

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

Date of Decision: 09.09.2019

1. FAO No.5583 of 2012(O&M)

Vinod Kumar and others

.....Appellants

Versus

Devishwari and others

.....Respondents

2. FAO No.2369 of 2009(O&M)

Devishwari and others

.....Appellants

Versus

Vinod Kumar and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Deepak Sharma, Advocate

**for the appellants in FAO No.5583 of 2012 and
for respondent No.1 in FAO No.2369 of 2009.**

Ms. Ekta Thakur, Advocate

**for the appellants in FAO No.2369 of 2009 and
for respondents No.1 to 4 in FAO No.5583 of 2012.**

Mr. Pardeep Kumar, Advocate and

Mr. Rajesh K. Sharma, Advocate

for respondent No.3 in FAO No.2369 of 2009.

Ms. Kamalpreet Kaur, Advocate for

Mr. Ashok Kumar Verma, Advocate

for respondent No.4 in FAO No2369 of 2009 and

for respondent No.7 in FAO No.5583 of 2012.

Mr. Vinod Chaudhari, Advocate
for respondent No.6 in FAO No.5583 of 2012.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, FAO No.5583 of 2012 titled Vinod Kumar and others Vs. Devishwari and others and FAO No.2369 of 2009 titled Devishwari and others Vs. Vinod Kumar and others are being disposed of. Both the appeals have arisen from the award dated 10.12.2008 passed by Motor Accident Claims Tribunal, Chandigarh (for short 'the Tribunal'), Common facts are being noticed.

[2]. Brief facts are that Balbir Singh died in a vehicular accident on 06.03.2006 when he was driving scooter bearing No.CH-01-Q-4694 and the same developed sudden mechanical defects and its brake failed. Ultimately, the same became out of control and struck against the tractor trolley No.RJ-05-TR-6641. Balbir Singh ultimately died on 07.03.2006 on account of serious injuries. Claimants namely Devishwari (widow), Jaideep Singh, Yogita and Nidhi (minor children) of the deceased Balbir Singh filed claim petition under Section 163-A of the Motor Vehicles Act.

[3]. The Tribunal took cognizance of the facts. The

deceased was working as a Munshi at brick-kiln and his monthly income was Rs.3300/- per month. All the claimants were dependents upon the income of the deceased. FIR was registered in respect of accident in question. Vinod Kumar was impleaded as respondent No.1 who was owner of the scooter as per record. Respondent No.1-A Jang Bahadur was impleaded as he had purchased the scooter in question from respondent No.1 Vinod Kumar. Respondent No.2 New India Assurance Company Ltd. was impleaded as Assurance Company of the scooter in question. Respondent No.3 Hira Singh was also impleaded as he was driver-cum-owner of the tractor No.RJ-05/TR-6641. Respondent No.1 Vinod Kumar did not appear and he was sought to be served by publication and he was ordered to be proceeded against *ex parte*. Respondent No.1-A contested the case and filed written statement and denied the accident. However, he alleged that registered owner of the scooter in question was respondent No.1 at the time of accident. He admitted that he had purchased the scooter vide RC dated 02.07.1996. Respondent No.2 also contested the petition and alleged that no cause of action was disclosed viz-a-viz liability of the Assurance Company. Respondent No.2 denied the accident having taken place with the scooter and the claim petition was alleged to be not maintainable. Moreover, it was also alleged

that the driver of the offending vehicle was not having valid and effective driving licence at the time of accident. Respondent No.3 also contested the case.

[4]. On the pleadings of the parties, following issues were framed:-

- “1. Whether deceased Balbir Singh has died on account of injuries sustained by him in a road side accident which occurred on 06.03.2006 at about 9:15 PM in the area of village Mullanpur on account of rash and negligent driving of tractor No.RJ-05/TR-6641 by respondent No.3? OPP*
- 2. Whether the claimants are entitled to receive compensation for the death of Balbir Singh, if so, to what extent and from whom? OPP*
- 3. Whether respondent No.3 was not holding a valid and effective driving licence at the time of accident, if so, its effect? OPR-4*
- 4. Relief.”*

[5]. Claimant Devishwari appeared as PW 1 and brought on record copy of FIR Ex.P1, postmortem report of deceased Balbir Singh Ex.P2, insurance policy Ex.P3 and driving licence of the deceased Ex.P4. B.S. Rawat appeared as PW 3 who was eye-witness of the accident. The witness has reiterated the version pleaded by the claimant. Respondents No.1 and 1-A were proceeded against *ex parte* and they did not lead any evidence. Respondents No.2 and 3 also did not lead any evidence and

evidence was closed by order.

