

**FAO-5321-2022 (O&M) AND
FAO-5328-2022 (O&M)**

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

Date of decision: January 24, 2023

1. FAO-5321-2022 (O&M)

Cholamandlam MS General Insurance Company Limited

....Appellant

versus

Naresh Kohli and another

....Respondents

2. FAO-5328-2022 (O&M)

Cholamandlam MS General Insurance Company Limited

....Appellant

versus

Poonam Kohli and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Punit Jain, Advocate
for the appellant-Insurance Company.

ARUN MONGA, J. (ORAL)

CM-17770-CII-2022 IN FAO-5321-2022 AND
CM-17789-CII-2022 IN FAO-5328-2022

For reasons stated in the applications, same are allowed. Delay of
123 days in re-filing the appeals is condoned.

Main cases (O&M)

Vide this common order and judgment, above-mentioned two
appeals are being disposed of, since the issues and facts raised therein are
common. For brevity, recitals are taken from FAO-5321-2022.

Appellant(s) before this Court is the Insurance Company seeking to set aside impugned award dated 10.03.2022 passed by learned Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (for short 'Tribunal).

2. Succinct facts as noted by the Tribunal are as below:

"Facts of Claim Petition No.1

2. *This petition has been filed under section 166 of the Motor Vehicle Act, 1988 (hereinafter referred to as 'the Act', for brevity), wherein petitioners Poonam Kohli and others have claimed compensation to the tune of Rs. 2 Crores on account of death of Vishal Kohli son of Shri Chander Mohan (husband of petitioner no.1 Poonam Kohli, father of petitioners No.2 and 3 and son of petitioner no.4), who allegedly died in a road side accident, which took place on 11.08.2019 on account of careless and negligence driving of truck bearing registration No.RJ-06-GC-4798 (hereinafter referred to as "the offending vehicle,"), by respondent No.1.*

3. *It is alleged that on 11.08.2019 at about 01:30 PM, Vishal Kohli (since deceased) alongwith his father Chander Mohan was going to Delhi in car no.HR-02-T-5978 and his brother Rahul Kohli was following them in car bearing no.HR-02-AC-5832. When Vishal Kohli and Chander Mohan reached in front of Rajinder Dhaba, GT Road, Gharaunda, Karnal, car of deceased Vishal Kohli struck in the offending vehicle which was parked negligently on the GT road without following traffic rules. Due to the impact, Vishal Kohli and his father Chander Mohan Kohli succumbed to the injuries.*

4. *It is further averred that the accident was caused due to negligent parking of the offending vehicle by respondent no.1 in violation of traffic rules on GT Road and the offending vehicle was not having any reflector etc. on the rear side of the offending vehicle.*

5. *It is further averred that on the statement of brother of deceased, namely, Rahul Kohli, FIR No. 564 dated 11.08.2019 was registered by the police of Police Station Gharaunda, District Karnal under sections 284 and 304 of Indian Penal Code, 1860 against the respondent no.1.*

6. *It is further averred that deceased was a healthy young man of age 42 years and he was quite hail and healthy. He was working as Team Leader Collections, Tractor Finance in Tata Capital Financial Services Limited and was earning more than Rs.1,00,000/- per month including incentives. His future was very bright. It is further averred that petitioners have lost love and affection and are suffering from physical and mental pain/agony and have suffered huge finance crises.*

7. *It is prayed that Rs.2 Crore may be granted as compensation. It is further claimed that respondent no. 1 being the driver/owner of the offending vehicle and respondent No. 2 being insurance company of the offending vehicle are jointly and severally liable to pay the compensation to the claimants. With these submissions, it is prayed for acceptance of the claim petition.*

Facts of Claim Petition No.II.

10. *This claim petition has also been filed under section 166 of the Act, wherein petitioner Naresh Kohli has claimed compensation to the tune of Rs.50 lacs on account of death of her husband Chander Mohan Kohli in same road side accident which took place on 11.08.2019 at about 01:30 PM on G.T. Road in front of Rajendra Dhaba, Gharaunda, District Karnal on account of careless and negligence driving of the offending vehicle.*

11. *In this petition, petitioners have taken same pleas as that of claim petition No.I.”*

3. Upon notice in **claim petition No.I** before the learned Tribunal, respondent No.1 contested and filed written statement taking preliminary objections as to maintainability; cause of action; *locus standi* and mis-joinder and non-joinder of necessary parties. On merits, it was submitted that deceased was not earning Rs.1,00,000/- per month. Respondent No.1 was falsely challaned by the police at the instance of petitioners. Infact, no accident as alleged in the FIR had ever taken place with the offending vehicle. The offending vehicle was falsely involved. Prayer for dismissal of the claim petition was made.

3.1 Respondent No.2 filed separate written statement taking preliminary objections as to maintainability, cause of action; *locus standi* and claim being barred by the principles of estoppel. Respondent no.1 was not holding any valid licence. On merits, it was averred that no accident had been caused by the rash and negligent driving of respondent no.1. Lastly, a prayer was made to dismiss the petition.

