

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) FAO No.5052 of 2015 (O&M)
Date of Order: 19th March, 2018

Janki Devi and others

..Petitioners

Versus

Rajesh Kumar and others

..Respondents

(2) FAO No.1550 of 2016(O&M)

New India Construction Company and another

...Petitioners

Versus

New India Assurance Company Limited and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikram Bali, Advocate,
for the appellants (in FAO No.5052 of 2015) and
for respondent Nos.2 to 5 (in FAO No.1550 of 2016)

Mr. Sanjay Jain, Advocate,
for the appellants (in FAO No.1550 of 2016) and
for respondent nos.1 and 2 (in FAO No.5052 of 2015)

Mr. Paul S. Saini, Advocate,
for respondent no.3 (in FAO No.1550 of 2016) and
for appellant no.2 (in FAO No.5052 of 2015)

ANIL KSHETARPAL, J.

This judgment shall dispose of FAO No.5052 of 2015 and FAO No.1550 of 2016, arising out of the claim petition filed by the claimants under the Motor Vehicles Act, 1988.

FAO No.1550 of 2016 has been filed by owner of the vehicle, whereas FAO No.5052 of 2015 has been filed by the claimants.

The appeal filed by the owner is along with an application for

condonation of delay of 694 days, However, taking into consideration the facts as pleaded in the application and at the same time noticing the fact that the appeal filed by the claimants against the award passed by the Motor Accident Claims Tribunal (hereinafter referred to as 'the Tribunal') arising from the same claim case is pending, delay of 694 days in filing the appeal is condoned.

Bacchu Lal, a mason, working with the construction company- the appellant in FAO No.1550 of 2016, died in an accident on 15.04.2011 while travelling in the truck owned by the construction company. It is the pleaded case that the truck had gone to Barwala in connection with the construction material and on return journey at about 9.00 PM, when they reached near village Tumbi, a wild animal came on the road and in order to avoid the accident, driver suddenly applied the brakes, due to which the vehicle went out of control and collided against the trees down the road. Late Sh. Bacchu Lal died at the spot. A daily diary report was entered on 16.04.2011 at Police Station Bilaspur. The claimants, i.e., the widow, minor daughter and parents filed claim petition under Section 166 of the Motor Vehicles Act, 1988. It was claimed that Late Sh. Bacchu Lal was working as a mason with the construction company, earning Rs.7,000/- per month. Compensation to the tune of Rs.10,00,000/- was claimed.

Driver and owner filed joint written statement and took the preliminary objections with regard to maintainability of the appeal and concealment of material facts from the Court. All assertions made in the petition on merits were denied.

The insurance company filed written statement stating that the accident took place by chance and respondent no.1-driver was not at fault.

It was further pleaded that the DDR in question was got recorded on wrong facts and claim petition has been filed in collusion with respondents no.1 and 2.

The learned Tribunal, absolved the Insurance Company finding the deceased to be a gratuitous passenger in the truck in question. The compensation assessed was Rs.12,47,599/- and the constructions company and owner of the truck were held jointly and severally liable to pay the amount along with interest @ 7.5% per annum.

Learned counsel for the appellant-construction company, in FAO No.1550 of 2016, has submitted that the appellant-company had got the vehicle insured by a Standard Commercial Package Policy. Learned counsel has drawn the attention of the Court to the copy of the policy and the cover note, which are Ex.R-4 and Ex.R-5 to assert that excluding the driver, 2 passengers were insured. He has further drawn attention to the policy schedule and the insurance certificate, which records that legal liability to paid driver, conductor, cleaner employed for operation have been covered. Hence he submitted that the Insurance Company has been wrongly absolved.

On the other hand, learned counsel for the Insurance Company has submitted that deceased Bacchu Lal was working as a Mason and, therefore, he would not be covered within the meaning of driver, conductor or cleaner employed for operations. He has submitted that it is not the case of the claimants that the deceased was employed for working on the truck (the vehicle in question). He has submitted that the learned Tribunal has rightly held that deceased Bacchu Lal was only a gratuitous passenger and, therefore, not covered by the policy.

