

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

(1)

**FAO-392-2014 with
XOBJC-132-CII-2016 (O&M)
Reserved on 23.08.2022
Pronounced on: 06.09.2022**

Oriental Insurance Co. Ltd.

.....Appellant

Versus

Jasvir Kaur and others

.....Respondents

(2)

**FAO-393-2014 with
XOBJC-61-CII-2016 (O&M)**

Oriental Insurance Co. Ltd.

.....Appellant

Versus

Harbans Kaur and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Ashwani Talwar, Advocate and
Mr. Varun Sharma, Advocate
for the appellant(s).

Mr. Arvind Rajotia, Advocate for
Mr. Ajit Sihag, Advocate
for the cross-objectors/respondents No.1 to 4.

Mr. Deepak Aggarwal, Advocate
for respondents No.5 and 6.

MANJARI NEHRU KAUL, J.

CM-10065-CII-2016 in XOBJC-132-CII-2016 in FAO-392-2014
CM-5136-CII-2016 in XOBJC-61-CII-2016 in FAO-393-2014

For the reasons mentioned in the applications, the same are allowed and delay of 663 days and 298 days respectively in filing the cross-objections is condoned.

However, it is clarified that the cross-objectors/respondents No.1 to 4 will not be entitled to the interest for the period of delay in filing the cross-objections.

Main Cases

The above referred appeals and cross-objections are being disposed of by this common order as they arise out of the same accident and impugned awards dated 11.09.2013 passed by learned Motor Accidents Claims Tribunal, Patiala (for short, 'the Tribunal').

Learned counsel appearing for the appellant-insurance company vehemently argued that the impugned award had been passed by ignoring the material aspects of the case and was contrary to the settled principles of law as well as the provisions of the Motor Vehicles Act, 1988 (for short, 'the Act'). He submitted that while adjudicating upon issue No.4 qua validity of the driving licence of the driver of the offending vehicle, the Tribunal gravely erred in holding that the driving licence of the driver respondent No.5 was valid on the date of the accident in question and further failed to appreciate that the offending vehicle which was an oil tanker fell under the category of vehicles carrying hazardous goods. Learned counsel drew the attention of this Court to the proviso to Section 14(2)(a) of the Act and submitted that it was clearly prescribed and stipulated therein that for driving a vehicle carrying goods of hazardous or dangerous nature, the driver had to undergo a specific training provided under the Central Motor Vehicles Rules, 1989 (for short, 'the Rules') and it was only thereafter a licence could be issued to him with a specific endorsement therein that he was competent to drive a vehicle of that class i.e. vehicle carrying hazardous or dangerous goods. It was argued that a conjoint reading of the above said provisions and the Rules clearly reflected the intent of the legislature that in the absence of an endorsement qua completion of

specific training, the driving licence could not be said to be valid and effective for driving a vehicle carrying hazardous goods. Learned counsel still further submitted that driving an oil tanker required expertise for it could not be halted immediately on application of brakes, as the liquid (petrol/diesel etc.) inside the tanker shifted its weight whenever brakes were applied hence, appropriate speed and a safe distance had to be maintained from other vehicles to avoid any collision. Learned counsel thus submitted that it was due to lack of specialised training the accident in question had taken place and thus there was apparent fundamental breach of the insurance policy. It was vehemently argued by learned counsel that in the above facts and circumstances, the company had been wrongly fastened with the liability to indemnify respondents No.5 and 6 i.e. owner and driver of the offending vehicle.

Learned counsel appearing for the insurance company also prayed for reassessing and modifying the compensation awarded to the claimants by urging that it was on the higher side and not in consonance with the settled law.

In support of his submissions, learned counsel for the insurance company has placed reliance upon ***Sarabjit Kaur and others Vs. Mohan Singh and others : 2020 ACJ 2492; New India Assurance Company Vs. Sunita Makol and others : 2019(2) ACJ 1034 and Smt. Kamal Vs. Archana Raju and others : 2020 ACJ 204.***

Per contra, learned counsel appearing for respondents No.5 and 6 i.e. driver and owner of the offending vehicle while vehemently disputing and opposing the submissions and prayer made by the

counsel opposite, submitted that merely because there was no endorsement on the driving licence of the driver (respondent No.5) to drive a vehicle carrying hazardous goods, it would not be a ground to absolve the insurance company of its liability to indemnify the insured. He argued that once it stood proved that the driver/respondent No.5 was holding a valid licence to drive heavy motor vehicles (Ex.P2), the findings of the Tribunal could not be faulted with, because an oil tanker being a transport vehicle also fell under the category of heavy transport vehicle. Learned counsel further argued that the accident in question had not taken place due to the petrol/diesel which was being transported in the offending vehicle and hence it could not be said that there had been a violation of the insurance policy by respondents No.5 and 6.

