

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

Date of Decision: 20.04.2017

1)

FAO No.1665 of 1999

Lichhma Devi and others

...Appellants

Vs.

Wazir Singh and others

...Respondents

2)

FAO No.1620 of 1999

National Insurance Company Limited

...Appellants

Vs.

Lichhma Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Vipul Sharma, Advocate for
Mr. Paul S. Saini, Advocate
for the appellant in FAO No.1620 of 1999 (National Insurance
Co. Ltd.) and respondent no.4 in FAO No.1665 of 1999.

Mr. K.S. Dhanora, Advocate
for respondent nos.1 to 7 in FAO No.1620 of 1999 and
for the appellants in FAO No.1665 of 1999.

Mr. S.K. Bishnoi, Advocate
for respondent no.9 in FAO No.1620 of 1999 and
for respondent no.2 in FAO No.1665 of 1999.

None for respondent no.10 in FAO No.1620 of 1999 and
for respondent no.3 in FAO No.1665 of 1999.

Amol Rattan Singh, J.

These two appeals, one filed by the insurance company that had insured the vehicle stated to be involved in the accident and the other by the claimants before the Motor Accident Claims Tribunal, both challenge the Award passed by the said Tribunal at Hissar.

The claimants seek enhancement of the compensation awarded, whereas the insurance company has challenged the award on all counts, i.e. on the finding of negligence, on the quantum of compensation awarded, as also on the liability fastened on the company to indemnify the insured.

The liability is being challenged on the ground that the person who was driving the vehicle, i.e. respondent no.9 herein, Dharambir, was not holding a valid driving licence on the date of the accident and as such, there is a violation of the terms of the insurance policy. Consequently, it is contended that even if eventually this Court holds that the negligence in causing the accident was that of respondent no.9 and that either the compensation awarded by the Tribunal is adequate or needs to be enhanced, that would still not be payable by the insurance company but only by the driver and the owner of the vehicle.

2. The facts leading up to the filing of the claim petition, as contended by the claimants (appellants before this Court in FAO No.1665 of 1999), are that, on 15.06.1996, Sheo Ram, husband of the first appellant, father of appellants no.2 to 5 and son of appellants no.6 and 7, was going to attend a Satsang at Siwani at 9.30 a.m, in a jeep bearing registration no.HR-48-0699. Several persons were traveling in the jeep, having taken a lift in it. The jeep was allegedly being driven in a reckless and negligent manner at a high speed by respondent no.2, Dharambir, with the person who was actually employed as a driver on the jeep, i.e. respondent no.1, Wazir Singh, sitting

with respondent no.2.

Allegedly, respondent no.2 was requested many a time to drive slow but with no result and therefore, when the jeep, at a speed of 80/85 kmph, reached near the railway crossing, the driver could not control its speed and caused an accident near Gate No.76-C. Several passengers are stated to have sustained injuries, including Sheo Ram, who were all got admitted to the General Hospital at Hansi, but Sheo Ram, brought by one Gopi Ram, was declared dead by the doctor.

An FIR is stated to have been registered at Police Station GRP Bhiwani on 16.06.1997, bearing no.150, alleging therein the commission of offences punishable under Sections 279, 337, 304-A and 180 IPC.

A claim petition was thereafter filed under Section 163-A of the Motor Vehicles Act, 1988, seeking therein compensation to the tune of Rs.10 lacs, with the aforesaid Wazir Singh, Dharambir, Ramesh Chand and the National Insurance Company, Hisar, arrayed as respondents.

Ramesh Chand is stated to be the owner of the vehicle in question.

3. Upon notice issued to them, respondents no.1, 3 and 4, i.e. Wazir Singh, Ramesh Chand and the insurance company respectively, contested the petition, whereas respondent no.2 Dharambir was proceeded against ex parte.

Respondent no.1 in his preliminary objections raised objections on locus standi, maintainability, misjoinder of parties and a mala fide intention. On merits, it was contended that he (respondent no.1) was “not in control of the jeep” in any capacity of a driver on the date of the accident and, in fact, he had no knowledge about it as he had not been in the employment of respondent no.3 since a month earlier.

