

123 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-2816-2023 (O&M)
DECIDED ON: 15.09.2023

M/S AGRO ENGINEERING WORKS AND ANR.

.....APPELLANTS

VERSUS

UNITED INDIA INSURANCE CO. LTD. AND ORS.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Mr. V.B. Aggarwal, Advocate
for the appellants.

VIKRAM AGGARWAL, J (ORAL)

CM-10133-CII-2023

Prayer in the present application is for condonation of delay of 240 days in filing the present appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit of Director/Proprietor of M/s Agro Engineering Works, the same is allowed and the delay of 240 days in filing the appeal is condoned.

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1. The present appeal lays challenge to the award dated 26.04.2022 passed by the Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as the 'MACT') vide which the claim petition filed by the respondents No.2 to 6 (hereinafter referred to as the 'claimants') for the grant of compensation of ₹3,00,00,000/- on account of the death of one Rohit Sahal in a motor vehicular accident which took place on 30.03.2018 was partly allowed and the compensation of ₹1,86,38,000/- alongwith interest @ 9% per

annum was granted.

2. Since the vehicle was found to be plying without a valid route permit, the liability of paying the awarded amount was held to be that of the present appellants. However, the insurance company (respondent No.1) was directed to satisfy the award in the first instance and a right was given to the insurance company to recover the awarded amount from the present appellants alongwith interest @ 6% per annum,

3. The case set up by the claimants was that Rohit Sahal, who was 35 years old at the relevant time and was employed as a Manager in M/s RBS Services India Private Limited, Gurugram, alongwith his brother Ashish Sahal went on 30.03.2018 at about 5:00 pm to meet his friend in Sector 86, Greater Faridabad. While on his way back, he was accompanied by his friend Vikas Kathuria. He was travelling in Wagon-R Car bearing registration No. HR29-AM-4883 and his brother Ashish Sahal was following them in a separate vehicle. It was averred that Rohit Sahal was driving his vehicle at a moderate speed on the correct side of the road. At about 12:15 am, on the intervening night of 30.03.2018 and 31.03.2018, when the duo reached near Escorts Plant, Sector 12, Faridabad, a vehicle make Tata 407 bearing registration No.HR38-M-5468 (hereinafter referred to as the 'offending vehicle') which was being driven by appellant No.2 in a rash and negligent manner came to the wrong side and struck against the Wagon -R car. The car also got damaged and both Rohit Sahal and Vikas Kathuria suffered injuries. They were taken initially to Park Hospital. Keeping in view the serious condition of Rohit Sahal, he was taken to B.K. Hospital where he was declared dead. On the statement of Ashish Sahal, FIR No.343 dated 31.03.2018 was registered under Sections 279, 337 and 304-A IPC at Police Station Central Faridabad. It was the case of

the claimants that the accident, as a result of which Rohit Sahal had expired, had taken place on account of the rash and negligent driving of the offending vehicle by respondent No.1.

4. Rohit Sahal was stated to be drawing a salary and other perks amounting to ₹1,10,000/- per month which, as per them were likely to be increased to ₹1,50,000/- per month. The claimants were the widow, two minor daughters and parents of Rohit Sahal.

5. In the joint written statement filed by the appellants, certain preliminary objections with regard to maintainability, cause of action, *locus standi*, mis-joinder and non-joinder of necessary parties were raised. On merits, all averments including the factum of the accident were denied. It was averred that the driver of the offending vehicle was holding a valid and effective driving license and in the event of a finding being returned that the accident had taken place on account of the rash and negligent driving of the offending vehicle by respondent No.1, the insurance company would be liable to satisfy the award.

6. The insurance company also denied all the averments including the factum of the accident. As is it usually is, it was averred that the driver was not having a valid and effective driving license and that the insured had violated the terms and conditions of the policy of insurance.

7. From the pleadings of the parties, following issues were framed:-

*“1. Whether deceased Sh. Rohit Sahal died in the accident on account of rash and negligent driving of Tejpal who while driving his vehicle No.HR-38-M-5468 in a rash and negligent manner hit the Wagon-R in which Rohit Sahal was travelling which resulted in death of Rohit Sahal?
OPP*

2. If issue no.1 is proved, whether the petitioners are

entitled to compensation, if so to what amount and from whom? OPP

3. Whether the petition is not maintainable in the present form? OPR

4. Whether the petitioner has to no cause of action and no locus standi to file the present petition? OPR

5. Whether the petition is bad for mis-joinder and non-joinder of necessary parties? OPR

6. Whether the respondent no.1 was not having a valid, effective and genuine driving license on the date of alleged accident? OPR3

7. Whether respondent No.2 has violated the terms and conditions of the Insurance Policy? OPR3

8. Relief”

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8. Parties led their respective evidence.