In the cross-objections, learned counsel for the claimants prayed for reassessment and modification of the compensation awarded as it was inadequate and not in consonance with the settled law in *National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270; Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. : (2009) 6 SCC 121* and *Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and others, 2018(4) RCR (Civil) 333*.

I have heard learned counsel for the parties and with their able assistance gone through the material on record.

The question which has arisen for consideration before this Court is whether the absence of the requisite endorsement on the driving licence of respondent No.5 of he having undergone and completed the prescribed period of training to drive a vehicle carrying

hazardous goods, as per Rule 9 of the Rules, would amount to a fundamental breach of policy so as to absolve the insurance company of its liability or not?

To deal with the issue in hand it would be apposite to reproduce Section 14(2)(a) of the Act, which reads thus:-

"14.Currency of licences to drive motor vehicles.
XXXX XXXX XXXX
(2) A driving licence issued or renewed under this Act shall,-
(a) in the case of a licence to drive a transport vehicle, be effective for a period of five years:
Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of three years and renewal thereof shall be subject to such conditions as the Central Government may prescribe;"

It would also be relevant to refer to Rule 9 of the Rules, which is reproduced as under:-

"9. Educational qualifications for drivers of goods carriages carrying dangerous or hazardous goods.—(1) One year from the date of commencement of Central Motor Vehicles (Amendment) Rules, 1993, any person driving a goods carriage carrying goods of dangerous or hazardous nature to human life shall, in addition to being the holder of a driving licence to drive a transport vehicle, also has the ability to read and write at least one Indian language out of those specified in the VIII Schedule of the Constitution and English and also possess a certificate of having successfully passed a course consisting of following syllabus and periodicity connected with the transport of such goods.

Period of training	3 days
Place of training	At any institute recognised by the State Government
Syllabus	

A.	Defensive driving	Duration of training for A & B-1st and 2nd day		
	Questionnaire			
	Cause of accidents			
	Accidents, statistics			
	Driver's personal fitness			
	Car condition			
	Braking distance			
	Highway driving			
	Road/Pedestrian crossing			
	Railway crossing			
	Adapting to weather			
	Head-on collision			
	Rear-end collision			
Night driving				
Films and discussion				
B.	Advanced driving skills and training			
	(i) Discussion			
	Before starting	-Check list		
		-outside/below/near vehicle		
		-product side		
		-inside vehicle		
	During driving			
		-correct speed/gear		
		-signalling		
		-lane control		
		-overtaking/giving side		
		-speed limit/safe distance		
		-driving on slops		
Before stopping condition	-safe stopping place, signalling, road width,			
After stopping	-preventing vehicle movement			
	-wheel clocks			
	-vehicle attendance			
Night driving	-mandatory lighting requirements			
	-headlamp alignment			
	-use of dripped beam			
(ii) Field test/training	-1 driver at a time			
C.	Product safety	-UN classification	Duration of for (C) Third day	
	UN Panel	-Hazchem Code		
		-Toxicity		
		flammability		
		other definitions		
	Product Information	-Tremcards		
		-CIS/MSDS		
		-Importance of temperature		
		Pressure, level		
		-Explosive limits		
		-Knowledge about equipment		
	Emergency Procedure	-Communication		
		-Spillage handling		
	-Use of PPE			
	-Fire fighting			
	-First Aid			
	-Toxic release control			
	-Protection of wells, rivers, lakes, etc.			
	-Use of protective equipment			
	-Knowledge about valves etc.			

(2) The holder of a driving licence possessing the

minimum educational qualification or the certificate referred to in sub-rule (1), shall make an application in writing on a plain paper alongwith his driving licence and the relevant certificate to the licensing authority in whose jurisdiction he resides for making necessary entries in his driving licence and if the driving licence is in Form 7, the application shall be accompanied by the fee as specified in the Table in rule 32.

(3) The licensing authority, on receipt of the application referred to in sub-rule (2), shall make an endorsement in the driving licence of the applicant to the effect that he is authorised to drive a goods carriage carrying goods of dangerous or hazardous nature to human life.

(4) A licensing authority other than the original licensing authority making any such endorsement shall communicate the fact to the original licensing authority."