Respondent no.3, i.e. the owner of the vehicle, denied the occurrence altogether, stating that his jeep was not involved in any such accident. It was further denied that respondent no.2 was driving the jeep in an unauthorized capacity.

4. In its separate written statement, the National Insurance Company (presently appellant in FAO No.1620 of 1999), also raised preliminary objections regarding cause of action, limitation etc., further challenging the validity of the driving licence of the person driving the jeep at the relevant time and yet further, contending that the passengers were being taken in the jeep for hire and reward purposes and as such the company was not liable to pay any compensation. On merits, the insurance company also denied the occurrence of the accident.

5. No replication having been filed by the claimants, the following issues were framed by the learned Tribunal:-

1. Whether the accident in question took place due to rash or negligent driving of jeep no.HR-048-0699 by respondent no.1 Wazir Singh on 15.6.1997 in area of Hansi? OPP
2. Whether Sheo Ram suffered injuries in the said accident and died due to the said injuries? OPP
3. Whether the petitioners are entitled to recover amount of compensation due to the death of Sheo Ram in the said accident, if so, how much amount and from whom? OPP
4. Whether the jeep was being driven by respondent no.1 in violation of the terms and conditions of the insurance policy as alleged? OPR-4.
5. Relief.

6. Upon consideration of the evidence led by the parties and the pleadings before it, the learned Tribunal first noticed the testimony of PW2,

Gopi Ram, to the effect that about a year earlier, on the 15th of June, he was travelling from Hansi to Tosham to participate in a 'Satsang'. Madan Lal, Hanuman, Sheo Ram and some other persons, including ladies, were also travelling with him in jeep No.HR-48-0699, on the Hansi-Tosham road. When the jeep reached about 3-4 k.m. ahead of Hansi, there was a railway crossing and actually respondent no.1, Wazir Singh, was earlier driving the jeep but was thereafter replaced by another person whose name was "perhaps Dharambir". Dharambir is stated to have got onto the drivers' seat with Wazir Singh going to the rear part of the jeep. Thereafter, the contents of the claim petition were reiterated by this witness, to the effect that Dharambir was driving at a high speed not heeding the advice of passengers. He further deposed that there was a bend on the road and the jeep over-turned while negotiating it. The accident thus occurred due to the rash and negligent driving of Dharambir, as per PW2.

This witness also proved the FIR, Ex.P-2, which was lodged at his instance, giving therein the number of the jeep and the fact that the second driver had taken charge of it on the way, who was driving it in a rash and negligent manner.

7. As opposed to the aforesaid testimony, the owner, respondent no.3, testified as RW-1 and stated that he had engaged respondent no.1, Wazir Singh, as the driver of the vehicle. In his cross-examination, this witness stated that he had not engaged Dharambir as a driver but only Wazir Singh, who had control over the vehicle and that he himself had come to know that the accident had been caused by "Wazir Singh and Dharambir" and that one person had died. In further cross-examination, RW-1 denied that Wazir Singh had left service one month earlier and that he was not in the jeep at the time of

the accident.

8. Wazir Singh appeared as RW-2 and wholly denied that he was the driver of the jeep in question at the time of the accident, reiterating that he had left service one month prior thereto. In his cross examination, he admitted that Dharambir was facing trial in a criminal case.

9. Dharambir aforesaid, though proceeded against *ex parte* as a respondent, however testified before the Tribunal as RW-3. He too denied that he was driving the vehicle, however admitting that he was not in possession of any driving licence. In his cross-examination, he stated that Wazir Singh was actually driving the vehicle at the time of the accident and he did not work with him, but admitted that he was present in the jeep on 15.06.1997. He also admitted to the fact that he was facing a trial in respect of the present accident.

10. On the aforesaid evidence, the Tribunal came to the conclusion that the accident did take place on 15.06.1997 with the jeep in question, as a result of which Sheo Ram had died.

