

\IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 392/2016

Date of decision: December 06,2022

Smt. Suman and others

.....Appellants

Vs.

Jagbir and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sanjeev Kodan, Advocate for the appellants/claimants
 Mr.Punit Jain, Advocate for the respondent No. 3-Insurance
 Company

Nidhi Gupta,J.

This is an appeal filed by the claimants/ appellants against the dismissal of their Claim petition No. 37 of 2014 filed under Section 163-A of the Motor Vehicles Act,1988, by the Motor Accident Claims Tribunal, Jhajjar (hereinafter referred to as 'the Tribunal') vide impugned order dated 7.10.2015. The claimants are the widowed wife and two minor children of the deceased Dharmender who is stated to have died in a motor vehicular accident that took place on 13.11.2013.

Brief facts of the case are that on 13.11.2013 deceased Dharmender, who was working as a Labourer was on his way to Jhajjar in a

Canter/ truck bearing registration No. HR-61A-8966 (hereinafter ‘offending vehicle’), being driven by respondent no.1. When they reached near bus stand of Village Bodia, Tehsil and District Jhajjar, the steering wheel of the offending vehicle failed/ got stuck due to which respondent no.1 could not control it and the offending vehicle struck a tractor with great force as a result of which deceased Dharmender fell on the road and suffered multiple grievous injuries on his person. Surat Singh, PW2 brother of the deceased shifted Dharmender to General Hospital, Jhajjar from where he was referred to PGIMS Rohtak where he remained admitted from 13.11.2013 to 3.12.2013 and subsequently died on 3.12.2013 on account of injuries suffered by him in the aforesaid accident. Surat Singh got recorded DDR No. 47 dated 3.12.2013 (Ex.P3) at PS Jhajjar. Post mortem report is on record as Ex.P1.

The Tribunal upon consideration of the rival contentions of the claimants, the driver and owner of the offending vehicle as well as respondent no.3-Insurance Company concluded that deceased had died on account of injuries suffered by him in the accident. However, regarding compensation, the Tribunal held that the claimants were not entitled to any compensation as the deceased was travelling in the offending vehicle as a gratuitous passenger and that Insurance Policy Ex.P5 was an Act policy and covered only 3rd party risk and the deceased cannot be said to be a third party.

Learned counsel for the claimants/ appellants submits that it is established position in law that under Section 163-A of the Motor Vehicles Act,1988 there is no requirement of negligence to be proved. It is further submitted that it has been proved on record that the deceased was working with respondent no.2, owner of the offending vehicle as a Labourer and therefore, the deceased was not a gratuitous passenger as incorrectly held by

the Tribunal, but the deceased was in fact a third party, as required in law. It is submitted that the deceased was travelling in the offending vehicle to load and unload bricks for his employer respondent No. 2 owner of the offending vehicle. Learned counsel also placed reliance upon Section 147 of the Motor Vehicles Act, 1988.

Perusal of the paper book reveals that respondent no.2 owner of the offending vehicle, stands served. Earlier he has been represented by Mr. Sandeep Kotla, Advocate. However, since last two dates no one has put in appearance on behalf of respondent No. 2. Even today, there is no one to represent respondent No. 2. Accordingly, this appeal is being decided in his absence. Respondent no.1 driver of the offending vehicle is stated to have died.

Learned counsel for the respondent Insurance Company submits that deceased was not employed with respondent no.2 owner of offending vehicle, and was only an unauthorized passenger in the vehicle. It is submitted that as per appellants' own claim petition, in particular averments made in columns 4, 5 and 6 thereof, the deceased was 'self employed'. Ld. Counsel also refers to the findings of the Tribunal in paras 23, 24 and 25 of the impugned Award in this regard, wherein the Id. Tribunal has held as follows:

“23. Per contra, Mr. Dhankhar, counsel for respondent no.3 has submitted that the deceased was travelling in the offending vehicle as a gratuitous passenger. The insurance policy (Ex.R5) was an Act policy only and covered only third party risk. The deceased cannot be said to be a third party. Drawing the attention to the testimony of Suman (PW1), Surat Singh (PW2) and Jitender @ Sonu (PW3) counsel submitted that none of them has satisfied that the deceased was working

as a labourer in the Truck in question. Even in the petition, it has not been alleged that the deceased was employed with respondent no.2. Accordingly, the Insurance Company is not liable to pay the compensation. Counsel also placed reliance on **General Manager, United India Insurance Co. Ltd. V M.Laxmi and others, 2009 ACJ 104.**

