

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

**Reserved on 4th of August, 2022
Pronounced on 17th of October, 2022**

FAO No.305 of 2011

Ashok Jain and another Appellants

versus

Mahinder Sharma and others Respondents

FAO No.257 of 2011

Trishla Jain and another Appellants

versus

Mahinder Sharma and others Respondents

FAO No.4601 of 2010

United India Insurance Co. Ltd. Appellant

versus

Ashok Jain and others Respondents

FAO No.4602 of 2010

United India Insurance Co. Ltd. Appellant

versus

Trishla Jain and others Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Pankaj Mehta, Advocate
for the appellants in FAO No.305 of 2011.

Ms. Deepali Verma, Advocate
for the appellants in FAO No.257 of 2011.

Mr. Vikas Mohan Gupta, Advocate
for the appellant in FAO Nos.4601 & 4602 of 2010 and
for respondent No.3 in FAO Nos.305 & 257 of 2011.

PANKAJ JAIN, J. (ORAL)

These are four appeals directed against the same award dated 12th of May, 2010 passed by Motor Accident Claims Tribunal, Hisar (for short, 'the Tribunal'). Two appeals bearing FAO Nos.305 & 257 of 2011 are at the behest of the claimants seeking modification of the award by way of enhancement in compensation. The other two appeals bearing FAO Nos.4601 & 4602 of 2010 are at the behest of insurer claiming that the Tribunal erred in ignoring the material evidence on record to decide Issue No.1 in favour of the claimants.

2. Since all the appeals involve common question of fact and are directed against common award they are being taken together for adjudication.

3. As per the claim petition on 13th of October, 2005 both the deceased namely Adesh Kumar Jain and Narender Kumar Jain were travelling in Maruti Car bearing registration No.DDO-32. Car was being driven by Naresh Kumar Jain. It is claimed that around 6:30 p.m. the car struck a stationary tanker bearing registration No.HR-26-A-2972. Both the passengers namely Naresh Kumar Jain and Aadesh Kumar Jain died of injuries sustained by them in the said accident. It is claimed that the accident was caused due to negligence on part of driver of the oil tanker.

The same was parked on the road without any signal. Since it was dark at 6:30 p.m., the driver of the car could not see the stationary tanker and this caused accident.

4. Two different claim petitions were filed by the legal representatives of Aadesh Kumar Jain and Narender Kumar Jain u/s 166 of the Motor Vehicles Act, 1988. Both of them were adjudicated together by the Tribunal vide award impugned in the present appeals.

5. On the basis of pleadings of the parties, Ld. Tribunal framed the following issues :-

- “1. Whether death of Narender Kumar Jain took place in the accident which took place on 13.10.2005 in the area of village Satrod Khas due to rash and negligent driving of Tata-tanker bearing registration No. HR-26A-2972 by respondent No.1 Mahender ? OPP.*
- 2. If issue No. 1 is proved whether the petitioners Trishla Jain, Bhishek Jain, Ashok Jain and Ankit Jain are entitled to claim compensation, if so to what amount and from whom ? OPP*
- 3. Whether the petitions are collusive between the petitioners and the respondents No. 1 & 2 ? OPD*
- 4. Whether the petitioners have no cause of action and locus standi to file the petition? OPD*
- 5. Whether the offending vehicle was not driven by a person holding a valid and effective driving licence at the time of accident ? OPD*
- 6. Whether the offending vehicle was driven in contravention of terms and conditions of insurance Policy ? OPR*

7. *Whether the petitions are not maintainable in the present form ? OPR*
8. *Whether the petitioners are estopped by their own act and conduct from filing the petition ? OPR*
9. *Whether the petitions are bad on account of mis-joinder and non-joinder of necessary parties ? OPR*
10. *Relief.”*

6. Since the insurer disputes the very liability fastened upon it and is in appeal against the findings recorded by the Tribunal w.r.t. negligence on part of the driver of the tanker, the said appeals are being adjudicated before discussing the appeals preferred by the claimants.

