

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

**FAO NO. 2685 OF 2015 (O&M)
DECIDED ON : 05.05.2015**

National Insurance Company Limited

...Appellant

versus

Chainpal and others

...Respondents

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

Present : Mr. B. S. Taunque, Advocate,
for the appellant.

K. C. PURI, J. (ORAL)

CM NO. 8126-CII OF 2015

The application stands allowed and delay of 29 days in filing the appeal stands condoned, for the reasons mentioned in the application.

MAIN CASE

This is an appeal directed by the National Insurance Company Limited against the award dated 04.12.2014 passed by Shri Jagdeep Singh, Motor Accident Claims Tribunal, Sonapat, vide which the claim petition preferred by the claimants was partly accepted.

The facts as gathered from the record are that on 24.08.2012 at about 1.30 am, Krishan Kumar had gone to Mathura from village Sandal Kalan, Sonipat, along with Jallo Devi, who was sitting in another van bearing No. HR-69A-8097 along with Rameshwar s/o Dali Ram, Gulabo w/o Rameshwar, Kamla w/o Rameshwar, Indro w/o Dariya, Aman s/o Chainpal, Pyari Devi w/o Dei Ram all residents of village Nangal Kalan, Sonapat. The said vehicle was being driven by Nanha @ Mukesh (since deceased) and Raj Kumar, Rajesh Kumar and other ladies of village Sandal Kalan were sitting in the van of complainant Krishan Kumar. On 26.08.2012 at about 6/6.30 AM the above said persons started from Mathura for coming back to their village. When their van reached near village Rai, GT Road, it dashed against a vehicle bearing No. HR-55J-6567 which was parked on GT Road without any parking and flasher, as a result of which Jello Devi, Mukesh, Kamla, Gulabo, Ramesh and driver of said van namely Nanha @ Mukesh died on the spot, whereas, Indro, Pyari Devi and Aman sustained greivous injuries. The complainant with the help of other passengers, took the above said persons to Civil Hospital, Sonapat, but they succumbed to their injuries. Post mortem of all the deceased was conducted. The accident took place due to rash and negligent driving of the driver of van bearing No. HR-69-A-8097 and negligent act on the part of respondent No.1 who parked his vehicle bearing No. HR-55J-6567 without any parking lights on. FIR No. 264 dated

26.08.2012 under Sections 283/304-A of the Indian Penal Code was registered at Police Station Rai. It was further averred that due to untimely death of Jello Devi-claimants have suffered great mental shock, agony and loss of love and affection. It was further averred that the claimants spent ₹50,000/- on transportation and last rites and as such, compensation to the tune of ₹30,00,000/- has been claimed.

Another claim petition No. 47 of 2014 titled as, "Chainpal vs. Kaushal Kumar and others" has been filed by son of deceased Jailo Devi and claim petition No. 48 of 2014 titled as, "Chainpal and another vs Kaushal Kumar and others" has been filed by parents of deceased Aman.

Notice of all the claim petitions were given. Respondents No.1 and 2 filed joint written statement stating therein that there was no negligence on the part of respondent No.1. The amount of compensation claimed by the claimants is highly excessive, exorbitant and without any basis. It was further pleaded that the accident took place due to sole rashness and negligence on the part of driver of the maruti van.

Respondent No.3-Insurance Company of vehicle No. HR-55J-6577 filed reply taking preliminary objections qua cause of action; locus standi; breach of provisions under Section 134 (c) of the Motor Vehicle Act, as well as terms of the insurance policy.

Respondent No.4 filed separate written statement taking preliminary objections qua maintainability; cause of action; locus standi etc. On merits, it was pleaded that the accident took place on account of negligence of the vehicle No. HR-55J-6577.

Respondent No.5-Insurance Company of vehicle No. HR-69-A-8097 filed written statement taking preliminary objections qua cause of action; breach of provisions under Section 134 (c) of the Motor Vehicle Act as well as terms and conditions of the insurance policy. It was further pleaded that no accident was caused by the said vehicle.

No replication was filed.

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

- 1) Whether the deaths of Jailo Devi w/o late Sh. Prabhu Singh and Aman son of Chain Pal are the result of accident which took place on 26.08.2012 due to rash and negligent driving of offending vehicle i.e container No. HR-55J-6567 or van bearing No. HR-69-A-8097 by its drivers ? OPP
- 2) If Issue No.1 is proved, to what amount of compensation, the claimants/petitioners are entitled to and from whom ? OPP
- 3) Whether respondent No.1 was not holding a valid driving licence at the time of accident and the offending vehicle had violated the terms and

conditions of the insurance policies, if so, its effect ? OPR 3 and 5.

4) Relief.

In order to prove their case, claimants examined Narinder Singh, Record Keeper as PW-1, Krishan Kumar complainant as PW-2, Chainpal as PW-3 and closed the evidence.

On the other hand, respondents did not led any evidence but tendered certain documents.

Learned Tribunal, while deciding Issue No.1 held that it was a case of contributory negligence and negligence on the part of van bearing No. HR-69-A-8097 was to the extent of 30% and canter No. HR-55J-6567 was wrongly parked and as such, respondent No.1 was held liable to the extent of 70%.

A sum of ₹3,42,000/- was allowed in respect of death of Jailo Devi and the liability to pay the amount was upon respondent No.1 to the extent of 70% whereas the liability to pay the amount upon respondents No.4 and 5 was to the extent of 30%.

Feeling dissatisfied with the above said Award dated 04.12.2014 passed by Motor Accident Claims Tribunal, Sonipat, the National Insurance Company-insurer of vehicle No. HR-69-A-8097 has directed this appeal.

Learned counsel for the appellant has submitted that the liability of the Insurance Company has been wrongly

fastened. The negligence was on the part of driver of canter No. HR-55J-6567 who has parked the canter on road without following the traffic rules.

I have considered the said submission but do not find any force in the same.

The driver of van is negligent as he dashed his van against the canter from backside. The liability to the extent of 30% has been fastened upon him.

Learned counsel for the appellant has further submitted that the appellant Insurance Company is not liable to pay any amount as the vehicle was being used for hire and reward in contravention to the terms of the policy which constitutes a fundamental breach of terms of the policy. However, to support this contention, he could not point out any evidence. Even all the respondents, including the appellant-Insurance Company, have not produced any evidence on the file that the vehicle insured by the appellant-Insurance Company was used for hire and reward against the terms and conditions of the policy. In the absence of any evidence, learned counsel for the appellant has failed to substantiate the above said plea. The appellant-Insurance Company has to pay compensation to the tune of 30%. No evidence has been led by the appellant-Insurance Company that the driver of the vehicle insured with the appellant company was not holding a valid driving license.

No other point has been urged before me.

Consequently, the appeal is without any merit and the same stands dismissed.

MAY 05, 2015
shalini

(K. C. PURI)
JUDGE