[6]. Under issue No.1, the Tribunal held that Balbir Singh died in a road side accident on 06.03.2006 and the claimants were held entitled to compensation under Section 163-A of the Motor Vehicles Act. Issues No.2 and 3 were decided together. Vinod Kumar was held to be registered owner of the scooter as per insurance policy Ex.P3. Respondent No.1 Vinod Kumar was held liable to pay the amount of compensation to the claimants as Assurance Company was not held liable to pay the amount of compensation because the deceased was not a third party within the meaning of the Act and he was not a victim under Section 163-A of the Motor Vehicles Act and did not fall within the meaning of any person under Section 147 of the Motor Vehicles Act. He was held to be a tort-feasor. There was no insurance cover for the driver other than the owner, therefore, Assurance Company was absolved.

[7]. The Tribunal after holding income of the deceased to be Rs.3300/- per month applied 1/3rd deduction towards personal expenses of the deceased, thereby calculating monthly dependency of the claimants to be Rs.2200/- i.e. Rs.26.400/- per annum. Keeping in view the age of the deceased i.e. 38 years, multiplier of 16 was applied and compensation was assessed to be Rs.4,22,400/-. An amount of Rs.2000/- was

added towards last rites of the deceased and an amount of Rs.10,000/- was added towards consortium. In this way, total amount of compensation was assessed to be Rs.4,34,400/-. Liability of respondent No.1 Vinod Kumar was fixed to pay the compensation as per apportionment done by the Tribunal in para No.19 of the award.

[8]. FAO No.5583 of 2012 along with application for additional evidence has been filed by respondent No.1 Vinod Kumar who was proceeded against *ex parte* before the Tribunal. FAO No.2369 of 2009 has been filed by the claimants for enhancement of compensation as well as for seeking direction against the Assurance Company to pay the amount in question.

[9]. Respondent No.1 Vinod Kumar and respondent No.1-A Jang Bahadur were proceeded against *ex parte* during the proceedings before the Tribunal. No evidence was led by respondents No.2 and 3 i.e. Assurance Company and Hira Singh.

[10]. In FAO No.5583 of 2012, High Court vide order dated 01.05.2018 allowed the application under Order 41 Rule 27 CPC and sent the case back to the Tribunal for recording additional evidence after granting opportunity to the claimants and respondent No.1-A Jang Bahadur. Order dated 01.05.2018 reads as under:-

“CM-25835-CII-2012

This is an application under Order 41 Rule 27 of CPC seeking permission to place on record Annexure A-1 and A-2, which are the affidavit of sale of scooter bearing registration No.CH-01-Q-4694. As per Annexure A-1, scooter was sold on 7.2.2016 to Jang Bahadur impleaded as respondent no.1A in the claim petition. Registration of the scooter was also transferred in the name of Jang Bahadur, as per entry in the registration certificate Annexure A-2, on 27.2.2006. The accident took place on 6.3.2018. Jang Bahadur had admitted that he had purchased the scooter, as such, Annexure A-1 and A-2 are relevant documents to be brought on record. On proof of fact that appellant was not owner of offending vehicle on the day of accident, he could not be made liable to pay the compensation.

As such, the instant miscellaneous application is allowed. File of claim petition is ordered to be sent back to Motor Accident Claims Tribunal, Chandigarh for recording additional evidence and then giving opportunity to the claimant as well as respondent no.1-A Jang Bahadur, if he appears before the Tribunal, to produce evidence in rebuttal and then send report regarding ownership of the scooter on the date of accident.

Parties are directed to appear before the Tribunal on 28.5.2018.

FAO-5583-2012

For awaiting report of Tribunal, list on

19.9.2018.”

[11]. The grievance of Vinod Kumar was that he has already sold the scooter on 07.02.2006 to Jang Bahadur (respondent No.1-A) and the registration of the scooter was also transferred in the name of Jang Bahadur as per entry dated 27.02.2006. The accident took place on 06.03.2006. The factum of purchase by Jang Bahadur was admitted. Both respondents No.1 and 1-A were proceeded against *ex parte*. Incriminating material could not be brought on record. After the remand of the case for recording additional evidence, the Tribunal recorded the evidence and submitted a report to the High Court in FAO No.5583 of 2012.

