

Sr. No. 206

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

**FAO No. 3102 of 2012(O&M)
Decided on: 18.09.2017**

Balak Ram and another

.....Appellants

versus

Binder Kumar @ Balwinder Kumar and another

.....Respondents

FAO No. 4441 of 2012(O&M)

Binder Kumar @ Balwinder Kumar

.....Appellant

versus

Balak Ram and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Ravinder Malik Ravi, Advocate(3102/2012)
Mr. Arvinder Arora, Advocate(4441/2012)
for the appellant.

Mr. Rajbir Singh, Advocate for
Mr. Sanjeev Goyal, Advocate
for Insurance Company.

Rajbir Sehrawat, J.(Oral)

This order shall dispose of two appeals i.e. FAO No. 3102 and 4441 of 2012 filed against the Award of Motor Accidents Claim Tribunal, Ambala(for short, 'the Tribunal') whereby an amount of ₹1,25,000/- was awarded as compensation but liability was fixed upon owner by absolving the insurance company.

FAO No. 3102 of 2012 is an appeal filed by the owner and driver of the Tractor Trolley bearing Registration No. HR-71-4352 whose vehicle

was involved in the accident in this claim case.

Learned counsel for the appellants submits that he is not challenging the amount of compensation in the award as such. He further submits that the Insurance Company has been wrongly exonerated on the ground that tractor was having trolley tied with it, therefore, it shall be considered to be a Goods Carriage Vehicle and therefore, was required to have a separate permit for carrying the goods.

Learned counsel for the appellants submits that the Hon'ble Supreme Court of India in the judgment rendered in the case of ***Mukund Dewangan vs. Oriental Insurance Company Ltd.; 2017 AIR SC 3668*** has held that trolley attached with the tractor would constitute only one vehicle within the definition of the Light Motor Vehicle Act. Even the Act defines that '*Tractor*' meaning to include the trolley attached to it. It is further contended by learned counsel for the appellants that the Insurance Company has not led any evidence whatsoever to show that any permit would be required in the present case, nor has any provision of the Act been pointed out by the Insurance Company.

Learned counsel for the appellants further argues that at the relevant time the tractor and trolley was not carrying any goods. Therefore, there is no question of any permit to be required for a trolley by including the same in the category of goods vehicle.

Learned counsel for the respondent-Insurance Company would not seriously dispute the point that as per the Act tractor means the trolley attached to it, therefore, neither any separate driving license would be required for it nor any special permit be required to ply the goods in the same. This is so, particularly, in view of the fact that at the given time, the

tractor and trolley was not carrying any goods and in view of the judgment of the Hon'ble Supreme Court mentioned above.

In view of the above, the finding recorded by the Motor Accidents Claim Tribunal, Ambala to the extent it exonerated the Insurance Company from the liability of making the payment of compensation to the claimant, is *set aside*. It is held that it would be the Insurance Company which shall be liable to make the payment of the entire compensation in the present case.

In view of the above, **FAO No. 3102 of 2012** is ***allowed*** by modifying the Award of the Motor Accidents Claim Tribunal, Ambala to the extent mentioned above.

In FAO No. 4441 of 2012, the claimant had claimed compensation on account of the injuries suffered by him in the accident in question.

Learned counsel for the appellant has argued that claimant has suffered serious injuries and he was referred to PGI, Chandigarh for treatment. Therefore, it is the argument that besides the treatment the actual bills of which he produced before the Tribunal he had to take follow up treatment also. Besides this, it is his argument that doctor was duly examined before the Tribunal and he has deposed that injuries were extremely serious and dangerous to life. Therefore, according to learned counsel for the appellant he had to incur an amount of ₹ 1 lakh on treatment and he had to suffer immense pain and suffering in the accident in question. Therefore, the Award of ₹1,25,000/- is grossly insufficient.

It has come in evidence by way of deposition of Dr. Balaraja Shekhar Chandra from PGI, Chandigarh that the appellant was admitted into emergency with head injury and compound fracture and his life was in

danger. It is his further deposition that the claimant/appellant was operated upon. Even the certificate of disability has been placed on record as Mark-A. However this certificate has not been proved as per the requirement of law; by examining either of the member of the Medical Board which assessed this disability. Therefore, although this certificate cannot be taken at its face value. However, this definitely suggests that the appellant had suffered disability in the accident on account of head injury.

In view of the above, it is clear that the appellant had to remain hospitalised. He was treated for serious injuries. He had head injury and had to take follow up treatment also which resulted into permanent disability, although the degree of the same has not been established.

In view of the above, it would be appropriate if the amount of ₹1,00,000/- awarded by the Tribunal on account of Disability, Disfigurement of face & for head and Pain and Suffering is enhanced to ₹1.5 lakh. However, in view of seriousness of injuries, special diet shall have to be separately compensated.

Still further, it is clear that the injuries of the appellant were serious and he had to take long treatment. It is well established that a person does not fully recovered the moment he steps out of the hospital. He has to take the follow up treatment also for which he might not be having all the bills. In view of this fact, the amount awarded on account of Medical Expenses is enhanced to ₹ 25,000/-.

Learned counsel for the appellant also made a submission that since it was the head injury which resulted into disability and required special diet for long duration. Therefore, the special diet has not been sufficiently compensated by the Tribunal. Therefore, a consolidated amount

of ₹15,000/- is awarded on account of Transporation and Special diet.

Hence, in view of the above a total sum of ₹1,90,000/- is awarded as compensation in this case.

In view of the above, the appeal i.e. **FAO No. 4441 of 2012** filed by the injured claimant is ***allowed*** and the Award of the Motor Accidents Claim Tribunal, Ambala is modified to the extent mentioned above.

Other stipulations and findings recorded in the Award of the Motor Accidents Claim Tribunal, Ambala regarding the interest etc. are retained as such.

18th September, 2017

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes*

Whether Reportable *Yes*