

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

Date of decision: 20.01.2020

FAO No.3730 of 2013 (O&M)

Oriental Insurance Co. Ltd.

... Appellant

Versus

M/s Kamal Agencies and others

... Respondents

FAO No.16 of 2014 (O&M)

M/s Kamal Agencies

... Appellant

Versus

S. Harpal Singh and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. RC Gupta, Advocate
for the appellant in FAO No.3730 of 2013
for respondent No.8 in FAO No.16 of 2014.

Mr. VK Sandhir, Advocate for claimant-M/s Kamal Agencies.

None for owner and driver of truck No.PB-06E-2612.

Mr. Ravinder Arora, Advocate and
Mr. Neeraj Khanna, Advocate
for National Insurance Co. Ltd.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.3730 of 2013 and 16 of 2014 as these have emerged out of the same award dated 18.03.2013 passed by the Motor Accidents Claims Tribunal, Amritsar whereby compensation has been assessed in respect of damage to the property of M/s Kamal

Agencies appellant in FAO No.16 of 2014 and respondents No.2, 3 and 8 therein have been held liable to pay compensation to the tune of Rs.7,50,000/-.

FAO No.3730 of 2016 has been filed by Oriental Insurance Co. Ltd., insurer of truck No.PB-06-E-2612 driven by Parshotam Lal and owned by Surjit Singh whereas the other appeal has been filed by the claimant seeking additional compensation.

FAO No.3730 of 2013

Counsel for the appellant would argue that as per case set up by the claimant, negligence is liable to be attributed to all the three vehicles namely tanker bearing No.PB-04-G-9918 driven by its owner Harpal Singh (respondent No.1 therein), truck bearing No.PB-06-E-2612 and bus bearing No.PB-02-Y-9972 driven by Satnam Singh and owned by Sh. Madan Mohan and insured with National Insurance Co. Ltd. It is further argued that other two vehicles involved in the occurrence may be attributed composite negligence and liability to pay compensation to the extent of negligence attributable to them.

Another submission made by counsel is that Surjit Singh and Parshotam Lal, owner and driver respectively of aforesaid truck did not contest the proceedings as their defence was struck off. An application was filed by the insurance company for production of documents by respondents No.2 and 3 therein but none of the documents was produced by them. It is argued with vehemence that as the insured failed to discharge his primary obligation to make available particulars of driving licence, if any,

possessed by Parshotam Lal, the insurance company is entitle to have right of recovery against the insured after payment of compensation to the claimant. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Pappu and others Vs. Vinod Kumar Lamba and another, 2018(1) PLR 425.**

There is no representation on behalf of respondents No.3 and 4 earlier represented by Mr. RN Lohan, Advocate.

Counsel representing National Insurance Co. Ltd., insurer of aforesaid bus has supported findings of the Tribunal on issue No.1 attributing exclusive negligence to the aforesaid truck driven by Parshotam Lal.

Counsel representing the claimant would argue that claimant is interested in recovering compensation for damages to its property irrespective of who is held liable to pay the same.

I have heard counsel for the parties, perused the paper book and records.

The claimant examined Harpal Singh AW5 to prove that accident is the result of rash and negligent driving of aforesaid truck by Parshotam Lal. The Tribunal, on detailed consideration of testimony of Harpal Singh AW5, had arrived at a positive finding that accident took place on account of rash and negligent driving of offending truck. Counsel for the appellant has failed to point out any facts elicited in cross examination of Harpal Singh AW5 to discard or disbelieve his testimony or

modify findings of the Tribunal attributing exclusive negligence to driver of aforesaid truck. Counsel has not disputed that FIR in this case was registered against Parshotam Lal who never appeared in the witness box to counter testimony of Harpal Singh AW5. In view of the aforesaid, I do not find any reason to differ with findings of the Tribunal on issue No.1 taken up jointly with issue No.2, attributing exclusive negligence to driver of aforesaid truck resulting in damage to the property of M/s Kamal Agencies, Amritsar.

The defence of respondents No.2 and 3 therein was struck off meaning thereby that they had caused appearance before the Tribunal but did not raise any defence. Respondents No.2 and 3 did not produce driving licence, if any, possessed by Sh. Parshotam Lal. They caused appearance in the appeal but again did not file an application for producing driving licence of Parshotam Lal in order to enable the insurance company to make necessary verification. In the given circumstances, the insured of truck failed to discharge his primary obligation that he had given his vehicle for driving to a person who was duly licensed on the date of occurrence. That being so, the insurance company shall have right of recovery against insured of the truck after payment of compensation to the claimant. Findings of the Tribunal on issue No.5 are modified accordingly.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms.

FAO No.16 of 2014

The sole submission made by counsel for the appellant is that

Tribunal awarded interest @ 6% per annum only if compensation amount is not paid within two months from the date of award. It is argued that as claim of the appellant with regard to grant of compensation has been accepted, there was no reason for the Tribunal to deny interest from the date of filing of claim application till realization.

Counsel for the insurance company has not made any submissions to justify findings of the Tribunal denying payment of interest to the claimant.

The Tribunal has not recorded any findings to deny interest from the date of application till realization. No reason has been assigned to extend concession to respondents No.2, 3 and 8 therein that interest would be attracted only if compensation is not paid within two months. In view of the above, findings of the Tribunal that no interest shall be payable if compensation is paid within two months cannot be allowed to sustain and accordingly set aside. As a natural corollary, the claimant shall be entitle to interest @ 6% per annum from the date of petition till realization on compensation of Rs.7,50,000/- assessed by the Tribunal.

In view of what has been stated hereinbefore, the appeal is partly allowed in the aforesaid terms.

20.01.2020

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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No