

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

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**FAO-60-2018 (O&M)**  
**Date of decision: 10.10.2022**

**Sumitra Devi and others**

**...Appellants**

**Versus**

**Hawa Singh and others**

**...Respondents**

**CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present:- Mr. Ashit Malik, Advocate  
for the applicants-appellants.

Mr. H. S. Sehgal, Advocate  
for respondent No. 3/Insurance Company.

**ARVIND SINGH SANGWAN, J. (Oral)**

**CM-9476-CII-2021**

Prayer in this application is for deleting the name of appellant No. 4 Bhani from the array of parties as she had died on 02.03.2019.

For the reasons stated in the application, the same is allowed and the name of appellant No. 4 Bhani is deleted from the array of parties.

Amended memo of parties is taken on record.

**FAO-60-2018 (O&M)**

The challenge laid in this appeal is to the award dated 04.08.2017, passed by the Motor Accident Claims Tribunal, Panipat (*for short 'the Tribunal'*), vide which the respondent No. 3/Insurance Company i.e. Iffco Tokio General Insurance Co. Ltd. Was absolved of its liability as well as for enhancement of the compensation, awarded by the Tribunal.

Brief facts of the case are that on 02.11.2014, Jagbir Singh (since deceased) along with others, were going from their village to Panipat via Gohana-Panipat road in a Jeep, which was being driven by its driver at a moderate speed. At about 10.00 AM, when they reached near village Kait, the offending canter bearing registration number HR-45A-7641 came from Gohana side and the driver of the said canter was driving it in a rash and negligent manner and at a very high speed and the driver of the said canter directly hit his canter against their Jeep, as a result of which, all the occupants of the Jeep sustained injuries. Jagbir sustained multiple and grievous injuries on his person and he succumbed to his injuries on the spot. Jagbir and other injured persons were shifted to Govt. Medical College Hospital, Khanpur. It is further stated that the driver of the offending canter bearing registration number HR-45A-7641 fled away from the spot while leaving the offending canter on the spot. On the statement of one Jasmer son of Rajbir, a case FIR no.220, dated 02.11.2014, under Sections 279, 337, 304-A of the IPC, was registered at police station Israna. Wife, sons and mother of deceased Jagir Singh filed a claim petition before the Tribunal, which was partly allowed, vide impugned award. The operative part of the award reads as under:

“25. In view of the above discussion and findings on the aforesaid issues, the present claim petition is partly allowed with costs and the petitioners are held entitled to a compensation of Rs.10,27,800/- (Rupees ten lacs twenty seven thousand eight hundred) which is payable jointly and severally by respondents no.1 and 2 being the driver and registered owner respectively of the offending vehicle. They are also held entitled to interest at the rate of 7.5% per annum from the date of filing of petition till

its realization.

26. Out of the compensation amount, petitioners no.2 and 3, who are children of the deceased, would get Rs.2,00,000/- each while petitioner no.4, who is mother of the deceased, would get Rs.1,50,000/- and the remaining amount shall be paid to claimant no.1 Sumitra Devi, widow of the deceased. The share of minor claimant no.3 Parmod shall be deposited in fixed deposit scheme of some nationalized bank or post office fetching maximum rate of interest and the same shall not be released without permission of this Tribunal.”

Learned counsel for the appellants/claimants has argued that that the only ground taken by the Tribunal for absolving the respondent No. 3/Insurance Company of its liability is that though the owner and the driver of the offending vehicle were validly insured with respondent No. 3/Insurance Company but they were not having a valid permit to ply the vehicle in question and, therefore, the terms and conditions of insurance policy Ex. R-1 were violated and on that premise, the Tribunal has held that respondent No. 3/Insurance Company cannot be held liable to pay the compensation in view of Section 149 of the Motor Vehicles Act, 1988.

Learned counsel for the appellants has relied upon **2004 (4) RCR (Civil) 399 National Insurance Co. Ltd. vs. Chella Bharathamma**, wherein Hon'ble Supreme Court has held that merely if an offending vehicle was not having a permit to ply and it has met with an accident, the insurance company cannot be absolved of its liability to pay the compensation.

Learned counsel for the appellants has further relied upon **2020 (2) RCR (Civil) 75 United India Insurance Co. Ltd. vs Satinder Kaur @ Satwinder Kaur** to submit that it is held that under the heads of 'Loss of

Consortium' and 'Parental Consortium', the appellants/claimants are entitled to Rs. 40,000/- and Rs. 1,20,000/- respectively and this amount should be awarded to the appellants.

Learned counsel for respondent No. 3/Insurance Company could not dispute the aforesaid settled propositions of law, however, it is argued that the Insurance Company be granted rights to recover the amount from the owner and driver, who have already been proceeded *ex-parte* as they have chosen not to appear despite service.

Accordingly, the present appeal is partly allowed and the finding recorded by the Tribunal on issue No. 3 is reversed and it is held that respondent No. 3/Insurance Company is liable to pay the amount of compensation along with interest @ 7.5% per annum from the date of filing of the petition till its realization with a right to recover the same from the driver and owner of the offending vehicle.

The appellants will also be paid an amount of Rs. 1,60,000/- over and above the amount that is awarded by the Tribunal, along with interest @ 7.5% per annum.

10.10.2022

*Waseem Ansari*

(ARVIND SINGH SANGWAN)  
JUDGE

*Whether speaking/reasoned*

*Yes/No*

*Whether reportable*

*Yes/No*