24. I have considered the rival contentions.

25. Admittedly, the accident in this case took place on account of the failure of the steering wheel of the vehicle in which the deceased was travelling. The petition is not against the driver, owner and insurer of the vehicle i.e. Tractor with the offending vehicle i.e Canter struck, but is against the owner, driver and insurer of the Canter in question in which the deceased was travelling. There is nothing on the record that the deceased was employed with respondent no.2. The claimants, in the petition, have not alleged that the deceased was employed with respondent no.2. In view of this, I am of the considered view that the claimants are not entitled to the compensation. Accordingly, this issue stands decided against the claimants”. (Emphasis supplied)

In support of his contention learned counsel for the respondent Insurance Company relies upon judgment of this Court in **FAO 2932/2011 titled ‘National Insurance Company Ltd. V Sushila and others’**, decided on 28.1.2016, wherein this Court held that the Insurance Company could not be held liable in view of the fact that the deceased was a gratuitous passenger in the offending vehicle.

I have heard ld. Counsel for the parties and perused the paperbook as well as the LCR in great detail. A perusal of the record reveals that the abovesaid findings of the ld. Tribunal/ submissions of the learned

counsel for the Insurance Company are borne out to be factually incorrect and contrary to facts on the record. This is evident from the following factors:

In para 3 of the impugned award it is recorded that *“Respondent no.1 is the driver and respondent no.2 is the owner of the offending vehicle. In their joint written statement, they have denied the case of the claimants. They have denied that the accident took place due to the negligence of respondent no.1. However, they have admitted that deceased was working with them as a labourer”*. (Emphasis supplied)

Accordingly, it was the pleaded case of the driver and owner of the offending vehicle themselves, that the deceased was in the employ of respondent No. 2-owner. Therefore, it does not lie in the mouth of the respondent Insurance Company to plead to the contrary in view of the above admission of the owner and driver themselves.

Further, Examination-in-chief of RW1 Jagbir Singh, respondent No. 1/ Driver of Canter bearing registration No. HR-61A-8966 reads as under:-

“Stated that on 13.11.2013, I was driving Truck bearing registration NO. HR-61A-8966. This truck was loaded with bricks. When reached at the bus-stop of Village Boriya, all the sudden the steering of the truck got failed and the truck struck against a tractor. Dharmender, since deceased was sitting in the cabin of my truck. Due to the impact of the accident, the window of the truck opened and Dharmender fell down on the ground and sustained fatal injuries. Dharmender used to work of loading and unloading the brick in the truck. I was possessing a valid driving licence at the time of accident in question and its photocopy is Ex. R1. Photocopies of registration certificate, permit, fitness certificate

and insurance policy are Ex. R2, Ex.R3, Ex. R4 and Ex. R5, respectively”. (Emphasis supplied)

Even in his cross examination RW1 Jagbir Singh has stated that *“it is incorrect to suggest that I had given lift to the deceased in my truck. The deceased was sitting in the cabin of the truck on conductor seat. It is incorrect to suggest that deceased was sitting in the trolley of the truck on the bricks. It is incorrect to suggest that the owner of the truck did not employ the deceased as labourer on his truck”*.

From the aforesaid statements and facts, it is clear that the deceased was in the employment of respondent no.2 and therefore, was a ‘third party’ in view of the above said facts; and as such the Tribunal was in patent error in rejecting the claim of the claimants. In similar circumstances this Court in **Partap Singh v National Insurance Company Ltd., 1997 (3) RCR (Civil)210** vide order dated 1.5.1997 had held as follows:-

4. Mr. Sheoran, learned counsel for the appellant vehemently contends that the findings of the Tribunal while holding the appellant liable to pay the compensation to the claimants and which findings have been reproduced above, cannot possibly sustain. Before, however, he could take the Court through the evidence led in the matter so as to show that the claimants, as a matter of fact, had boarded the truck driven by the appellant, having been engaged as labourers for loading and unloading, even though, insofar as he is concerned, he has stated that Amar Singh was a cleaner of the truck, he has referred to the latest case law on the point with reference to Section 147 of the Motor Vehicles Act, 1988. With the help of Section 147 of the 1988 Act, the counsel has endeavoured, and in my view successfully, to project that the law that earlier held the field, in pursuance of the then provisions dealing with the situation i.e. Section 95 of the Motor Vehicles Act, 1939 no more

holds the field and there being vital change in the provisions of Section 95 of the 1939 Act and Section 147 of the 1988 Act, it is now settled that Insurance Co. cannot disclaim its liability in respect of particular class of persons or particular kind of vehicles and when a victim is labourer travelling in a truck, he is covered under Section 147 and Insurance Company is liable to pay compensation.