[12]. As per report, the Tribunal found that Jang Bahadur was the registered owner of the scooter on the date of accident. Contents of report dated 17.09.2018 are reproduced hereasunder:-

“It is most respectfully submitted that in this case, this Tribunal was directed to record additional evidence with regard to ownership of scooter bearing No.CH-01Q-4694 and then giving opportunity to the claimant as well as respondent No.1-A Jang Bahadur, if he appears before the Tribunal, to produce evidence in rebuttal and then send report regarding ownership of the scooter on the date of accident. In compliance of the order passed by Hon'ble High Court, additional

evidence has been recorded with regard to registered owner of scooter No.CH-01Q-4694 and after recording evidence, this Tribunal has come to the conclusion that Jang Bahadur is registered owner of the scooter in question, on the date of accident. Original file along with final order are being sent for onward transmission to Hon'ble High Court where the matter is fixed for 19.09.2018.”

[13]. In view of report submitted by the Tribunal, the scope of FAO No.5583 of 2012 is only to replace the liability of Vinod Kumar with that of Jang Bahadur. Jang Bahadur has not preferred any appeal, nor Assurance Company had any occasion to dispute the findings recorded by the Tribunal exonerating the Assurance Company. The claimants in FAO No.2369 of 2009 have questioned the exoneration of the Assurance Company from its liability to pay the award on the ground that in the insurance policy/cover note, there was a specific recital of compulsory PA to the owner-cum-driver. Insurance Policy had covered the risk of owner as well as driver of the vehicle. In the policy itself, persons or class of persons entitled to drive were specifically mentioned from where it was apparent that any person including insured was entitled to drive the vehicle provided that the person driving the vehicle was having an effective driving licence at the time of accident and

was not disqualified from driving or obtaining such a licence. It was also provided that person holding an effective learner's licence was also entitled to drive the vehicle provided such a person satisfies the requirement of Rule 3 of Central Motor Vehicles Rules, 1989.

[14]. It can be noticed that in the column of insurance policy itself, class of persons entitled to drive the vehicle was categorized and in nutshell, it was given that any person having valid and effective driving licence at the time of accident was competent to drive the vehicle as per the policy. Insurance policy further highlighted payment of Rs.50/- as compulsory PA to owner-cum-driver. The driving licence of the deceased Balbir Singh was produced as Ex.P4 which was not countered by the respondents. The limits of liability were also highlighted in the policy itself.

[15]. Perusal of the aforesaid column would show that the same was sufficient to cover the petition under Section 166 of the Motor Vehicles Act as well as under Section 163-A of the Motor Vehicles Act.

[16]. The Tribunal has exonerated the Assurance Company on the premise that the deceased was not covered under the definition of victim/third party. The deceased was not a third party within the meaning of the Act, but a tort-feasor and tort-

feasor because of his own negligence cannot be equated with the victim of the accident and there was no insurance cover for the driver other than the owner. The victim would include third party like pedestrian passers-by and such other persons not mentioned in the Motor Vehicles Act and who specifically could not be covered under the insurance policy. The victim would not include a person who himself was negligent.

[17]. Respondents No.1 and 1-A were proceeded against *ex parte* before the Tribunal and respondents No.2 and 3 did not adduce any evidence. It could not be brought on record whether the deceased was borrower, representative or agent of the owner. Relationship between the owner and deceased was not brought on record.

[18]. In **Ningamma and another Vs. United India Insurance Co. Ltd., 2009(3) RCR (Civil) 435**, the provision in terms of Section 163-A of the Motor Vehicles Act was extracted and it was held that the deceased in that case had stepped into the shoes of owner of the vehicle and if the driver was held to be in the category of owner, then the owner himself could not be recipient of compensation as the liability to pay the same was on himself. **Ningamma and another's case (supra)** was a case of act policy. Para No.21 of the said judgment reads as under:-

“21. Section 147 of the MVA provides that the policy of

insurance could also cover cases against any liability which may be incurred by the insurer in respect of death or fatal injury to any person including owner of the vehicle or his authorised representative carried in the vehicle or arising out of the use of vehicle in the public place.”

[19]. In **New India Assurance Company Ltd. Vs. Umesh Kumari and others, (2010-1) 157 PLR 675 (P&H)**, it was held that if the insurance policy was a comprehensive policy and the insured had paid premium for personal accident (PA) for owner-cum-driver, then the insurance company was held to be liable. The reference was made to para No.21 of the **Ningamma and another's case (supra)**, in which it was provided that the policy of insurance could also cover cases against any liability which may be incurred by the insurer in respect of death or fatal injury to any person including owner of the vehicle or his authorized representative carried in the vehicle or arising out of the use of vehicle in the public place. Since premium towards compulsory PA to owner-cum driver was paid, therefore, insurance company was held liable to pay the compensation.