On a perusal of the above reproduced Rule 9 of the Rules, it is evident that the course is comprehensive in nature as it provides the candidate/driver to be mandatorily trained in all aspects relating to driving of vehicle carrying hazardous goods, including advanced driving skills and training, product information, field test/training, emergency procedure to be followed etc.

The object behind prescribing such extensive curriculum is twofold: (i) to prevent any accident or mishap which could have serious repercussions on life and property in the wake of the hazardous nature of the goods being transported in the vehicle (ii) to control the impact and avoid adverse consequences by prescribing emergency procedure such as spillage handling, fire fighting, toxic release control among other things.

Thus, a transport vehicle carrying hazardous and dangerous goods has to be cautiously driven and handled after complying with all the safety precautions and standards laid down. It is clear that a vehicle carrying hazardous or dangerous goods cannot be kept at par with that

of a heavy motor vehicle or any other transport vehicle, not carrying hazardous goods.

The owner of a vehicle carrying hazardous and dangerous goods has to be extra cautious at the time of employing a driver for driving such vehicle. It is incumbent upon the owner to satisfy himself qua not only the driving skills but also the expertise of the driver to drive a vehicle carrying hazardous goods. It would be fraught with danger to let untrained drivers jeopardise the life of unsuspecting public on the road as there are many perils involved in driving a vehicle carrying hazardous goods. Verification of the certificate or endorsement on the driving licence as prescribed in Rule 9 of the Rules is a cardinal duty cast upon the owner, which is to be carried out before entrusting the vehicle with hazardous consignment to his driver.

It would be also relevant to reproduce Rule 132 of the Rules which reads thus:-

"132. Responsibility of the transporter or owner of goods carriage.—(1) It shall be the responsibility of the owner of the goods carriage transporting any dangerous or hazardous goods to ensure the following, namely:—

(a) that the goods carriage has a valid registration to carry the said goods and the said carriage is safe for the transport of the said goods; and

(b) the vehicle is equipped with necessary first-aid, safety equipment, tool box and antidotes as may be necessary to contain any accident.

(2) Every owner of a goods carriage shall, before undertaking the transportation of dangerous or hazardous goods in his goods carriage, satisfy himself that the information given by the consignor is full and accurate in all respects and correspond to the classification of such goods specified in rule 137.

(3) The owner of a goods carriage shall ensure that the driver of such carriage is given all the relevant information in writing as given in Annexure V of these rules in relation to the dangerous or hazardous goods

entrusted to him for transport and satisfy himself that such driver has sufficient understanding of the nature of such goods and the nature of the risks involved in the transport of such goods and is capable of taking appropriate action in case of an emergency.

(4) The owner of the goods carriage carrying dangerous or hazardous goods, and the consignor of such goods shall lay down the route for each trip which the driver shall be bound to take unless directed or permitted otherwise by the Police Authorities. They shall also fix a time table for each trip to the destination and back with reference to the route so laid down.

(5) It shall be the duty of the owner to ensure that the driver of the goods carriage carrying dangerous or hazardous goods holds a driving licence as per provisions of rule 9 of these rules.

(6) Notwithstanding anything contained in rules 131 and 132, it shall be sufficient compliance of the provisions of these rules if the consignor transporting dangerous or hazardous goods and the owner of the goods carriage or the transporter, abides by these conditions within six months after the date of coming into force of the Central Motor Vehicles (Amendment) Rules, 1993."

Adverting to the case in hand, the insurance company has taken a specific defence that the driving licence of the driver i.e. respondent No.5 was not valid and effective for driving the offending vehicle. It is their case that the offending vehicle was carrying petrol/diesel at the time of accident in question, and did not carry the necessary endorsement as per Rule 9 of the Rules.

This Court in the wake of the above, has no hesitation in concurring with the submissions made by learned counsel for the appellant insurance company that in the absence of necessary endorsement, the driving licence of respondent No.5 could not be said to be valid to drive the offending vehicle i.e. oil tanker, and thus there was indeed a fundamental breach of the insurance policy by the owner respondent No.6 of the offending vehicle.

It would be pertinent to observe that a vehicle carrying a tanker filled with liquid, such as the one in the case at hand, is expected to maintain a proper distance and speed so as to give it buffer distance to stop as and when the brakes are applied. The height of the tanker and liquid inside makes it difficult for a vehicle in motion to stop immediately on application of brakes. Due to inertia, the center of gravity and the weight of liquid shifts when brakes are applied, as a result of which such vehicle cannot stop immediately but only after some distance.

