

FAO-1046-2018(O&M) &
FAO-1296-2018(O&M)

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

(1) FAO-1046-2018(O&M)

Sangeeta Devi and others

...Appellants

Versus

National Insurance Company Limited and others

...Respondents

(2) FAO-1296-2018(O&M)

Kamlesh Yadav and another

...Appellants

Versus

Sangeeta Devi and others

...Respondents

Date of Decision:-17.5.2019

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

Present: Mr.Kartar Singh, Advocate for the appellants in
FAO-1046-2018 and for respondents No.1 to 5
in FAO-1296-2018.

Mr.K.K. Chaudhary, Advocate for the appellants in
FAO-1296-2018 and for respondents No.2 and 3 in
FAO-1046-2018.

Mr.Deepak Jindal, Advocate for respondent No.1 n
FAO-1046-2018 and for respondent No.6 in
FAO-1296-2018.

H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-1046-
2018(O&M) filed on behalf of appellants – Sangeeta Devi and others and

FAO-1296-2018(O&M) filed on behalf of appellants – Kamlesh Yadav and another, which have arisen out of the same accident.

Petitioners/claimants – Mrs.Sangeeta Devi, aged about 42 years – wife, Ms.Sudha, aged about 23 years – married daughter, Ms.Sheetal, aged about 21 years – unmarried daughter, Deepak, aged about 19 years – son and Nisha, aged about 17 years – minor daughter of Sh.Shambhu Mehto, an unfortunate victim of the road side accident had brought a claim petition under Section 166 of the Motor Vehicles Act against the respondents i.e. National Insurance Company Ltd. - insurer, Kamlesh Yadav – owner and Parvesh Kumar driver of Hydra motor vehicle having No.HR-38Q-7238(hereinafter referred to as the offending vehicle), claiming compensation to the tune of Rs.1,03,80,000/-.

As per the case of the claimants on 23.5.2016 Shambhu Mehto deceased was going from his workshop towards another workshop situated nearby along with his son; that both of them were going on foot; that at about 12:10 p.m., when they had reached on the backside of Lal Vidya Mandir near Tea shop, the offending vehicle being driven by respondent No.3 – Parvesh Kumar in a rash and negligent manner came and tyre of that vehicle passed over the foot of Shambhu Mehto and the pole, which was being carried in the said vehicle fell on him and it crushed his head, resulting into his instant death; that postmortem examination on the dead body of Shambhu Mehto was conducted at B.K. Hospital, Faridabad; that Deepak son of deceased Shambhu Mehto lodged report regarding the accident vide FIR No.266 dated 23.5.2016 for the offences under Sections 279, 337 and 304-A IPC with Police Station

SGM Nagar, NIT Faridabad.

According to the claimants, the deceased was aged about 43 years enjoying good health and physique; he was having his own unit of bottle manufacturing and used to earn more than Rs.50,000/- per month from that business; in addition to that he was running tour and travel business; that all the claimants were dependent upon his earnings.

Notice of the petition was given to respondents, who put in appearance. Respondent No.1 – insurance company filed a separate written statement *inter alia* raising various preliminary objections, on merit controverting the material assertions in the claim petition coming up with a plea that the claim petition had been filed by the claimants in collusion with respondents No.2 and 3; that respondent No.3 was not holding a valid and effective driving licence at the time of accident; that the insured/driver of the vehicle violated the terms and conditions of the insurance policy since the vehicle was being plied without any valid permit; that the claimants had no locus standi or cause of action to file the same. The Insurance company denied that any such accident had taken place involving the vehicle in question, though it was admitted that the offending vehicle was insured with it in the name of Kamlesh Yadav for the period from 30.1.2016 to 30.1.2017.

In the joint written statement filed on behalf of respondents No.2 and 3, they also took up various legal objections and on merits denied the assertions in the claim petition contending that liability to pay compensation, if any, was that of respondent No.1 with which the vehicle in question was insured.

All the respondents prayed for dismissal of the claim petition.

On the pleadings of the parties following issues were framed:

1. Whether Shambhu s/o Sh.Ram Vilas Mehto died in a motor vehicular accident which took place on 23.5.2016 at about 12:00 noon within the area of P.S. SGM Nagar, NIT Faridabad due to rash and negligent driving of vehicle No.HR-38-Q-7238 by respondent no.3? OPP.
2. If issue no.1 is proved, whether the petitioners are entitled to any amount of compensation and if so, how much and from whom? OPP.
3. Whether the insured has violated the terms and conditions of the insurance policy or that respondent no.3 was not holding a valid and effective driving licence at the time of alleged accident? OPR-3(OPR-1).
4. Relief.

Both the parties led evidence in support of their respective claims.

After hearing arguments, the Tribunal decided issue No.1 in favour of the petitioners and against the respondents, issue No.2 in favour of the petitioners, issue No.3 in favour of respondent no.1 and against respondents No.2 and 3. Resultantly, the claim petition was partly allowed with costs and compensation to the tune of Rs.40,95,000/- along with interest @ 6% per annum from the date of filing of the petition till the date of actual realization was awarded to the petitioners, payable by respondents No.2 and 3 jointly and severally. However, respondent No.1

– insurance company was not made liable to pay any compensation for the reason that the offending vehicle was being plied without route permit.

The claimants and respondents No.2 and 3 were dissatisfied with the said award dated 22.9.2017 and they have filed separate appeals before this Court.

