

FAO-1346-2000(O&M) with
XOBJC-37-CII-2001 &
FAO-1347-2000(O&M) with
XOBJC-36-CII-2001

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

(1) FAO-1346-2000(O&M) with
XOBJC-37-CII-2001

Shiv Narain

...Appellant

Versus

The Oriental Insurance Company Ltd. and others

...Respondents

(2) FAO-1347-2000(O&M) with
XOBJC-36-CII-2001

Shiv Narain

...Appellant

Versus

The Oriental Insurance Company Ltd. and others

...Respondents

Date of decision:16.12.2019

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

Present: Mr.A.K. Gupta, Advocate
for the appellant in both the appeals.

Ms.Madhu Sharma, Advocate
for respondent No.1 in both appeals.

Mr.Kuldeep Choudhary, Advocate for
Mr.Anshuman Dalal, Advocate
for respondent No.2 in both appeals.

Mr.K.S. Dhanora, Advocate for
respondents No.3 to 7 in FAO-1347-2000 and
for respondent No.3 in FAO-1346-2000 and for cross-
objectors.

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H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-1346-2000 and FAO-1347-2000 filed on behalf of appellant/owner – Shiv Narain and cross-objections i.e. XOBJC-37-CII-2001 and XOBJC-36-CII-2001 filed by the claimants, which have arisen out of the same accident.

Briefly stated, facts of the case are that on 9.1.1998 Smt. Omi Devi – widow of Lekhi Ram, a resident of village Baas, Azam Shahpur, Tehsil Hansi, District Hisar along with his son - Sunder, daughter-in-law - Santra Devi, Jaspal, Rajpati, Laxmi Devi and others were travelling in a jeep bearing registration No.HR21-A-3368 going from their village Bass Ajam Shahpur to Chapar in connection with a pre-marital ceremony; when the jeep reached between village Baas and Madanheri, a truck bearing registration No.HYD-2771 (hereinafter referred to as the offending truck) came from opposite direction being driven in a rash and negligent manner and by going on the wrong side had hit against the jeep, as a result the occupants of the jeep suffered injuries; Omi Devi and Santra Devi injured were shifted to Medical College and Hospital, Rohtak where Santra Devi succumbed to the injuries, whereas Omi Devi was admitted and treated there.

Claimant Omi Devi was statedly aged about 40 years and a household lady contributing Rs.1,200/- per month to the family by doing household and agricultural work. Whereas Santra Devi, who had

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succumbed to the injuries suffered by her in the accident was stated to be aged about 25 years and a household lady; in addition to that looking after agricultural work and selling milk thereby contributing a sum of Rs.7,500/- per month to the family.

Petitioner Omi Devi had brought a claim petition bearing Petition No.154 of 1998 against respondents i.e. Ved Pal – driver, Shiv Narain – owner and The Oriental Insurance Company Ltd. - insurer of the offending truck, claiming compensation to the tune of Rs.2 lacs on account of injuries suffered by her in the motor vehicular accident.

Whereas the legal heirs/legal representatives of deceased Santra Devi i.e. her husband – Sunder Singh, minor son – Deepak, minor daughters Jyoti and Sonia and another minor son Shiv Kumar had brought a claim petition bearing Petition No.155 of 1998 against the above-said respondents, claiming compensation to the tune of Rs.6 lacs on account of death of Santra Devi in the motor vehicular accident.

Since both the claim petitions arose out of the same accident, those were tried together by Motor Accidents Claims Tribunal, Hisar(hereinafter referred to as the Tribunal).

On being put to notice, respondents No.1 and 2 did not appear to offer a contest, as such they were proceeded against ex-parte. Only respondent No.3 had appeared and filed written statement contesting the claim petitions. During the pendency of the petitions when the case was at the stage of evidence of respondents, respondent No.2 had moved

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an application for setting aside ex-parte proceedings and such respondent was allowed to join the proceedings at that stage and he did not file any written statement.

