

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 11.12.2017

FAO No. 3842 of 2010 (O&M)

Daljit Singh and another

---Appellants

versus

Smt. Malti and others

---Respondents

FAO No. 2146 of 2010 (O&M)

Smt. Malti and others

---Appellants

versus

Daljit Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. M.S.Khaira, Senior Advocate with
Mr. D.S.Randhawa, Advocate
for the appellants in FAO-3842 of 2010
for respondent Nos. 1 and 2 in FAO- 2146 of 2010**

**Ms. Amandeep Kaur, Advocate
for appellants in FAO- 2146 of 2010
for respondent Nos. 1 to 3 in FAO- 3842 of 2010**

**Mr. R.M.Suri, Advocate
for the Insurance company in FAO-2146 of 2010**

**Mr. A.S.Sidhu, Advocate
for the insurance company in FAO-3842 of 2010**

Rekha Mittal, J.

**This order will dispose of FAO Nos. 2146 and 3842 of 2010 as
these have emerged out of the same award dated 9.2.2010 passed by the
Motor Accidents Claims Tribunal, Chandigarh (in short “the Tribunal”)**

whereby compensation has been awarded on account of death of Ajay Chauhan out of use of Tata Ace Pick Up PB-65E- 9580, on the fateful day of 22.10.2007.

FAO No. 2146 of 2010 has been filed by Malti Devi and others for enhancement of compensation whereas FAO No. 3842 of 2010 has been filed by the owner and driver of the aforesaid vehicle to assail findings of the Tribunal exonerating the insurance company of liability to pay compensation under the policy Ex. RA.

FAO-2146 of 2010

Malti and others filed application under Section 163-A of the Motor Vehicles Act, 1988 (in short “the Act”) for claiming compensation qua death of Ajay Chauhan. The Tribunal awarded compensation to the tune of Rs. 2,80,000/- detailed hereunder:-

Monthly income of the deceased	Rs. 2500/-
Deduction for personal expenses	1/3 rd
Multiplier	14
Loss of dependency	20,000 x 14= 2,80,000/-

Counsel for the claimants would urge that Ajay Chauhan was an employee with High Telecom. Mohali and earning Rs. 3300/- per month. The claimants did not examine a witness of High Telecom, Mohali to prove employment and salary of deceased Ajay Chauhan. Anil Chauhan, brother of Ajay Chauhan lodged DDR in respect of the occurrence in question wherein he reported that Anil Chauhan and Ajay Chauhan are working as welders with Hitech Engineers & Services, Plot No. 647, Phase VII, Industrial Area, Mohali. Taking into consideration that the deceased was a

semi skilled labour when examined in the light of notification fixing minimum wage for different categories of employees available at the relevant time, income of the deceased is assessed at Rs. 2700/- per month.

The Tribunal has applied multiplier of 14 to compute loss of dependency. There cannot be any dispute that in claim under Section 163-A of the Act, compensation is to be assessed on the basis of structured formula envisaged in 2nd schedule appended thereto. The deceased was 22 years old, therefore, admissible multiplier is 17. The deduction for personal expenses allowed by the Tribunal is affirmed. In this manner, loss of dependency comes to Rs. 1800 x 12 x 17 = Rs. 3,67,200/-.

The claimants shall be entitled to following compensation under conventional heads:-

Loss of consortium to widow	Rs. 5,000/-
Expenses on funeral	Rs. 2,000/-
Loss of estate	Rs. 2,500/-

The total compensation comes to Rs. 3,76,700/- and the additional amount is Rs. 96,700/- (3,76,700 – 2,80,000). The additional amount shall carry interest at the rate of 7% per annum from the date of petition till realization, payable to widow of the deceased.

The appeal is partly allowed in the aforesaid terms.

FAO-3842 of 2010(O&M)

Counsel for the appellants has assailed findings of the Tribunal recorded in paras 13 and 14 of the award, exonerating the insurance company of its liability to pay compensation primarily on two counts. The first submission made by counsel is that as per the insurance policy Ex. RA, policy covers risk of injury or death of the driver plus one employee

coming under the purview of Workmen's Compensation Act, 1923. It is argued that deceased Ajay Chauhan was employed by High Telecom, Mohali. The vehicle in question was hired by Hitech Engineers and Services, Mohali through Mohali Auto Public Carrier Operator Union, Mohali as is apparent from the documents (Annexures P-4 and P5), therefore, the insurance company cannot escape liability to pay compensation qua death of Ajay Chuahan, an employee of hirer of the vehicle in question.

