

FAO-6408-2011(O&M);
FAO-6409-2011(O&M); and
FAO-7221-2011(O&M)

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

(1) FAO-6408-2011(O&M)

Oriental Insurance Company Ltd.

...Appellant

Versus

Surinder Kaur and others

...Respondents

(2) FAO-6409-2011(O&M)

Oriental Insurance Company Ltd.

...Appellant

Versus

Mandeep Kaur and others

...Respondents

(3) FAO-7221-2011(O&M)

Surinder Kaur and others

...Appellants

Versus

Gurdeep Singh and others

...Respondents

Date of Decision:-4.7.2019

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

Present: Mr.Ashwani Talwar, Advocate with
Mr.Sahej Mahajan, Advocate
for the appellant in FAO-6408-2011 and FAO-6409-2011
and for respondent No.3 in FAO-7221-2011.

Mr.R.K. Shukla, Advocate
for the appellants in FAO-7221-2011 and
for respondents No.1 to 4 in FAO-6408-2011.

H.S. MADAAN, J.

By this order, I shall dispose of three FAOs i.e. FAO-6408-

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2011, FAO-6409-2011 filed on behalf of appellant – Oriental Insurance Company Ltd. and FAO-7221-2011 filed on behalf of appellants – Smt.Surinder Kaur and others, which have arisen out of the same accident.

Briefly stated, facts of the case are that on 25.9.2009 deceased Mohinder Singh and Amrinder Singh were going from Chandigarh to Patiala via Sirhind - Patiala road; that they were travelling in car bearing registration No.PB-11AB-7106, which was being driven by Amrinder Singh, whereas Mohinder Singh was sitting on the front seat; that Sher Singh was following that car in his own car; that when their car reached near bus-stand of village Fagan Majra, then a truck having registration No.JK-02R-9587 (hereinafter referred to as the offending vehicle) being driven in a rash and negligent manner at a very high speed by respondent No.1 – Gurdeep Singh came from Patiala side and while in the process of overtaking another vehicle, struck against that car, resultantly Amrinder Singh and Mohinder Singh suffered multiple injuries; that after the accident Gurdeep Singh – respondent No.1 fled after leaving the offending vehicle at the spot; that both the injured were taken to Rajindra Hospital, Patiala, however they succumbed to the injuries suffered by them in the road side accident. The matter was reported to the police and formal FIR regarding the accident was got registered. The postmortem examination on the dead bodies was performed.

The legal representatives of deceased Mohinder Singh

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namely Smt.Surinder Kaur, aged about 46 years – wife, Nipinder Singh aged about 19 years, Prabhjot Singh, aged about 17 years – sons, the latter being a minor and Mrs. Gurdial Kaur, aged about 70 years - mother had brought a claim petition under Section 166 of the Motor Vehicles Act against respondents i.e. Gurdeep Singh – driver, Gurmit Singh – owner and Oriental Insurance Company Ltd. - insurer of the offending vehicle. They had impleaded Harnek Singh aged about 74 years, father of deceased as proforma respondent. They had contended that deceased was aged about 45 years and was working as Assistant Manager in Nabha Primary Co-op. Agricultural Development Bank Ltd., Nabha; that he was sole earning member of the family. They craved for grant of compensation of Rs.70 lacs along with interest.

The legal representative of deceased Sh.Amrinder Singh namely Smt.Mandeep Kaur, aged about 32 years - wife had also brought a claim petition under Section 166 of the Motor Vehicles Act against respondents i.e. Gurdeep Singh – driver, Gurmit Singh – owner and Oriental Insurance Company Ltd. - insurer of the offending vehicle. She had impleaded Daljit Kaur, mother of deceased as respondent No.4. She had contended that deceased was aged about 36 years and was working as Assistant Manager in Nabha Primary Co-op. Agricultural Development Bank Ltd., Nabha; that he was sole earning member of the family. She craved for grant of compensation of Rs.25 lacs along with interest.

