

FAO-8365-2014(O&M) &  
FAO-3252-2015(O&M)

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

(1) FAO-8365-2014(O&M)

Sarabjit Kaur and others

...Appellants

Versus

Mohan Singh and others

...Respondents

(2) FAO-3252-2015(O&M)

Amanpreet Singh, partner of M/s Chatha Service Station

...Appellant

Versus

Sarabjit Kaur and others

...Respondents

Date of Decision:-7.2.2019

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

Present: Mr.G.S. Punia, Sr.Advocate with  
Mr.P.S.Punia, Advocate for the appellant in  
FAO-3252-2015 and for respondent No.2 in  
FAO-8365-2014.

Mr.Vivek Suri, Advocate  
for the appellant in FAO-8365-2014.

Mr.B.S. Taunque, Advocate  
for respondent No.6 in FAO-3252-2015.

Mr.Puneet Sharma, Advocate  
for respondent No.3 in FAO-8365-2014.

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**H.S. MADAAN, J.**

By this order, I shall dispose of two FAOs i.e. FAO-8365-2014 filed on behalf of appellants Smt.Sarabjit Kaur and others and FAO-3252-2015 filed on behalf of appellant – Amanpreet Singh, partner of M/s Chatha Service Station, which have arisen out of the same accident.

Petitioners – Mrs.Sarabjit Kaur – wife, Gurtej Singh, Inderjit Singh – minor sons and Gurnam Kaur – mother of Sh.Gursewak Singh, an unfortunate victim of a road side accident had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against respondents i.e. Mohan Singh – driver, Amanpreet Singh son of Manjit Singh, partner of M/s Chatha Service Station and The New India Assurance Company Ltd., Mohali - insurer of tanker No.PB-65-H-1524 (hereinafter referred to as the offending tanker), claiming compensation to the tune of Rs.20 lacs on account of death of Gursewak Singh in the accident.

According to the claimants, on 22.6.2012 at about 7:00 a.m. in the area of bus stand Chunni Kalan, respondent No.1 – Mohan Singh by his rash and negligent driving of the offending tanker had struck against Gursewak Singh riding a bicycle, with the result Gursewak Singh suffered multiple injuries; though Gursewak Singh was shifted to Government Hospital, Sector 32, Chandigarh but he succumbed to the injuries; that an FIR No.64 dated 22.6.2012 for offences under Sections 304-A, 337, 338, 427, 279 IPC was got registered by one Randhir Singh with Police Station Bassi Pathana with regard to the accident. According to the claimants, the

deceased was aged about 32 years, working as a labourer earning Rs.12,000/- per month and the claimants were dependent upon his earnings to make their both ends meet.

The claim petition was contested by respondents No.1 and 3, whereas respondent No.2 was proceeded against ex-parte. Respondent No.1 – Mohan Singh denied that he had caused any accident by rash and negligent driving of the offending tanker resulting in causing death of the deceased. Respondent No.3 – the insurance company while resisting the claim petition raised legal objection that since respondent No.1 was not having a valid driving licence at the time of accident, therefore, it is absolved of any liability to pay compensation on behalf of the insured. It took up various legal pleas also.

Finally, respondents No.1 and 3 came up with a prayer for dismissal of the claim petition.

On the pleadings of the parties, following issues were framed:-

1. Whether Gursewak Singh son of Bant Singh died in a vehicular accident, which took place on 22.6.2012 due to rash and negligent driving of respondent No.1 on tanker No.PB-65-H-1524? OPP.
2. Whether the claimants are entitled to compensation and what extent and from whom? OPP.
3. Whether the respondent No.1 was not having valid and effective driving licence as alleged? OPR3.
4. Relief.

Both the parties led evidence in support of their respective

claims.

In support of his case, the claimants examined Sarabjit Kaur as CW1 and Randhir Singh as CW2. The claimants also tendered in evidence copy of FIR as Ex.P1, photocopy of post-mortem report of the deceased as Ex.P2, copy of charge sheet as Ex.C3 and Insurance policy as Ex.C4.

On the other hand, respondent No.1 Mohan Singh appeared as RW1.

