

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO- 3425-2009 (O&M)
Date of Decision: March 15, 2019

1. National Insurance Company Ltd. Appellants(s)
- Versus**
- Sarti Devi and others Respondent(s)

FAO- 3426-2009 (O&M)

2. National Insurance Company Ltd. Appellants(s)
- Versus**
- Neelam and others Respondent(s)

FAO- 3427-2009 (O&M)

3. National Insurance Company Ltd. Appellants(s)
- Versus**
- Ashok Kumar and others Respondent(s)

FAO- 3428-2009 (O&M)

4. National Insurance Company Ltd. Appellants(s)
- Versus**
- Ramesh and others Respondent(s)

FAO- 3429-2009 (O&M)

5. National Insurance Company Ltd. Appellants(s)
- Versus**
- Ramesh and others Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. R.C. Kapoor, Advocate
for the appellant-National Insurance Company Ltd.
(in all the appeals).

Mr. Ajay Gupta, Advocate
for the claimants (in all the appeals).

Mr. R.N. Singal, Advocate
for the Oriental Insurance Co. Ltd. (in all the appeals)

LISA GILL, J.

This judgment shall dispose of FAO-3425-2009 (National Insurance Co. Ltd. Vs. Sarti Devi and others), FAO-3426-2009 (National Insurance Co. Ltd. Vs. Neelam and others), FAO-3427-2009 (National Insurance Co. Ltd. Vs. Ashok Kumar and others), FAO-3428-2009 (National Insurance Co. Ltd. Vs. Ramesh and others) as well as FAO-3429-2009 (National Insurance Co. Ltd. Vs. Ramesh and others) filed by the National Insurance Company Limited, challenging the award dated 12.03.2009, passed by the learned Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as 'the Tribunal') wherein five claim petitions had been decided together.

Challenge in these appeals is limited to the liability of the insurance company. There is no challenge to the quantum of compensation. There are no appeals or cross-objections filed by the claimants/respondents.

Brief facts necessary for adjudication of the case are that five separate claim petitions were filed at Bhiwani under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') seeking compensation on

account of death of two persons and injuries to the other three in motor vehicle accident, which took place on 08.10.2004. Balbir (since deceased), Khusbu (since deceased), Sarti Devi, Neelam and Ramesh along with Ram Kishan and Ramesh (both deceased) were travelling in the Mahendra Jeep bearing registration MH-15TR-0786, being driven by respondent-Harish Kumar. When their vehicle reached near Ghasola bridge, the offending truck bearing registration No.HR-46-2575, being driven by respondent-Gulab Singh in a rash and negligent manner came from the opposite side and struck against their jeep, due to which, its occupants sustained multiple injuries. Balbir and Khushbu succumbed to the injuries sustained in the accident. Injured were hospitalized. FIR No. 191 dated 08.10.2004 under Sections 283, 304-A IPC was registered against respondent-Gulab Singh.

Five claim petitions i.e. subject matter of the present appeals, were filed under Section 166 of the Motor Vehicles Act before the Motor Accidents Claims Tribunal, Bhiwani and two at Narnaul .

Respondents – driver and owner of the truck in the present proceedings filed a joint written statement and denied the accident in question.

Separate written statements were filed by the National Insurance Co. Ltd. (appellant) and Financer of Mahendra Jeep.

None appeared on behalf of respondents – driver and owner of the Mahendra Jeep, bearing registration no. MH-15-TR-0786 . They were proceeded against *ex-parte* on 10.01.2007 before the learned Tribunal.

Replication was not filed.

Issues were framed by the learned tribunal on the basis of the pleading. Evidence was led by both the parties.

Learned Tribunal while deciding the issue regarding the accident having occurred on 08.10.2004, due to the rash and negligent driving of truck bearing registration no. HR-46-2575, by its driver Gulab Singh, concluded that the accident in question indeed took place due to the rash and negligent driving of the offending truck by its driver respondent-Gulab Singh. This truck was insured with the appellant-National Insurance Company.

Learned counsel for the appellant-insurance company vehemently argues that two claim petitions arising out of the same accident were filed before the learned Motor Accident Claims Tribunal, Narnaul, which were decided vide a common award dated 22.08.2007 (Ex. R-1). Learned Motor Accident Claims Tribunal, Narnaul while deciding the issue regarding the occurrence of the accident on 08.10.2004, concluded that the accident in question was caused due to the composite negligence of drivers of both the offending truck bearing registration No. HR-46-2575 and Mahendra vehicle bearing registration No.MH-15TR-0786, in which the deceased/injured were travelling. It is submitted that in the said award dated 22.08.2007, it was held that the truck in question was stationary, lying parked on the road without any indicator etc. The Mahendra jeep had dashed into the stationary truck. Learned counsel further argues that

learned Motor Accident Claims Tribunal, Narnaul apportioned the extent of negligence of each of the vehicles at 50% each. The said award has not been challenged by the insurer of the Mahendra vehicle, which is very much a party to the present proceedings as well. It is submitted that Learned Motor Accident Claims Tribunal, Bhiwani while referring to Ex. R-1 i.e. award dated 22.08.2007 passed by learned Motor Accident Claims Tribunal, Narnaul has accepted the finding regarding the driver having a valid and effective driving licence but at the same time has not paid any heed to the specific finding of the said Court in respect to the composite negligence of both the vehicles. It is thus prayed that present appeals be allowed and respondent-Oriental Insurance Company Limited i.e. insurer of the Mahendra jeep be also fastened with liability to pay the compensation to the extent of 50%.

I have heard learned counsel for the parties.

Learned counsel for the Oriental Insurance Company is unable to deny passing of award dated 22.08.2007 by learned Motor Accident Claims Tribunal, Narnaul and fixing of the limit/extent of negligence on the part of both the drivers of the offending truck and the Mahendra jeep. There is further no dispute that the Mahendra jeep was insured with the Oriental Insurance Company Limited and its driver had a valid driving licence, as has been held by learned Motor Accident Claims Tribunal, Narnaul. Learned counsel for the Oriental insurance company fairly states that award dated 22.08.2007, passed by the learned Motor Accident Claims

Tribunal, Narnaul has not been challenged by the Oriental Insurance Company Ltd. till date.

It is a matter of record that all the claim petitions i.e. the ones', which are the subject matter of the present appeals and those before the learned Motor Accident Claims Tribunal, Narnaul arise from the same accident, which took place on 08.10.2004. Once dispensation of the learned Motor Accident Claims Tribunal, Narnaul vide award dated 22.08.2007 has been accepted by the Oriental Insurance Company Ltd., there is no ground for a divergent dispensation in the present appeals. Accordingly, finding of the learned Tribunal to the effect that the accident in question was caused solely due to the rash and negligent driving of truck bearing registration No.HR-46-2575, driven by its driver Gulab Singh, is set aside. It is held that the accident in question took place due to the composite negligence of both the offending truck bearing registration No.HR-46-2575 as well as Mahendra jeep bearing registration no. MH-15TR-0786 and the extent of liability is also fixed in the same proportion as in the award dated 22.08.2007, passed by the learned Motor Accident Claims Tribunal, Narnaul i.e. to the extent of 50% each.

Needless to say, decision in these appeals shall not effect the right of the claimants to recover the amount of compensation from any of the joint tort feorsors, who in turn shall be at liberty to recover the amount if any, paid by them from the other tort feasor.

Keeping in view the facts and circumstances as above, all the five appeals are allowed.

As the main appeals have been disposed of, applications for vacation of the interim order and early hearing of the appeals are rendered infructuous.

March 15, 2019.

Sunil

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No