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3.3 Upon notice in **claim petition No.II** before the learned Tribunal, respondents No.1 contested and filed written statement taking preliminary objections as to maintainability; cause of action; *locus standi* and mis-joinder and non-joinder of necessary parties. On merits, it was submitted that deceased was not earning Rs.30,000/- per month. He (respondent No.1) was falsely challaned by the police at the instance of petitioners. In fact, no accident as alleged in the FIR had taken place with the offending vehicle. The offending vehicle had been falsely involved in this petition. Prayer for dismissal of the claim petition was made.

3.4 Respondent No.2 filed separate written statement taking preliminary objections as to maintainability, cause of action; *locus standi* and claim being barred by the principles of estoppel. Respondent No.1 was not holding any valid licence. On merits, it was averred that no accident had been caused by the rash and negligent driving of respondent no.1. Lastly, a prayer was made to dismiss the petition.

4. Learned Tribunal framed the following issues in **claim Petition No.I** on 22.07.2021:

- “1. *Whether the accident resulting in death of Vishal Kohli took place on 11.08.2019 on account of rash and negligent driving of respondent no.1 while driving the offending vehicle bearing registration no.RJ-06GC-4798? OPP*
2. *If issue No.1 is proved, to what amount of compensation and from whom the claimant is entitled to? OPP*
3. *Whether the respondent No.1 was not holding any valid and effective driving licence, fitness certificate and route permit etc. at the time of alleged accident and has violated the terms and conditions of the insurance policy? OPR*
4. *Relief.”*

4.1 Learned Tribunal framed the following issues in Claim Petition

No.II:

- “1. *Whether the accident resulting in death of Chander Mohan Kohli took place on 11.08.2019 on account of rash and negligent driving of respondent no.1 while driving the offending vehicle bearing registration no.RJ-06GC-4798? OPP*
2. *If issue No.1 is proved, to what amount of compensation and from whom the claimant is entitled to? OPP*
3. *Whether the respondent No.1 was not holding any valid and effective driving licence, fitness certificate and route permit etc. at the time of alleged accident and has violated the terms and conditions of the insurance policy? OPR*
4. *Relief.”*

4.3 Thereafter on 29.10.2021, learned Tribunal ordered both claim petitions to be consolidated and evidence of parties to be led in claim petition No.I.

5. On appraisal of record/ evidence, learned Tribunal while deciding issue No.1 held the accident in question to be of contributory negligence. Drivers of both the vehicles were held equally negligent and contributed equally to cause accident in question. Negligence of driver of offending vehicle and driver of victims car was taken as 50:50. Issue No.2 was decided in favour of the petitioners and against the respondents. While deciding issue No.3, respondent No.1 being driver/ owner and respondent No.2 being Insurance Company were held jointly and severally liable to the compensation amount.

5.1 Consequently, in claim petition No.1, claimants were held entitled to receive total compensation of Rs.58,09,468/- along with interest @ 7.5% per annum from the date of filing of petition till actual realization. In claim petition No.II, claimants were held entitled to receive total

compensation of Rs.3,55,000/- along with interest @ 7.5% from the date of filing of petition till its actual realization.

6. I have heard learned counsel for the appellant(s)-Insurance Company and gone through the record. It is contended that the accident took place due to the rash and negligent driving of the victims car but liability of 50% negligence has been wrongly fastened on the truck driver. I am unable to accept the contention.

7. Ordinarily this Court would have issued notice to the respondents on enhancement of compensation. The facts as borne out from Tribunal's findings and the case pleaded by the claimants are that the truck had been parked on the highway at non-designated spot knowing-fully well that on the highway there are high speed vehicles moving and yet in negligent manner without indicating any hazard light and/ or any signs by way of putting caution/ hazard boards and/ or glowing/ luminous traffic signs, which ordinary provided in these days as a mandatory requirement of the accessories when the vehicle is sold. The conclusion drawn by learned Tribunal that contributory negligence of the offending vehicle (i.e., truck) was only 50% does not appeal to the common sense. Be that as it may, since the claimants have chosen not to file appeal, this Court would refrain to tread on the path of reopening the case.

8. Furthermore, it transpires that truck was parked at a spot adjacent to an eatery (*dhaba*) in the most negligent manner without bothering to even find a spot to park the same off the road by making an effort to park it even if it was few meters away from the *dhaba*. *Ex facie*, it was carelessly parked

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just to avoid the inconvenience of finding a safer spot off the highway. This goes on to show that driver of the offending truck was totally negligent and careless in parking the truck right on the highway. Merely because it was stationary, is no excuse for the driver of offending vehicle to attribute total negligence on the vehicle plying from the rear side.

9. In the premise, the appeals are being dismissed simplicitor without commenting on merits any further.

10. Dismissed.

11. Pending application(s), if any, shall also stand disposed of.

**(ARUN MONGA)
JUDGE**

January 24, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No