After hearing arguments, the Tribunal decided issues No.1 and 2 in favour of the claimants against respondents, whereas issue No.3 was decided against the respondents. Resultantly, the claim petition was accepted by the Tribunal and compensation of Rs.9,07,000/- with interest and cost was granted in favour of the claimants payable by all the three respondents jointly and severally. However, the Insurance Company was found entitled to recover the amount paid by it to the claimants as compensation under the Award from respondents No.1 and 2.

The claimants and respondent No.2 – Amanpreet Singh, partner of M/s Chatha Service Station were dissatisfied with the said award dated 11.7.2014 and they have filed separate appeals before this Court.

Notice of the appeals was issued to the respondents, who put in appearance through counsel.

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

As far as *FAO-8365-2014* is concerned, the Tribunal in light

of the facts and circumstances of the case and appreciation of the evidence adduced before it had taken the monthly income of deceased to be Rs.5,000/- per month, in that way his annual income come to Rs.60,000/- considering that as per the claimants, he was working as a manual labourer.

The Tribunal has added 30% of the income towards future prospects. The age of the deceased at the time of the accident was 32 years. In view of the authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, wherein it was observed that in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income is warranted where the deceased was below the aged of 40 years. Doing so, the total annual income of the deceased comes out to  $24,000 + 60,000 = \text{Rs.}84,000/-$ .

However, despite the fact that the number of claimants/dependents happened to be four, the Tribunal has deducted  $1/3^{\text{rd}}$  of the amount towards personal and living expenses. However, in view of the law enunciated by the Apex Court in landmark authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77**, where a deceased was married and number of dependent members was 4 to 6, deduction should be  $1/4^{\text{th}}$ . Therefore, the Tribunal fell in error in deducting  $1/3^{\text{rd}}$  of the income towards personal and living expenses of the deceased instead of  $1/4^{\text{th}}$ . In such way, the contribution towards the family is worked out to Rs.63,000/- per annum (84,000 - 21,000).

The Tribunal has used multiplier of 16, which considering the

age of deceased to be 32 years is appropriate in terms of law laid down in *Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr.(supra)*. Thus the total compensation is thus comes out to Rs.10,08,000/-(63,000 x 16).

In view of the observations made in *National Insurance Company Limited Versus Pranay Sethi and Ors (supra)*, the claimants are entitled to get Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses making it total of Rs.10,78,000/- (10,08,000 + 15,000 + 40,000 + 15,000).

In that way, the enhanced amount comes to Rs.1,71,000/- (10,78,000 - 9,07,000). The appellant/claimant shall be entitled to recover the enhanced amount with interest at the rate i.e. 7.5% per annum from the date of filing appeal till actual payment. The liability of the respondents and apportionment amongst the claimants besides other terms and conditions shall be the same as given in the original award by the Tribunal.

With such modification, ***FAO-8365-2014*** is allowed with costs.

As far as *FAO-3252-2015* filed on behalf of partner of M/s Chatha Service Station village Lakhnoura, District Mohali owner of the offending tanker is concerned, an application bearing No.CM-9764-CII-2015 has been filed on behalf of the appellant under Order 41 Rule 27 read with Section 151 CPC for producing training certificate of Mohan Singh – driver and memo of recovery dated 22.6.2012 as additional evidence contending that the Tribunal has given a right to the insurance

company to realize the amount of compensation paid by it to the claimants from the owners/driver for the reason that though the driver was holding a driving licence but it was not having endorsement of training as required under Section 14(2) of the Motor Vehicles Act; that as a matter of fact the driver had undergone training from National Engineering College from 13.1.2012 to 16.1.2012, which was valid up to 15.1.2013, however, the certificate could not be produced before the Tribunal since the counsel for the driver did not inform him regarding the production of the certificate and further the Court has misread the statement of driver to hold that at the relevant time, the tanker was carrying the oil; that during investigation of the case FIR No.64 dated 22.6.2012 under Sections 279, 337, 338, 304-A IPC, Police Station Bassi Pathana registered against the driver, the tanker was taken into possession and in memo of recovery, it is specifically mentioned that tanker was empty; that the appellant wants to prove it by summoning the concerned person; that though the appellant had engaged Sh.V.K.Chopra, Advocate, but he had appeared for driver only and not for the appellant/owner, who was proceeded against ex parte; that the appellant came to know regarding passing of the award only in the last week of January, 2015 when the Process Server came for service of summons in execution; thereafter he contacted his counsel and came to know that impugned award had been passed on 11.7.2014; therefore due to the negligence of the counsel, the appellant could not produce the training certificate and the memo of recovery. Therefore, the application be accepted.

This application is being resisted on behalf of the insurance

company contending that in terms of Section 14(2) of the Motor Vehicles Act, an endorsement on the driving licence to drive the transport vehicle carrying goods of dangerous or hazardous nature is required to be made, which is valid only for one year and once there was no endorsement on the driving licence, driver Mohan Singh was not authorized to drive the oil tanker since he was not holding a valid driving licence on the date of accident. Therefore, no useful purpose would be served by merely placing on record the certificate of having obtained training since the requirement of obtaining an endorsement from the Licensing Authority has not been complied with by the appellant or driver Mohan Singh and further merely because the vehicle was empty at the time of accident as alleged by the appellant, the oil tanker vehicle of the appellant continues to be a vehicle meant for carrying dangerous or hazardous goods. Therefore, placing of memo of recovery would not further the case of the appellant. The grounds mentioned in the application do not deserve to be accepted and the application should be dismissed.

After hearing the rival contentions, I find that there is no merit in the application. Order 41 Rule 27 CPC deals with production of additional evidence in the Appellate Court. For ready reference the provision is reproduced as under:

*27. Production of additional evidence in Appellate Court.—(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if— (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or*  
*1 [(aa) the party seeking to produce additional evidence, establishes*



*that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]*

*(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.*

*(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.*

The case of the appellant does not fall in any of the three eventualities provided under the Section. It is not case of the appellant that the Tribunal had refused to admit the evidence, which ought to have been admitted. As a matter of fact even as per own case of the appellant after putting in appearance before the Tribunal, he had been proceeded against ex parte. The second eventuality does not come to rescue of the appellant for the same reason. I do not find the proposed documents to be necessary to pronounce the judgments. Interestingly, the driver of the vehicle has not filed any appeal. The training is said to have been undergone by the said driver. It was for him to produce the alleged training certificate during his evidence and so also to place on record the recovery memo of the offending tanker, with respect to seizure of the tanker during investigation of the case registered against him. But there is nothing on record to show as to why he did not do so. It needs to be mentioned here that now the appellant is stating that the driver had undergone one year training and

certificate in that regard needs to be placed on file but as has been rightly pointed out by the insurance company in its reply that the requirement of Section 14(2) of Motor Vehicles Act is an endorsement on the driving licence of the vehicle effective for one year, which is admittedly not there on the driving licence of the driver of the offending vehicle. Therefore, the application under reference being without merit stands dismissed.

Furthermore, the appellant cannot take advantage of the fact that in the seizure memo, the tanker is mentioned to be empty when there is evidence to the contrary. The Tribunal in para No.14 of the Award while referring to statement of driver Mohan Singh, who appeared as RW1 has mentioned that he had stated therein that at the time of accident, he was carrying oil in the said tanker, as such he was driving a transport vehicle carrying goods of dangerous and hazardous nature, that falsifies the contention that tanker was empty at the relevant time. The Tribunal has further noted that in order to enable the driver to drive the said vehicle he was to have a driving licence, whose validity was to be for a period of one year and subject to its subsequent renewal. However, the driving licence Ex.R9 placed on the file showed that it was issued to respondent No.1 for a period of three years indicating that he could drive the transport vehicle but not a transport vehicle carrying goods of hazardous nature, in that way, he was not holding a valid driving licence at the time of accident. For the said reason on account of violation of terms and conditions of the insurance policy, the insurance company was given a right to recover the amount from the driver/owner of the offending vehicle. No fault can be found with such verdict given by the Tribunal.

Thus, ***FAO-3252-2015*** filed on behalf of appellant –  
Amanpreet Singh is found to be without any merit and is dismissed  
accordingly.

7.2.2019  
Brij

**(H.S.MADAAN)**  
**JUDGE**

**Whether reasoned/speaking : Yes/No**

**Whether reportable : Yes/No**