

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

(1)

FAO No.5663 of 2015 (O&M)

Date of decision : 26.05.2016

Lakhwinder Singh

.....Appellant

Versus

Rukmani Mishra and others

...Respondents

(2)

FAO No.5351 of 2015

Rukmani Mishra and others

.....Appellants

Versus

Baghel Singh 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. Vivek Suri, Advocate for appellant
in FAO No.5663 of 2015 and for respondent No.2
in FAO No.5351 of 2015.

Mr. P.K. Rohilla, Advocate for appellants
in FAO No.5351 of 2015 and for respondents No.1 to 5
in FAO No.5663 of 2015.

Mr. Subhash Goyal, Advocate for respondent No.7
in FAO No.5663 of 2015 and for respondent No.3
in FAO No.5351 of 2015.

DARSHAN SINGH, J.

This judgment shall dispose of both the appeals mentioned above, which have arisen out of the same award dated 30.03.2015, passed by the learned Motor Accidents Claims Tribunal, Panipat (hereinafter called the 'Tribunal') vide which the appellants-claimants of FAO No.5351 of 2015 have been awarded compensation to the tune of Rs.10,33,936/- as compensation on account of death of Amarnath Mishra in the motor vehicular accident, which took place on 02.03.2013.

2. FAO No.5351 of 2015 has been preferred by the appellants-claimants for enhancement of the amount of compensation. FAO No.5663 of 2015 has been preferred by the owner of vehicle canter bearing registration No.PB-11AT-8617 to assail the recovery rights given against them to the Insurance Company.

3. Lakhwinder Singh, the appellant of FAO No.5663 of 2015 has also filed CM No.4600-CII-2016 under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure, 1908 for permission to lead the additional evidence by placing on record the route permit in respect of vehicle bearing registration No.PB-11AT-8617.

4. On the basis of said application, respondent-Insurance Company has sought the report from the Secretary Regional Transport Authority, Patiala with respect to the verification of the route permit of vehicle bearing registration No.PB-11AT-8617, which shows that the route permit for the said vehicle was valid with effect from 07.4.2011 to

06.04.2016 as per the record of their office. Thus, as the owner of the vehicle was having the valid route permit and the production of the copy of the said route permit is essential for the just decision of the case, so the copy of the route permit is allowed to be produced in the additional evidence. Annexure A-1 is the copy of the route permit, which is taken on record as Ex.R6.

5. Learned counsel for the appellants-claimants contended that the learned Tribunal has not awarded any future prospects towards the income of the deceased. The deduction towards his personal expenses has also been wrongly deducted. It should have been 1/4th. The compensation awarded under other conventional heads is also inadequate. So, the just compensation has not been awarded.

6. Mr. Vivek Suri, Advocate, learned counsel for appellant Lakhwinder Singh in FAO No.5663 of 2015, the owner of the vehicle contended that there was valid route permit to operate the vehicle No.PB-11AT-8617. The learned Tribunal was not justified in granting the recovery rights to the respondent-Insurance Company. He contended that mere this fact that the route permit was for the State of Punjab and the accident has taken place in the State of Haryana, is no ground to prove the violation of the terms and conditions of the insurance policy.

7. Mr. Subhash Goyal, Advocate, learned counsel for the respondent-Insurance Company contended that the claimants have not produced any documentary evidence with respect to the employment and

income of the deceased. The learned Tribunal has taken the notional income of the deceased as Rs.8000/- per month stating to be the prevailing daily wages. But the daily wages even for the upper skilled worker for the relevant period for the State of Haryana was Rs.5617/-. Thus, he contended that the learned Tribunal has taken the exaggerated income of the deceased. He further contended that no future prospects were required to be added to the income of the deceased as the deceased was not holding any permanent job. He further contended that the compensation awarded under the other conventional heads is also just and appropriate.

8. He further contended that the route permit of vehicle was valid only for the State of Punjab but the present accident has taken place at Samalakha, Distt. Panipat, Haryana. So, the vehicle was being operated in State of Haryana in violation of the route permit, which is a violation of the terms and conditions of the insurance policy. Thus, he contended that learned Tribunal has rightly granted the recovery rights against the insured.

9. I have duly considered the aforesaid contentions.

10. As per the case of the appellants-claimants deceased Amarnath Mishra was working as a Supervisor in R.G. Holding Infratech Private Limited, Somepat and was earning Rs.10,150/- per month as salary. But the claimants have not produced any documentary evidence to establish the income of the deceased. PW-2 Jaibir Singh Rana, the witness of the occurrence has deposed that deceased Amarnath Mishra was doing the work of optical fiber cable Delhi Panipat Road when he met with the accident. It

shows that the deceased was an upper skilled worker. So, the income of the deceased can safely be taken to Rs.6000/- per month.