FAO Nos.4601 & 4602 of 2010

7. Claimants examined ASI Ram Chander, who appeared as PW-4 as an eyewitness to the accident. Aforesaid PW-4 is stated to be on duty in PCR which was following the car at the time of accident. Insurer on the other hand heavily relied upon statement of RW-2 Mahender son of Ram Babu who claims himself to be employed as cleaner of the tanker on the fateful day, and photographs produced on record as Exhibit R-1 and R-2.

8. Ld. Counsel for the insurer has made strenuous efforts by referring to the photographs to claim that the statement of RW-2 is fully corroborated. Tanker was parked on unmetalled road and, thus, the Driver of the tanker cannot be held to be a tortfeasor. He submits that the photographs also show that the indicator of the truck was on and, thus, the

finding recorded by the Tribunal on Issue No.1 is result of misreading of evidence and, is thus, perverse. He places reliance upon law laid down by Apex Court in **Nishan Singh and others vs. Oriental Insurance Company Ltd. through Regional Manager and others, 2018(6) SCC 765**. He further relies upon **Oriental Insurance Co. Ltd. vs. Sony Cheriyan, 1999(6) SCC 451** to claim that the Insurance Company should not be held liable in the present case as the owner of the vehicle was required to show that the driver employed was holding a valid licence to drive a vehicle carrying hazardous material. He, thus, claims that finding recorded by the Tribunal w.r.t. the liability of the insurer is also erroneous.

9. Per contra, Counsels for the claimants have claimed that the Award is perfectly valid w.r.t. issue of negligence and the liability. However, they claim that the amounts of compensation awarded need to be revisited in terms of law laid down by Apex Court in '**National Insurance Company Limited vs. Pranay Sethi and others**', (2017) 16 SCC 680 and '**Smt. Sarla Verma & others vs. Delhi Transport Corporation & another**' (2009) 6 SCC 121

10. I have heard Ld. Counsel for the parties and have carefully gone through the evidence on record.

11. From bare perusal of RW-2 who claims himself to be cleaner of the tanker, it is clear that he himself has not witnessed the accident. Solitary eyewitness to the accident is PW-4 ASI Ram Chander. He claims

that he was following the car in PCR while on duty. He is unambiguous in his testimony to state that the tanker was parked on the metalled part of the road between mid line and edge line. On seeing Exhibits R-1 and R-2, testimony of PW-4 gets corroborated. Testimony of RW-2 regarding parking of the tanker on unmettled road gets totally falsified. In order to appreciate statement of PW-4, the same is being reproduced herein below :-

“PW-4 on SA

ASI Ramchander, Check Post Barwala Naka, PS City Hisar.

On 13.10.2005 I was posted at PCR No.8 as Incharge. When I was coming from Hansi to Hisar at about 6.30 am. One maruti car No.DDO-32 was plying ahead of us. When the said car reached near SB oil mill Delhi Road, Hisar a tanker was parked on the road, the said car struck from behind into the stationery tanker. The regn. no. Of the tanker was HR26A/2972. The accident took place due to fault of driver of tanker as there was no parking light on, neither any bricks or stones were put behind it and it was wrongly parked. The photocopy of my statement is Mark-A.

Xxxxby Shri C.D. Singla, counsel for the respondent No.1 & 2.

I was on PCR duty from Hansi to Hisar. On that day I was posted under the control of SP Hisar. I started my duty on that day from Police Post Cantt. which is in the jurisdiction of PS Sadar, Hisar at 10.00 AM. I started from Police Post cantt. at 10.00 AM in the PCR bearing No.HR-20H/0775 for Hisar. I cannot tell at what time I reached Hisar after proceeding from Cantt. Police Post. Then I left Hisar after 10-15 minutes for Hansi. I cannot tell at what time I reached Hansi. On the way between Hisar to Hansi I had been stopping. Thereafter I left Hansi at about 6.00 PM. The distance between Hansi and Hisar is 28 KM. I had made an entry in the daily diary register at

Police post Cantt at 10.00 AM. I returned to police post cantt.on 14.10.2005 at 10.00 AM and an entry in this regard was made in the daily diary register of the police post Cantt. I did not sign both the entries in the daily diary register. The entry was made by the MHC. I cannot tell whether under the police rules, it is necessary for the incharge of the PCR to sign the entry in the daily diary. I had been maintaining the log book of the said PCR.

