

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

1.

**Date of Decision: 27.09.2017
FAO No.1294 of 2000**

Mohan Fibers

...Appellant(s)

Versus

Tej Kaur

...Respondent(s)

2.

FAO No.1650 of 2000

Tej Kaur and others

...Appellant(s)

Versus

Mohan Fiber Product Ltd. and others

...Respondent(s)

CORAM:-HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Rishav Jain, Advocate for
Mr. Arun Jindal, Advocate
for the appellant(s) (in FAO-1294-2000).

Mr. Satpal Dhamija, Advocate for
for respondent No.8 (in FAO-1294-2000) and
for respondent No.3 (in FAO-1650-2000).

Mr. Amit Kohar, Advocate for
for the appellants/claimants (in FAO-1650-2000) and
for respondents No.1 to 6 (in FAO-1294-2000)

Mr. Chandeeep Singh, Advocate for
Mr. Anoop Bajwa, Advocate as Amicus Curiae.

ANITA CHAUDHRY, J.

These are two appeals arising out of one award dated
14.01.2000 passed by the Motor Accident Claims Tribunal, Patiala.

One appeal is by the owner disputing his liability whereas the other

appeal is by the claimants seeking enhancement.

On the last date of hearing, there was no appearance in the appeal filed by the claimants and Sh. Anoop Bajwa, Advocate was appointed as amicus curiae but inadvertently order was passed in FAO NO.1294 of 2000. The order passed therein in fact relates to FAO No.1650 of 2000.

The record of this file had been burnt in the fire incident which had taken place in the year 2011. Only copy of the award and grounds of appeal are available. Both the parties had stated that the matter can be decided on the basis of the award and the other available material. A copy of the statement of RW-3 had been submitted by the owner.

The incident occurred on 07.10.1994. Labh Singh was the driving his scooter and was going with Sarwan Singh on the pillion seat. At about 2.00 p.m. they had reached Urban Estate, Phase-II, Patiala when the vehicle owned by Mohan Fibers Product Ltd. driven by Baldev Singh, came from the opposite direction and on the wrong side, it hit the scooter. Both Labh Singh and Sarwan Singh sustained injuries and the scooter was damaged. Sarwan Singh succumbed to the injuries.

Sarwan Singh's widow and five sons filed the claim petition and pleaded that the deceased was 50 years of age and was earning Rs.5,000/- per month.

The Tribunal noted that the age of the deceased had not been correctly shown as Sarwan Singh's grandson was 32 years of age and therefore the age of the deceased would be around 70 years. A detailed discussion was made in Para-11. A lump sum amount of Rs.10,000/- was awarded for the injuries sustained by Sarwan Singh. A total award of Rs.60,000/- was allowed. The liability to pay the compensation was placed on the owner-driver as the driving licence was found to be fake.

Learned counsel for the owner relied upon '*Pepsu Road Transport Corporation Vs. National Insurance Company (SC) 2013 AIR SCW 6505*' and urged that the owner had stepped into the witness box as RW-3 and he had stated that he had appointed the driver after taking his driving test and they had also seen his driving licence and the law does not require the owner to verify the genuineness of the driving licence. The copy of the statement made by Krishan Kumar RW-3 was placed on record.

The submission on behalf of the claimants is that the amount allowed for the deceased-Sarwan Singh is meager and incorrect age was taken. It was urged that there was no evidence or statement to say that the deceased was 70 years and Sarwan Singh's widow had stated that Sarwan Singh was two years elder to her, therefore, his age would be 62. It was submitted that he owned land, *jamabandis* of which, were placed on record and a higher income should have been taken and the multiplier method should

have been used and some amount should have been awarded for loss of consortium and funeral expenses.

Learned counsel for the Insurance Company had urged that adequate amount had been granted and the Court had noted that the correct age had not been given as the grandson of the deceased was 32 years old, therefore, the son of Sarwan Singh would be over 50 years of age and therefore the age of Sarwan Singh was rightly assumed to be over 70 years. It was urged that the land always remain with the family and there would be change in the income and the sons are major and minor and father would not be tilling the land or doing manual labourer in the fields and at the most the family could engage a labourer and if the minimum wages of 1994 are seen, the compensation would not be much and the claimants have been adequately compensated.

Coming to the issue raised by the owner, Krishan Kumar- RW3 had stepped into the witness box on 02.02.1999 and made a categorical statement that he had seen the driving licence of Baldev Singh before he was appointed in 1990. He has stated that 90 people were working for him and regular accounts were maintained by them and they had also taken the driving test of the driver before his engagement. In *Pepsu Road Transport Corporation's case (supra)* the Apex Court had held that the owner is only to be satisfied that the driver had a valid driving licence and he is the one who has to test the competency of the driver and not expected to verify the

genuineness of the driving licence and the insurance company would be liable. No judgments to the contrary has been cited by the counsel for the Insurance Company.

The view of the Tribunal is thus erroneous in the light of the law laid down by the Supreme Court in *Pepsu Road Transport Corporation's case (supra)*. The owner is not required to make specific inquiries regarding the licence. The owner was entitled to full indemnity.

In view of this, the appeal filed by the owner is allowed. Since the amount has been paid by the owner to satisfy the award, the amount would be paid to the owner by the Insurance Company within 60 days, failing which, the owner would also be entitled to interest @6% per annum on that amount from the Insurance Company.

As regards the appeal for enhancement by the claimants is concerned, I find no merit in the same. The Tribunal had exhaustively dealt with the issue with respect to age of the deceased in Para-11 of the Award.

Tej Kaur had admitted that her elder son was married and had two sons and the elder son was 32 years of age. The Tribunal went on to hold that Bhajan Singh's father would be around 70 years of age and not 50 years as testified by his widow. It was also noted that Tej Kaur had given her age as 60 years and wrong statement had been made with respect to the age of the deceased. The

deceased was stated to be an agriculturist, who at the age of 70 years would have been supervising and would not be in a position to actually till the land. The minimum wages were less than Rs.1,000/- p.m. in 1994. Even if we apply the multiplier method and make a deduction of half of the income (since all the children were major and not dependent) it was the widow alone who was the dependent and the compensation would not be more than Rs.30,000/- (500x12x5).

Considering the value of rupee of those days, Rs.20,000/- which was allowed can be adjusted on the other heads and no other amount can be allowed. The appeal filed by the owner is allowed. The award is modified. It is held that it was the Insurance Company who had to pay the amount to the claimant.

The appeal filed by the claimant is dismissed.

September 27, 2017
ps-/

(ANITA CHAUDHRY)
JUDGE

Whether Reasoned/Speaking
Whether Reportable

Yes/No
Yes/No