

FAO-1735-2016(O&M) &
FAO-5671-2016(O&M)

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

(1) FAO-1735-2016(O&M)

Pooja Bhaatu and another

...Appellants

Versus

Randhir Singh and another

...Respondents

(2) FAO-5671-2016(O&M)

Randhir Singh

...Appellant

Versus

Vikram and others

...Respondents

Date of Decision:-26.9.2019

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

Present: Mr.Sandeep Kotla, Advocate
for the appellants in FAO-1735-2016 and
for respondents No.1 and 2 in FAO-5671-2016.

Ms.Kusum Raj, Advocate for
Mr.S.S. Sahu, Advocate
for the appellant in FAO-5671-2016 and
for respondent No.1 in FAO-1735-2016.

Mr.D.P. Gupta, Advocate
for respondent No.2 in FAO-1735 of 2016 and
for respondent No.3 in FAO-5671-2016.

H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-1735-

2016 filed on behalf of appellants – Pooja Bhaatu and another and FAO-5671-2016 filed on behalf of appellant Randhir Singh, which have arisen out of the same accident.

Briefly stated, facts of the case are that on account of suffering injuries in a motor vehicular accident, which took place on 12.11.2013 in the area between Dera Sacha Sauda Canteen, G.T. Road, Fatehabad and Dariyapur Canal, statedly on account of rash and negligent driving of truck bearing registration No.HR-39B-2727 (hereinafter referred to as the offending vehicle) by respondent No.1 – Vikram, petitioner/claimant Randhir had brought a claim petition under Section 166 of the Motor Vehicles Act against respondents i.e. Vikram – driver, Pooja Bhaatu – owner and United India Insurance Company Ltd. - insurer of the offending vehicle, claiming compensation to the tune of Rs.10 lacs.

On notice, all the three respondents had appeared and contested the claim petition. Issues on merits were framed. Parties were afforded adequate opportunities to lead evidence.

On conclusion of the trial, the Motor Accidents Claims Tribunal, Fatehabad (hereinafter referred to as the Tribunal) while allowing the petition partly vide award dated 2.2.2016, awarded compensation of Rs.3,56,851/- along with interest @ 7.5% per annum from the date of filing of the petition to the claimant payable by respondents No.1 and 2 jointly and severally. It was observed that insurance company shall satisfy the award at the first instance but shall have a right to recover the amount from respondent No.1 – insured. The recovery right was granted to the insurance company for the reason that

respondent No.1 was not holding a valid and effective driving licence at the time of accident.

The claimant being dissatisfied with the amount of compensation awarded and respondents No.1 and 2(driver and owner) being dissatisfied with the said award regarding recovery rights have filed separate appeals before this Court.

Notices of the appeals were issued to the respondents, who put in appearance through counsel.

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

Firstly coming to FAO-5671-2016 filed on behalf of the appellant/claimant seeking enhancement of compensation.

The Tribunal on analysis of the evidence produced before it both oral as well as documentary has returned a finding that respondent No.1 – Vikram was author of the accident by his rash and negligent driving of the offending truck and the petitioner/claimant had suffered injuries in the said accident. The finding is proper and appropriate and does not call for any interference. For the said reason, respondent No.1 - Vikram being driver, respondent No.2 – Pooja Bhaatu – owner and United India Insurance Company Ltd. - insurer of the offending vehicle were held liable to pay compensation to the claimant.

Learned Tribunal while assessing the compensation has considered the aspect that claimant had suffered multiple fractures and remained hospitalized for 34 days and he has suffered permanent disability of 4%. The claimant getting his own statement recorded as PW1

had deposed in that regard. PW3 Dr.B.L. Bagri, Medical Officer, Sarvodaya Hospital, Hisar had stated that on 12.11.2013, the claimant was admitted in their hospital and was treated by Neuro Surgeon etc., however, he had left the hospital on 13.11.2013 against medical advise. He had proved various supporting documents.