11. The deceased was an upper skilled worker doing the technical job, so there were very bright and definite prospects of the appreciation of the income of the deceased with the passage of time. The deceased was 35 years of age at the time of his death. So, 50% of the income of the deceased shall be added towards the future prospects. His total income comes to Rs.9000/- per month *i.e.* Rs.1,08,000/- per annum. The present claim petition has been filed by the widow, three minor children and father of the deceased. So, the deceased has five dependents. Thus, 1/4th of his income shall be deducted towards his personal and living expenses. The remainder comes to Rs.81,000/-. The learned Tribunal has rightly applied the multiplier of 16. So, the compensation on account of loss of dependency comes to Rs.12,96,000/-.

12. The learned Tribunal has not awarded any amount towards loss of consortium to the widow and loss of love, care and guidance to the minor children. Even the funeral expenses have been awarded less. So, Smt. Rukmani Mishra, the widow of the deceased shall be entitled to a sum of Rs.1,00,000/- towards loss of consortium. Appellants-claimants No.2 to 4, the minor children of the deceased shall also be entitled to a sum of Rs.1,00,000/- towards loss of love, care and guidance. The appellants-claimants shall also be entitled to Rs.25,000/- as funeral and last rites expenses. The total amount of compensation comes to Rs.15,21,000/-.

13. Now the question arises who is liable to pay the amount of compensation. Learned Tribunal has granted the recovery rights to the Insurance Company as the route permit of the vehicle bearing registration No.PB-1180-8617 was valid only for the State of Punjab but the accident has taken place in the State of Haryana. But the approach of the learned Tribunal was erroneous. This Court in case ***Hans Raj Chaudhary Vs. Smt. Nanhi Devi and others* 2013(7) RCR (Civil) 2574** has laid down as under:-

“The counsel appearing on behalf of the insurance company still insist that Sections 66 and 69 of the Motor Vehicles Act set out the various terms of permit and one of the terms is that be that the vehicle could traverse only within the area allowed in the permit. The language used in Section 149 that sets out the permissible defences employs the expression of user of a vehicle "for a purpose not allowed by the permit". The purpose of the permit is not the same thing as condition in the permit. The legislature has employed a language restricting it only to violation of purpose of permit. The MV Act, being a beneficial legislation, the issue of liability should be interpreted to the benefit of claimant and to the extent to which the owner obtains indemnity, it makes possible the prospect of recovery so much easier.”

14. Similarly in case ***Future General Insurance Co. Ltd. Vs. Smt. Surjo Devi and others* 2013(2) RCR (Civil) 564**, this Court has laid down that a violation of any other term than the purpose for which the permit was to operate will not be a defence which will be available in the scheme of the Motor Vehicles Act.

15. In case ***National Insurance Company Ltd. Vs. Rajinder Giri and others* 2012(2) RCR (Civil) 183**, the vehicle had a valid route

permit for being plied in State of Rajasthan. The accident took place when the vehicle was being operated in the State of Haryana. This Court laid down as under:-

“It would be said that the vehicle had a valid route permit for being plied in the State of Rajasthan but not in Haryana State. The Transport Authority of Rajasthan State had found the vehicle fit for being plied as goods carriage. Therefore, it cannot be said that the vehicle was being plied without a route permit. The violation of bringing the vehicle to the area of State of Haryana without a valid route permit for plying the same in the said State would not amount to violation of the conditions of the insurance policy and would not give the insurer a defence under Section 149(2) of the Act. The case before me is not a case where there is no route permit at all. Therefore, the ratio of the decision in National Insurance Co. Ltd.'s case (supra) would not stand attracted to the facts of this case.”

16. In view of the consistent ratio of law laid down in the cases referred above, mere this fact that the truck in question was being operated in the State of Haryana, though it has route permit only for the State of Punjab will not constitute the violation of the condition of the permit as the insurance Company has not been able to establish that the vehicle in question was being used for a purpose not allowed by the permit.

17. Thus, it is not established that the insured has violated the terms and conditions of the insurance policy. Consequently, the appellant-Insurance Company cannot escape the liability and to indemnify the insured.

18. Thus, the respondent-Insurance Company was not entitled for any recovery rights against the owner of the vehicle (Lakhwinder Singh appellant of FAO No.5663 of 2015).

19. Thus, keeping in view my aforesaid discussion, FAO No.5663 of 2015 is hereby allowed. FAO No.5351 of 2015 is partly allowed. The amount of compensation payable to appellants-claimants Rukmani Mishra and others is enhanced to Rs.15,21,000/- from Rs.10,33,936/- as awarded by the learned Tribunal. The appellants-claimants shall be entitled to interest on the enhanced amount from the date of filing the petition till realisation at the rate as determined by the learned Tribunal. The respondents shall be jointly and severally liable for the payment of the amount of compensation. Respondent-Insurance Company will not have any recovery rights against the insured.

26.05.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**