In the instant case, the offending vehicle i.e. the oil tanker struck the two wheeler from behind, on which the deceased were riding. Hence, it is discernible that respondent No.5 i.e. driver had not been maintaining a safe braking distance and speed on the road. Even while stepping into the witness box as RW1, the driver of the offending vehicle in his examination-in-chief was silent on this aspect, that is, that he had been observing a safe driving distance and reasonable speed. This without a doubt further points towards lack of expertise and training on the part of RW1 driver of the offending vehicle to drive a vehicle carrying hazardous or dangerous goods.

Though a Court while adjudicating a case under the MACT should not adopt a hyper technical approach, however, the Court of law, being bound by statutory principles, must also be guided by logic and reason. Therefore, it cannot be said that the factum of petrol/diesel being carried in the offending vehicle was not a contributing factor to the accident in question. The ratio of law as laid down by the Hon'ble Supreme Court in *National Insurance Co. Ltd. Vs. Swaran Singh* :

(2004) 3 SCC 297 is well settled. However, in the instant case, the breach on the part of the insured has contributed to the cause of accident and it is so fundamental that the insurer cannot be fastened with the liability to indemnify the insured.

As a sequel to the above, this Court has no hesitation in rejecting the submissions made by learned counsel for respondents No.5 and 6 i.e. driver and owner, that the transportation of petrol/diesel did not contribute to the accident in question. The Tribunal erred in fastening the liability on the insurance company to indemnify the insured moreso when the owner/respondent No.6 was evidently negligent and failed to discharge his duty to satisfy himself that the driver was holding a valid driving licence along with the requisite endorsement as per Rule 9 of the Rules.

The next challenge by the appellant insurance company is qua the following compensation awarded to the claimants by the learned Tribunal:-

Compensation awarded in respect of death of Maghar Singh

Sr. No.	Head	Amount
1.	Monthly Income	Rs.35,250/-
2.	Annual Income	Rs.35,250/- x 12 = Rs.4,23,000/-
3.	Future prospects (15%)	Rs.4,23,000/- x 15% = Rs.63,450/-
4.	Total annual income	Rs.4,23,000/- + Rs.,63,450/- = Rs.4,86,450/-
5.	Tax deducted	Rs.28,645/-
6.	Annual income after deducting tax	Rs.4,86,450/- (-) Rs.28,645/- = Rs.4,57,805/-
7.	Deductions towards personal expenses (1/3rd)	Rs.4,57,805/- (/) 3 = Rs.1,52,602/-
8.	Loss of dependency to the claimants	Rs.4,57,805/- (-) Rs.1,52,602/- = Rs.3,05,203/-
9.	Multiplier	11

10.	Total dependency of the claimants after applying multiplier	Rs.3,05,203/- x 11 = Rs.33,57,233/-
11.	Loss of consortium	Rs.1,00,000/-
12.	Funeral expenses	Rs.25,000/-
	Total compensation	Rs.34,82,233/-

Claimant No.1 was held entitled to compensation to the extent of 40%, claimant No.4 was held entitled to 30% of the compensation amount whereas claimants No.2 and 3 were held entitled to 15% each of the compensation amount along with interest @ 6 % per annum from the date of filing of the petition till actual payment. The appellant insurance company and respondents No.5 and 6 being driver and owner of the offending vehicle were held liable to pay the amount of compensation jointly and severally.

Compensation awarded in respect of death of Jaswinder Gir

Sr. No.	Head	Amount
1.	Monthly Income	Rs.8,000/-
2.	Annual Income	Rs.8,000/- x 12 = Rs.96,000/-
3.	Future prospects (50%)	Rs.96,000/- x 50% = Rs.48,000/-
4.	Total annual income	Rs.96,000/- + Rs.,48,000/- = Rs.1,44000/-
5.	Deductions towards personal expenses (1/4th)	Rs.1,44,000/- (/) 4 = Rs.36,000/-
6.	Loss of annual future earnings	Rs.1,44,000/- (-) Rs.36,000/- = Rs.1,08,000/-
7.	Multiplier	16
8.	Total dependency of the claimants after applying multiplier	Rs.1,08,000/- x 16 = Rs.17,28,000/-
9.	Loss of consortium	Rs.1,00,000/-
10.	Funeral expenses	Rs.25,000/-
	Total compensation	Rs.18,53,000/-

Claimant No.1 was held entitled to the extent of 10% of the total compensation amount, claimants No.2 to 4 were held entitled to 30% each of the compensation amount along with interest @ 6 % per

annum from the date of filing of the petition till actual payment. The appellant insurance company and respondents No.5 and 6 being driver and owner of the offending vehicle were held liable to pay the amount of compensation jointly and severally.