9. After consideration of the same, the MACT held that the accident, as a result of which Rohit Sahal had expired, had taken place on account of the rash and negligent driving of the offending vehicle by appellant No.2. In so far as quantum of the compensation is concerned, the age of the deceased was held to be 35 years. His income was found to be ₹12,12,647/- per year as per the Income Tax Returns. After applying the formulas as laid down by the Hon'ble Apex Court in the case of ***Sarla Verma and Others Vs. Delhi Transport Corporation and Another, 2009(3) RCR Civil 77, National Insurance Company Vs. Pranay Sethi and Others, 2017(4) RCR (Civil) 1009*** etc., the MACT assessed the total compensation at ₹1,86,38,000/-. Interest @ 9% per annum was also awarded.

10. With regard to liability to pay the compensation, it was held that the offending vehicle was being plied without a valid and effective route permit and, therefore, there was a violation of the terms and conditions of the

policy of insurance. It was accordingly held that the present appellants i.e. the owner and driver of the offending vehicle would be liable to pay the compensation. However, in terms of the law laid down by the Hon'ble Apex Court, it was further laid down that in the first instance, the insurance company would satisfy the award and it would subsequently have a right to recover the said amount from the present appellants.

11. Aggrieved by this finding, the present appeal has been preferred.

12. I have heard learned counsel for the appellants and have perused the paper book.

13. Learned counsel for the appellants has submitted that the MACT erred in fastening the liability upon the appellants. Reference was made to the route permit Ex.R-6 and the statement of RW1-Balraj who was an official from the Office of R.T.A, Faridabad. It has been submitted that as per the cross-examination of this witness, the insurance policy of the offending vehicle could not be produced by this witness as the records had been weeded out. It has been submitted that once the record could not be produced by the witness, it could not be said that the route permit was not valid. Learned counsel has also read over the entire cross-examination of the said witness and has submitted that from the cross-examination of this witness, it is clear that the findings recorded by the MACT are liable to be set aside.

14. I have considered the submissions made by learned counsel for the appellants but find the same to be devoid of merit.

15. The MACT dealt with the issue in detail. The insurance policy was duly produced on record. The driving license of appellant No.2 was also produced in evidence as Ex. R1. The certificate of registration was produced on record as Ex. R3. The MACT found that there was no dispute with regard

to the genuineness of these documents.

16. Coming to the route permit Ex. R6, it was held that route permit was not a valid document. The route permit Ex. R6 was duly produced by learned counsel for the appellants before this Court also during the course of arguments alongwith other documents. The statement of RW1-Balraj was also produced. The route permit bears the number 504/H.T.V/2015 and registration number of the offending vehicle is HR38-M-5468. No doubt, the vehicle number is duly mentioned in the route permit. However, RW1-Balraj produced the summoned record and stated that route permit bearing registration number 504/H.T.V/2015 was issued in the name of vehicle bearing No.HR38-U-7318 which was effective from 29.07.2015 to 27.07.2020 and had been issued in the name of one Century NF Casting and the same was not in respect of vehicle No.HR38-M-5468. It was also submitted by him that the entry of vehicle No.HR38-M-5468 was not mentioned in their records.

17. This would clearly show that the route permit Ex. R6 which was produced in the Court was not a valid document. No doubt, in the cross-examination, the witness stated that whenever any route permit is issued, the insurance records/policy of that vehicle is also kept in their records. Since he did not have the record on the day concerned, the cross-examination was deferred and he was asked to bring the record which would have the insurance policy/cover note of the vehicle HR38-U-7318. On the deferred date, the witness appeared and stated that the concerned records had been weeded out as per the Government instructions vide letter Ex. R8.

18. This would not lead the Court to draw an adverse inference against the respondents because the record was weeded out as per the Government instructions. Even otherwise, once the concerned route permit

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number did not match with the vehicle number, it was clear that the vehicle did not have a valid route permit. Merely because, there were some cuttings in the record would not mean that there were some manipulations. Even the original route permit was not produced. In the considered opinion of this Court, nothing came out in the cross-examination of RW1-Balraj which could have even suggested that the route permit Ex.R6 was a valid document. Under the circumstances, the MACT did not commit any error in fastening the liability upon the appellants.

In view of the above, I do not find any merit in the present appeal and the same is accordingly dismissed.

15.09.2023
Prince Chawla

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No