

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

(1)

FAO No.5671 of 2011 (O&M)

Date of decision : 15.02.2016

Bikramjit Singh

.....Appellant

Versus

Malkiat Kaur and others

...Respondents

(2)

FAO No.1045 of 2011 (O&M)

Date of decision : 15.02.2016

Nazar Singh

.....Appellant

Versus

Malkiat Kaur and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. Parduman Yadav, Advocate for
Mr. Sandeep Arora, Advocate for appellant
in FAO No.5671 of 2011 and
for respondent No.5 in FAO No.1045 of 2011.

Mr. Aminder Singh, Advocate for respondents No.1 to 3
in both the appeals.

Mr. Ashok Bhardwaj, Advocate for respondent No.4
in both the appeals.

Mr. S.S. Salar, Advocate for respondent No.5
in FAO No.5671 of 2011 and
for appellant in FAO No.1045 of 2011.

Mr. Puneet Sharma, Advocate for respondent No.6
in both the appeals.

DARSHAN SINGH, J.

CM-21063-CII-2011 in
FAO-5671-2011

There is delay of 225 days in filing the present appeal. The appellant has filed an application under Section 5 read with Section 14 of the Limitation Act for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed.

FAO Nos.5671 and 1045 of 2011

This judgment of mine shall dispose of both the appeals mentioned above, which have arisen out of the same award dated 07.09.2010 passed by the learned Motor Accidents Claims Tribunal, Sangrur (hereinafter called the 'Tribunal').

2. For the sake of convenience, the status of the parties shall be referred as per the claim petition.

3. Claimants-respondents No.1 to 3 had filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter called the 'Act') for grant of compensation on account of death of Bhola Singh in the motor vehicular accident, which took place on 27.03.2008. The learned Tribunal awarded the compensation to the tune of

Rs.5,40,000/- in favour of the claimants. They were held entitled to recover 50% of the amount of the compensation from Nazar Singh appellant of FAO No.1045 of 2011 and respondent No.4 Balkar Singh. 50% of the amount was ordered to be paid by Bikaramjit Singh, the appellant of FAO No.5671 of 2011 who is the driver-cum-owner of truck bearing registration No.PCT-9541.

4. FAO No.1045 of 2011 has been filed by Nazar Singh (respondent No.2 in the claim petition) assailing the liability to pay the compensation amount fastened upon him by the learned Tribunal on the ground that he has already sold the vehicle to respondent No.4 Balkar Singh.

5. FAO No.5671 of 2011 has been preferred by Bikramjit Singh alleging that his vehicle was duly insured with respondent No.6 - the New India Assurance Company Limited, which was liable to pay the amount of compensation.

6. I have heard Mr. Parduman Yadav, Advocate for Mr. Sandeep Arora, Advocate, learned counsel for appellant in FAO No.5671 of 2011 and for respondent No.5 in FAO No.1045 of 2011, Mr. Aminder Singh, Advocate, learned counsel for respondents No.1 to 3 in both the appeals, Mr. Ashok Bhardwaj, Advocate, learned counsel for respondent No.4 in both the appeals, Mr. S.S. Salar, Advocate, learned counsel for respondent No.5 in FAO No.5671 of 2011 and for appellant in FAO No.1045 of 2011, Mr. Puneet Sharma, Advocate, learned counsel for respondent No.6 in both the appeals and gone through the paper-books

carefully.

7. Firstly, I take up the FAO No.1045 of 2011. Learned counsel for appellant Nazar Singh contended that it is an admitted case that the TATA Sumo bearing registration No.HR-01F-2435 was sold by him to respondent No.4 Balkar Singh much before the present accident. On the date of accident, he was the owner in possession of the vehicle. So, appellant Nazar Singh was not entitled to share the liability to pay the amount of compensation. He relied upon cases ***Ravi Kumar Vs. Jitender Lathar and others 2014(3) PLR 275*** and ***Anoop Kumar Kaila Vs. Soma Devi 2010(4) TAC 590***.

8. Mr. Ashok Bhardwaj, Advocate, learned counsel for respondent No.4 Balkar Singh contended that as appellant Nazar Singh was the registered owner, he was liable to pay the amount of compensation.

