

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Date of Decision: 23.04.2018

(i) FAO No. 5033 of 2012 (O&M)

Sanjay Jain

.....Appellant

**Versus**

Phoolwati and others

.....Respondents

(ii) FAO No. 5034 of 2012 (O&M)

Sanjay Jain

.....Appellant

**Versus**

Phoolwati and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ajay Kumar Kansal, Advocate  
for the appellant.

Mr. Vaibhav Parashar, Advocate  
for Mr. B.B. Sharma, Advocate  
for respondents No. 1 and 2.

Mr. Neeraj Khanna, Advocate  
for respondent No.3.

**AVNEESH JHINGAN, J.(o ral)**

These two appeals have been filed by owner of Tanker bearing registration No.HR-37-A-3671 against the award dated 04.02.2012 passed by the Motor Accidents Claims Tribunal, Karnal (for short 'the Tribunal') in MACT Case Nos.111 of 2010 and 112 of 2010.

An accident took place on 29.10.2009. The offending vehicle in the accident was Tanker bearing registration No.HR-37-A-3671 in which Ram Chander lost his life and Phoolwati suffered injuries. Two claim petitions were filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'). The Tribunal awarded a sum of Rs. 1,40,200/- alongwith interest at the rate of 7.5.% in claim petition filed by Phoolwati for death of

her husband Ram Chander. A sum of Rs. 59,402/- was awarded to Phoolwati for the injuries suffered by her in the accident.

Two appeals were filed by the claimant for enhancement of compensation. The said appeals have been disposed of today by two separate orders of even date. The compensation has been enhanced in both the appeals.

The present two appeals are filed by owner of the offending vehicle. The grievance raised in the present appeals are that inspite of there being a valid driving licence the Insurance Company has been awarded recovery rights. The accident took place in 2009 and the matter regarding compensation is pending for seven years. The enhancement in one of appeal i.e. F.A.O. No. 4807/2012 is made in consonance with Supreme Court decision in case of National Insurance Company Versus Pranay Sethi and others 2017(10) JT 450. To settle the grievance of the claimants and to save them from further litigation because of remand the said appeals have been decided.

During the course of arguments of the appeal, learned counsel for the appellant on instructions stated that the appellant has already paid the amount awarded by the Tribunal and is ready to pay even the enhanced amount alongwith interest within four weeks from today subject to outcome of the proceedings. The contention raised is that an effective opportunity should be provided to the appellant to prove that the original driving licence was valid or that the deposition of PW1 that original licence was issued from Jind was wrong. From the perusal of the paper book and the record received, the stamps on the driving licence are not legible. It would be important to adjudicate that though the driving licence was validly renewed

but the same was validly issued originally also.

Without expressing any opinion on the merit of the case, the issue only with regard to recovery rights is remanded back to the Tribunal for giving an opportunity to owner of the offending vehicle to show either that the driving licence was originally validly issued or that it was not originally issued from Jind but from New Delhi. The appellant would be at liberty to adduce any other evidence to show the validity of the licence.

In case the appellant succeed to do so, the Insurance Company would be given an opportunity to produce fresh evidence in support of their case.

The remand is subject to the condition of payment being made by the appellant of enhanced amount alongwith interest to the claimants. The enhanced amount and interest would be deposited before the Tribunal and the claimants would take appropriate steps for claiming the same. Parties are directed to appear before the Tribunal on 23.05.2018.

**23.04.2018**

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**(AVNEESH JHINGAN)  
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No