Further in judgment passed by this Court on 27.11.2017 in **‘Shiv Lochan @ Bhola v National Insurance Co.Ltd. and others’ bearing FAO No. 4287/2005(O&M) and XOBJC No.57-CII of 2013**, it has been held that *“seen in terms of the provisions of the new Motor Vehicle Act, it is clear that whosoever is entitled to raise a claim against the owner/Insured or the insurer is the third party”*.

Further, it is also pertinent that the following issues were framed by the learned Tribunal:

1. Whether the accident, resulting into the death of Dharmender @ Bablu son of Ram Sarup, took place due to use of vehicle bearing registration No. HR-61A-8966 by Respondent no.1 as alleged? OPP
2. If issue No. 1 is proved in affirmative, whether the petitioners are entitled to compensation, if so to what amount and from whom? OPP
3. Whether respondent No. 1 was not holding a valid and effective driving license on the date of alleged accident, if so it's effect? OPR-3.
4. Whether respondent No. 2 had contravened the terms and conditions of the insurance policy, if so its effect? OPR-3
5. Relief.

The findings of the learned Tribunal in regard to Issue No. 1 are most relevant, and are as follows:

“ I have perused the DDR (Ex. P3) lodged by Surat Singh (PW2) as well as the testimonies of Jitendra @ Sonu (PW3) and respondent No. 1 (RW1). From the perusal of the same it is crystal clear that the accident resulting into the death of Dharmender took place due to the use of the offending vehicle by respondent No. 1. Claimants have also proved on the record a copy of PMR (Ex. P1). As per the PMR the cause of death in this case was due to the injury suffered by the deceased in the accident and their complications, which were ante-mortem in nature and sufficient to cause death in ordinary course of nature. On the basis of the above evidence, I am of the considered view that the deceased died on account of the injuries suffered by him in the accident. Accordingly, I hereby find this issue in favour of the Claimants.”

It is the considered view of this Court, that in view of the abovesaid categorical finding of the Tribunal in regard to Issue No. 1 to the effect that the deceased had died due to use of the offending vehicle; and in view of the fact that it has been amply demonstrated above from the testimonies of the respondents themselves that the deceased was not a gratuitous passenger, but in fact, was in the employ of respondent No. 2 owner; as also keeping in view the above pronouncements of law, it is held that the impugned Award dated 7.10.2015 is contrary to the facts and law. Accordingly, the same is set aside, and this appeal/ the claimants' petition under Section 163-A of the Motor Vehicles Act, 1988 is allowed and they are held entitled to compensation of Rs.5 lacs on account of death of deceased Dharmender who died in a motor vehicular accident that took place on 13.11.2013 due to failure of steering wheel of Canter bearing registration No.

HR-61A-8966.

Moreover, a perusal of paras 7 and 8 of the impugned Award shows that it has been recorded therein as follows:

- “7. On the other hand, respondent no.1 and 2 have examined Jagbir Singh (respondent no.1) (RW1) and also proved on the record photocopies of driving-licence (Ex.R1); registration-certificate (Ex.R2); route-permit (Ex.R3); fitness-certificate (Ex.R4) and insurance policy (Ex.R5).
8. Respondent No.3-Insurance Company has not led any oral or documentary evidence”.

Further, finding of the learned Tribunal with regard to Issues 3 and 4 as recorded in para 27 of the Award is as follows:

“27. Both these issues have not been discussed, pressed or argued by counsel for any of the parties during the course of final arguments. Even otherwise, Respondent no.3 has not led any evidence on the file to prove these issues. Hence, these issues are settled against respondent no.3”.

Accordingly, in view of the facts and circumstances as noted above, respondent Nos. 2 and 3 are held jointly and severally liable to pay the compensation of Rs. 5,00,000/- (Rs. Five Lacs only). Respondent No. 3 Insurance Company is directed to release the above said compensation of Rs. 5 lacs to the appellant/claimants within three months from today, along with interest @ 7.5% per annum from date of filing claim petition till date of realisation. Ordered accordingly.

Pending applications if any, stand disposed of.

December 06,2022	(Nidhi Gupta)
Joshi	Judge
Whether speaking/reasoned	Yes
Whether reportable	Yes/No