PW4 Dr.Sanjay Sheoran, Malik Hospital, Hisar had stated that the claimant was admitted in his hospital on 23.11.2013 and he was operated on 27.11.2013 and 2.12.2013. He was discharged on 14.12.2013. He has also proved various bills.

PW5 Dr.Neeraj Satija, Satija Health Care, Hisar had also deposed regarding admission of the claimant in his hospital on 13.11.2013 and treatment given to him in the form of operation for fracture of shaft femur right side with fracture ulna right side and fracture bilateral pubic rami etc.

PW6 Dr.Saurabh Arora, Ortho Surgeon, CHC Dabwali, District Sirsa, who was member of the Board of doctors, which had assessed the permanent disability of the claimant on 27.9.2015 to the extent of 4% vide disability certificate Ex.77 stated that the patient was unable to flex right knee beyond 90 degree.

The Tribunal has awarded a sum of Rs.2,61,851/- for expenditure on medicines/treatment. While granting such compensation towards medical treatment, the Tribunal has not taken into view the fact that many a times, the record of various amounts spent on purchase of medicines in the form of bills, receipts, cash memos etc. is not kept or at times it gets misplaced or lost and no amount has been awarded towards

future medical expenses. Thus, the compensation under that head is enhanced to **Rs.3,50,000/-**.

A sum of Rs.8,000/- awarded by the Tribunal towards special diet is meagre. The same is enhanced to **Rs.25,000/-**.

Similarly, the transportation charges of Rs.6,000/- awarded by the Tribunal are on very lower side. The same are enhanced to **Rs.25,000/-**.

The Tribunal has declined to grant any amount towards charges of attendant for the reason that claimant has not specifically made any mention in that regard. However, the approach of the Tribunal in doing so has been improper and wrong. With such type of magnitude of injuries suffered by the claimant, he would have required assistance of an attendant during the period of his hospitalization, period of his recovery and going for follow up treatment. A sum of **Rs.25,000/-** is awarded to the claimant on that account.

With regard to permanent disability of 4%, the amount of compensation awarded as Rs.1,000/- is very low. The Apex Court in judgment **Master Mallikarjun Versus Divisional Manager, The National Insurance Company Ltd. and another, 2014(14) SCC 396** has provided the yardstick for award of compensation to a child, who suffered permanent disability in a motor vehicular accident providing that for permanent disability upto 10%, Rs.1 lakh is to be awarded besides some more compensation under different heads. However, since in the present case the disability is only 4%, nevertheless I find that compensation of Rs.1,000/- awarded is on the lower side and it needs to be enhanced.

Therefore, a compensation of **Rs.35,000/-** is awarded on account of permanent disability.

The amount of Rs.35,000/- awarded by the Tribunal towards loss of income is inadequate. It is enhanced to **Rs.50,000/-**.

The Tribunal has awarded a sum of **Rs.45,000/-** towards pain and suffering, which is just and adequate and does not call for any interference.

No amount has been awarded to the claimant on account of loss of amenities and loss of expectation of life. The claimant on account of injuries suffered by him would not be able to walk, run or sit as he was prior to the accident. A sum of Rs.25,000/- each (total **Rs.50,000/-**) is awarded to him under that heads.

Thus, the total compensation comes out to Rs.6,05,000/-

The Tribunal has awarded compensation of Rs.3,56,851/- along with interest @ 7.5% per annum from the date of filing of the petition till realization. The same is enhanced to Rs.6,05,000/-.

In this way, the enhanced amount comes out to Rs.2,48,149/- (6,05,000 - 3,56,851). The claimant would be entitled to get interest @ 7.5% per annum on the enhanced amount of Rs. 2,48,149/- from the date of filing of the appeal till actual realization.

It is not in dispute that the truck in question was insured with respondent No.3 insurance company at the relevant time. However, the insurance company had taken up a plea that respondent No.1 was not having a valid and effective driving licence to drive a truck at the relevant time, in the process the Tribunal observing that since terms and conditions

of the insurance policy were violated, as such insurance is entitled to recover the amount paid by it to the claimant under the award from the insured i.e. respondent No.1.

