

**FAO No. 7257 of 2016 (O&M) and
FAO No. 8024 of 2016 (O&M)**

- 1-

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

**FAO No. 7257 of 2016 (O&M)
DECIDED ON: JANUARY 14, 2019**

RAJESH MEHLAWAT AND ANOTHER

.....APPELLANTS

VERSUS

OM PARKASH AND ANOTHER

.....RESPONDENTS

AND

FAO No. 8024 of 2016

OM PARKASH

.....APPELLANT

VERSUS

VIJAY AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

**Present: Mr. Sandeep Sangwan, Advocate
for the appellants in FAO No. 7257 of 2016 and
for respondents No.1 and 2 in FAO N. 8024 of 2016.**

**Mr. Gopal Sharma, Advocate
for the appellant in FAO No. 8024 of 2016 and
for respondent No.1 in FAO No. 7257 of 2016.**

Mr. Rajneesh Malhotra, Advocate
for respondent No.2 in FAO No. 7257 of 2016 and
for respondent No.3 in FAO No. 8024 in 2016

AVNEESH JHINGAN J. (ORAL)

The award dated 07.05.2016 passed by the Motor Accident Claims Tribunal, Rewari (for brevity 'the Tribunal') has been assailed in two appeals, one by the driver and owner of tractor bearing registration No. HR-36-T-0219 (hereinafter referred to as 'offending vehicle') and another by the claimant i.e. FAO No. 7257 of 2016 and FAO No. 8024 of 2016, respectively.

The afore-said two appeals are being disposed of by a common order, as both the appeals have arisen out of the same award.

The grievance raised in the appeal filed by the claimant i.e. FAO No. 8024 of 2016 is that there was permanent disability but the certificate regarding permanent disability was not available at the time of award.

Alongwith the appeal an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 has been filed seeking permission to adduce additional evidence by producing medical disability certificate.

The grievance raised in the appeal filed by the driver and owner of the offending vehicle i.e. FAO No. 7257 of 2016 is that the driving licence held by the driver at the time of accident was for driving Motor Car With gear, Light Motor Vehicle-NT-Car, Light Motor Vehicle-Tr-Cab only, the said licence authorised the driver to drive tractor also, the insurance company has been wrongly exonerated.

The brief facts necessary for adjudication of the present appeal are

that a motor vehicular accident took place on 21.12.2014. The vehicles involved in the accident were the offending vehicle and a motorcycle bearing registration No. HR-36-H-5439. In the accident, Om Parkash sustained injuries. FIR No. 289, dated 24.12.2014 was registered at Police Station Rampura.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed by the claimant. The Tribunal after considering the facts and on appreciating the evidence adduced, held that the accident was caused due to the rash and negligent driving of the offending vehicle. It was also held that the driver of the offending vehicle was not having a valid driving licence to drive a tractor i.e. the offending vehicle, hence, recovery rights were granted to the insurer of the offending vehicle.

Learned counsel for the claimant contends that the compensation awarded by the Tribunal is on the lower side as the claimant had sustained permanent disability on account of the injuries sustained in the accident.

Learned counsel for the insurer, driver and owner contends that since the permanent disability certificates are being produced for the first time before this Court alongwith the appeal, an opportunity be provided to them to verify or to rebut the same.

Factual aspects have to be taken into consideration for deciding the quantum of compensation. The claimant would be required to prove disability certificate produced before this Court by the deposition of doctor etc. and an opportunity has to be provided to the insurer, driver and owner of the offending vehicle to verify or to rebut the said certificates. In such circumstances, the matter with regard to the quantum of compensation is remanded back to the

Tribunal to be decided afresh in accordance with law after providing opportunity to the parties to adduce evidence in support of their claims, if so desired.

Learned counsel for the driver and owner contends that the Tribunal had erred in holding that the driving licence of the driver of the offending vehicle was not valid for driving the tractor. He relies upon the decision of the Supreme Court in *Mukund Dewangan versus Oriental Insurance Co. Ltd.*, (2017) 14 SCC, 663 .

Learned counsel for the insurer argues that the licence was for Light Motor Vehicle-NT-Car only and the same was not valid for driving the offending vehicle i.e. Tractor. It would be pertinent to note that the Clerk of RTO office, who appeared before the Tribunal had only stated that there is no endorsement made on the driving licence to drive tractor, as on date. As per the decision of the Supreme Court in Mukund Dewangan's case supra, no separate endorsement is required for driving the transport vehicle of same class for which the licence has been issued. Be that as it may, as the quantum of compensation is being remitted back to the Tribunal, the issue regarding liability to pay the compensation is also remitted back to the Tribunal to decide afresh after considering the relevant case law.

The driver and owner of the offending vehicle shall be at liberty to adduce evidence with regard to the fact that the licence was valid for driving the offending vehicle at the time of accident. Similarly, the Tribunal shall afford an opportunity to the insurer to adduce fresh evidence, if so desired to rebut the

case of the driver and owner.

Both the appeals are disposed of accordingly.

Parties are directed to appear before the Tribunal on 21.02.2019.

Original disability certificates attached with the appeal be sent to the
Tribunal.

(AVNEESH JHINGAN)
JUDGE

JANUARY 14, 2019
sham

Whether speaking/reasoned:
Whether reportable :

Yes / No
Yes / No