On the other hand, learned counsel for the appellants in FAO No.5052 of 2015, has submitted that the learned court has only enhanced the income towards future prospectus by adding 30%, whereas as per the judgment of the Constitution Bench in the case of **National Insurance Company Limited vs. Pranay Sethi and others**, (Special Leave Petition (civil) No.25590 of 2014, decided on 31.10.2017), it should be 40%. He has further submitted that under the conventional heads, Rs.70,000/- was required to be awarded.

The primary issue which needs determination is “whether a mason working for the owner-construction company would fall within the meaning of the words driver, conductor, cleaner employed for operations?”

In the considered opinion of this court, late Sh. Bacchu Lal would not fall in any one of them. No doubt late Sh. Bacchu Lal was employed as a Mason as admitted by Sh. K.M.Garg, Manager of the appellant-construction company. However, Sh. K.M.Garg nowhere stated that he was employed for operation at the truck (the vehicle in question).

In the present case, accident took place on 15.04.2011. Section 147 of the Act reads as under:-

147. Requirements of policies and limits of liability.

- 1. In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which--*
 - a. is issued by a person who is an authorised insurer; and*
 - b. insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)--*
 - i. Against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or*

damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

- ii. Against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:*

Provided that a policy shall not be required-

- i. to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923, (8 of 1923.) in respect of the death of, or bodily injury to, any such employee--*

a. Engaged in driving the vehicle, or

b. If it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

c. If it is a goods carriage, being carried in the vehicle, or

ii. To cover any contractual liability.

Explanation.--For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

- 2. Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:--*

a. Save as provided in clause (b), the amount of liability incurred;

b. in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the

commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

3. A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

4. Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

5. Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

A careful reading of the aforesaid section, provides that the Insurance Policy is required to comply with the requirements of this chapter and a policy of insurance must be a policy which has to cover insurance as spelled out in the aforesaid provision. In the present case, Bacchu Lal cannot be treated as owner of the goods or his authorised representative as there is no evidence available on the file that any goods were being carried. However, first proviso to Section 147 of the Motor Vehicles Act, 1988 comes to the rescue of the claimants. It provides that if an employee is being carried in the vehicle during the course of employment, the liability arising under the Workmen's Compensation Act, 1923 (now re-named as

Employees' Compensation Act, 1923) shall be covered by the policy of insurance. In the considered opinion of this court, the present case would fall in Clause 'c(ii)(i) of the first proviso to Section 147 of the Motor Vehicle Act. This Court while considering a similar situation, has interpreted the provisions of Section 147 of the Motor Vehicles Act, in the same manner While deciding FAO No.6164 of 2013, on 13.05.2016 (United India Insurance Company Limited vs. Hari Shankar and another).

This court also respectfully agrees with the aforesaid view. Hence, in the considered opinion of this Court, the Insurance Company shall also be liable to pay the compensation.

Since the compensation is to be assessed, in accordance with the provisions of Employees' Workman Compensation Act, 1923 (earlier known as Workmen's Compensation Act), 50% of the monthly wages of the deceased employee is to be multiplied by relevant factor. As per Section 4 of the Employees' Compensation Act, considering the age of the deceased, the relevant factor would be 207.98. Hence, the compensation payable would work out to $\text{Rs.}3500 \times 207.98 = 7,27,930/-$.

The respondents in the claim petition i.e. FAO No.5052 of 2015 shall be jointly and severally liable to pay the aforesaid amount along with interest @ 12% per annum as provided under the Employees' Compensation Act, 1923.

In the result, the appeal No.1550 of 2016 is allowed, whereas FAO No.5052 of 2015, filed by the claimants for enhancement is dismissed.

19th March, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No