

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

(1)		FAO No. 4356 of 2004
Ravi Kapoor		 APPELLANT
	Versus	
Suresh Kumar and others		 RESPONDENTS
(2)		FAO No. 4374 of 2004
Smt. Raj Rani Chhabra and others		 APPELLANTS
	Versus	
Suresh Kumar and others		 RESPONDENTS
(3)		FAO No. 4569 of 2004
Tarsem Kumar		 APPELLANT
	Versus	
Smt. Raj Rani Chhabra and others		 RESPONDENTS
(4)		FAO No. 4570 of 2004
Tarsem Kumar		 APPELLANT
	Versus	
Ravi Kapoor and others		 RESPONDENTS

DATE OF DECISION : 16.03.2018

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : None for the appellant (in FAO No. 4356 of 2004)

Mr. G.C. Shahpuri, Advocate,
for the appellants (in FAO No. 4374 of 2004)
for respondents No.1 to 4 (in FAO No. 4569 of 2004)

Mr. Atul Gaur, Advocate,
for respondents No.1 and 2 (in FAO Nos.4356 & 4374 of 2004)
for the appellant (in FAO Nos. 4569 and 4570 of 2004)

Mr. Neeraj Khanna, Advocate,
for the respondent – Insurance Company.

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AVNEESH JHINGAN, J. (Oral)

These appeals arise from the award dated 04.06.2004 passed by the Motor Accident Claims Tribunal, Yamunanagar at Jagadhri (for short, 'the Tribunal').

2. These are burnt cases and have been reconstructed from the salvaged records and copies supplied by counsel for the parties, subject to just exceptions.

3. On 22.11.2002, an accident took place resulting into loss of life of Tarun Kumar alias Sonu and injuries to Ravi Kapoor. They were going on scooter bearing registration No. HR-02F-5869, on Mathana Pipli road, a truck bearing registration No. HR-26-6993 (for short, 'the offending vehicle') which was being driven in a rash and negligent manner struck against the scooter. FIR No. 447 dated 23.11.2002 was registered at Police Station Thanesar.

4. Two separate claim petitions under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') were filed by the injured and the legal heirs of the deceased.

5. The Tribunal awarded compensation and also granted recovery rights to the Insurance Company, as the driving license of driver of the offending vehicle was found not to be validly issued.

6. The owner of the offending vehicle has filed two appeals being aggrieved of recovery rights granted to the insurer of the offending vehicle. Two appeals have been filed by the claimants for enhancement of compensation.

7. The contention raised by learned counsel for owner of the

offending vehicle is that the owner satisfied himself, while employing the driver, regarding the driving skill of the driver and the fact that he was holding a valid driving license. He relies upon a decision of the Supreme Court in *Pepsu Road Transport Corporation Vs. National Insurance Company, 2013 (10) SCC 217.*

8. Learned counsel for the insurer argued that the decision relied upon by learned counsel for owner of the offending vehicle was not there at the time of passing of the award.

9. The contention raised by learned counsel for the insurer cannot be upheld. The decision of the Supreme Court being of subsequent date will not mean that it will not apply in the present case.

10. Without expressing any opinion on the merits of the case, the matter is remitted back to the Tribunal to decide the issue of liability to pay compensation afresh in accordance with law. The parties would be at liberty to adduce fresh evidence in support of their respective cases, if so desired. Since the matter has been remitted for deciding the issue of liability to pay compensation, the issue with regard to enhancement of compensation raise by the claimants in their appeals shall also be decided by the Tribunal in accordance with law.

11. The parties are directed to appear before the Tribunal on 10.05.2018.

12. Appeals are disposed of in the aforesaid terms.

March 16, 2018
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No