9. I have duly considered the aforesaid contentions.

10. In the written statement filed by respondent No.4 Balkar Singh, it is mentioned that he has purchased the TATA Sumo bearing registration No.HR-01F-2435 from appellant Nazar Singh and as such, he was owner in possession of the TATA Sumo since 30.01.2008. This accident has taken place on 27.02.2008. Thus, it shows that on the date of the accident, though appellant Nazar Singh was the registered owner, but respondent No.4 Balkar Singh was the real owner in possession of the vehicle as he has purchased the same on 30.01.2008 *i.e.* much prior to the present accident. This Court in case ***Ravi Kumar Vs. Jitender Lathar***

and others (supra) while dealing with the similar factual position, has laid down as under:-

“1- The appeal in FAO No.4690 of 2007 is at the instance of the driver who was admittedly a purchaser of the vehicle by delivery on 09.10.1993 from the registered owner. The accident took place subsequently on 05.11.2003. Registered owner as well as the subsequent purchaser who was also incidentally the driver, were made parties. The Tribunal has made registered owner also liable. The judgment is erroneous, for transfer of owner of a motor vehicle took place by delivery under Section 19 of the Sale of Goods Act. Registration is only a facilitative provision provided under Section 50 of the Motor Vehicles Act and in cases where the subsequent purchaser was not a party, Courts have made registered owners liable. But however if the subsequent purchaser is himself a party that ought to be taken as sufficient to anchor the liability on the subsequent purchaser irrespective of the fact whether there had been a transfer of registration or not. The liability cast on the registered owner is erroneous in a case where there was a transfer of vehicle by delivery to the driver on 09.10.2003 that is prior to the accident.”

11. The similar ratio of law has been laid down by Hon'ble Delhi High Court in case **Anoop Kumar Kaila Vs. Soma Devi** (supra). Thus, as the TATA Sumo in question was purchased and was in possession of respondent No.4 Balkar Singh being its driver-cum-owner, so, he alone was liable for payment of the amount of compensation. No liability could be fastened upon appellant Nazar Singh simply on the ground that he happened to be the registered owner, particularly when the subsequent purchaser was also impleaded as a party to the petition.

12. In view of my above discussion, appellant No.4 Balkar

Singh will alone be liable to pay the 50% of the amount of compensation awarded by the learned Tribunal.

13. Now I take up FAO No.5671 of 2011. Learned counsel for appellant Bikramjit Singh contended that while recording the findings under issues No.4 & 5, the learned Tribunal has categorically held that the vehicle in question was insured with respondent No.5 - Insurance Company and, there was no violation of the conditions of the insurance policy on the part of the appellant but even then no liability has been fastened on the Insurance Company.

14. This factual position could not be disputed by the learned counsel for the respondent - Insurance Company. Issues No.4 & 5 framed by the learned Tribunal and the findings given thereupon are reproduced as under:-

“4- Whether the respondent No.4 was not holding the valid driving licence, if so, its effect? OPA

5- Whether respondent No.4 has violated any other terms and condition of the policy if so, its effect? OPA”

“Issue No.4

As can be manifested from the copy of the driving licence of respondent No.4 Bikramjit Singh Ex.R2, he was having valid licence uptill 19.5.2008. This issue is decided accordingly.

Issue No.5

This issue was not pressed by learned counsel for respondent No.5 nor any evidence that respondent No.4 has violated any terms and conditions of insurance policy. This issue is also decided accordingly”.

15. On the basis of aforesaid findings recorded by the

learned Tribunal, it comes out that appellant Bikramjit Singh, the owner-cum-driver of truck bearing registration No.PCT-9541 was having the valid driving licence. It was also decided by the learned Tribunal that the respondent-Insurance Company has not led any evidence to show that appellant Bikramjit Singh has violated any terms and conditions of the insurance policy. But surprisingly in the relief clause only appellant Bikramjit Singh, who was respondent No.4 in the claim petition, has been held liable for payment of 50% of the amount of compensation along with respondents No.1 and 2 in the claim petition, which is a serious error on the part of the learned Tribunal. Once it was found that appellant Bikramjit Singh was holding the valid driving licence and the Insurance Company has failed to establish any violation of the terms and conditions of the insurance policy, the respondent No.5 Insurance Company was required to indemnify the appellant and consequently, appellant Bikramjit Singh (respondent No.4 in the claim petition) and respondent No.5 Insurance Company should have been made jointly and severally liable for payment of the amount of compensation.

16. Thus, keeping in view my aforesaid discussion, both the appeals mentioned above are hereby allowed. In FAO No.1045 of 2011 it is held that respondent No.4 Balkar Singh alone shall be liable to pay the amount of compensation being real owner in possession of the TATA Sumo No.HR-01F-2435 on the date of the accident and in FAO No.5671 of 2011 appellant Bikramjit Singh the owner-cum-driver of truck No.PCT-9541 and insured New India Insurance Company shall be jointly

and severally liable for payment of amount of compensation as determined by the learned Tribunal.

15.02.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**