ram Karan, the owner and driver of the truck trolla denied the accident on account of wrong parking. He took the stand that the vehicle was parked on the correct side of the road with parking lights on.

The New India Assurance Company, insurer of the truck denied its liability. The stand put forth was that the vehicle in question was being driven without valid registration certificate, fitness certificate and route permit. It was also claimed that the vehicle was driven in violation of terms and conditions of insurance policy as the driver was not having any effective driving licence on the date of accident. Plea of non-joinder of owner of jeep was also raised.

On the basis of evidence adduced by the parties, the Tribunal held:-

(i) that the accident took place due to rash and negligent driving of canter and wrong parking by the driver of the truck trolla and that it was a case of contributory negligence of both the drivers.

(ii) that the injured/ deceased were not the gratuitous passengers and were covered under the insurance policy and liable to be indemnified by the insurance company;

(iii) Ajay Kumar, driver of the canter had a valid driving licence;

(iv) Adverse inference was drawn against the owner and driver of the truck trolla as he failed to produce the driving licence despite directions;

(v) As it was held to be a case of contributory negligence, half share of total compensation was ordered to be paid jointly and severally by owner and insurance company of canter and to be mainly indemnified by the insurance company;

(vi) that owner, driver and insurance company of truck trolla were held jointly and severally liable to pay remaining half of the compensation, but at the first instance by insurance company and it was given recovery rights to recover the amount from owner and driver of the truck trolla.

The Tribunal ordered the disbursement of the compensation to the claimants vide separate awards passed in six claim petitions decided on 18.05.2013.

Dis-satisfied with the quantum and the liability to the extent of 50%, Oriental Insurance Company with which the canter was insured, preferred FAO Nos. 4339, 4340, 4341, 4342, 4343 and 4344 of 2013.

Likewise, New India Assurance Company Limited with whom the truck trolla was insured has preferred FAO Nos. 4781, 4782, 4783, 4784, 4785 and 4786 of 2013 challenging its liability to pay the compensation to the extent of 50%.

FAO No. 4951 of 2013 has been filed by claimant Nasib Singh @ Naseeb Singh seeking enhancement of compensation.

I have heard the learned counsel for the parties.

<u>FAO Nos. 4339, 4340, 4341, 4342, 4343, 4344 of 2013 &</u>

<u>FAO Nos. 4781, 4782, 4783, 4784, 4785 and 4786 of 2013</u>

Learned counsel for Oriental Insurance company urged that it was not the case of contributory negligence and the accident took place only on account of wrong parking of the truck trolla. It was urged that the report of FSL confirms that the driver of the canter was under the influence of liquor. He further submitted that the canter was driven in violation to the terms and conditions of the insurance policy as the policy only permitted two passengers with one driver in the cabin, but all the eight persons were sitting on the backside of the truck. He further submitted that the liability to the extent of 50% had wrongly been foisted upon it and they should be exonerated.

On the other hand, the counsel for the New India Assurance Company with whom the truck trolla was insured urged that the Tribunal has wrongly held it liable to indemnify to the extent of 50%. According to him, there was no fault of the driver because due care was taken while parking the vehicle. He further contended that it was not a case of contributory negligence as the accident took place due to the sole rash and negligent driving of the driver of the canter, who was under the influence of liquor.

The submission made on behalf of claimant Naseeb Singh was that the liability was rightly fixed on both the drivers. It was urged that Naseeb Singh had spoken about the negligence of both the drivers and the road was wide enough to accommodate two vehicles at one time and the canter was going down hill and the truck trolla did not have an indicator to show its presence and the finding recorded by the Tribunal was based on evidence.

The owner and driver of the truck trolla were proceeded ex parte. No evidence was led by the other respondents. The only evidence on record was the evidence led by the claimants. Naseeb Singh PW2 had described the accident blaming both the drivers. In his affidavit Ex.PB there was a categoric assertion reiterating the stand taken in the petition that the truck trolla was parked on the metalled road at night time with no parking lights on and the canter driver came and struck against the trolla. The accident had taken place at 9:30 p.m. There is a report Ex.R17 which shows the canter driver had alcohol in the blood sample to the extent of 97.96 mg%.