The Tribunal, in the opinion of this Court, fell into error by deducting the amount of allowances from the salary of deceased Maghar Singh as no deductions, except towards income tax, if any, can be made from the gross salary. The Tribunal, however, has rightly added future prospects to the extent of 15% and also applied the correct multiplier of '11'. Hence, no interference is warranted on the afore-stated counts.

With respect to the compensation to the claimants in respect of death of Jaswinder Gir the Tribunal has rightly assessed the loss of dependency, however, the amount of compensation awarded to the claimants under the conventional heads is not in consonance with the settled law.

The Hon'ble Supreme Court in ***Pranay Sethi's case*** (*supra*) has quantified the amount in the sum of Rs.15,000/- each for loss of estate and funeral expenses in addition to Rs.40,000/- each for loss of consortium. Still further, it has been held by the Hon'ble Supreme Court that the aforesaid amounts would be subject to 10% enhancement after every three years. Therefore, the claimants would be entitled to 10% enhancement *qua* the above-mentioned conventional heads as per the ratio laid down in ***Pranay Sethi's case*** (*supra*). Hence, the amount of compensation under the convention heads stands modified to Rs. 16,500/- each for loss of estate and funeral expenses.

Besides this, the claimants are entitled to Rs.44,000/- each, for loss of consortium.

The compensation thus payable to the claimants would be as follows:-

Compensation in respect of death of Maghar Singh

Sr. No.	Head	Amount
1.	Monthly Income	Rs.41,263/-
2.	Annual Income	Rs.41,263/- x 12 = Rs.4,95,156/-
3.	Tax (10% of the amount exceeding Rs.1,80,000/-)	(Rs.4,95,156-Rs.1,80,000)x10% = Rs.31,516/-
4.	Annual Income after deducting tax	Rs.4,95,156/- (-) Rs.31,516/- = Rs.4,63,640/-
5.	Future prospects (15%)	Rs.4,63,640/- x 15% = Rs.69,546/-
6.	Total Annual Income	Rs.4,63,640/- + Rs.69,546/- = Rs.5,33,186/-
7.	Deductions towards personal expenses (1/3rd)	Rs.5,33,186/- (/) 3 = Rs.1,77,729/-
8.	Loss of annual future earnings	Rs.5,33,186/- (-) Rs.1,77,729/- = Rs.3,55,457/-
9.	Multiplier	11
10.	Loss of future earnings	Rs.3,55,457/- x 11 = Rs.39,10,027/-
11.	Loss of consortium	Rs.44,000/- x 4 = Rs.1,76,000/-
12.	Funeral expenses	Rs.16,500/-
13.	Loss of estate	Rs.16,500/-
	Total compensation	Rs.41,19,027/- (rounded off to Rs.41,19,000/-)

Compensation in respect of death of Jaswinder Gir

Sr. No.	Head	Amount
1.	Monthly Income	Rs.8,000/-
2.	Annual Income	Rs.8,000/- x 12 = Rs.96,000/-
3.	Future prospects (50%)	Rs.96,000/- x 50% = Rs.48,000/-
4.	Total annual income	Rs.96,000/- + Rs.,48,000/- = Rs.1,44000/-
5.	Deductions towards personal expenses (1/4th)	Rs.1,44,000/- (/) 4 = Rs.36,000/-
6.	Loss of annual future earnings	Rs.1,44,000/- (-) Rs.36,000/- = Rs.1,08,000/-

7.	Multiplier	16
8.	Loss of future earnings	Rs.1,08,000/- x 16 = Rs.17,28,000/-
9.	Loss of consortium	Rs.44,000/- x 4 = Rs.1,76,000/-
10.	Funeral expenses	Rs.16,500/-
11.	Loss of estate	Rs.16,500/-
	Total compensation	Rs.19,37,000/-

The claimants are, therefore, held entitled to total compensation as referred to above, along with interest @ 6% per annum from the date of filing of claim petition till its actual realization except for the period of delay in filing the cross-objections, which shall be apportioned to the claimants in the same ratio as directed by learned Tribunal. However, the insurance company is held not liable to indemnify respondents No.5 and 6 i.e. driver and owner of the offending vehicle, but shall satisfy the claim at the first instance and thereafter recover it from respondents No.5 and 6 i.e. driver and owner.

Accordingly, the appeals filed by the insurance company are allowed and cross-objections filed by the claimants are disposed of in the above terms.

06.09.2022
Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes