

223(l)

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

FAO No.2668 of 2016 (O&M)
Date of Decision : 02.05.2019

M/s Ludhiana Bottling, 185, GT Road, Ludhiana

Appellant

Versus

Sandeep Singh Sunny and others

Respondents

FAO No.7976 of 2017 (O&M)

Sandeep Singh Sunny

Appellant

Versus

Hardeep Singh @ Deepa and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rujhan Dhawan, Advocate for
Mr. Divyastuti Prasoon, Advocate
for the appellant [in FAO No.2668 of 2016].

Mr. Rahul Vats, Advocate for
Mr. Prashant Vashisht, Advocate
for the appellant [in FAO No.7976 of 2017]
for respondent No.1 [in FAO No.2668 of 2016].

Mr. Gopal Mittal, Advocate
for respondent No.2 [in FAO No.2668 of 2016].

Mr. Rajneesh Malhotra, Advocate for
Mr. R.K. Bashamboo, Advocate
for respondent No.3 [in FAO No.2668 of 2016].

AVNEESH JHINGAN, J (Oral)

The award dated 28.09.2015 passed by the Motor Accident Claims Tribunal, Ludhiana [for brevity 'the Tribunal'] has been assailed in two cross appeals. One appeal has been filed by the owner of Tempo Tata 907 bearing registration No. PB-10AI-9821 [hereinafter referred to as 'offending vehicle'] and another by the claimant seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act']. Since both the appeals arise from same award and accident, these are being disposed of by a common order.

The factum of the accident is not disputed by the parties. A motor vehicular accident took place on 05.07.2012. The accident was the result of rash and negligent driving of the offending vehicle. In the said accident, Sandeep Singh Sunny sustained injuries. FIR No. 136, dated 05.07.2012 was registered at Police Station Phillaur, District Jalandhar. The insurer of the offending vehicle was held liable to pay the compensation but was granted recovery rights on the ground that driver was holding Driving Licence authorizing him to drive Heavy Transport Vehicle whereas he was driving Medium Transport Vehicle.

FAO No.2668 of 2016: (Owner's Appeal)

Learned counsel for the owner contends that the driver of the offending vehicle was holding Driving Licence authorizing him to drive the offending vehicle as he was having a Driving

Licence for Heavy Transport Vehicle.

Learned counsel for the insurer of the offending vehicle defends the award and argues that Driving Licence was valid for driving Heavy Transport Vehicle whereas offending vehicle was Medium Transport Vehicle.

The contention raised by learned counsel for the owner deserves acceptance. There is no challenge to the fact that there was valid Driving Licence authorizing him to drive the Heavy Transport Vehicle and the offending vehicle was Medium Transport Vehicle.

At this stage, it would be relevant to quote Section 7 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act"), which reads as under:-

"7. Restrictions on the granting of learner's licences for certain vehicles – (1) No person shall be granted a learner's licence to drive a transport vehicle unless he has held a driving licence to drive a light motor vehicle for at least one year.

Provided that nothing contained in this subsection shall apply to an e-cart or e-rickshaw.

(2) No person under the age of eighteen years shall be granted a learner's licence to drive a motor cycle without gear except with the consent in writing of the person having the care of the person desiring the learner's licence."

Section 7 of the Act imposes a restriction that a learner's licence to drive a transport vehicle shall not be issued

unless the driver has held a driving licence to drive a light motor vehicle for at least one year. The said section itself ensures that the driver had held a licence to drive Light Motor Vehicle before getting a learner's licence for transport vehicle.

This Court in the case of **National Insurance Company Limited vs. Parkashi and others, 2017(1) PLR 361**, taking into consideration the earlier decision of this Court in **Harsewak Singh vs. Lajo Devi, 2013(2) PLR 809** and considering the decision of Delhi High Court in **The United India Insurance Co. Ltd. vs. Deepak Goel and others, MAC. APP. No. 750/2006, decided on 24.01.2014** and decision of Jammu & Kashmir High Court in **National Insurance Co. Ltd. vs. Gh. Rasool Baba, 2011 (2) J.K.L. 357**, held that possession of a driving licence valid to drive HTV must be seen as sufficient qualification for a person to drive a LMV also. Moreover, the mechanism to drive both the categories of vehicles was the same.

In view of above discussion, appeal of owner is allowed to the extent that the owner, driver and insurer of the offending vehicle shall be jointly and severally liable to pay the compensation.

FAO No.7976 of 2017: (Claimant's Appeal)

Learned counsel for the claimant argues that claimant suffered grievous injuries and remained hospitalized for 18 days. He produced medical bills of ₹2,73,000/- which were duly

reimbursed alongwith ₹77,000/- on account of mental pain, suffering, loss of amenities, special diet etc. The grievance raised is that no amount has been awarded for attendant charges.

Though the claimant had not suffered permanent or temporary disability but his injuries were grievous, he was hospitalized for 18 days. He would have required an attendant during the hospitalization and may be thereafter also. Keeping in view the facts and circumstances of the case in entirety, ₹20,000/- is awarded for attendant charges.

It is clarified that while awarding ₹20,000/- for attendant charges, interest to be awarded under Section 171 of the Act has been taken into consideration.

The appeal of claimant is allowed.

[AVNEESH JHINGAN]
JUDGE

May 02, 2019
pankaj baweja

1. Whether speaking/ reasoned

:

Yes
2. Whether reportable

:

No