

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

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Date of decision: 16.01.2019

**FAO No. 9357 of 2014 (O&M) and  
Cross objections No. 51 CII of 2015**

*Shri Ram General Insurance Co Limited.* .....Appellant

*versus*

*Reena and others* .....Respondents

**FAO No. 9364 of 2014 (O&M) and  
Cross objections No. 53 CII of 2015**

*Shri Ram General Insurance Co Limited.* .....Appellant

*versus*

*Shri Pali Devi and others* .....Respondents

**FAO No. 9402 of 2014 (O&M)  
and Cross objections NO. 48-CII of 2015**

*Shri Ram General Insurance Co Limited.* .....Appellant

*versus*

*Sunder Pal and others* .....Respondents

**Coram: Hon'ble Mrs. Justice Rekha Mittal**

Present : Mr. T K Joshi, Advocate  
for the appellant (Shri Ram General Insurance Co Limited)

Mr. Jagdish Manchanda, Advocate  
for the cross objectors  
Mr. Pradeep Goyal, Advocate  
for New India Assurance Co Limited

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**Rekha Mittal, J. (Oral)**

This order will dispose of aforesaid appeals and cross objections as these have emerged out of award dated 05.08.2014 passed by the Motor Accidents Claims Tribunal, Karnal (hereinafter to be referred as 'the Tribunal') whereby compensation has been assessed on account of injuries sustained by Sunder Pal, Reena daughter of Sunder Pal and Pali Devi wife of Sunder Pal in a motor vehicular accident that took place on

12.09.2011.

Appeals have been filed by Shri Ram General Insurance Company Limited (insurer of Canter No. HR 63-A 1234) whereas cross objections have been preferred by Krishan Chand, driver and owner of aforesaid vehicle. For the sake of convenience, the parties shall be referred to as 'the insurance company' and 'the respondents'.

Counsel for the insurance company has assailed the award to the limited extent that as the injured were gratuitous passengers, travelling in a goods vehicle and there is no special contract covering risk of injury or death of gratuitous passenger in a goods carrier, the insurance company has wrongly been fastened with liability to pay compensation. It is further argued that in the FIR lodged by Sunder Pal and in claim application preferred by the injured, there is no such averment that the injured were carrying their goods in aforesaid Canter, therefore, testimony of Sunder Pal that he had been carrying 40 kgs of wheat, clothes etc. cannot be taken into consideration being beyond pleadings.

Counsel representing cross objectors has supported findings of the Tribunal holding the insurance company jointly and severally liable to pay compensation by way of indemnification of the insured, in discharge of its liability under the contract of insurance. It is further argued that Sunder Pal, in his affidavit tendered by way of examination in chief, has categorically deposed in para 1 that he was travelling in the Canter along with his goods like wheat, clothes and some other articles.

To substantiate his plea raised in cross objections with regard to challenge to findings of the Tribunal on issue No. 1, attributing rashness

and negligence to Jasvinder Singh, driver of aforesaid Canter, it is argued that even if Jarnail Singh, driver of other vehicle involved in the occurrence bearing No. PB 11 AR 8725 cannot be held solely responsible for the accident but the present is certainly a case of composite negligence of both the drivers and accordingly, Jarnail Singh - respondent No. 4 and the insurance company of trailer should be held liable to pay compensation to the extent of negligence attributable to Shri Jarnail Singh. Another submission made by counsel is that in the criminal trial initiated against Jasvinder Singh, he has been acquitted and it negates plea of the claimants that accident is the result of rash and negligent driving of Canter No. HR 63A-1234.

The insurance company raised a specific plea that the injured were gratuitous passengers travelling in Canter No. HR 63A-1234, a goods carrier and the insurance company is not liable to pay compensation.

Perusal of the application for compensation and so also the first version given by Sunder Pal while recording FIR with the Police in regard to occurrence, no such plea was raised by the claimants that they were carrying their goods in the aforesaid Canter. That being so, statement of Sunder Pal that the claimants were travelling in the Canter along with articles is beyond pleadings and cannot be taken into consideration. As such, it has been sufficiently proved on record that the injured claimants were gratuitous passengers in a goods carrying vehicle, thus, the insurance company cannot be fastened with liability to pay compensation. In this context, reference can be made to judgment of this Court ***Ranbir Chand vs Tarsem Lal and others along with connected matters*** (FAO No. 3242 of

**2004, decided on 20.09.2018).**

In view of what has been discussed hereinbefore, the appeals preferred by the insurance company are allowed with the findings that the insurance company is not liable to pay compensation to the injured claimants. However, it is clarified that in case the insurance company has already paid compensation to the claimants, it shall be entitle to recover the same from owner/insured of Canter bearing No. HR 63-A 1234 by filing an appropriate application before the Tribunal.

This brings the Court to contentions raised by the registered owner and driver by way of cross objections to the effect that the accident is the result of rash and negligent driving of Trailer bearing No. PB 11 AR 8725.

Indisputably, on due investigation of FIR 492 dated 14.09.2011 for offence punishable under Sections 279, 337 and 338 of Indian Penal Code, lodged in Police Station Sadar, Karnal at the behest of Sunder Pal, only Jasvinder Singh, driver of Canter No. HR 63-A 1234 was put to trial. The mere fact that Jasvinder Singh was acquitted in the criminal case would not enure to benefit of the respondents to assail findings of the Tribunal on issue No. 1.

Sunder Pal, one of the injured victims appeared in the witness box and tendered into evidence his affidavit Ex. PW4/A by way of examination in chief. He has reiterated his version set up in claim application about the manner in which the occurrence in question took place. This witness was cross examined at length by different sets of respondents before the Tribunal. In his cross examination, conducted by

Advocates of all the respondents, he has deposed to the following effect:-

*“The canter bearing No. HR 63A-1234, in which I was travelling tried to overtake a truck going ahead of the Canter and in the process of overtaking Canter, struck against vehicle Container bearing No. PB 11 AR 8725 . It is correct that in the process of overtaking the Canter, I was travelling on the wrong side of the road and hit the Container. It is correct that I have stated to the Police that the accident has taken place because of rash and negligent driving of Jasvinder Singh who was driving his canter No. HR 63-A-1234 in a rash and negligent manner, as a result of which, the accident in question took place.”*

However, in his cross examination by counsel representing respondents No. 1 and 2 before the Tribunal, he has stated as follows:

*“It is correct that I have stated in my claim petition respondents No. 1 and 4 are jointly responsible for causing the accident but Canter driver was more responsible in which I was travelling.”*

Taking into consideration testimony of Sunder Pal and discussion made hereinbefore, it is difficult to accept contention of the cross objectors that the present is a case of composite negligence of both the vehicles involved in the occurrence or the respondents are not liable to pay entire compensation assessed by the Tribunal.

For the foregoing reasons, cross objections preferred by the respondents are dismissed, leaving the parties to bear their own costs.

(Rekha Mittal)  
Judge

16.01.2019  
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