In the High Court of Punjab and Haryana, at Chandigarh

1. **F.A.O. No. 1631 of 1995 (O&M)**

Date of Decision: 28.01.2020

The Oriental Insurance Company Limited

... Appellant(s)

Versus

Dhan Kaur and Others

... Respondent(s)

2. **F.A.O. No. 1632 of 1995 (O&M)**

The Oriental Insurance Company Limited

... Appellant(s)

Versus

Ramesh and Others

... Respondent(s)

3. **F.A.O. No. 1633 of 1995 (O&M)**

The Oriental Insurance Company Limited

... Appellant(s)

Versus

Smt. Kamlesh and Others

... Respondent(s)

AND

4. **F.A.O. No. 2439 of 1995 (O&M)**

Ramesh

... Appellant(s)

Versus

Raghbir Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. D.P.Gupta, Advocate
for the appellant-Insurance Company
(In FAO-1631-1995 to FAO-1633-1995).

Mr. R.S.Kundu, Advocate
for the appellant (In FAO-2439-1995).

Mr. Vijay Pal, Advocate
for respondents No. 3(iii), 3(a), (b), (c), (d) & (e)
(In FAO-1631-1995 to FAO-1633-1995).

Mr. S.N.Pillania, Advocate
for respondents No. 1 & 2 (In FAO-1631-1995) and
for respondent No.1 (In FAO-1633-1995).

Anil Kshetarpal, J.

By this order, FAO-1631-1995, FAO-1632-1995, FAO-1633-1995 and FAO-2439-1995 shall stand disposed of. Out of the aforesaid four appeals, three appeals i.e. FAO-1631-1995, FAO-1632-1995 and FAO-1633-1995 have been filed by the insurance company, whereas fourth appeal i.e. FAO-2439-1995 has been filed by the injured-claimant. All these appeals are arising from a common judgement passed by the learned Motor accident Claims Tribunal, Jind (hereinafter referred to as "the Tribunal") on 18.04.1995. In the appeals filed by the insurance company, only point which requires determination is that whether the insurance company is liable to honour the award passed by the Tribunal or not, where passengers travelling in a goods carrying vehicle without payment of fare got injured in an accident.

Learned counsel appearing for the appellant has drawn attention of the Court to a larger Bench judgement of the Hon'ble Supreme Court in the case of ***New India Assurance Company Limited v. Asha Rani and***

Others (2003) 3 SCC 223 followed in the case of ***Oriental Insurance Company v. Devireddy Konda Reddy and Others Etc. Etc. And Jogi Subbamma and Others Etc. Etc. (2003) 2 SCC 339***.

The Hon'ble Supreme Court, after examining the difference in the provisions of the Motor vehicles Act, 1939, Motor Vehicles Act, 1988 and Motor Vehicles Act post amendment in the year 1994, has opined that the definition of goods vehicle is etymologically different. By amendment in the year 1994, owner of the goods or his representative was included for the purpose of insurance. However, as far as passengers travelling in the goods vehicle are concerned, position remains unchanged. In view of the aforesaid judgements, passed by the Hon'ble Supreme Court, it is apparent that the insurance company cannot be held liable in the present case.

The accident took place on 15.02.1993. Hence, this case is covered by unamended definition of "goods vehicle" in Section 2(14) of the Motor Vehicles Act, 1988.

Now let us examine the appeal i.e. F.A.O. No. 2439 of 1995, filed by Ramesh-injured. He was 35 years of age at the time of accident. He suffered the following injuries:-

"1. Deviation and swelling of left thigh. X-ray was advised;

2. Lacerated wound of 2 cm x 1/2 cm on front of forehead in the mid line. Freshly bleeding. X-ray was advised; And

3. Multiple abrasions on various parts of the body".

Ramesh-injured remained admitted in the hospital from 18.02.1993 to 31.05.1995. When Ramesh appeared in the Court as PW.6 on 07.11.1994, he was unable to move smoothly. The Tribunal has awarded a sum of ₹ 25,000/- including reimbursement of medical expenses for an amount of ₹ 15,000/-. Keeping in view the fact that appellant-Ramesh was an agriculturist and accident took place on 15.02.1993, it would be safe to assume that he was at least earning ₹ 1,500/- per month.

Appellant-Ramesh was unable to work and resumed his normal working at least after one year. Compensation on this account works out to ₹ 1,500 x 12 = ₹ 18,000/-. For pain & suffering, appellant is held entitled to ₹ 15,000/- and for special diet ₹ 5,000/-. Thus, the compensation payable to appellant-Ramesh is re-calculated as per table enumerated below:

S.No.	**Heads of Compensation**	**Compensation awarded by learned Motor Accident Claims Tribunal (in ₹)**	**Compensation awarded by this Court (in ₹)**
01.	Other loss of Income Assessed	10,000/-	18,000/- (1,500 x 12)
02.	Medical Expenses	15,000/-	15,000/-
02.	Pain and suffering	–	15,000/-
03.	Special Diet	–	5,000/-
04.	**Total Compensation**	**25,000/-**	**53,000/-**
05.	**Amount of compensation enhanced by this Court**	**28,000/- (53,000 – 25,000)**	

In view of the above, the amount of compensation so awarded to appellant-Ramesh by the learned Tribunal is enhanced from ₹ 25,000/- to ₹ 53,000/-.

Learned counsel appearing for the appellant has submitted that the insurance company should be allowed to recover the amount from the claimants as the insurance company has not been held liable.

The claimants are, in any case, entitled to the compensation. Hence, once the amount has already been paid to the claimants, then there is no ground to direct refund of the amount paid to the claimants. Hence, these appeals are disposed of with liberty to the insurance company to recover the amount from the owner of the canter/goods vehicle.

(Anil Kshetarpal)
Judge

January 28, 2020
"DK"

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No