

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

1. FAO-3369-2012
Date of decision: 26.10.2017

New India Assurance Company Ltd. Appellant

Versus

Sukhwant Kaur and others Respondents

2. FAO-3370-2012

New India Assurance Company Ltd. Appellant

Versus

Sukhjinder Kaur and others Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Paul S. Saini, Advocate
for the appellant.

Mr. Viney Puri, Advocate for
Mr. D.K. Bhati, Advocate
for respondents No.1 to 4.

Avneesh Jhingan, J.

The present two appeals have been filed against the award dated 21.01.2012 passed by Motor Accidents Claims Tribunal, Karnal (hereinafter referred to as the 'Tribunal') in MACT Case Nos. (RBT) 238 of 2010 and (RBT) 239 of 2010.

The claim petitions were filed by the legal heirs of Manjeet Singh-cleaner and Dalbir Singh-driver, who were working on the Tanker

bearing registration No.HR-38-G-6811. Both of them lost their life in a motor vehicular accident which allegedly occurred on 09.05.2009.

The Tribunal after considering the material produced before it, awarded a sum of Rs.3,66,000/- and Rs.5,55,000/-along with interest @ 6% per annum.

Aggrieved of the said order, the present two appeals have been filed by the Insurance Company.

I have heard the learned counsel for the parties and perused the paperbook.

Learned counsel for the appellant reiterated the facts raised in the ground that the claimants never approached the Tribunal with clean hands and withheld important facts. He further contended that even the facts were twisted according to their convenience. The facts alleged by him in the appeal are reproduced as under :-

“ That the award dated 21.01.2012 passed by the learned Tribunal deserves to be set aside being passed on the basis of fraud committed by the claimants. Certain facts which would show the fraud being committed by the claimants are necessary to be noticed. The claim petition in the present case arises out of a vehicular accident alleged to have occurred on 09.05.2009 on G. T. Road near Liberty Chowk, Karnal between two tankers bearing No.HR-38-G-6811 driven by the deceased Dalbir Singh, owned by Simarjeet Singh son of Kanwarjeet

*Singh of Jalandhar insured with Oriental Insurance Company, Karnal and tanker No.UP-14G-7369 driven by Surjit owned by Naveen Minocha, Delhi and insured with New India Assurance Company Limited, Karnal. In the aforesaid alleged accident, the driver and the cleaner of tanker no. HR-38-G-6811 namely Dalbir Singh son of Inderjit Singh and Manjit Singh son of Gurmeet Singh respectively had died. The legal heirs of the driver Dalbir Singh comprising of his mother Sukhjinder Kaur and father Inderjit Singh preferred a claim petition No.WC/21 of 2009 titled as “**Sukhjinder Kaur vs Simarjeet Singh**” before the Commissioner under the Workmen's Compensation Act, Circle Karnal, against the owner and insurer of tanker No.HR-38-G-6811 alleging that the deceased Dalbir Singh aged 20 years was employed as driver at a salary of Rs.6000/- per month by Simarjeet Singh on his tanker No.HR-38G-6811. Another claim application No.WC/22 of 2009 titled as “**Sukhwant Kaur vs. Simarjeet Singh**” was preferred before the Commissioner under the Workmen's Act, Karnal Circle by the mother-Sukhwant Kaur and father-Gurmeet Singh of deceased Manjit Singh against the owner and insurer of tanker No.HR-38-G-6811*

alleging that the deceased Manjit Singh aged 20 years was employed as Cleaner by Simarjeet Singh on his tanker No.HR-38-G-6811 at a salary of Rs.5000/- per month. On the basis of the pleadings of the parties and the evidence on record, the Commissioner under the Workmen's Compensation Act, Karnal awarded a compensation of Rs.4,42,740/- each in both the claim applications against the owner-Simarjeet Singh and the insurer-Oriental Insurance Company of tanker No.HR-38-G-6811 vide award dated 12.05.2010. A copy of the award dated 12.05.2010 passed by the learned Commissioner in the claim application titled as "Sukhwant Kaur vs Simarjeet Singh" on account of the alleged accidental death of Manjit Singh-cleaner is appended herewith as Annexure A-1. The aforesaid award in both the cases amounting to Rs.4,42,740/- each was deposited before the Commissioner under the Workmen's Compensation Act, Karnal by the insurer of the said tanker i.e. Oriental Insurance Company on 07.06.2010 against a proper receipt. A copy of the receipt dated 07.06.2010 in the claim application titled as "Sukhwant Kaur vs. Simarjeet Singh" is appended herewith as Annexure A-2. Simultaneously, the legal

heirs of the deceased driver-Dalbir Singh and the deceased Cleaner- Manjit Singh also preferred a claim petition before the learned Tribunal seeking compensation on account of death of their respective sons against the driver Surjit, owner-Naveen Minocha and the insurer New India Assurance Company Limited, Karnal of tanker No.UP-14-G-7369. The learned Tribunal decided both the aforesaid claim petitions vide a common award dated 20.01.2012, a copy of which is appended herewith as Annexure A-3, awarding a compensation of Rs.3,60,000/- and Rs.5,55,000/- along with interest @6% p.a. to the claimants in the case of death of Cleaner- Manjit Singh and driver-Dalbir Singh respectively. The present appeal has been preferred against the aforesaid award dated 21.01.2012 passed by the learned Tribunal primarily on the ground that the claimants secured the aforesaid award by misrepresentation, concealment of material facts and fraud which is writ large on the face of it”

In nutshell the contention of learned counsel for the Insurance Company is that the claimants have withheld the facts that they have claimed compensation under the Workmen's Compensation Act, 1923 (for short, 'the Act') and the registration number of the other vehicle involved was not

mentioned. In the proceedings before the Tribunal, the registration number of the vehicle on basis of which they had already claimed compensation under the Act was withheld. He further argued that under Section 167 of the Act, the claimants cannot claim the compensation under two Acts simultaneously.

Learned counsel for the claimants argued that it is not proved that the claimants were compensated for the same accident under the Act.

Without expressing any opinion on the merits of the case, the award dated 21.01.2012 passed in MACT Case Nos. (RBT) 238 of 2010 and (RBT) 239 of 2010 are set aside. The matter is remitted back to the Tribunal to decide afresh after taking into consideration the proceedings under the Workmen's Compensation Act, 1923.

Both the parties would be at liberty to produce their evidence before the Tribunal.

Both the parties are directed to appear before the Tribunal on 22.12.2017.

Both the appeals stand disposed of.

(AVNEESH JHINGAN)
JUDGE

26.10.2017

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Note:

1. Whether the order is speaking/reasoned: Yes
2. Whether the order is reportable : Yes