

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

FAO No. 1910 of 2012 (O&M)  
DECIDED ON: MAY 22, 2019

ICICI LOMBARD GENERAL INSURANC CO. LTD.

APPELLANT

VERSUS

MOHINDER KAUR AND ANOTHER

RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr. Subhash Goyal, Advocate  
for the appellant.

Mr. Dinesh Maurya, Advocate for  
Mr. G.S. Sandhu, Advocate  
for respondent No.1.

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**AVNEESH JHINGAN, J (Oral):**

Aggrieved of the award dated 09.01.2012 passed by the Motor Accident Claims Tribunal, Moga (for brevity 'the Tribunal') in MACT Case No. 32 of 12.09.2009, the insurer of truck bearing registration No. PB-29-E-9214 (hereinafter referred to as 'offending vehicle') has filed the present appeal.

The claimant has been arrayed as respondent No.1 and the driver and owner of the offending vehicle have been arrayed as respondents No.2 and 3 respectively in the appeal.

There is no challenge to the factum of the accident, involvement as well as rash and negligent driving of the offending vehicle and the quantum of compensation awarded by the Tribunal.

The only grievance raised in the present appeal is with regard to liability to pay compensation.

The facts in brief are that a motor vehicular accident took place on 23.03.2009. The accident proved fatal for Partap Singh. The accident was result of rash and negligent driving of the offending vehicle. The driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay compensation.

In the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), following issues were framed:-

- “1. Whether Partap Singh died in a motor vehicle accident due to rash and negligent driving of truck/Trolla bearing No. PB-29E-9214 by respondent No.1 Mela Singh? OP claimant;*
- 2. Whether the claimant is entitled to compensation? If so, to what amount, from which of the respondents and the manner of recovery? OP claimants.*
- 3. Whether the claim petition is not maintainable? OPR-2*
- 4. Whether respondent No.1 was not holding valid and effective driving licence at the time of alleged accident and respondent No.2 has violated the terms is insurance policy? OPR-3*
- 5. Relief.”*

The Tribunal awarded a sum of ₹1,10,000/- alongwith interest @9% per annum.

In the present appeal, the findings on issue No.4 are in dispute.

The Tribunal recorded the finding on issue No.4, which is reproduced below:

*“Onus to prove this issue was upon respondent No.3 Insurance Company but respondent No.3 has not led any evidence on this issue. Learned counsel for respondent No.3 insurance company has also not pressed this issue during the course of arguments. So, this issue is decided against respondent No.3 as unpressed.”*

Notice was issued in the present appeal. Driver was proceeded against ex-parte and the owner refused to accept notice.

During the pendency of the appeal an affidavit of Mr. Vishal Jain, Advocate appearing on behalf of respondent-Insurance Company was filed to the effect that issue No.4 was pressed before the Tribunal. Learned counsel for the appellant relies upon the notice dated 21.10.2011, sent to the owner and driver of the offending vehicle for the production of driving licence and route permit.

Keeping in view the facts and circumstances of the case the issue with regard to liability to pay compensation, is remitted back to the Tribunal to decide afresh, after providing opportunity to the owner, driver and insurer of the offending vehicle.

Disposed of.

**(AVNEESH JHINGAN)**  
**JUDGE**

**MAY 22, 2019**  
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|-----------------------------------------|-------------------|
| <b><i>Whether speaking/reasoned</i></b> | <b><i>Yes</i></b> |
| <b><i>Whether reportable</i></b>        | <b><i>No</i></b>  |