Notices of the appeals were issued to the respondents, who put in appearance through counsel.

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

Firstly coming to FAO-1046-2018 filed on behalf of the claimants seeking enhancement of compensation.

A perusal of the award goes to show that the Tribunal on the basis of evidence adduced before it oral as well as documentary had taken date of birth of deceased to be 6.11.1973, meaning thereby, that at the time of his death, he was aged little more than 42 years. In view of the income tax returns proved on the record, the income reflected in the last income tax return for the year 2015-16 was considered, which was to the tune of Rs.3,40,000/- per annum, monthly income to be Rs.28,333/-. However, the Tribunal omitted to make addition to that amount on account of future prospects.

In view of the ratio of authority *National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009*, in such an eventuality 25% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as $\text{Rs.28,333} + 7,083 = \text{Rs.35,416/-}$.

The Tribunal considering the number of claimants was justified in making deduction of 1/4th towards self-expenses. Doing that the dependency of claimants comes out to Rs.26,562/- per month, annual dependency comes out to Rs. 26,562 x 12 = Rs.3,18,744/-.

The Tribunal has used multiplier of 14, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs. 3,18,744 x 14 = 44,62,416/-.

The Tribunal has awarded a sum of Rs.1,00,000/- for loss of consortium, Rs.25,000/- as funeral expenses, Rs.4 lacs on account of loss of love and affection to four children. Whereas in view of the ratio of authority *National Insurance Company Limited Versus Pranay Sethi and Ors.*(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to Rs. 44,62,416 + 70,000 = 45,32,416/-.

The Tribunal has awarded compensation of Rs.40,95,000/-.

In this way, the enhanced amount comes out to Rs.4,37,416/- (45,32,416 - 40,95,000). The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.4,37,416/-.

With such modification, the **FAO-1046-2018** is allowed partly.

As far as **FAO-1296-2018** filed on behalf of owner and driver, the Tribunal has observed that the vehicle was being plied without

a route permit, as such absolved the insurance company of its liability to pay compensation. Learned counsel for the insured has referred to judgment by a Co-Ordinate Bench of this Court i.e. **Anju Bala and others Versus Mohammad Ahmed and others, 2015(33) RCR(Criminal) 579,** which was a case where the insured vehicle had caused accident in Haryana, whereas it had permit to ply in Rajasthan only. It was observed that deviation did not contribute to the accident and it is only the user of transport vehicle for the purpose not allowed by the permit, which would enable the insurance company deny its liability and not the plying of vehicle in an area for which there was no permit. The violation of route permit will result in other consequences at the instance of transport authorities but that does not exonerate the insurance company of its liability arising out of such an accident.

Learned counsel for the claimants also submitted that the insurance company was wrongly exonerated by the Tribunal since at least it was liable to pay the compensation amount to the claimants though it could recover the same from the insured later on. In support of his that contention, he has referred to judgment **National Insurance Co. Ltd. Versus Chella Bharathamma, 2004 (4) RCR(Civil) 399** by the Apex Court, wherein it was observed that when the insured vehicle was being plied without permit the insurer cannot be made liable, however, insurer may be asked to satisfy the third party claim/award and effect recovery from the insured by executing the award like a decree against him.

Learned counsel for the insurance company has however vehemently defended the award vide which the insurance company was

not found liable to make payment to the claimants.

After hearing the rival contentions and going through the record, I find that the Tribunal by misappraisal of the evidence and wrong interpretation of law and facts has come to the conclusion that the insurance company was not liable on account of the fact that the vehicle was being plied without a route permit. The offending vehicle in question happens to be a Crane. It is debatable whether it comes within the definition of a transport vehicle and for plying it some route permit is required.

Section 66 of the Motor Vehicles Act, 1988 deals with necessity for permit. For ready reference the provision is reproduced as under:

66. Necessity for permits. – (1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used.

A perusal of the provision goes to show that it applies to transport vehicle which is plied in public place meant for carrying passengers or goods. The vehicle involved in this case does not fall within the definition of transport vehicle in that way. Therefore, route permit for use of same could not be said to be necessary.

However, the vehicle was being plied in State of Haryana itself and not outside it. As per the facts of the authority **Anju Bala and others Versus Mohammad Ahmed and others**(supra) a Co-ordinate Bench dealing with such type of situation has observed in para Nos.15 and 16 as under:

15. *A permit is usually issued on so many terms and conditions. The violation of all terms and conditions mentioned in the permit does not allow the Insurance Company to avoid its liability. A close reading of Section 149 (2) (i) (a) of the Act would show that it is only the user of transport vehicle for the purpose not allowed by the permit would enable the insurance company to defend the action to satisfy an award in a motor accident where the risk is covered by a policy obtained under Section 147 of the Act.*

16. *Under the circumstances, the Tribunal ought to have provided full right of indemnity to the owner and driver under the contract of insurance. Accordingly, the appeal (FAO No. 3716 of 2009) is accepted and award of the Tribunal is modified to the extent that respondent no. 3-Insurance Company shall take full liability to pay the entire compensation amount as awarded in this case.*

Therefore, the findings of the Tribunal on issue No.3 is reversed and the petitioners are found entitled to compensation from all the respondents jointly and severally.

Thus, **FAO-1296-2018** filed on behalf of the owner and driver stands allowed.

17.5.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No