It was also recorded that even the witnesses examined by the respondents eventually had half heartedly admitted the accident and the fact that a criminal case was pending against Dharambir for causing the accident.

The testimony of the owner of the vehicle, i.e. Ramesh Chand, to the effect that he had actually hired Wazir Singh to drive the vehicle and it was he who was driving the jeep was not believed, to the extent that even the claimants' witnesses had admitted that the control of the jeep had been handed over to Dharambir who was driving it rashly and negligently.

It was further observed by the Tribunal that nothing had been brought on record to show that Dharambir had taken any step to counter the criminal case registered against him.

On the aforesaid findings, issue no.1 was decided by the Tribunal to the effect that the accident in question was caused by respondent no.2, Dharambir.

11. As regards the second and third issues, of whether the injuries sustained by Sheo Ram had led to his death and whether the claimants were entitled to compensation, it was found that as per the testimony of PW-1 (the first claimant, Lichhma Devi), as also the post mortem report, Sheo Ram was shown to be 45 years old, who died due to the injuries caused in the accident.

As regards his profession and income, the contention of Lichhma Devi was that her husband was a mason earning Rs.4000/- per month, of which he gave Rs.3000/- for household expenses, and that she, her children and her in-laws were dependent upon him.

Though PW-3, Hari Singh, supported the testimony of PW-1, to the effect that Sheo Ram was a mason, however, he admitted that he had never engaged Sheo Ram as such. No other evidence having been led to prove that fact, or with regard to his actual income, the learned Tribunal took him to be a skilled casual labourer, whose income in the year 1997 would be Rs.1666/- per month, or Rs.20000/- annually. Of the aforesaid sum, 1/3rd was deducted towards the personal expenses of the deceased, thereby assessing the loss of income to the claimants to be Rs.13350/- per annum.

Noticing that in the claim petition it had been mentioned that the age of the first petitioner was between 30-39 years and in the post mortem report the age of the deceased had been mentioned as 45 years, a multiplier of '14' was applied by the Tribunal to the aforesaid dependent income.

Rs.10,000/- was awarded towards loss of expectation of life and thereby, the total compensation awarded was Rs.1,96,900/-.

12. As regards the liability to pay the compensation, it was held that since the case of the claimants as also the owner of the vehicle was that actually the vehicle was handed over to a licensed driver who thereafter had handed it over to a person not carrying a licence, the judgments cited by the insurance company, holding that if the driver was not carrying a valid driving licence no liability could be fastened on the company, would not be applicable.

To the contrary, in fact it would be the ratio of the judgment in **Sohan Lal Passi v. P. Sesh Reddy and others**, 1996 (5) SCC 21, that would apply.

13. As regards the contention of the insurance company that the vehicle was being driven for hire and reward and therefore the company was not liable to pay compensation, that contention was rejected despite PW-2, Gopi Ram, in his cross-examination having stated that there were 17/18 occupants in the jeep, who were to pay a fare for being transported. It was also stated in the FIR that one person had collected the fare who thereafter started driving the vehicle.

However, the aforesaid part of the cross-examination was held to be not applicable, in view of the fact that Gopi Ram had also deposed that the occupants were coming from Hansi to Tosham to participate in a 'Satsang' but had not stated anywhere that Sheo Ram had specifically paid any amount for being taken in the jeep and further, because the owner of the vehicle, Ramesh Chand, had also testified to the effect that the driver was not carrying passengers for hire and reward.

Similarly, it was recorded that the other witnesses had also stated to that effect.

Hence, it was held that simply because it was mentioned in the FIR that one person had collected the fare, it would not mean that other passengers and Sheo Ram were travelling in the jeep for hire and reward, with no cogent evidence having been led in that regard by the insurance company.

On the aforesaid findings, it was held that the insurance company was liable to pay compensation to the claimants.

