

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

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Date of decision: 09.12.2019

FAO 1401 of 1994 (O&M)

Bhola Nath

.....*Appellant*

Versus

Sohan Singh and others

.....*Respondents*

FAO 1579 of 1994

Gurdev Singh

.....*Appellant*

Versus

Urmila Rani and others

.....*Respondents*

FAO 1621 of 1994

Gurdev Singh

.....*Appellant*

Versus

Kishan Lal and others

.....*Respondents*

FAO 1622 of 1994

Gurdev Singh

.....*Appellant*

Versus

Bhola Nath and others

.....*Respondents*

FAO 1623 of 1994

Gurdev Singh

.....*Appellant*

Versus

Raminder Singh and others

.....*Respondents*

FAO 1635 of 1994

Urmila Rani and another

.....*Appellants*

Versus

Sohan Singh and others

.....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: None for injured appellant (FAO No. 1401 of 1994)

Mr. Neeraj Khanna, Advocate
for owner of offending Truck No. PB10 B 9624 (Gurdev Singh)

Mr. D R Bansal, Advocate
for the National Insurance Company

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Rekha Mittal, J. (Oral)

CM 8892 CII of 1994

Prayer in this application is for condoning delay of 19 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit and arguments advanced, the application is allowed and delay of 19 days in filing the appeal stands condoned.

Main case

This order will dispose of aforesaid appeals as these have emerged out of the same award dated 13.01.1994 passed by the Motor Accidents Claims Tribunal, Kurukshetra (in short, 'the Tribunal') whereby compensation has been assessed on account of two deaths and injuries to two persons in a motor vehicular accident that took place on 31.08.1991 while the claimants were travelling in Bus No. HR 03 - 2327 of Haryana Roadways Chandigarh and accident is stated to be the result of rash and negligent driving of Truck No. PB 10-B-9624 driven by Sohan Singh son of

Mahender Singh.

FAO No. 1401 of 1994 has been filed by injured-Bhola Nath seeking enhancement of compensation and FAO No. 1635 of 1994 has been filed by Urmila Devi and others seeking enhancement of compensation qua death of Vikas, a boy eight years old whereas other appeals have been filed by Gurdev Singh, owner of Truck No. PB-10-B-9624 to assail findings of the Tribunal on the question of driving licence on the basis whereof, the insurance company of aforesaid Truck, namely the National Insurance Company Limited (hereinafter referred to as 'the insurance company') has been exonerated of liability to pay compensation.

FAO 1401 of 1994

There is no representation on behalf of the injured appellant.

Dismissed for non-prosecution.

FAOs No. 1579 and 1621 to 1623 of 1994

Counsel for the appellant would apprise the Court that records have burnt in a fire incident that took place in Records Room of this Court. He would further inform that vide order dated 28.01.2015 passed by this Court, a report was sought from the Tribunal in respect of driving licence Ex. R-1/A purported to be issued by the Licensing Authority, Delhi on 07.01.1993 (initially issued on 08.08.1972) which was valid upto 07.01.1996 but no such report has been received till date.

Counsel for the parties are *ad idem* that in place of awaiting report of the Tribunal, let the matter be remitted to the Tribunal for deciding issue of driving licence Ex.R-1/A, in terms of order dated 28.01.2015 afresh on the basis of evidence to be adduced by the appellant and rebuttal evidence, if any, by the insurance company.

In view of the above, the appeals are disposed of. The Tribunal is directed to decide the question of validity or otherwise of driving licence Ex.R-1/A purported to be issued by the Licensing Authority, Delhi on 07.01.1993, in terms of order dated 28.01.2015 passed by this Court. The Tribunal shall decide issue of driving licence positively within a period of six months of the parties putting in appearance. The parties are directed to put in appearance before the Tribunal on 14.01.2020. For deciding the question of driving licence, the Tribunal would not bother the claimants as question of driving licence is a dispute *inter se* the insured/registered owner of the vehicle and the insurance company.

Before parting with this order, it is pertinent to note that the Tribunal has wrongly exonerated the insurance company of liability to pay compensation to the claimants. Even if issue of driving licence is answered against the insured, the insurance company, at best, can be conferred with right of recovery against the insured after payment of compensation to the claimants. In this context, reference can be made to judgments of Hon'ble the Supreme Court *National Insurance Co. Ltd. v. Swaran Singh and others 2004(3) SCC 297* and *Pappu and others v. Vinod Kumar Lamba and another 2018(1) PLR 425*.

Accordingly, the insurance company is directed to make payment of compensation to the claimants, if not already paid by the driver or owner of the offending vehicle but without prejudice to its right to press for right of recovery in case issue of driving licence is answered against the insured.

Records reconstructed by this Court, if any, be sent back to the Tribunal to facilitate decision on the question of driving licence.

FAO No. 1635 of 1994

The Tribunal awarded Rs.15,000/-.

Indisputably, the deceased was a boy aged eight years. When the case is examined in the light of judgment of this Court '*Baljit Singh and another vs Devi Lal and others*' in FAO 391 of 2003, decided on 17.01.2018, the appellants are entitle to compensation of Rs.2,40,000/-. Accordingly, they shall be entitle to additional amount of Rs.2,25,000/-, payable with interest @ 7.5% per annum from the date of petition till realization to mother of the deceased.

In view of the above, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

09.12.2019
Mohan Bimbura

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No