

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

(1)	FAO-2728-2014 (O&M)	
Chhabil Dass and another		...Appellants
Versus		
Smt. Reshma and others		...Respondents
(2)	FAO-2729-2014 (O&M)	
Chhabil Dass and another		...Appellants
Versus		
Bhup Singh and others		...Respondents
(3)	FAO-2730-2014 (O&M)	
Chhabil Dass and another		...Appellants
Versus		
Smt. Leelo and others		...Respondents
(4)	FAO-5116-2014 (O&M)	
Baljeet Singh		...Appellant
Versus		
Bhup Singh and others		...Respondents
(5)	FAO-5117-2014 (O&M)	
Baljeet Singh		...Appellant
Versus		

(6) ...Respondents
FAO-5118-2014 (O&M)

Smt. Leelo and others

...Respondents

Ram Chander and others

...Respondents

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

Mr. T.C. Dhanwal, Advocate for the appellant(s) in FAO-5116, 5117 and 5118-2014 and for respondent No.3 in FAO-2728 and 2729-2014 and for respondent No.4 in FAO-2730-2014 and FAO-1281-2015.

Ms. Anita Kumari, Advocate for
Mr. Rose Gupta, Advocate for the appellants
in FAO-1281-2015 and for respondent No.1 in
FAO-5118 and 2730-2014.

Mr. Punit Jain, Advocate for IFFCO TOKIO
Gen. Ins. Co. Ltd. in all cases.

Mr. Abhinav Singla, Advocate for
Mr. Sanjeev Goyal, Advocate for
ICICI Lombard Gen. Ins. Co. Ltd., in all the cases.

H.S. MADAAN, J. (Oral)

Briefly stated facts of the case are that on 08.05.2019, Jaivir son of Bhup Singh along with Sandeep son of Ram Chand and Naveen @ Jai Parkash son of Bir Singh, besides Sh. Bhoop Singh son of Sh. Phool Singh, all residents of Village Sarsana, Tehsil & District Hisar were going to Village Parleeka to attend the marriage of Rajender son of Dharam Pal, resident of their village in a Canter No.HR-20-A-8397. The Canter was being driven by Baljeet Singh son of Bhalu Ram, resident of same village. When the said Canter had reached near Village Ramgarh and time was about 2.00 pm, then, bus No.RJ-31-PA-0821 being driven by respondent No.1 Ram Chand in a rash and negligent manner came from opposite direction and it struck against the Canter in question, as a result of which, Bhoop Singh travelling in the Canter received serious multiple grievous injuries and Naveen @ Jai Parkash as well as Sandeep had died at the spot. Initially the FIR with regard to the accident was registered against respondent No.1 bus driver only but during the course of investigation, the police found that drivers of both the vehicles were responsible for the accident, therefore, both of them were challaned. Mother of deceased Naveen @ Jai Parkash, namely Smt. Reshma widow of Sh. Bir Singh had brought a claim petition No.96-MACT of 2010 against respondent i.e. Ram Chander-driver, Chhabi Dass-owner, Iffco Tokio General Insurance Company Ltd., Ahmedabad-insurer of bus No.RJ-31-PA-0821 as well as Baljeet Singh-driver, Mahender Singh-owner and ICICI Lombard General Insurance Company Ltd., Hisar-

insurer of Canter No.HR-20-A-8397. Bhup Singh-injured had also filed claim petition under Section 166 of the Motor Vehicles Act against those respondents. That petition was allotted No.95-MACT of 2010, whereas, legal representatives of second deceased Sandeep, namely Smt. Leelo-mother and father Sh. Harpal had also filed a claim petition bearing No.97-MACT of 2010 against those very respondents. Since all the claim petitions arose out of the same accident, those were consolidated and tried together by Motor Accidents Claims Tribunal, Hisar (for short 'the tribunal'), observing that the evidence would be recorded in claim petition titled as Reshma Vs. Ram Chander and others and it would be treated as main case.