In the written statement filed on behalf of respondent No.3 – insurance company, it raised various legal objections, to wit that the claimants lacked locus-standi to file the claim petitions; that the claim petitions were bad for mis-joinder and non-joinder of the necessary parties; that fitness of the truck had expired; that the truck was being driven by a person not holding valid driving licence and not in the course of his employment. On merits, the assertions in the claim petitions were controverted stating that as per FIR Sukhbir Singh was driving the offending truck but such Sukhbir Singh had not been impleaded as a party for the reasons best known to the claimants. In the end, such respondent prayed for dismissal of the claim petitions.

Issues on merits were framed and the parties were afforded adequate opportunities to lead evidence.

After hearing arguments, the claim petitions were accepted against respondent No.2 with costs by the Tribunal vide award dated 4.1.2000. However, the claim petitions were dismissed against respondents No.1 and 3. Petitioner/claimant Omi Devi, who had filed Claim Petition No.154-1998 was awarded compensation of Rs.25,000/- and petitioners Sunder etc., who had filed Claim Petition No.155 of 1998 were awarded compensation of Rs.2,15,000/- along with interest at the

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rate of 12% per annum from the date of filing of the petitions till final realization. The manner in which the compensation is to be apportioned was also given in the award.

Such award left the respondent No.2 – Shiv Narain - owner of the offending truck aggrieved and he has knocked at the door of this Court by filing separate appeals praying that the same be accepted, the award under challenge be set aside. Notice of the appeals was issued to the respondents, who have put in appearance through counsel. Respondents/claimants in both the appeals have also filed cross-objections seeking enhancement of compensation. Respondent No.3 – insurance company has also appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

The Tribunal has though admitted that the accident in which Omi Devi had suffered injuries and Santra Devi had lost her life had taken place on account of rash and negligent driving of the offending truck owned by respondent No.2 – Shiv Narain but had disbelieved the version of the claimants that the truck was being driven by Ved Pal – respondent No.1 at that time. The Tribunal has given a finding that as a matter of fact the truck was being driven by one Sukhbir Singh, who has not been impleaded as a respondent in the present case. Therefore, Ved Pal and Oriental Insurance Company were not liable.

I find that the whole approach of the Tribunal was wrong and

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incorrect. As per the case of the claimants, the offending truck was being driven by respondent No.1 – Ved Pal at the relevant time. It is for that reason they had impleaded him as a respondent. PW1 Omi Devi injured had deposed in consonance with the case of the claimants as given in the claim petitions. PW2 Sunder, who had also provided the eye-witness account of the incident had also deposed on those lines. In the FIR copy Ex.P1, it is clearly mentioned that the accident had been caused by truck No.HYD-2771, by its rash and negligent driving. Challan in this case has been filed and truck driver is facing trial. The Tribunal has made much of the fact that the eye-witnesses had not given name of the truck driver. The Tribunal referring to the FIR and statements of Sunder and Jaspal recorded during the inquest proceedings came to the conclusion that the truck was being driven by Sukhbir Singh; that in the FIR the name of the driver was mentioned as Sukhbir Singh and that neither Omi Devi appearing as PW1 nor Sunder appearing as PW2 had not stated that the police had not recorded their statements correctly. The claimants had not examined the Investigating Officer to show as to under what circumstances name of the driver has been changed from Sukhbir Singh to Ved Pal. As such the Tribunal reached a conclusion that the truck was being driven by Sukhbir Singh.

I find that the entire approach of the Tribunal was erroneous and misdirected. The FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. FIR is often

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lodged in hurry and it may not contain the minute and precise details of the incident. The FIR can be got registered by a person, who may not be an eye-witness of the incident. It is only during investigation of the case that police can come to know about the culprit, who had committed the crime.

