

FAO-412-2014 and
FAO-6078-2015

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

FAO-412-2014 (O&M)
Date of decision: 27.02.2019

Soniya and others

...Appellants

Versus

Shahid and others

...Respondents

FAO-6078-2015 (O&M)
Date of decision: 27.02.2019

Phool Chand

...Appellant

Versus

Shahid and others

...Respondents

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

Present: Mr. Ashish Gupta, Advocate
for the appellants in FAO-412-2014.

Mr. Arjun Attri, Advocate for the appellant
in FAO-6078-2015.

Mr. Punit Jain, Advocate for respondent No.3
in both appeals.

H.S. MADAAN, J. (Oral)

This order shall decide FAO No.412 of 2014 and 6078 of
2015 as both the appeals arise out of the same accident.

Briefly stated facts of the case are that Rohit son of Babu
Ram, Tara wife of Mehboob, Subhash Chand son of Ashi Ram and Phool

Chand son of Sukh Ram suffered injuries in a motor vehicular accident which took place on 08.08.2011 at about 4 p.m., in the area of Police Station Punhana, statedly on account of rash and negligent driving of L.P. Truck bearing registration No.HR-46-D-2298 by respondent No.1-Shahid. Subhash Chand had succumbed to the injuries suffered by him in the accident, whereas, the other injured fortunately survived. Legal representatives of Subhash Chand, namely, his widow-Smt. Soniya and others had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 against the respondents i.e. Shahid-driver, Asruddin-owner and Shri Ram General Insurance Company Ltd, Gurgaon-insurer of L.P truck in question.

Phool Chand, injured had also brought a claim petition against those very respondents. Claim petition preferred by Smt. Soniya and others bearing MACT No.291 of 2011 was allowed by Motor Accidents Claims Tribunal, Nuh, vide award dated 06.07.2013 and compensation of Rs.6,39,400/- was awarded to the claimants payable by all the three respondents jointly and severally along with interest @ 6% p.a., along with costs of the claim petition, whereas, claim petition preferred by Phool Chand, injured bearing MACT No.13 of 2014 was decided by Motor Accidents Claims Tribunal, Mewat, vide award dated 20.03.2015 and compensation of Rs.1,20,000/- was granted to such claimant payable by respondent No.1 Shahid and respondent No.2-Asruddin, observing that at the first instance, compensation shall be paid by respondent No.3-Shri Ram General Insurance Company, Gurgaon,

which may effect recovery of the same from the owner. This was so directed, in view of finding on issue No.2, whereas, no such recovery rights have been granted to the insurance company in claim petition preferred by Smt. Soniya and others.

In the claim petition preferred by Phool Chand, injured, while deciding issue No.4 to the effect whether respondent No.2 has violated the terms and conditions of insurance policy, if so, to what effect, the tribunal had observed in para No.15 of the award that the truck in question was being plied without a valid permit thereby violating the terms and conditions of the insurance policy, as such, recovery rights had been granted to the insurance company. However, in case of claim petition preferred by Smt. Soniya and others, though, a similar issue had been struck but that issue along with issue No.3 was decided against respondent No.3-Insurance Company for the reason that those were not pressed. In two claim petitions arise out of the same accident, a very anomalous situation has arisen, since in one award the tribunal has given a finding that the offending truck was being plied without a valid permit, violating the terms and conditions of the insurance policy, thereby giving recovery rights to the insurance company, whereas, no such verdict was given in case of claim petition filed by Smt. Soniya and others.

Under the circumstances, a consistent finding needs to be there as regards the two awards. Therefore, the claim petitions are disposed of inasmuch as the impugned awards are set aside and both the cases are remanded to learned District Judge-cum-Motor Accidents

FAO-412-2014 and
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Claims Tribunal, Nuh to give fresh findings on issues especially issue

No.4 after hearing learned counsel for the parties and decide both the

claim petitions vide a consolidated award. The parties through counsel

are directed to appear before learned District Judge-cum-Motor Accidents

Claims Tribunal, Nuh on 29.03.2019. The Tribunal shall also give notice

to the respondents who are unrepresented before this Court and thereafter,

fix a date for hearing arguments and then decide the two petitions vide

expeditiously preferably within a period of three months from the date of

receipt of certified copy of order there.

It is stated that the amount of compensation has already been paid by the insurance company to the claimants. Learned counsel for insurance company states that the insurance company would not seek refund of the compensation amount already paid, till the fresh award(s) is/are passed by Motor Accidents Claims Tribunal. Let it be so.

27.02.2019

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(H.S. MADAAN)
JUDGE

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