On being put to notice, respondents No.1, 2, 4 and 6 had put in appearance whereas name of respondent No.3-insurance company was deleted, whereas, respondent No.5 was proceeded against ex parte. Respondents had filed written statements, contesting the claim petitions. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence in support of their respective claims and vide award dated 13.09.2013, all the three claim petitions were accepted partly with costs. Resultantly, Smt. Reshma-petitioner/claimant in petition No.96-MACT of 2010 was awarded a sum of Rs.3,50,000/- as compensation on account of death of her son, namely Naveen @ Jai Parkash, whereas, Bhoop Singh-petitioner/claimant in claim petition No.95-MACT of 2010 who had suffered injuries in the mishap was awarded compensation of Rs.58,632/-, Smt. Leelo and Harpal-

petitioners/claimants in petition No.97-MACT of 2010 were awarded a sum of Rs.3,50,000/- as compensation on account of death of their son Sandeep. All the claimants were awarded interest @ 7.5% p.a., on the amount of compensation awarded to them, from the date of filing of claim petitions till realization. Costs of the petitions were also awarded to them. The tribunal had issued directions with regard to apportionment and payment of the compensation amount in the award itself. With regard to liability of respondents, it was directed that the compensation along with interest and costs shall be paid to the extent of $\frac{1}{2}$ share by respondent Nos.1 & 2 jointly and severally whereas the remaining half share of amount of compensation along with interest and costs shall be paid by respondent No.4. However, petitions qua respondent Nos.5 & 6 were dismissed.

Feeling dissatisfied with the award, Chhabil Dass and Ram Chander owner as well as driver of bus in question have brought three appeals i.e. FAO-2728, 2729 and 2730-2014. Similarly, Baljeet Singh driver of the Canter has also filed three appeals i.e. FAO-5116, 5117 and 5118 of 2014, whereas, Smt. Leelo and her husband Harpal claimants were also aggrieved by the amount of compensation awarded to them and they have approached this Court, by way of filing an appeal, seeking enhancement of compensation. That appeal has been allotted number FAO-1281-2015.

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

The tribunal while deciding issue No.1 has come to the conclusion that the accident in question had taken place due to rash and negligent driving of bus by respondent No.1 Ram Chander as well as that of respondent No.4 Baljeet Singh, driver of canter in question. In that way, it was a case of contributory negligence by respondent Nos. 1 & 4 in causing the accident. While coming to this conclusion, the tribunal has taken into consideration the ocular version of the accident provided by the petitioner Bhup Singh appearing as PW-3 who had tendered his affidavit Ex.PW3/A, stating therein that the accident had taken place due to rash and negligent driving of bus by respondent No.1 Ram Chander and that of Canter by respondent No.4 Baljeet Singh. He deposed in consonance with the case of claimants. He stated that the police had filed final report under Section 173 Cr.P.C. against respondent Nos.1 & 4 being drivers of the offending vehicles. The tribunal also took notice of certified copy of challan/report under Section 173 Cr.P.C., placed on file by the petitioners Ex.PW2/C, which had been filed against respondent No.1 Ram Chander and respondent No.4 Baljeet Singh for committing offence punishable under Sections 279, 337, 304 of IPC and 183 of the Motor Vehicles Act. It has further been noticed that both of them are facing trial before the criminal Court and they had not submitted any representation against the report of any competent higher authority. It has further been noticed that none of them had appeared in the witness box to rebut the statement made by PW-3 or report ExPW2/C. Though the respondents had examined Ram Parsad as RW-3 who had tendered his

affidavit Ex.RW3/A, stating therein that he is running a welding shop under the name and style of Jangir Engineering Works in Village Ramgarh, Tehsil Nohar, District Hanumangarh. On 08.05.2009 at about 2.00 pm, when he was present at his shop, he saw that bus No.RJ-31-PA-0821 was going from Nohar To Bhadra. In the meanwhile, Canter No.HR-20-A-8397 came from opposite side being driven in a rash and negligent manner and hit the bus by going on the wrong side of road. The bus driver had brought the bus on kacha portion of the road but driver of the Canter was so rash that he could not control the speed of the Canter and hit the bus. After the accident, the Canter went about 100 feet away from the place of accident. He had stated that Ram Chander was driving the bus at a slow speed in a most careful manner on the left side of the road and his statement was recorded by the police, copy of which being Ex.RW3/B.