[20]. In **Oriental Insurance Company Limited Vs. Monika and others, 2012(1) RCR (Civil) 875 (P&H)**, it was held that in case of death of driver who was not owner of the vehicle and it was not proved whether he was borrower, representative or

agent of the owner, then he was to be treated as third party and insurance company was liable to pay the compensation. The ratio of **National Insurance Company Limited Vs. Sinitha and others, 2012(1) RCR (Civil) 205** was relied in **Oriental Insurance Company Limited Vs. Sinitha and others' case (supra)**. Para No.19 of **National Insurance Company Limited Vs. Sinitha and others' case (supra)** is to the following effect:

"19. To substantiate his second contention, it would be essential for the petitioner to establish, that Shijo having occupied the shoes of the owner, cannot be treated as the third party. Only factual details brought on record through reliable evidence, can discharge the aforesaid onus. During the course of hearing, despite our queries, learned counsel for the petitioner could not point out the relationship between Shijo and the owner of the motorcycle involved in the accident. Shijo is not shown to be the employee of the owner. He was not even shown as the representative of the owner. In order to establish the relationship between the Shijo and the owner, the petitioner- Insurance Company could have easily produced either the owner himself as a witness, or even the claimants themselves as witnesses. These, or other witnesses, who could have brought out the relationship between the owner and Shijo, were not produced by the petitioner herein, before the Tribunal. The petitioner has, therefore, not discharged the onus which rested on its shoulders. Since the relationship between the Shijo and the owner has not been established, nor the capacity in which he was riding the vehicle has been brought out, it is not possible for us to conclude, that Shijo

while riding the motorcycle on the fateful day, was an agent, employee or representative of the owner. It was open to the petitioner to defeat the claim for compensation raised by the respondents by establishing, that the rider Shijo represented the owner, and as such, was not a third party, in terms of the judgment rendered by this Court in Oriental Insurance Company Limited case (supra). The petitioner failed to discharge the said onus. In view of the above, it is not possible for us to accede to the second contention advanced at the hands of the learned counsel for the petitioner."

[21]. It was culled out from the facts and circumstances of **National Insurance Company Limited Vs. Sinitha and others case (supra)** that relationship between the driver and owner could not be brought on record. Driver involved in the said case was not proved to be related to owner, neither he was shown to be employee of the owner, nor representative of the owner. Insurance Company could have produced the owner as witness and other material to show the connectivity between the deceased driver and the owner. Insurance Company did not discharge the onus. Relationship between the driver and owner was not established and it could not be pointed out that in which capacity the driver was riding the vehicle. It was open to the Insurance Company to defeat the claim for compensation by establishing that the rider/driver had represented the owner and therefore, he was not a third party. Since Insurance Company

had failed to discharge the onus, therefore, Insurance Company was held liable.

[22]. In **Bajaj Allianz General Insurance Company Limited Vs. Jasmer Singh and another, (2015-1) PLR 782 (P&H)**, it was held that terms of the policy of insurance are stipulated on the basis of instructions issued by Tariff Advisory Committee which is a statutory authority under the Act. Insurance Company could not show that the Tariff Advisory committee had laid down any condition to limit the liability only for the owner himself to be covered under the personal accident cover. When main object of the policy is to cover for the owner-driver and the meaning of expression 'driver' in the policy has been explained, limiting the liability to the registered owner in personal accident claim in rest of the term of policy cannot be given any legal sanctity. The interpretation of the aforesaid term to cover the personal accident claims cannot be made on the basis of each and every term because the basic intent is to cover not only the third party liability under the Act but also personal accident and even the own damage claim for which the premium was paid.

[23]. Insurance Policy Ex.P3 has suggested that compulsory PA to owner-cum-driver was paid. There was a column of limits of liability in the policy itself and persons or class of persons entitled to drive the vehicle were also defined. Insurance policy

was suggestive of the fact that compulsory PA was for Rs.50/- and said payment was for owner-cum-driver i.e. Rs.1,00,000/-.

