

FAO No.340 of 2014 (O&M)

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

FAO No.340 of 2014 (O&M)

Date of decision: 29.08.2019

Naresh Gandhi

.....Appellant

versus

Smt. Sarojni Rawat and others

.....Respondents

FAO No.341 of 2014 (O&M)

Naresh Gandhi

.....Appellant

versus

Smt. Shakuntla and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Rajiv Dhawan, Advocate,
for the appellant(s).

Mr. Rohit Rana, Advocate,
for Mr. Kunal Dawar, Advocate,
for respondents No.1 to 4
(in FAO No.340 of 2014).

Ms. Vandana Malhotra, Advocate,
for respondent No.5 (in FAO NO.340 of 2014) and
for respondent No.3 (in FAO No.341 of 2014).

RAMENDRA JAIN, J. (ORAL)

By this common judgment, above-titled two appeals filed by

owner of the offending truck bearing registration No.HR-38-P-6759 against

award dated 23.08.2013 passed by Motor Accident Claims Tribunal,

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Faridabad (in short the 'Tribunal'), are being disposed of, whereby holding driving licence of his driver Jagram as fake, recovery rights to the Insurance Company have been given to recover the awarded amount of from him, while accepting claim petitions of the claimants under Section 166 of the Motor Vehicles Act.

Briefly, on 03.04.2011 deceased Amit Panchal and Balvinder accompanied by Sanjeev, Arun, Dharmender Bhardwaj, while travelling in car bearing registration No.UGC 3593, when reached 1 km ahead of toll plaza-II, Mathura Road towards Hodal side, Palwal, in the area of Police Station Sadar Palwal, offending truck bearing registration No.HR-38-P-6759 driven by Jagram (respondent No.3 in FAO No.440 of 2014 and respondent No.4 in FAO No.441 of 2014) in a rash and negligent manner, going ahead of them, applied sudden brakes without any indication or signal. As a result thereof, aforesaid car being driven by Amit Panchal struck against aforesaid truck from behind. All the occupants received multiple grievous and serious injuries on their person. Amit Panchal and Balvinder succumbed to the same.

Being aggrieved on account of their death, legal heirs of deceased Amit Panchal and Balvinder filed their respective claim petitions No.103 and 104 in the year 2011 before the Tribunal at Faridabad. After due contest from the appellant-Insurance Company, both the petitions were accepted vide impugned award dated 23.08.2013, granting compensation to the respondents-claimant as narrated above.

Learned counsel for the appellant *inter alia* contends that

Tribunal has wrongly given recovery rights to the Insurance Company,

ignoring the statement of appellant as RW3 and deposition of Baney Singh,

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Sub Inspector (retd.) as PW4 categorically testifying that during investigation, on verification, driving licence Ex.R1 of driver of the offending truck, namely, Jagram from Licensing Authority, Mathura, was found genuine. Learned Tribunal has also erred in not appreciating the deposition of appellant that before engaging Jagram as his driver, he had taken all precautions in accordance with traffic rules, including his driving test and also saw his driving license, which on physical appearance was looking to be genuine. In support of his submissions, learned counsel for the appellant placed reliance on the judgment in ***Pepsu Road Transport Corporation v. National Insurance Company***, 2013(4) R.C.R.(Civil) 273 (S.C.).

Refuting above submissions, learned counsel for respondent-Insurance Company, submits that RW1 Yash Pal, Licensing Clerk from Licensing Authority and RW2 Om Parkash ARTO, Etawa U.P., earlier posted as ARTO office Mathura, categorically testified that driving license ExP4 was not issued in the name of Jagram, rather was issued to one Santosh Kumar Sharma son of Deen Dayal on 11.02.1998. Since, driving license of Jagram driver of the offending truck was fake, thus, recovery rights have rightly been given to the Insurance Company.

Having given thoughtful consideration to the rival submissions, this Court finds both the appeals merit acceptance for the reasons to follow.

For ready reference relevant portion of statement of appellant as RW3 by way of his affidavit Ex.RW3/A is reproduced as under: -

“That the deponent employed respondent No.1 Jagram S/o Suraj Pal as a driver on his truck after taking the driving test of Jagram on the truck in the presence of his another truck driver namely Raghubir Singh S/o Atma

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Ram who is employed as driver with the deponent since last several years and after the said driving test the deponent as well as Raghubir Singh were fully satisfied with the driving test of Jagram. Further Jagram also showed his driving license issued from Licensing Authority-M.V Department-Mathura and also produced a photocopy of his Driving License No.S-1991/MTR/2008 issued from Licensing Authority-M.V Department-Mathura, which on the face of it seems to be valid and genuine.”

He was cross-examined at length, but nothing favourable could be elicited by the Insurance Company nor any contrary evidence was produced by it on record to rebut his statement.

That apart, Baney Singh, SI (retd.) as PW4 also testified that during investigation, he obtained verification report ExR1 of the driving licence of Jagram from Licensing Authority, Mathura, whereby same was declared valid.

In view of above, statements of RW1 and RW2 are of no help to respondent-Insurance Company considering the proposition of law laid down in the case of ***Pepsu Road Transport Corporation (supra)***, wherein it has been held that in case, owner, while employing a driver satisfies that the driver has a valid driving license apart from his competency to drive a vehicle, in that eventuality, Insurance Company is liable to pay compensation.

As discussed above, there is no rebuttal to the statement of appellant Naresh Gandhi as RW3. Therefore, same has to be accepted in toto.

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Tribunal qua giving recovery rights to the Insurance Company against the appellant is set aside.

(Ramendra Jain)
Judge

August 29, 2019
R.S.

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No