On notice, all the respondents had appeared in both the claim petitions. However contest was offered by respondents No.1 to 3.

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In the joint written statement filed on behalf of respondents No.1 and 2, they raked up preliminary objections challenging the maintainability of the claim petition and contending that claimants had not approached the Tribunal with clean hands. On merits, they denied the averments in the claim petitions contending that in fact the accident was caused due to rash and negligent driving of car bearing registration No.PB-11AB-7106. In the end, such respondents prayed for dismissal of the claim petitions.

In the written statement submitted by respondent No.3 in both the petitions, it took up preliminary objections that driver of the offending vehicle was not having a valid and effective driving licence and it was being plied without a valid route permit; that the claim petitions were bad for non-joinder of necessary parties and were not maintainable. Refuting the remaining allegations in the claim petitions, in the end, such respondent prayed for dismissal of the claim petitions.

Respondent No.4 in both the claim petitions had not filed any written statement.

Issues on merits were framed in both the petitions. Parties led evidence in respect of their claims.

After contest, the claim petitions were allowed by Motor Accidents Claims Tribunal, Patiala and separate awards dated 8.8.2011 were passed and compensation of Rs.38,47,200/- was awarded in favour of claimants and against respondents No.1 to 3 in the claim petition bearing MACT Case No.47T/16.2.10/20.5.10 filed on behalf of legal

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representatives of deceased Mohinder Singh and since the offending vehicle was insured with respondent No.3, it was directed to pay the awarded amount to the claimants in equal shares within three months from the date of award, failing which, the claimants would be entitled to recover that amount with interest @ 9% per annum from the date of claim petition till realization of the compensation amount and compensation of Rs.30,46,400/- was awarded in favour of claimant and respondent No.4 and against respondents No.1 to 3 in the claim petition bearing MACT Case No.79T/4.2.10/17.8.10 filed on behalf of legal representative of deceased Amrinder Singh and since the offending vehicle was insured with respondent No.3, it was directed to pay the awarded amount to the claimant and respondent No.4 in equal shares within three months from the date of award, failing which, the claimants would be entitled to recover that amount with interest @ 9% per annum from the date of claim petition till realization of the compensation amount.

The claimants/petitioners Surinder Kaur and others of MACT Case No.47T/16.2.10/20.5.10 being dissatisfied with the said Award and insurance company being dissatisfied with both the Awards have filed separate appeals before this Court.

Notice of the appeals was issued to the claimants, driver and owner. Initially, appellants No.1 to 3 in FAO-7221-2011 and respondent No.4 in FAO-6408-2011 and FAO-6409-2011 have put in appearance through counsel. But subsequently, there was representation on their behalf.

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

First coming to the FAO-7221-2011 filed on behalf claimants/appellants Smt.Surinder Kaur and others seeking enhancement of the compensation amount awarded by the Tribunal in MACT Case No.47T/16.2.10/20.5.10. A perusal of the award goes to show that the Tribunal has considered that deceased Mohinder Singh was working as an Assistant Manager in the Nabha Primary Co-op. Agricultural Development Bank Ltd., Nabha getting salary of Rs.37,000/- per month as per the averments made by PW3 Surinder Kaur – claimant in her affidavit Ex.PW3/A and salary certificate Ex.P1 of deceased Mohinder Singh showing that he was getting gross salary of Rs.37,554/-. The Tribunal has rejected the contention of the respondents that since on account of death of Mohinder Singh, his wife Smt.Surinder Kaur – claimant has got a job on compassionate grounds in that very bank and she is getting salary of Rs.10,300/- per month and in addition to that she has got service benefits of deceased Mohinder Singh, therefore, the compensation amount be not awarded or reduced. The Tribunal was justified in doing so. The Tribunal has considered gross salary of deceased Mohinder Singh as Rs.37,200/- deducting the medical allowance of Rs.350/- paid to him for the reason that it was admissible only on account of medicines to be purchased by the deceased. Considering the age of deceased to be 45 years, 30% amount has been added towards future prospects. 1/3rd of the amount has been rightly deducted towards personal expenses of the deceased treating

