

FAO-427-1999(O&M) &
FAO-428-1999(O&M)

-1-

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

(1) FAO-427-1999(O&M)

Ram Kumar

...Appellant

Versus

Rajey Shankar and others

...Respondents

(2) FAO-428-1999(O&M)

Ram Kumar

...Appellant

Versus

Alop Kumar Aggarwal @ Alok Kumar Aggarwal and others

...Respondents

Reserved on:-23.3.2023

Date of Decision:-29.3.2023

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Amit Jain, Sr.Advocate with
Mr.Chetan Slathia, Advocate
for the appellant in both appeals.

Mr.J.P. Sharma, Advocate
for LR (i) of respondent No.5 in FAO-427- 1999 and
for LR (i) of respondent No.3 in FAO-428-1999 .

Ms.Jasneet Mehra, Advocate for
Mr.Amrinder Singh, Advocate
for respondent No.4 in FAO-427- 1999 and
for respondent No.2 in FAO-428-1999 .

Mr.Neeraj Khanna, Advocate for
Mr.Ravinder Arora, Advocate
for respondent No.6 in FAO-427- 1999 and
for respondent No.7 in FAO-428-1999 .

H.S. MADAAN, J.(ORAL)

1. By this order, I shall dispose of two FAOs i.e. FAO-427-1999 and FAO-427- 1999 filed on behalf of appellant – Ram Kumar, which have arisen out of the same award.

2. Briefly stated, the facts of the case are that on 26.9.1992 Rama Shankar Kanojia was driving his Maruti Car bearing registration No.DBD-1779;. Arun Devi, Alop Kumar @ Alok Kumar were also travelling by the said car; they were going to Delhi from Narnaul; at about 3:30 p.m., when the car had just crossed village Bachhod, then a Matador bearing registration No.DL-2C/B-1016 (hereinafter referred to as the offending Matador) being driven by Subhash in a rash and negligent manner and at a very high speed came from opposite direction; Rama Shankar Kanojia took his car to the extreme left side of the road to avoid the collision but even then the offending Matador struck against the car; resultantly Rama Shankar Kanojia suffered multiple injuries on his person; other occupants of the vehicles namely Alop Kumar @ Alok Kumar and Subhash (driver of the offending Matador) also got injured; The injured were removed to Government Hospital Narnaul, however keeping in view the serious condition of Rama Shankar Kanojia, he was referred to MCH Rohtak but he died on the way.

3. The legal representatives of deceased Rama Shankar Kanojia i.e. his wife – Smt.Rajey Shankar, minor daughters Vani Shankar aged 17 ½ years and Rashi Shankar aged 16 years, residents of D-100, Saket New Delhi had brought claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against respondents i.e.

Subhash – driver, Ram Kumar- owner and Om Pal Singh – Superdar of offending Matador as well as National Insurance Company Ltd., New Delhi – insurer of Maruti Car No.DBD-1779 and Dinesh Motor Finance Company, New Delhi.

Alop Kumar Aggarwal @ Alok Kumar Aggarwal, who had suffered injuries in the accident had also filed a separate claim petition against Subhash – driver, Ram Kumar – owner and Om Pal Singh – Superdar of the offending Matador as well as Smt.Rajey Shankar – widow, Vani Shankar and Rashi Shankar - minor daughters of Rama Shankar Kanojia, owner cum driver of Maruti Car No.DBD-1779 and National Insurance Company, New Delhi – insurer of that car.

The third claim petition was brought by Subhash – driver of the offending Matador against Smt.Rajey Shankar – widow, Vani Shankar and Rashi Shankar - minor daughters of Rama Shankar Kanojia, owner cum driver of Maruti Car No.DBD-1779 and National Insurance Company, New Delhi – insurer of that car besides Ram Kumar – owner of the offending Matador and Om Pal – superdar of the Matador.

4. Since all the three claim petitions arose out of the single accident, those were tried together by Motor Accident Claims Tribunal, Narnaul(hereinafter referred to as the Tribunal).

5. After procuring presence of respondents in the claim petitions and affording them opportunities to file written statements, the Tribunal had framed the following issues:

1. Whether Rama Shankar Kanojia had died and Alop Kumar was injured in an accident caused due to the rash and negligent driving of

Matador No.DL-2C/B-1016? OPP.

2. Whether Subhash claimant had been injured in accident due to the rash and negligent driving of R.Shankar (since deceased), the driver of Maruti Car No.DBD-1779? OPP.

3. Whether the accident in question had taken place due to the rash and negligent driving of Matador No.DL-2C/B-1016 by its driver? OPP.