14. Before this Court, Mr. Vipul Sharma, learned counsel appearing for the insurance company, first submitted that the claim petition was filed under Section 163-A and not under Section 166 of the Motor Vehicles Act, 1988 and as such, no enhancement of compensation would be payable. He further submitted that in any case whatever compensation is eventually decided to be awarded by this Court, the insurance company cannot be held liable as the vehicle in question had been used for a commercial purpose despite it having been insured as a private vehicle.

Learned counsel drew attention to that part of the Award, in which the testimony of PW-2, Gopi Ram, has been referred to, to submit that, firstly, 17/18 persons were travelling in the jeep and secondly, that fare had been collected from the passengers to allow them to travel in the vehicle.

Lastly, learned counsel also reiterated, pointing to the Award, that admittedly Dharambir, the person found to have been driving the vehicle, was not holding a driving licence.

15. On the other hand, learned counsel for respondent no.8 in the FAO filed by the insurance company, i.e. Wazir Singh, submitted that the Tribunal having come to a positive finding that the vehicle was not being used for a commercial purpose, therefore it would be the insurance company that would be fully liable to pay compensation to the claimants.

16. Mr. Dhanora, learned counsel for the appellants-claimants (in FAO no.1665 of 1999), submitted that Sheo Ram having been found to be only 45 years old, with at least 2 minor children and two other children and his widow and parents to support, the compensation of Rs.1,96,900/- was far too meagre and therefore, deserves to be appropriately enhanced.

17. Having heard learned counsel for the parties and having considered the Award of the Tribunal, the first issue to be looked into by this Court is the negligence in causing the accident, since the insurance company at least in the grounds of appeal, has challenged the finding on negligence also (even though the claim petition was one filed under Section 163-A of the Motor Vehicles Act).

A perusal of the evidence shows that an FIR was registered against both, Wazir Singh as also Dharambir, though only Dharambir was shown to be in custody, as per his own admission.

It is further seen, as duly noticed by the Tribunal, that other than Wazir Singh, all other witnesses testified to the effect that both Wazir Singh and Dharambir were travelling in the jeep and that the wheel of the vehicle was handed over to Dharambir by Wazir Singh on the way, for driving it, and thereafter the accident was caused by Dharambir who was driving at a high speed and could not negotiate a bend near the railway crossing.

Of course, Dharambir testified that he was present in the vehicle but it was Wazir Singh who was driving.

18. Having considered the testimonies of all witnesses and the reasoning given by the learned Tribunal, I see no reason to hold that it was not Dharambir who was actually driving the vehicle and had caused the accident, even though it was Wazir Singh who had handed over the vehicle to

Dharambir, though he himself was employed as the driver and had actually handed over the vehicle to a person not licensed to drive it.

19. That having been said, it is further to be seen that even as per the testimony of the claimants' witness, PW2, there were 16 to 17 persons travelling in the vehicle, including Sheo Ram who unfortunately died in the accident. Learned counsel for the appellant insurance company has specifically raised the issue that the jeep was over loaded and the persons travelling in it had actually paid a fare to the driver for being carried to the Satsang, as was stated by even PW2, i.e. the witness on the claimants' side and as such, the finding of the Tribunal to the contrary, is wholly erroneous.

Having considered the above, I agree with learned counsel that with the claimants' witness having stated that 16 to 17 persons were travelling in the jeep, at least some of whom had paid a fare for such travel, there was obviously over loading beyond the registered capacity of the vehicle.

Though a perusal of the written statement filed by the insurance company before the Tribunal shows that it was contended therein that the vehicle was registered for a seating capacity of 4 persons, however, a perusal of the insurance policy itself, i.e. Ex.R2 before the Tribunal, shows that the seating capacity in that policy itself, is shown as "8+1", i.e. 8 passengers and one driver. Even so, obviously with 16 to 17 persons travelling in the vehicle, it was carrying about double the number of persons that it was registered to carry.

Therefore, with an over loaded vehicle being driven at a high speed, the negligence of the driver in driving the vehicle, i.e. respondent no.2, Dharambir, is very obvious.