RW-4 Shanker Lal another witness examined by the respondent also deposed on those lines. Both of them tried to give a clean chit to the bus driver but in view of the deposition of Bhup Singh PW-3, who had suffered injuries in question and had no reason to depose wrongly, who had attributed rashness and negligence to drivers of both the vehicles and the fact that drivers of both the vehicles have been challaned by the police for causing the accident and they facing trial in the Court, the tribunal had rightly not concluded that only the Canter driver was responsible for the accident, since rashness and negligence on the part of bus driver also comes out to be there. Furthermore, depositions

of such witnesses in the absence of respondent Nos.1 & 4 themselves stepping into the witness box and supporting their version goes to show that the testimony of PW-3 Bhup Singh should be accepted. Therefore, no reason is there to interfere with such findings given by the tribunal.

Though, learned counsel for the appellants has argued that Jaivir son of Bhup Singh who had lodged the report regarding the accident was not examined by the claimants, as such, adverse inference should be drawn against the claimants. Further pointing out to cross examination of Bhup Singh, learned counsel for the appellants Chhabil Dass and Ram Chander has tried to develop the argument that reliance should not be placed upon his testimony. However, I find that argument so advanced are without any merit. Firstly, the examination of complainant was not necessary. Bhup Singh having suffered injuries in the accident and having filed a separate claim petition, was a stamped witness and his presence at the spot at the relevant time cannot be doubted. In his cross examination, he had stated that he is an illiterate person. The replies given by him in the cross examination come out to be natural and it is nowhere indicated that he was giving a false version. As regards deposition of RW-3 Ram Parsad and RW-4 Shanker Lal who tried to give clean chit to bus driver, those statements were rightly not taken as such by the tribunal for the reason which have been discussed above. The site plan Ex.RX produced by such appellants does not help them much, keeping in view the totality of circumstances and sufficient evidence being there on the record to show that the bus driver was also to be

blamed for happening of the accident. The bus was not insured at the relevant time. Therefore, Ram Chander being driver and Chhabil Dass registered owner of the bus were rightly saddled with 50% of liability to pay compensation to the claimants and remaining 50% liability to be shared by Baljeet Singh driver of the Canter.

Now coming to the appeals filed by Baljeet Singh, the tribunal in para No.21 of the award has dealt with the genuineness of the driving license produced by Baljeet Singh Canter driver. For ready reference, the relevant portion is reproduced as under:-

“Admittedly, at the time of accident in question offending canter bearing No.HR-20A-2397 was insured with respondent No.6 but the respondent No.6 has examined Yogender Kumar Manager as RW-1 who has tendered in evidence driving license of Baljeet (respondent No.4) Ex.R-1 and has stated that the driving license was verified through PRO-Tech Insurance Associates, Agra and as per their record, the driving license Ex.R-1 was not issued from RTA Agra and license of Baljeet Singh is fake one. Report of investigator is Ex.R3 and report of RTA authority Agra is Ex.R4.”

No evidence has been led by the respondents No.4 & 5 to prove that statement of PW-1 is incorrect or that reports of Investigator Ex.R-3 and R-4 is false or fabricated.

RW-2 Hari Om Morya Clerk of RTA Officer Agra brought the summoned record (original record of driving license) maintained by RTA Agra for the year 2006. RW-2 has stated that as per record of register the driving license No.4609/A/06 was issued to Kumari Ankita Sehtiyia resident of Agra and for motorcycle and LMV (private). This license was issued on 06.05.2006 and valid upto 06.05.2006 to 05.05.2026. The copy of register is Ex.R5. He has seen the copy of DL

Ex.R-1. This license was not issued to Baljeet Singh by RTA Agra. Ex.R-1 is fake one. He has seen the driving license verification report of RTA Agra Ex.R4. He identified the signature of Sh. Gyan Mohan Saxena, PTO Agra and initial sign of Sh. Yogender, same was issued on 23.11.2011 on the application of M/s PRO TECH Insurance Associates Agra. As per record Ex.R1, driving license of Baljeet Singh is fake one, which was not issued from RTA Agra, as per record brought by him.

Respondent No.4 has not appeared in the witness box to depose that his driving license Ex.R1 is not fake one.

