

**FAO No. 8462 of 2015 (O&M)
FAO No. 8665 of 2015 (O&M) and
FAO No. 6510 of 2016 (O&M)**

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

**FAO No. 8462 of 2015 (O&M)
DECIDED ON: May 06, 2019**

SUNITA AND OTHERS

APPELLANTS

VERSUS

JITENDER SINGH AND ORS

RESPONDENTS

2. FAO No. 8665 of 2015 (O&M)

THE NEW INDIA ASSURANCE CO. LTD.

.....APPELLANT

VERSUS

SUNITA AND OTHERS

.....RESPONDENTS

AND

3. FAO No. 6510 of 2016 (O&M)

JITENDER SINGH & ANOTHER

.....APPELLANTS

VERSUS

THE NEW INDIA ASSURANCE CO. LTD. & ORS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sagar Aggarwal, Advocate for
Mr. Ashit Malik, Advocate
for the appellants in FAO No. 8462 of 2015.

Mr. Ram Kumar Saini, Advocate
for the appellants in FAO No. 6510 of 2016
for respondent No.1 in FAO No. 8462 of 2015 and
for respondent No.4 in FAO No. 8665 of 2015.

Mr. R.C. Gupta, Advocate
for the respondent-New India Assurance Co. Ltd.

AVNEESH JHINGAN, J (Oral):

The award dated 25.08.2015 passed by the Motor Accident Claims Tribunal, Kurukshetra (for brevity 'the Tribunal') passed in MACT case No. 224 of 2014 has been assailed by filing three separate appeals. One appeal i.e. FAO No. 8462 of 2015 has been filed by the legal representatives of Darshan Singh @ Darshal Lal (deceased), second by the insurer of tractor trailer bearing registration No. HR-78-3129 (hereinafter referred to as the 'offending vehicle') and third by the driver and owner of the offending vehicle. As the appeals arise out of same accident and one award, these are being disposed of vide common order.

The facts in brief are that a motor vehicular accident took place on 17.04.2014. The accident proved fatal for Darshan Singh @ Darshan Lal, who was travelling on the offending vehicle sitting on the mudguard.

The Tribunal after considering the facts and appreciating the evidence adduced held that there was contributory negligence to the extent

of 50:50. The 50% of the said negligence was on the part of the driver of the offending vehicle and 50% was on the part of the deceased who was travelling on the mudguard of the offending vehicle. The Tribunal calculated a compensation to the tune of ₹15,04,360/-.

The grievance raised by learned counsel for the insurer is that the insurer should have been absolved from its liability rather than giving recovery rights. The said issue no longer survives as learned counsel for the parties states that the compensation has already been paid to the claimants.

The challenge in the appeal filed by the insurer is with regard to the quantum of compensation.

The grievance raised by learned counsel for the driver and owner of the offending vehicle is that no recovery rights should have been given to the insurer. It is argued that the Tribunal erred in giving the recovery rights as the insurer itself stated in policy that the sitting capacity of the offending vehicle is two.

Claimants have filed the appeal for enhancement of compensation and challenged the contributory negligence attributed to the deceased.

Before deciding the issues raised in the appeals, the issue that has to be considered first is the effect of the fact that in the insurance policy, the sitting capacity of the tractor has been mentioned as two.

The Tribunal while deciding the issue has opined that the second person as per the insurance policy would cover the labourer

travelling on the tractor. No such condition is forthcoming from the record.

There are disputed questions of facts, same would need adducing further evidence. Without expressing any opinion on the merits of the case, the matter with regard to liability to pay compensation, contributory negligence and quantum of compensation is remitted back to the Tribunal to decide afresh in accordance with law after providing opportunity to the parties.

The parties are directed to appear before the Tribunal on 10.07.2019. As the accident is of the year 2014 it is expected that the Tribunal shall decide the same as expeditiously as possible.

All the afore-said three appeals are disposed of.

(AVNEESH JHINGAN)
JUDGE

MAY 06, 2019
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>