It is nobody's case that the driver of the truck was known to the complainant earlier. Therefore, there could be every possibility his giving wrong name of the truck driver. However, the eye-witness had in their supplementary statements had given the name of the truck driver as Ved Pal. It needs to be mentioned here that in the FIR, Sunder – complainant had stated that the driver of the truck had run away from the spot after the accident and his name was subsequently came to be known as Sukhbir Singh. As already discussed above, there could be every possibility of his getting wrong information with regard to name and identity of the truck driver. Therefore, the case of the claimants cannot be thrown away and discarded solely for this reason. Things would have been quite different, if such respondent had appeared in the Court and stated on oath that as a matter of fact he was not driving the truck at the relevant time and the truck was being driven by Sukhbir Singh. Similarly, the owner of the truck did not depose that the truck was being driven by Sukhbir Singh and not by Ved Pal. The owner of the truck was the best person to give authentic information in that regard but such evidence is clearly missing.

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Now coming to the statements got recorded by the eye-witnesses with the police. The first statement of Sunder was recorded on 9.1.1998. In the supplementary statement of witnesses namely Rajpati, Omi Devi, Jaspal, Sunder recorded on 9.1.998, they had categorically stated that the truck driver's name was later on known as Ved Pal son of Ram Singh, who had escaped and run away after the accident whereas leaving the truck behind and there was a conductor named Sukhbir and the driver and conductor of the truck belonging to the same village Dubaldhan Majra. Karambir the driver of the jeep who had got his statement recorded on 10.1.1998 had stated that truck driver Ved Pal son of Ram Singh Caste, Jat resident of Dubaldhan Majra was known to him prior to the incident as he plies his truck on the road and he had seen him many a times at tea shop taking tea. Ved Pal had run away from the spot after the accident and for that reason Ved Pal had been challaned and not Sukhbir Singh. Therefore, there was enough evidence available in absence of any evidence led in rebuttal and to the contrary to show that Ved Pal was author of the accident by his rash and negligent driving of the offending truck and the Tribunal wrongly came to the conclusion that the truck was being driven by Sukhbir Singh, in the process absolving the Ved Pal and insurance company of liability to pay compensation. Therefore, the finding recorded by the Tribunal on issue No.1 is reversed and the issue is decided in favour of the claimants and against respondents holding that the accident in question had taken place due to rash and

negligent driving of truck No.HYD-2771 by respondent No.1 – Ved Pal.

As far as issues No.2 and 3 are concerned, the Tribunal had rightly decided those issues in favour of the claimants holding that Smt.Omi Devi had suffered injuries in the accident, whereas Santra Devi had died on account of injuries suffered by her in the mishap. Findings on those issues are proper and appropriate and do not call for any interference.

Next coming to the quantum of compensation. The Tribunal has awarded total compensation of Rs.25,000/- to the claimant – Omi Devi, who had filed Petition No.154 of 1998. The split up of that compensation is as under:

Compensation on account of treatment	Rs.10,000/-
Compensation on account of pain and sufferings	Rs.10,000/-
Compensation on account of special diet, transportation etc.	Rs.5,000/-
Total	Rs.25,000/-

However, I find that such compensation awarded is inadequate. Omi Devi was aged about 40 years at the time of her suffering injuries in the accident. According to her, she has been doing household as well as agricultural work. However, not much plausible and satisfactory evidence has been adduced to show that she had been engaged in avocation of agriculture. No doubt, a woman does contribute to the family by doing household chores including cooking, cleaning utensils,

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washing clothes and managing the household affairs and it is difficult to quantify such services rendered by a household lady to the family, however, a reasonable amount is to be taken in that regard.

The Tribunal has awarded a sum of Rs.10,000/- to the claimant Omi Devi on account of medical treatment. While granting reimbursement of Rs.10,000/- towards medical treatment, the Tribunal has not taken into view the fact that many a times, the record of various amounts spent on purchase of medicines in the form of bills, receipts, cash memos etc. is not kept or at times it gets misplaced or lost and no amount has been awarded towards future medical expenses. Thus, the compensation under that head is enhanced to Rs.15,000/-.