4A. To what amount of compensation, if any, the claimants in MACT Case No.15 of 1993 are entitled for the death of R.Shankar and from whom? OPP.

4B. To what amount of compensation, if any, Subhash claimant in MACT Case No.26 of 1993 is entitled for the injuries sustained by him in this accident and from whom? OPP.

4C. To what amount of compensation, if any, Alop claimant in MACT Case No.75 of 1993 is entitled for the injuries sustained by him in this accident and from whom? OPP.

5. Whether R.Shankar, since deceased, was not covered by the Insurance Policy? OPR.

6. Relief.

6. The parties were afforded adequate opportunities to lead evidence in support of their respective claims.

7. After hearing arguments, the Tribunal decided issues No.1 to 3 in favour of the petitioners in petition No.(i) and (ii) and against the respondents in these petitions and claimant in petition No.(iii) holding that accident in question resulting in death of Rama Shankar Kanojia and injuries to Alop Kumar @ Alok Kumar as well as Subhash were

caused by rash and negligent driving of offending Matador by Subhash. Issues No.4A, 4B and 4C were decided holding that Ram Kumar was registered owner of offending Matador, which was being driven by Subhash and when the accident had been caused on account of rash and negligent driving of the Matador by Subhash then Ram Kumar and Subhash being registered owner and driver of the Matador were jointly and severally liable to compensate the dependents of deceased Rama Shankar Kanojia for his death and Alop Kumar @ Alok Kumar for his injuries, whereas claimant Subhash in petition No.III as well as respondent in other two petitions was not entitled to get any compensation for the injuries received by him in the accident particularly when the accident had been caused on account of his own negligence. Issue with regard to compensation payable to Smt.Rajey Shankar and others on account of death of Rama Shankar Kanojia was decided finding them entitled to get Rs.3,00,000/-, payable by respondent Subhash and Ram Kumar jointly being driver and registered of the offending Matador. Whereas claimant Alok Kumar was found entitled to get compensation of Rs.10,000/-, payable by Subhash and Ram Kumar. Respondent National Insurance Company of the ill-fated car was absolved of liability to pay compensation. The compensation so granted mentioned above was with interest @ 12% per annum from the date of filing of the claim petitions till actual realization vide award dated 7.9.1998.

8. Feeling aggrieved by the said award Ram Kumar owner of the offending Matador has filed two different appeals in this Court submitting that he had since sold the Matador in question to respondent

Om Pal Singh before the accident though in the registration certificate his name continued to be reflected. It was Om Pal Singh, who had got the Matador in question released on superdari, therefore he was also liable to pay compensation.

9. I have heard learned counsel for the parties besides going through the record.

10. In this case respondent Ram Kumar is registered owner of the offending Matador in question. While appearing as RW3, he had deposed that he had sold the Matador to Om Pal Singh respondent vide agreement Ex.R5 dated 8.6.1992 and Om Pal Singh had also given his affidavit Ex.R4 in that regard. Respondent Subhash getting his statement recorded as PW12 has stated that he was driving the Matador as a driver under Om Pal Singh. Notice of the claim petitions had been given to Om Pal Singh but he did not appear to offer a contest. As per copy of order passed by Judicial Magistrate available on record, the Matador in question was released on superdari to Om Pal Singh on an application filed by him. All these things go to establish that Om Pal Singh was having actual custody of Matador in question at the time of accident and Subhash was driving that Matador as his employee. Though in the registration certificate name of Ram Kumar continued being reflected as an owner but for all intents and purposes, the ownership vested in Om Pal Singh.

11. Under the circumstances since Ram Kumar had not insured that the ownership qua the Matador got transferred in the name of Om Pal Singh in the record maintained in the transport office, he being registered owner, Subhash being driver and Om Pal Singh otherwise exercising

ownership rights qua the Matador are liable to pay compensation to the claimants in both the claims petitions filed on behalf of LRs of Rama Shankar Kanojia and Alop Kumar Aggarwal @ Alok Kumar Aggarwal.

12. The Tribunal was not justified in exonerating Om Pal Singh and slapping the liability upon Ram Kumar and Subhash only. Therefore, the award needs to be modified to that extent. Otherwise, on merits the compensation awarded by the Tribunal is fair and sufficient. It cannot be termed to be excessive by any stretch of imagination.

13. Therefore, the impugned award is modified to the extent that Om Pal Singh is also held to be jointly and severally liable to pay compensation to the claimants in both the claim petitions along with respondents Ram Kumar - owner and Subhash - driver.

14. With such modifications, both the appeals are allowed partly.

Since both the appeals are partly allowed with above modification, the miscellaneous application(s), if any, stand disposed of accordingly.

29.3.2023.
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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No