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dependency of the claimants to be Rs.24,700/- per month, annual dependency to be Rs.2,94,400/- and multiplier of 13 has rightly been applied and the compensation of Rs.38,27,200/- arrived at. The amount awarded under the conventional heads is Rs.20,000/- i.e. Rs.10,000/- for loss of consortium and Rs.10,000/- as funeral expenses. However, 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/-. Thus, the total compensation comes out to Rs. 38,27,200 + 70,000 = 38,97,200/-. Otherwise the amount of compensation awarded by the Tribunal is just and adequate and does not require any further enhancement.

The Tribunal has awarded compensation of Rs.38,47,200/-.

In this way, the enhanced amount comes out to Rs.50,000/- (38,97,200 - 38,47,200). The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

With such modification, the FAO-7221-2011 is allowed partly with costs.

Now coming to the FAO-6408-2011 and FAO-6409-2011 filed on behalf of the insurance company. The main thrust of arguments of learned counsel for the insurance company was that it was a case of contributory negligence since there was head on collision between the two

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vehicles and this fact was not taken into consideration by the Tribunal while awarding compensation.

However, after going through the record, I find that this contention lacks merit. The law is well settled that a fact should be first pleaded and then proved and any evidence led beyond the pleadings is not worth the paper on which it is written. A perusal of the written statements filed by the respondents goes to show that no such plea has been taken by them, rather they have denied the happening of the accident itself. The claimants on their part had brought sufficient evidence, both oral as well as documentary to prove that respondent No.1 was author of the accident by rash and negligent driving of the offending vehicle. The oral evidence was in the form of statement of PW Sher Singh, who had deposed in consonance with the case of the claimants. In his cross-examination, his credibility could not be shattered on any material point. It was he, who had set the criminal machinery into motion by reporting the matter to the police and he was author of the FIR. His presence at the spot comes out to be natural and probable and account given by him to be worthy of reliance. Respondent No.1 could not summon courage to step into the witness-box and to depose on oath that he had not caused the accident by driving the offending vehicle in a rash and negligent manner. Similarly none on behalf of respondent No.2 get his statement recorded to state that the offending vehicle in question belonging to it and being driven by respondent No.1 – Gurdeep Singh, had not caused any accident.

The appellant/respondent No.3 insurance company has also

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not adduced any evidence in that regard. From the statement of RW2 Additional Ahlmad in the Court of JMIC, Patiala, who had brought the summoned file 'State Versus Gurdeep Singh' pending in the Court of JMIC, Patiala, it comes out that respondent No.1 is facing trial with regard to the accident in question.

There is not an iota of evidence to suggest that it was a case of contributory negligence. Therefore, such argument of learned counsel for the appellant cannot be accepted.

Learned counsel for the appellant – insurance company has further contended that PW Sher Singh was not present at the spot and he had come forward to depose as a false witness being relative of the deceased Mohinder Singh. He has pointed out to the leave application moved by Sher Singh submitting that Sher Singh had applied for leave on 25.9.2009, then the application should have been moved a day earlier. However, as it comes out from the record it was received in the office of the concerned authority on 29.9.2009, which renders his presence at the spot on 25.9.2009 to be doubtful. Therefore, he could not possibly had seen the accident on 25.9.2009.

This contention had been raised on behalf of the respondents before the Tribunal also. However, the Tribunal after analyzing the evidence adduced by both the parties and hearing the arguments advanced by them did not find any merit in the same and had rejected it. Detailed discussion in that regard is there in the awards and I do not see any reason to disagree with the finding so recorded by the Tribunal.

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The findings recorded by the Tribunal are well reasoned and cannot be said to be arbitrary or erroneous contrary to the evidence available on record. Therefore, there is no ground to set aside the awards.

Finding no merit in FAO-6408-2011 and FAO-6409-2011 filed on behalf of the insurance company, the same stand dismissed accordingly.

4.7.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No