20. However, in a claim petition filed under Section 163-A,

negligence of the driver is actually not to be gone into, unless of course it can be shown that it was wholly the victim who was responsible for the accident. In the present case, though the vehicle was seen to be over loaded almost to double its capacity, i.e. in the insurance policy, Ex.R2, the Mahindra 'jeep' is shown to be registered with a seating capacity of 8 passengers + 1 driver, whereas as per the claimants' witness himself, i.e. PW2, it was carrying 16 to 17 passengers, the question would be whether Sheo Ram, being one of the such passengers, can be attributed any negligence. As per PW2, at least some passengers were to pay a fare for travelling in the vehicle but it has been found by the Tribunal that no firm proof in that regard was shown. In the opinion of this Court, actually if a private vehicle is being used for commercial purposes, obviously illegally, no firm proof in the form of any receipt etc. would be available. However, with PW2 Gopi Rams' testimony not being specifically to the effect that Sheo Ram himself was also a fare paying passenger, or was simply a person who travelled in the vehicle, I see no reason to interfere with that finding. This is to be seen with the fact that as per the owner of the vehicle, RW1 Ramesh Chander, he had accepted that his employed driver, i.e. respondent Wazir Singh, was taking some relatives with him. Though obviously with no relationship between Wazir Singh and Sheo Ram having been even contended by appellant-claimant no.1, such relationship cannot be accepted, yet, as already said, in the absence of any contention also on the part of any person, to the effect that Sheo Ram had actually paid any fare himself to the driver, he cannot be taken to be a person who had misused a private vehicle.

Of course, what this Court cannot lose sight of is the fact that very often private vehicles of this kind are used for commercial purposes but

with neither any proceedings against the owner or driver of the vehicle initiated by the police or the Transport Department towards that end, deceased Sheo Ram cannot be held to be a person who was travelling in a private vehicle after payment of any money for such travel.

21. Coming to the aspect of the vehicle being over loaded, though Sheo Ram was one of the passengers, but with nothing shown as to whether he was one of the extra passengers or one of the initial passengers, after whom the extra passengers boarded the vehicle, no negligence cannot be attributed to him even on account of such over loading of the vehicle.

Therefore, with the accident in question having been proved, involving the vehicle owned by respondent Ramesh Chand, driven by respondent Dharambir, in which one of the passengers, Sheo Ram died, there would be no reason to deny compensation under Section 163-A, to the appellants (in FAO No.1620 of 1999).

22. Coming then to the question of quantum of compensation.

Learned counsel for the insurance company is of course correct in stating that the claim petition was filed invoking Section 163-A of the Motor Vehicles Act and not Section 166 thereof. Thus, the quantum of compensation has to be limited to what is contained in the 2nd Schedule to the Act of 1988, subject to the multiplier to be applied which would be applied as per the ratio of the judgment of the **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another** (2009) 6 SCC 121 and not as per the said schedule, as it is seen and has been held in various judgments, that the calculation in the schedule, as regards the multiplier, is wholly erroneous. Thus, as regards the multiplier, deceased Sheo Ram having been found to be 45 years of age by the Tribunal, both on account of that age having been stated in the post mortem

report and the fact that his wife, i.e. appellant no.1 in FAO no.1665 of 1999, was 38 to 39 years old of age, I see no reason to interfere with that finding. Therefore, in terms of the ratio of *Sarla Vermas'* case (supra), a multiplier of 14 is to be applied to the loss of annual income to the claimants, in the case of a victim aged between 41 to 45 years of age, which is what has been applied by the Tribunal. Therefore, that does not require any interference with in the present case.

As regards the income of the deceased himself, the first claimant and PW3 both having testified that he was a mason, though the testimony was not accepted at face value by the Tribunal, however, I also see no error in holding Sheo Ram to be a skilled labour earning about Rs.1667/- per month, in the year 1996.

