

FAO-889-2012(O&M) &
FAO-1920-2012(O&M)

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

(1) FAO-889-2012(O&M)

The Oriental Insurance Company Limited

...Appellant

Versus

Sunita Rani and others

...Respondents

(2) FAO-1920-2012(O&M)

Sunita Rani and others

...Appellants

Versus

M/s Moti Timber Traders and another

...Respondents

Date of Decision:-5.12.2018

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.D.P. Gupta, Advocate
for the appellant in FAO-889-2012 and
for respondent No.2 in FAO-1920-2012.

Mr.Ashok Singla, Advocate
for the appellants in FAO-1920-2012 and
for respondents No.1 to 4 in FAO-889-2012.

H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO No.889-
2012 filed on behalf of appellant – The Oriental Insurance Company
Limited and FAO No.1920-2012 filed on behalf of appellants - Sunita

Rani and others.

Ms.Sunita Rani – aged 28 years (wife), Baby Kasvi aged about 6 years (minor daughter), Master Nilesh aged about 3 years (minor son) and Kamlesh Rani mother of Mukesh Kumar, who perished in a road side accident had brought a claim petition under Section 166 Motor Vehicles Act, 1988 against M/s Moti Timber Traders through its partner Ashok Kumar (owner) and the Oriental Insurance Company Limited through its District Manager, Faridkot (insurer) of car having registration No.PB-04L—0557 make Chevrolet Optra claiming compensation.

Briefly stated, facts of the case as pleaded by the claimants are that on 29.8.2010 at about 3:00 p.m. - Mukesh Kumar deceased was driving car bearing registration No.PB-04L—0557 make Chevrolet Optra belonging to his uncle Ashok Kumar, partner of M/s Moti Timber Traders; that as per the instructions of the latter, the former had dropped Hamit Kumar and his wife Babita at Bajakhana and thereafter while coming to Jaitu from Bajakhana in the said car, near canal in the area of village Sedha Singh Wala, the front tyre of the car of the driver's side burst all of a sudden, resultantly Mukesh Kumar driver lost control over the car, which struck into wayside trees, as a result Mukesh Kumar suffered injuries and died at the spot; FIR no.49 dated 29.8.2010 for the offences under Sections 304-A, 427, 337 and 338 IPC was registered against the deceased with Police Station Bajakhana for the reason that two labourer, who were washing their bicycle were hit by the car in question and they had also lost their lives. According to the claimants, the deceased was aged about 31 years and was running business under the name and

style of M/s Mukesh & Company as well as M/s National Timber Company and he was earning Rs.7 lacs per annum; that the claimants were dependent upon his earnings. According to the claimants since the deceased had gone in the car of respondent No.1 Ashok Kumar on his instructions and due to death of deceased, they have lost earning member and are unable to make both ends meet, as such they have brought the claim petition in question.

Notice of the petition was given to the respondents, who put in appearance. Respondent No.1 M/s Moti Timber Traders through its partner Ashok Kumar in the written reply though admitted the accident and resultant death of Mukesh Kumar, however, denied that FIR contained true depiction of the manner of accident. The remaining allegations with regard to earning of deceased and dependency of the claimants upon him were also refuted.

Respondent No.2 – The Oriental Insurance Company in its reply had taken preliminary objections that claim petition was vague, incomplete and claimants were colluding with respondent No.1; that driver of car was not holding a legal, valid and effective driving licence at the time of accident; that it further took up usual defences that since terms and conditions of the insurance policy were violated, respondent No.2 Insurance company was absolved of any liability to pay compensation. On merits, such respondent while denying the assertions in the claim petition showed ignorance about other facts. In the end, the answering respondent prayed for dismissal of the claim petition.

The claimants filed rejoinder controverting the allegations in

the written statement and reiterating the averments in the petition.

On the pleadings of the parties, following issues were framed vide order dated 3.5.2011:-

1. Whether deceased Mukesh Kumar died in a motor vehicle accident that took place on 29.8.2010 around 4:00 p.m. in the area of village Seda Singh Wala, Police Station Bajakhana on account of use of the car bearing registration No.PB-04L—0557 being driven by the deceased? OPA.
2. Whether the claimants are entitled to compensation, if so, to what extent and amount and as to from whom of the respondents? OPA.
3. Whether the driver of the car bearing registration No.PB-04L—0557 at the time of the alleged accident was not holding a valid, legal and effective driving licence? OPR(2).
4. Relief.

Both the parties led evidence in support of their respective claims.

During the course of evidence, the claimants examined AW1 Kiranjit Singh Romana, Investigator, AW2 Sunita Rani, AW3 Hamit Kumar and AW4 Romesh Sharma, Accountant besides tendering certain documents.

On the other hand the respondents examined Neeraj Kumar, Clerk office of DTO, Faridkot as RW1 and Ashok Kumar as RW2.

After hearing arguments, the Tribunal decided issues No.1 and 2 in favour of the claimants and against respondents, issue No.3 in favour of respondent No.1 and against respondent No.2, as a result the

claim petition was accepted with costs and compensation to the tune of Rs.5,76,000/- was awarded to the claimants. Claimant No.1 – Sunita Rani(wife), claimant No.2 Baby Kasvi (minor daughter) and claimant No.3 Master Nilesh (minor son) were found entitled to 30% each of the compensation amount and the remaining 10% to go to claimant No.4 – Kamlesh Rani. In addition, claimant No.1 Sunita Rani was awarded Rs.25,000/- on account of last rites and ceremonies and loss of consortium. The claimants were further granted interest @ 8% per annum on the amount of compensation w.e.f. the date of institution of the claim petition till actual realization.

The claimants and insurance company were dissatisfied with the said award and they have filed separate appeals before this Court.

Notice of the appeals was issued to the respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record. During the course of arguments, it transpired that proper issues had not been framed by the Tribunal and the award passed is result of non-application of mind and lack of clarity regarding the dispute, which has directly affected the findings and the relief granted. The claim petition was filed under Section 166 of the Motor Vehicles Act. Later on the claimants nursed a doubt regarding the maintainability of petition under Section 166 of the Motor Vehicles Act keeping in view the facts and circumstances of the case, as such they sought adjournments for amendment of petition to one under Section 163-A of the Motor Vehicles Act but did not do so. Issues were framed by the Tribunal on 3.5.2011 and

issue No.1 so struck point out that the Tribunal had taken the petition to be under Section 163-A of Motor Vehicles Act. The point on account of whose rashness and negligence the accident had taken place has not been determined.

I find it proper to remand the case back to the Tribunal with a direction to frame proper issues keeping in view the nature of the claim petition and the pleas raised by the respondent, then afford the parties reasonable opportunities to lead further evidence and then after hearing learned counsel for the parties pass a fresh judgment/award.

Resultantly, the award dated 13.10.2011 passed by the learned Motor Accident Claims Tribunal, Faridkot is set aside.

The entire exercise be carried out expeditiously preferably within a period of three months from the date of receipt of copy of this order in the Tribunal, keeping in view the fact that the case is quite old one inasmuch as the claim petition was filed in the year 2010, whereas the accident in question had taken place on 29.8.2010.

The parties through their counsel are directed to appear before the Tribunal on 21.1.2019. The Tribunal may issue notice to remaining respondents to secure their presence.

With the above observations, the appeals stand disposed of accordingly.

5.12.2018
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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No