In these circumstances and from the aforesaid statement made by RW-1 and RW-2 and from the reports Ex.R3 and Ex.R4 and copy of register Ex.R5, it is proved on record that driving license of respondent No.4 Baljeet Singh, copy of which is Ex.R1 is fake.”

The reasoning given by the tribunal that the driving license produced by Baljeet Singh was a fake one and its subsequent renewal by District Transport Authority, Mansa cannot cloth it with genuineness, is convincing and appropriate. Though, learned counsel for the appellant Baljeet Singh in the appeals filed by him has tried to put up a plea that the driving license of the appellant bears No.4609/A9 of 2006, whereas, copy of driving license got verified by the insurance company was having No.4609-A/2006, therefore, it cannot be said that the appellant was not having a legal and valid driving license at the time of accident or that it amounts to breach of terms & conditions of the insurance policy, absolving respondent No.6-insurance company of its liability to pay compensation, whereas, this contention is vehemently contested by

learned counsel for insurance company, contending that this plea has been now invented in order to avoid liability to pay compensation. No such plea had been taken up by appellant Baljeet Singh before the tribunal. No evidence in that regard was adduced by him. The witnesses examined by the insurance company were not given any such suggestion and no clarification was sought from them in that regard. Therefore, this plea should be rejected.

After hearing learned counsel for the parties, I find that the verdict given by the tribunal that Baljeet Singh was not holding a legal and valid driving license at the time of accident since the original license was a fake one and subsequent renewals did not make it a legal document. Though, an argument has been advanced that as and when a license is renewed, report is sought from the issuing office and if the license was fake, then report from the issuing authority in that regard should have been there but I am not convinced by this arguments. This may be the practise in vogue, however, in this particular case, whether District Transport Authority Mansa had sought report from RTA Agra with regard to genuineness of license is not forthcoming, therefore, the appellant cannot take advantage of this fact and start claiming that since no adverse report had been sent by office of RTA Agra with regard to license issued to him being fake, it should be taken that the driving license was genuine one. There is a specific statements of RW-2 Hari Om Morya, Clerk of RTA Office Agra that as per record driving license No.4609/A of 2006 was issued to Kumari Ankita Sehtiyia, resident of

Agra for motorcycle and LMV (private). He was shown copy of driving license Ex.R1 and he stated that it was not issued to Baljeet Singh by RTA Agra and it is fake one. Therefore, Baljeet Singh was rightly made liable to pay 50% of the compensation amount, taking it to be a case of contributory negligence and no fault can be found with such inference drawn by the tribunal.

Now coming to the appeal filed by claimants Leelo and Harpal, who had lost their son Sandeep, aged about 14 years in the accident. The tribunal in its wisdom had awarded a sum of Rs.3 lacs as compensation and Rs.50,000/- towards loss of company and pain and suffering, total amount of Rs.3.5 lacs. Learned counsel for the appellants has contended that the compensation so awarded is on the lower side. He has pressed into service judgment **Krishan Gopal and Anr. Vs. Lala and others** 2013 (4) RCR (Civil) 276 by the Apex Court, wherein while dealing with death of a child aged about 10 years, notional income of the child was taken as Rs.30,000/- and applying multiplier of 15, the compensation was calculated as Rs.4,50,000/- and Rs.50,000/- was awarded under conventional heads i.e. loss of love and affection, funeral expenses, last rites, making it total of Rs.5 lacs. I find that this authority is applicable to the facts of the present case and compensation of Rs.3.5 lacs awarded needs to be enhanced to Rs.5 lacs. Therefore, the appeals filed by Chhabil Dass and Ram Chander i.e. FAO-2728, 2729 and 2730-2014, the appeals filed by Baljeet Singh i.e. FAO-5116, 5117 and 5118 of 2014 are dismissed, whereas, appeal filed by Smt. Leelo and her husband

Harpal bearing No. FAO-1281-2015 is allowed partly and an additional compensation of Rs.1,50,000/- (Rs.5,00,000 – 3,50,000/-) is awarded to the claimants, payable by respondent Nos. 1 & 2 to the extent of 50% and respondent No.4 to the extent of remaining 50% along with interest @ 7.5 p.a. from the date of filing of appeal till actual realization besides costs of the appeal.

13.09.2019

sumit.k

(H.S. MADAAN)

JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No