[24]. The aforesaid endorsement would show that the insured had paid premium of Rs.50/- for personal accident cover (owner-cum-driver). No premium was paid for optional personal accident cover (unnamed driver and pillion rider). The personal accident cover was only available to driver-cum-owner. General Regulation No.36 would show that the accident cover was available only to the registered owner in person where he or she was holding effective driving licence. The term 'driver-cum-owner' relates to only registered owner who is capable of driving the vehicle and was driving the vehicle at the time of accident. Family members of the registered owner shall not be covered under this term. The interpretation based on General Regulation No.36 would give different meaning in the context of compulsory PA to owner-cum-driver on the strength of ratio as laid down in **National Insurance Company Limited Vs. Hari Mohan and another, 2017(3) RCR (Civil) 388, Sushila w/o late Sh. Muna Lal Ji and others Vs. Pankaj Mahajan and another, 2012(57) RCR (Civil) 252** and **FAO No.2839 of 2011** titled **Surender son of Ajit Vs. Mahabir Singh and another** decided on 17.08.2017.

[25]. The interpretation on the basis of General Regulation No.36 would give meaning to compulsory PA to the extent that

the personal accident cover is available only to the registered owner in person who holds an effective driving licence and the words 'owner-driver' mentioned in General Regulation No.36 must be understood as owner who is capable of driving and was in fact, driving the vehicle and had valid and effective driving licence at the time of accident. A person who is not a registered owner of the vehicle is not covered for personal accident cover.

The interpretation based on the ratios of **National Insurance Company Limited Vs. Sinitha and others case (supra)** and **Oriental Insurance Company Limited Vs. Monika and others case (supra)** would not be attracted in the present case as the import of General Regulation No.36 was not the subject matter of discussion therein. The requirement of General Regulation No.36 would take out the case from the ratio of aforesaid cases.

[26]. In **FAO No.1688 of 2011** titled **Surinder Kaur Vs. Rahim and others** decided on 30.05.2018 and **FAO No.2387 of 2015** titled **ICICI Lombard General Insurance Company Limited Vs. Sunita and others** decided on 30.05.2018, this Court has interpreted General Regulation No.36 by observing that personal accident cover is available only to the registered owner in person where he or she holds the effective driving licence. Reference to owner-driver as mentioned in General

Regulation No.36 must be understood as owner who is capable of driving the vehicle and was in fact driving the same at the time of accident. It cannot be understood as owner or driver. The aforesaid requirement would show that owner-driver should be duly licensed to drive the vehicle, therefore, a person who is not a registered owner of the vehicle is not covered for personal accident cover. This Court after adverting to the different precedents came to the aforesaid conclusion.

[27]. In the instant case, Assurance Company has not led any evidence. Respondents No.1 and 1-A were proceeded against *ex parte*. It was only by virtue of additional evidence in FAO No.5583 of 2012, the factum of respondent No.1-A Jang Bahadur being transferee of the vehicle came to fore and liability of Vinod Kumar has to be replaced by Jang Bahadur. So far as liability of the Assurance Company is concerned, the Assurance Company has not led any evidence in the context of relationship between the driver and owner of the vehicle. No issue was framed to that effect by the Tribunal. The claimants have brought on record the driving licence of the deceased Ex.P4 which has not been countered by the Assurance Company by leading any cogent evidence. In the absence of any appeal filed by the Assurance Company, findings to that effect cannot be disturbed except to dismiss the appeal of the

claimants on that score.

[28]. Resultantly, FAO No.5583 of 2012 is disposed of on the basis of report of the Tribunal in respect of additional evidence and liability of Vinod Kumar is replaced with that of Jang Bahadur.

[29]. As per requirement of Section 163-A of the Motor Vehicles Act, the compensation has to be granted as per structured formula given in the Schedule for compensation. Though the calculation of compensation and the amount worked out in the Schedule suffer from some defects, but still some guess work can be made.

[30]. The monthly income of the deceased has been held to be Rs.3300/- i.e. Rs.39,600/- per annum. If multiplier of 16 is applied as per age and Schedule, the compensation would come out to be Rs.6,33,600/-. If deduction to the extent of 1/3rd is taken towards personal expenses of the deceased, the amount of Rs.2,11,200/- has to be deducted and after deducting the same, the remaining amount would come out to be Rs.4,22,400/- to which an amount of Rs.9500/- has to be added towards conventional heads as per Second Schedule. In this way, total compensation would come out to be Rs.4,31,900/-. The Tribunal has already awarded an amount of Rs.4,34,400/-. Even on that premise, this Court does not feel like to interfere in

the award passed by the Tribunal as the calculation based on structured formula as per Second Schedule suffers from defects as noted at the end of the Schedule itself in the Act.

[31]. In view of above, the award passed by the Tribunal on the point of issue of grant of compensation to the claimants does not suffer with any illegality. FAO No.2369 of 2009 is accordingly dismissed.

09.09.2019
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking **Yes/No**

Whether reportable **Yes/No**