The reasoning given for arriving at such conclusion is in the form of discussion under issue No.3. Learned Tribunal in para No.41 of the Award has observed that Ex.R1, which is copy of driving licence of respondent No.1 goes to show that it is valid for LMV, MMV and HMC only, whereas the offending vehicle in this case was 'heavy goods vehicle', therefore, respondent No.1 was not holding a valid and effective driving licence at the time of accident. The Tribunal has referred to two judgments while arriving at this conclusion.

However, learned counsel for the insured has come up with an argument that such conclusion drawn by the Tribunal is erroneous. Respondent No.1 was having driving licence authorizing him to drive 'heavy motor vehicle'. He has referred to classification of vehicle as given under Section 2(16)(17) of Motor Vehicles Act, which for ready reference is reproduced as under:-

16. "heavy goods vehicle" means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms.

17. 'Heavy passenger motor vehicle' means any public service vehicle or private service vehicle or educational institution bus or omnibus the gross vehicle weight of any of which, or a motor

car the unladen weight of which, exceeds 12,000 kilograms.

According to learned counsel for the appellant – insured the definition of 'heavy goods vehicle' makes it clear that any vehicle exceeding 12,000 kilogram weight was fall under the category of heavy goods vehicle and the Apex Court in judgment **Kulwant Singh and others Versus Oriental Insurance Company Limited in SLP(Civil) No.1499-1500 of 2014** has observed that there is no breach of any condition of insurance policy, if absence of any endorsement to drive commercial vehicle and the insurance company could not disown its liability.

Learned counsel for the insured has pressed into service judgment i.e. **Pushpa Devi Versus Ranbir Singh, 2017(3) RCR(Civil) 321** by a Co-ordinate Bench of this Court wherein dealing an accident case where the driver of offending vehicle was holding a driving licence authorizing him to drive HTV, in absence of any endorsement to drive heavy transport vehicle i.e. bus on the driving licence of driver of the offending vehicle observed that the insurance company cannot be exonerated from its liability because the mechanism of driving heavy goods vehicle and heavy passenger motor vehicle is the same.

He has further referred to judgment **National Insurance Company Ltd. Versus Presiding Officer and another by another** by Co-ordinate Bench of this Court passed in CWP No.6739 of 2012 decided on 20.12.2012, wherein the contention raised on behalf of the insurance company that the driver was not having a valid driving licence and he was not authorized to drive a tanker, which is a hazardous vehicle of

transportation and requires specialized raining and a particular licence, was rejected observing that there is no separate category defined for tankers entitled to ferry hazardous goods and only the definition given in the Motor Vehicle Act is that of 'heavy goods vehicle', stating that this means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms and in that way a tanker is covered under the definition of heavy goods vehicle; when the driver was having a valid driving licence and merely because the report of DTO refers to the issuance a driving licence for carrying hazardous goods, whose validity is limited for one year would make no difference to the question of legitimacy of the driving licence of the petitioner unless there was a specific report or material indicating that such a licence was fake.

He has further placed reliance upon judgment **Mukund Dewangan Versus Oriental Insurance Company Ltd., 2017(4) RCR(Civil) 111** wherein it was observed that when a driver is holding a licence to drive 'light motor vehicle, he is competent to drive a 'transport vehicle' of that category without specific endorsement to drive the transport vehicle.

Though learned counsel for the insurance company has contested those assertions defending the award granting recovery rights to the insurance company but I find force in the contentions raised by learned counsel for the appellant – insured and conclude that the finding given by the Tribunal with regard to the driving licence of respondent No.1 is not sustainable and is hereby set aside.

Resultantly, all the respondents are liable to make the payment of compensation jointly and severally and the insurance company would not be able to recover any amount payable/paid by it to the claimant from the respondent No.1 under the award.

Thus, FAO-5671-2016 filed on behalf of appellant/claimant is allowed partly and FAO-1735-2016 filed on behalf of appellants, who are driver and owner is allowed.

26.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No