The Tribunal has awarded a sum of Rs.10,000/- towards pain and sufferings. The said amount is on very low side. In my view considering the number of injuries suffered by the claimant, period of hospitalization, it is very difficult to quantify the pain and suffering undergone by a person suffering injury requiring hospitalization and follow up treatment. Keeping in view the facts and circumstances of the case, I enhance the said amount to Rs.15,000/-.

The Tribunal has awarded a meagre amount of Rs.5,000/- clubbing two heads of special diet and transportation, which was not justified. I find that the petitioner/claimant Omi Devi is entitled to Rs.7,500/- each for special diet and transportation.

The Tribunal has not awarded any amount towards attendant

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charges. The claimant having suffered injuries did require help of an attendant during the period of his hospitalization and then going to hospital for follow up treatment. A sum of **Rs.5,000/-** is accordingly awarded to the claimant Omi Devi on that score.

No amount has been awarded by the Tribunal to the claimant Omi Devi for the loss occasioned on account of her inability to do household work etc. after suffering injuries in the accident, during the period of her hospitalization and even after discharge. I award a sum of Rs.10,000/- on that score.

Thus, the total amount of compensation comes out to Rs.60,000/-. The Tribunal has awarded compensation of Rs.25,000/-. The same is enhanced to Rs.60,000/-. In this way, the additional amount comes out to Rs.35,000/- (60,000 - 25,000).

With regard to the death case of Santra Devi, though the Tribunal has not accepted the plea put forward by the claimants that the deceased by doing household work and agriculture work was earning Rs.7,500/- per month and had taken that she was at least contributing Rs.1,000/- per month. She was aged 25 years. Her contribution to the family by doing household working taken as Rs.1,000/- is certainly on the lower side. The same should be taken as Rs.1,500/- per month, annual to be $\text{Rs.1,500} \times 12 = 18,000/-$. The Tribunal has rightly applied the multiplier of 17. Doing that the compensation worked out to Rs.3,06,000/-.

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In view of the ratio of authority *National Insurance Company Limited Versus Pranay Sethi and Ors.*(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to Rs. 3,06,000 + 70,000 = 3,76,000/-.

The Tribunal has awarded compensation of Rs.2,15,000/-.

In this way, the additional amount comes out to Rs.1,61,000/- (3,76,000 – 2,15,000).

The tribunal has not given any clear cut finding. Rather much stress of the Tribunal was that it was actually Sukhbir Singh, who was driving the truck but since he did not have the valid driving licence, he was replaced by Ved Pal having valid licence. Therefore, insurance company was absolved of its liability so was Ved Pal. As already discussed above, the Tribunal did not act properly in doing so and rather it has been found that the truck was being driven by Ved Pal. The onus of proving issue No.5 that “Whether respondent No.1 was not holding valid and effective driving licence at the time of accident” was upon respondent No.3 – insurance company. Such insurance company had not led any evidence to discharge that onus. Therefore, this issue is decided against the respondent – insurance company and in favour of the claimants. In that way, the respondent No.1 being driver, respondent No.2 being owner and respondent No.3 being insurer of the offending truck are jointly and

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severally liable to pay the compensation to the claimants in both the petitions.

Therefore, the FAO-1346-2000 and FAO-1347-2000 filed by the owner/respondent No.2 are allowed partly and all the respondents are liable to pay the compensation amount.

Similarly, XOBJC-37-CII-2001 and XOBJC-36-CII-2001 filed by the claimants are also allowed partly. Resultantly, the impugned award is modified to the extent that the claimants/cross-objectors in both the appeals would be entitled to get the additional amount of compensation as mentioned above with interest @ 7.5% per annum from the date of filing of the cross-objections till actual realization on the additional amounts, payable by all the three respondents jointly and severally.

16.12.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No