

210 **IN THE HIGH COURT OF PUNJAB AND HARYANA**
(4 cases) **AT CHANDIGARH**

(1) FAO No.2278 of 2014
Date of Decision: 16.09.2019

Om Parkash and another
.....Appellants

Versus

Sukhwinder Kaur and others
.....Respondents

(2) FAO No.2279 of 2014

Om Parkash and another
.....Appellants

Versus

Surinder Singh and another
.....Respondents

(3) FAO No.2683 of 2014 (O&M)

Sukhvinder Kaur and others
.....Appellants

Versus

Parminder Singh and others
.....Respondents

(4) FAO No.2734 of 2014 (O&M)

Surinder Singh
.....Appellant

Versus

Parminder Singh and others
.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Tapan Kumar Yadav, Advocate
for the appellants in FAO-2278 and 2279-2014.

Mr. Vinod K.Kanwal, Advocate for
Mr. Ashit Malik, Advocate
for the appellants in FAO-2734 and 2683-2014.

Mr. Paul S.Saini, Advocate with
Mr. Vipul Sharma, Advocate
for the respondent/insurance company in all cases.

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NIRMALJIT KAUR, J. (ORAL)

All the aforementioned appeals shall stand decided by this common order.

Appeal bearing FAO Nos.2278 and 2279 of 2014 are filed by the appellants-owner and driver. Appeal FAO Nos.2683 and 2734 of 2014 are filed by the claimants for enhancement of compensation as granted vide award dated 07.02.2014 passed by the Motor Accident Claims Tribunal, Kaithal (for short, the Tribunal).

Two orders dated 05.05.2014 and 27.08.2018 passed by the coordinate Bench have been brought to the notice of this Court. Vide order dated 05.05.2014, the stay application filed by the appellants was rejected on the ground that the claimant should not suffer and the amount should be deposited at the first instance. Thereafter, as per order dated 27.08.2018 information was also sought as to whether the said amount had been deposited or not.

Admittedly, the execution petition is pending and the amount has not been deposited for the last almost five years.

However, learned counsel for the respondents/claimants has pointed out that they are not able to succeed in the execution till now as no detail of the property of the appellants-owner and driver available is with them.

In the situation, learned counsel for the parties also agree that the matters can be heard on merits today itself.

Learned counsel for the appellants representing the owner and driver submitted that the liability is of the insurance company and not of the appellants. The Tribunal had committed illegality while accepting the plea

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raised by the insurance company that Parminder Singh, driver of the offending truck bearing registration No.HR56P-0025 was not having a valid and effective driving licence at the time of the alleged occurrence. The onus to prove that the driving licence was fake, was on the insurance company. Infact, no evidence was led by the insurance company to prove the said fact except that the documents Ex.RF and Ex.PG were produced simply on the statement made by learned counsel for the insurance company. Even the author of the documents or the person who had knowledge of the said documents was examined. The said document i.e. Ex.RF was the communication by the Assistant Transport Officer (Administrative), Farukabad to the Officer Incharge of the Police Station, Kotwali, Farukabad and Ex.PG was the FIR.

Further, a perusal of the document Ex.RE, which is the driving licence shows that the said licence was issued on 12.02.2008, which was renewed on 30.06.2012 till 29.06.2015. However, the document Ex.RF pertains to the period of the scam which are reproduced as under:

	“20.12.2005 to 11.04.2005,
	24.04.2008 to 22.05.2008
Different	20.08.2008 to 21.09.2008
(विविध)	22.10.2008 to 04.11.2008
	24.06.2011 to 04.07.2011
	10.05.2012 to 14.05.2012”

There is no mention of the period from 12.02.2008 or 30.06.2012 to 28.06.2015. Hence, the said document i.e. Ex.RF could not have been relied upon to declare the driving licence of the appellant/driver as fake. The date when the licence of the appellant was issued and period

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when it was renewed is not covered by the period as mentioned in Ex.RF. Hence, the very finding recorded by the Tribunal in para 24 of the award is incorrect and against the record. Learned counsel for the insurance company is not able to dispute the above factual position.

In view of the above, appeal bearing FAO Nos.2278 and 2279 of 2014 are filed by the appellants-owner and driver are allowed and the award passed by the Tribunal is set aside, to the extent, vide which, they have been made liable to pay the compensation.

Consequently, the insurance company shall deposit the amount of the compensation awarded by the Tribunal within two months from the receipt of certified copy of this order alongwith 6% interest per annum from the date of filing of claim petition till its realization.

In case the said amount is not paid within two months, the same shall be paid thereafter alongwith 12% interest from the expiry of the period of two months.

Appeal bearing FAO Nos.2683 and 2734 of 2014.

In the appeal bearing FAO No.2683 of 2014, while praying for enhancement of compensation, learned counsel for the appellants submitted that at that point of time, the minimum wages was ₹4967/- per month, whereas, only ₹4400/- per month has been taken into consideration.

Learned counsel for the respondent/insurance company as well as learned counsel for the driver and owner submitted that infact the future prospects should have been only 25% as deceased Joga Singh, being 48 years of age at the time of death. In case the income is enhanced to ₹4967/- per month, on the one hand and the future prospects is reduced to 30% to

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out. Accordingly, no interference is called for in the award passed by the Tribunal with respect to the quantum of compensation. The same is dismissed.

In the appeal bearing FAO No.2734 of 2014, while praying for enhancement of compensation, learned counsel for the appellant submitted that only an amount of ₹85,828/- has been awarded by the Tribunal, out of which, ₹75,828/- is towards medical expenses.

Admittedly, there is no disability. Therefore, no interference is called for in the award passed by the Tribunal. The same too is dismissed accordingly.

The appeal bearing FAO Nos.2683 and 2734 of 2014 are dismissed accordingly.

16.09.2019
sandeep

(NIRMALJIT KAUR)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No