I did not notice the truck in question prior to the accident in a mechanical break down in stationery condition. I saw the said truck only at the time of accident. Today I have not brought the log book of the said PCR. The log book is in the control of the driver of the said PCR. At that time driver was Beer Singh. The entry in the log book used to be made by the driver but I used to sign the entry. I plied the PCR thrice or four times prior to the accident on Hansi Hisar road.

I cannot tell the width of the National High way No.10 on which the accident in question had occurred. There was no divider in the middle of the road, however, there was a lane in the middle of the road of white paint. There was also a lane on both edges of the road with white paint. Two vehicles could not have passed on one side of the road in between the midline and the edge line. It is wrong to suggest that in this respect I am deposing falsely and that two vehicles can easily pass in between the midline and the edge line. I was following the maruti car which dashed into the stationery tanker at a distance of 60-70 paces. The entire front portion of the maruti car had dashed into the back of the stationery tanker. It did not come to my notice from which time the tanker was there. I cannot tell whether there was any mechanical break down of the tanker or not. The tanker was parked on the road in between midline and edge line. Lights of the car were on. It was dark at that time. Photographs were not taken in my presence. I did not take injured in my car.

It is wrong to suggest that our duty was to take the

injured to the hospital. I have seen the photographs of accident and the same are Ex.R-1 and R-2. It is wrong to suggest that there was no fault of the stationery truck. It is wrong to suggest that the break down stationery truck was parked beyond the edge line towards kacha side of the road, though it was on the road. It is also wrong to suggest that the truck was not parked in the service lane. It is also wrong to suggest that the tanker was not parked in between the midline and edge line. It is wrong to suggest that I have deposed falsely to help the claimants.

xby Ms. Suman Jain, counsel for respondent No.3.

It is correct that the truck was parked on the service lane as per these photographs of the place of occurrence. I did not enquire regarding the parking of truck in mechanical break down condition. It might have been enquired by the IO of the case. I cannot say whether any vehicle was coming from opposite side at that time. I remained at the spot for 15-20 minutes. I cannot tell what was filled in the tanker. It is wrong to say that due to mechanical break down the tanker was parked on the side of the road and due to rash and negligent driving of deceased Narender Jain, the said accident occurred. It is further wrong to say that due to the fast speed of the car, the deceased Narender could not control and struck against the parked tanker rashly and negligently from backside of the tanker and he himself was responsible to cause accident. I cannot tell the width of any vehicle. I cannot tell the width of National Highway No.10. 3-4 vehicle can pass the road at one time.

RO&AC

(Dr. Shiva Sharma)
MACT, Hisar/17.4.07”

12. PW-4 is a neutral witness. His testimony is most natural as he had no axe to grind against the respondents. From Exhibits R-1 and R-2 it is also clear that the testimony of RW-2 w.r.t. placing bushes, bricks etc.

around the tanker also gets demolished. In view of the aforesaid facts, no fault can be found with the findings recorded by the Tribunal that :

“From the evidence on record it has clearly been established due to the act of negligence on the part of respondent No. 1 who parked the stationery tanker at the place of occurrence which is busy road known as national Highway No.10 and he without taking any precaution, such as indicating the drivers of passers-by vehicles that the tanker was parked being stationery the accident had taken place.”

13. While dealing with the aspect of liability, Tribunal held as under :-

23. Coming on the point of liability as per observation of this tribunal made herein before, there is no dispute on the date of accident, the tanker was being driven by the respondent No.1. Counsel for the respondent no.3 argued respondent No.2 was the owner of the tanker as per registration book Ex.R.5. The tanker was insured with respondent No.3 on the date of accident. It is not disputed fact, rather, very much proved from the insurance policy Ex. R.6. Counsel for the respondent No.3 argued, the respondent No.1 was not having the valid and effective driving license at the time of driving the tanker. Police took into possession driving license Ex.RW5/A and the license E.RW5/A is bearing endorsement. Of LMV and HVG but it was not bearing any endorsement. To drive vehicle like oil tanker. Therefore, respondent No.3 is not liable to indemnify the respondent no. 2 from the liability to make the payment of compensation to the petitioners. Respondent No.3 examined respondent No.1 in the course of evidence as RW-2. While cross-examining him, no such suggestion was given to him suggesting he was not authorized to drive the oil tanker. The driving license Ex.RW5/A