The accident occurred when canter was going down hill. The truck trolla was parked on the road with no parking lights or indicators or signage. The witnesses have deposed that the road was wide enough to accommodate two vehicles. The canter driver did not notice the truck trolla parked on the road and struck against the rear portion. It appears that canter driver had no control over the vehicle and he could not stop the canter in time to avoid the accident as he was drunk. Naseeb Singh had spoken about the rash and negligent driving of the canter driver. He had stated that the driver of their vehicle could not control the canter. Avtar Singh PW3 had stated that their driver got dazzled as the lights blinded him and he could not notice the truck trolla parked on the road. He was under the influence of liquor as well. As noticed above, the truck trolla was also parked on the metalled road without any indicators or signages showing its presence on the road.

The submission of appellant Oriental Insurance Company also was that as the canter was carrying 8 persons when only two people were allowed in the cabin and the driver was drunk, therefore, they should be exonerated from the liability of payment of compensation or given recovery rights to recover the amount from the owner of the canter. The submission was that FSL report submitted in the evidence refers to quantity of alcohol found in the blood viz., 97.97 mg% in blood and 124.77 mg% in urine. Learned counsel has referred to Section 185 of the Motor Vehicles Act. It read as under:-

> "185. **Driving by a drunken person or by a person under the influence of drugs-** Whoever, while driving, or attempting to drive, a motor vehicle-
>
> [(a) has, in his blood, alcohol exceeding 30 mg per 100 ml of blood detected in a test by a breath analyser, or]
>
> (b) is under this influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle,
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> shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both; and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both."

A perusal of the provision above would show that if the driver is found driving the vehicle and has an alcohol exceeding 30 mg per 100 ml of blood, then the driver is liable for drunken driving. It has come on record that the driver of the canter was inebriated at the time of accident. He was carrying passengers in a goods vehicle. But only on that account the insurance company cannot be exonerated from indemnifying third party. It is settled that if there is any violation of terms and conditions of the policy, insurance company is under an obligation to satisfy the claim of third parties; since the liability of the Insurance Company during subsistence of the liability under the policy is statutory in nature, at best, the Insurance Company has to satisfy the award and they can recover the same from the insured.

The findings recorded by the Tribunal regarding contributory negligence and fastening liability upon the drivers of both the vehicles are affirmed. However, in view of the above, Oriental Insurance Company, the insurer of the canter is given the recovery rights as the policy conditions have been violated.

FAO No.4951 of 2013

The submission made on behalf of Naseeb Singh was that the compensation awarded to the claimant was on the lower side. It was urged that there was disability to the extent of 30% which led to shortening of the leg and compensation be enhanced. It was urged that no amount had been allowed for the attendant and the appellant was entitled to higher amount for pain and suffering.

Supporting the judgment, the submission on behalf of the respondents was that the Tribunal had considered the functional disability and had applied the multiplier method and had awarded compensation which was appropriate.

The claimants had pleaded that his monthly earning were Rs.15000/- per month but he failed to lead evidence to show that he was earning a higher amount from his business. The Tribunal had noted that a labourer could get Rs.4500/- per month as wages in 2010 and had considered the income of the claimant to be Rs.5000/- per month. Noticing the observations made by the Apex Court in **Raj Kumar Vs. Ajay Kumar and another reported in 2011 ACJ 1**, the Tribunal had considered the functional disability to be not more than 15% and the compensation was rightly calculated at Rs.1,53,000/- and no change is required. The Tribunal had awarded Rs.8000/- towards special diet and Rs.10,000/- as compensation for pain and sufferings. I would add a sum of Rs.15,000/- for the attendant, Rs.25,000/- for pain and sufferings and Rs.5000/- for transportation giving a total increase of Rs.45000/-.

In view of the above, FAO Nos. 4339, 4340, 4341, 4342, 4343 and 4344 of 2013 preferred by Oriental Insurance Company are partly allowed. They are given the right of recovery of the amount of compensation from the owner of the canter which was/ or has to be paid.

FAOs No. 4781, 4782, 4783, 4784, 4785 and 4786 of 2013 filed by New India Assurance Company are dismissed.

FAO No. 4951 of 2013 is partly allowed and an amount of Rs.45000/- is awarded to the appellant Naseeb Singh. The same shall be paid in the similar proportion by the insurance companies, as directed by the Tribunal below with a right to recover it, as held above.

29.01.2015 **(ANITA CHAUDHRY)**
Jiten **JUDGE**