Another submission made by counsel is that the vehicle in question is a goods carrier. After the amendment of 1994 in the Act, Act policy in respect of a goods carrier would cover risk of injury or death of owner of the goods or representative of owner of the goods, carried in the vehicle. It is further argued that as Ajay Chauhan and others, employees of High Telecom, Mohali travelled in the vehicle alongwith goods belonging to their employer for the purpose of installation of telephone towers at Abohar, Ajay Chauhan cannot be treated as a gratuitous passenger, entitling the insurance company to escape its liability to pay compensation.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal recorded in paras 13 and 14 of the award. It is argued that no such plea was raised by the claimants or respondents No. 1 and 2 in their pleadings that any articles/goods belonging to High Telecom, Mohali were carried in the vehicle in question or Ajay Chauhan being covered under the Worksmen's Compensation Act though the policy would cover the driver and employee of the insured and not of the alleged hirer. It has been further argued that the appellants cannot rely upon documents annexures P-4 and P-5 as these documents are not proved

to be part of proceedings before the Tribunal.

I have heard counsel for the parties, perused the paper book and the documents made available as records have been burnt in a fire incident.

The Tribunal in para 13 has made reference to limitations as to use of motor vehicle provided in the cover note Ex. RA, reads as follows:-

- (i) Use of organized racing, race making, reliability trial or speed testing
- (ii) Use whilst drawing a trailer except the towing (other than reward) of any one disabled mechanically propelled vehicles.
- (iii) Use for carrying passengers in the vehicles, except employees (other than the driver) not exceeding the nos. permitted in the registration document and coming under the purview of Workmen's compensation Act, 1923.

The policy does not cover passengers in the vehicle except employees (other than driver) not exceeding the numbers permitted in the registration document and coming under the purview of Workmen's Compensation Act, 1923. In the cover note (Ex. RA) passenger carrying capacity is 1+1. In the registration certificate, the capacity is one other than the driver. Ajay Chauhan was not employee of Prabhdeep Singh, insured of the vehicle. It would be discussed in later part of the judgment if there is evidence on record that vehicle was taken on hire by High Telecom, Mohali. However, it remains a fact that neither the claimants nor the private respondents examined a witness of High Telecom, Mohali to prove status of Ajay Chauhan in High Telecom, Mohali. There is no oral or documentary evidence available on record as to status of Ajay Chauhan in High Telecom, Mohali much less that he comes under the purview of Workmen's

Compensation Act. In this view of the matter, the appellants cannot derive advantage to their contention from clause (c) of cover note Ex. RA.

As has been noticed hereinbefore, records have been burnt in a fire incident. Perusal of the award particularly pleadings of the parties extracted therein would not indicate that any such plea was raised by the claimants or private respondents that the vehicle in question was used by High Telecom, Mohali for carrying goods or Ajay Chauhan was travelling in the vehicle being representative of owner of the goods carried in the vehicle. In the first version recorded by Anil Chauhan, brother of Ajay Chauhan vide DDR dated 23.10.2007, there is no reference that any goods belonging to Hitech Engineers & Services, Mohali were carried in the vehicle in question. Annexure P-3 is the unsigned copy of an affidavit of Prabhdeep Singh. In the award of the Tribunal, there is no reference to examination of Prabhdeep Singh owner of the vehicle as a witness. Under the circumstance, it is difficult to rely upon document Annexure P-3 in support of contention of the appellants that the vehicle in question was used for carrying materials of High Telecom, Mohali. Cross examination, if any, conducted upon Prabhdeep Singh is also not a part of records. In the statement of Prabhdeep Singh, there is no reference to any document of Mohali Public Carrier Operator Union, Mohali being tendered into evidence. In this view of the matter, it is difficult to rely upon the documents Annexures P-4 and P5 to record a finding that the vehicle in question was taken on hire by Hitech Engineers & Services much less goods of High Telecom, Mohali were being carried in the vehicle in question. In this view of the matter, contention of the appellants that Ajay Chauhan being an employee of High Telecom, Mohali travelled in the vehicle as a

representative of owner of the goods carried therein is not meritorious and liable to be rejected.

The appellants have failed to adduce clear and cogent evidence to establish that the vehicle had been taken on hire by M/s Hitech Engineers & Services. Analyzed from any angle, there is no merit in contention of the appellants that the insurance cover Ex. RA covers the risk of death or injury to Sh. Ajay Chauhan and consequently the insurance company is liable to pay compensation by way of indemnification of the insured.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed. The claimants shall be entitled to recover compensation from the driver and owner of the vehicle in question. No order as to costs.

(Rekha Mittal)
Judge

11.12.2017

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No