bears endorsement of heavy vehicle. Respondent No.3 has not examined any official from the transport department, to prove that specific endorsement was required on the driving license to drive vehicle oil tanker. In this way, this tribunal find no infirmity with the driving license of respondent No.1. Consequently, all the respondents are held jointly and severally liable to pay the compensation to the petitioners as assessed by this tribunal. However, it shall be the primarily liability of the respondent no.3 to deposit the compensation in the Tribunal. Issue No.1 goes against the respondents. Issue No.2 partly goes in favour of the petitioners. Issue No.5 goes against the respondent No.3.

Issue No.3

24. So far this issue is concerned, in the light of findings recorded by this Tribunal on issues No.1, 2 and 5, no circumstance appeared on the record showing any element of collusion between the petitioners on one hand and respondents No.1 and 2 on the other hand. Neither respondent No.3 led any evidence to prove the collusion as alleged. Due to lack of evidence respondent No.3 failed to prove this issue. Consequently, it goes against the respondent No.3.”

14. Tribunal has rightly recorded that while cross-examining RW-2 no suggestion was put to him that he was not authorized to drive the oil tanker. This amounts to tacit admission on part of insurer. Reliance can be well placed on **Anita Sharma vs. New India Assurance Co. Ltd. (2021) 1 SCC 171.**

15. Ld. Counsel for the insurer in order to drive benefit out of law laid down by Apex Court in **Sony Cheriyan's** case (supra) was required to show as to which covenant contained in the policy was breached. He has

not been able to point out any covenant contained in the insurance policy. Thus, no fault can be found with the findings recorded by the Tribunal. In the light of aforesaid facts no fault can be found with the findings recorded by the Tribunal while fastening liability on the insurer.

16. As a sequel of the aforesaid discussion, no merit is found in the appeals preferred by the Insurer and the same are, thus, ordered to be dismissed.

FAO Nos.305 & 257 of 2011

17. Coming on to the appeals preferred by the claimants, the compensation awarded by the Tribunal needs to be calculated afresh in term of law laid down by Apex Court in **Pranay Sethi's** case (supra). There is no dispute w.r.t. the salaries of the deceased as assessed by the Tribunal.

18. In FAO No.305 of 2011, deceased Aadesh Kumar Jain died at the age of 53 years. His income has rightly been assessed @ Rs.32,830/- per month. The claimants are entitled to an element of 15% hike on account of future prospects. Personal deduction also needs to be recalculated @ $1/3^{\text{rd}}$. Keeping in view the age and as per the ratio of law laid down in **Sarla Verma's** case (supra), multiplier of 11 will be applicable instead of that of 9. Claimants are also entitled for compensation under the conventional heads. Each of the claimants shall be entitled for an amount of Rs.44,000/- for loss of consortium. Loss of Estate is assessed @ Rs.44,000/-. On account of funeral expenses they are held to be entitled for

an amount of Rs.15,000/-.

19. In FAO No.257 of 2011, deceased Narender Kumar Jain died at the age of 58 years. His salary has been rightly assessed by the Tribunal @ Rs.31,684/- per month. Nothing has been paid on account of future prospects. Claimants shall be entitled for 15% on account of future prospects. For calculating dependency personal deduction also needs to be modified to 1/3rd. Multiplier also needs to be modified to 9 from 8 awarded by the Tribunal. The claimants shall also be entitled for an amount of Rs.44,000/- each on account of loss of consortium, they shall be awarded Rs.44,000/- for Loss of Estate and Rs.15,000/- on account of funeral expenses as per the dictum of **Pranay Sethi's** case (supra).

20. The compensation awarded shall carry an interest @ 7.5% per annum from the date of filing of the claim petition(s) till the date of actual realization.

21. Needless to say that any amount already paid to the claimants/ appellants shall be set off.

22. Ordered accordingly.

23. A copy of this judgment be kept on the files of other connected cases.

October 17, 2022

Dpr

**(PANKAJ JAIN)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No