Also, as per the 2nd schedule to the Act of 1988, a 1/3rd reduction in expenses is to be applied towards the personal expenses of the deceased had he remained alive, which has also been done by the learned Tribunal. Hence, calculated as above, there is no error in the Tribunals' finding, to the effect that from the annual income of Rs.20,000/-, a 1/3rd deduction is to be made, thereby coming to the loss of dependent income to the claimants to be Rs.13,350/- per annum. Upon applying a multiplier of 14 to the aforesaid amount, the total compensation payable under the head of loss of income would be Rs.1,86,900/-.

The Tribunal thereafter added Rs.10,000/- towards loss of expectation of life.

As per clause 3 of the 2nd Schedule to the Act, general damages to be paid to the claimants, in the case of the death of the victim, are Rs.2000/- towards funeral expenses, Rs.5000/- towards loss of consortium to the spouse

of the deceased and Rs.2500/- towards loss of estate, thereby coming to a total sum of Rs.9500/-.

Sub-clause (iv) of clause 3 further stipulates that actual medical expenses to the extent of Rs.15,000/- would also be payable if such medical expenses have been incurred prior to the death of the victim. However, no such expenses are shown to have been incurred, Sheo Ram having been declared unfortunately dead at the time of arrival at the hospital.

If strictly calculated, the Tribunal has therefore awarded Rs.500/- in excess to the claimants, i.e. instead of Rs.9500/- it has awarded Rs.10,000/- towards loss of expectancy of life, which is not actually a head prescribed in the 2nd schedule.

However, such a small amount would not be interfered with by this Court, especially as the schedule was notified on 14.11.1994 and the accident took place about one year and seven months later.

Yet, with the claim petition having been filed under Section 163-A and not under Section 166 of the Motor Vehicles Act, the contention of learned counsel for the appellants-claimants (in FAO No.1620 of 1999), for enhancement of the aforesaid compensation, cannot be accepted.

23. The last question in these appeals is as to whether the insurance company (appellant in FAO No.1620 of 1999 and respondent no.4 in FAO No.1665 of 1999) is liable to indemnify the owner of the vehicle, i.e. Ramesh Chand, or it is to be absolved of such liability on account of the fact that respondent Dharambir admittedly did not possess a driving licence, and because the vehicle was seen to be over loaded to about double its capacity.

In *Sohan Lal Passis'* case (*supra*), it was held that when the employed driver allowed the cleaner/conductor of the bus to drive the vehicle,

though the owner could not be absolved of liability, as his employed driver had actually allowed the act during the course of his employment, yet, the insurance company could also not be absolved of its liability to indemnify the owner, simply because the person driving the vehicle was not holding a drivers' licence, as the act of the driver would not amount to a breach of Section 96 (2) of the Motor Vehicles Act, 1939 (pari materia to Section 149 (2) of the Act of 1988).

Hence, at least on that count, the law being well settled, the insurance company cannot be absolved of its liability.

On the 2nd aspect, though in the opinion of this Court, with the vehicle being over loaded, the insurance company may be held to be not liable at least to some extent, especially as it is not unknown that such a vehicle is often used for commercial purposes though not registered for that purpose, however again, if the aforesaid principle in *Sohan Lal Passis'* case is to be applied to even that situation, with there being no evidence led to the effect that the owner of the vehicle had actual knowledge of his vehicle being over loaded by his employed driver, possibly the ratio of the judgment would apply in that circumstance also.

Consequently, I do not find it an appropriate case to hold that the insurance company is not liable to indemnify the insured, i.e. the owner of the vehicle, though if it could have been shown that the owner had knowledge of his vehicle carrying more passengers than its registered capacity, commensurate reduction in liability of the insurance company could be directed (in such case).

24. Considering the entire discussion above, there being no ground to enhance the compensation, the claim petition having been filed under the

provisions of Section 163-A of the Motor Vehicles Act, (nor to reduce it), and the grounds raised by the insurance company to absolve itself of any liability to pay the compensation also having been rejected by this Court, both the appeals are dismissed, but in the circumstances, with no order as to costs.

April 20, 2017

dinesh/vcgarg

(AMOL RATTAN SINGH)

JUDGE

1. Whether speaking/reasoned? Yes
2. Whether reportable? Yes