

FAO-347-2006(O&M) &
FAO-5584-2005(O&M)

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

(1) FAO-347-2006(O&M)

Jasmail Singh

...Appellant

Versus

Sushil Kumar and another

...Respondents

(2) FAO-5584-2005(O&M)

National Insurance Co.Ltd.

...Appellant

Versus

Jasmail Singh and another

...Respondents

Date of Decision:-24.3.2023

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

Present: Mr.Mandeep Sindhu, Advocate
for the appellant in FAO-347-2006 and
for respondent No.1 in FAO-5584-2005.

Mr.Suman Jain, Advocate
for the appellant in FAO-5584-2005 and for
respondent No.2 in FAO-347-2006

H.S. MADAAN, J.

1. By this order, I shall dispose of two FAOs i.e. FAO-347-2006
filed on behalf of appellant/claimant Jasmail Singh and FAO-5584-2005
filed on behalf of appellant – National Insurance Company Ltd. as both
the appeals have arisen out of the same award.

2. Briefly stated, facts of the case are that petitioner/claimant Jasmail Singh had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against respondents i.e. Sushil Kumar – driver-cum-owner and National Insurance Company Ltd. - insurer of motorcycle bearing registration No.PB-11-W-1447, claiming compensation on account of death of his uncle Ram Singh in a motor vehicular accident.

3. As per the version of the petitioner/claimant, Ram Singh was a bachelor and was residing with the claimant, who is his nephew; on 21.9.2003, Ram Singh deceased along with Hukam Nath and Kesar Singh was riding scooter bearing registration No.PB11-V-6641 going from village Sukhewal towards village Diggi for attending an eye camp in the said village; the scooter was being driven by Hukam Nath on correct left hand side of the road on normal speed with great care and caution; when the said scooter reached in the area of village Diggi at some distance from drain, then a motorcycle bearing registration No.PB-11-W-1447 came from behind being driven by Sushil Kumar in a rash and negligent manner; a person was pillion riding the motorcycle; Sushil Kumar brought their motorcycle parallel to the scooter and pillion rider of the motorcycle for the purpose of stopping the scooter of the deceased had caught the arm of scooter driver Hukam Nath; resultantly the motorcycle driven by Sushil Kumar struck against the scooter, which was being driven by Hukam Nath and due to that impact, Ram Singh deceased fell on the road along with Hukam Nath and Kesar Singh; Ram Singh and Kesar Singh suffered head injuries, whereas Hukam Nath received multiple grievous injuries. In

the meanwhile, Jagdev Singh from village Diggi reached at the spot, then Sushil Kumr driver of the offending motorcycle ran away. The injured were taken to Civil Hospital, Nabha from where Ram Singh, who was in injured condition was referred to Rajindra Hospital, Patiala but he was taken to Amar Hospital, Patiala, where he remained admitted from 21.9.2003 to 26.9.2003 and thereafter he was again admitted in Rajindra Hospital, Patiala from 27.9.2003 to 28.9.2003, however on 28.9.2003 he had expired.

4. According to the petitioner/claimant, the accident had taken place due to rash and negligent driving of motorcycle bearing registration No.PB-11-W-1447 by Sushil Kumar – respondent No.1 and a criminal case in the form of FIR No.132 dated 21.9.2003 for the offences under Sections 279, 337, 304-A IPC was registered with Police Station Sadar, Nabha, District Patiala. At the time of registration of the FIR, injured Hukam Nath had given the statement that the motorcycle had struck against the scooter but the police in connivance with respondent No.1 had not recorded his version properly.

5. According to the petitioner/claimant, deceased Ram Singh was earning Rs.5,000/- per month and a sum of Rs.50,000/- was spent on his medical treatment in Civil Hospital, Nabha and Amar Hospital, Patiala.

6. On being given notice, both the respondents appeared and filed separate written statements.

7. In the written statement filed by respondent No.1 Sushil Kumar, he denied being driver of the motorcycle or the same being

involved in the accident, rather he contended that the answering respondent has been in business of Karyana and he was not present at the spot at the time of accident; Hukam Nath used to take Karyana articles from him and a sum of Rs.10,000/- was payable by him to the answering respondent up to 21.9.2003 for purchase of Karyana articles on credit basis and for the said reason Hukam Nath has involved the answering respondent in this case falsely.

In the written statement filed on behalf of respondent No.2 insurance company it denied the entire claim and accident alleging that the claim petition has been wrongly filed and motorcycle bearing registration No.PB-11-W-1447 has been falsely implicated. Some other legal pleas were also raised.

Both the respondents prayed for dismissal of the claim petition.

8. Following issues were framed by the Motor Accident Claims Tribunal, Patiala (hereinafter referred to as the Tribunal):

1. Whether deceased Ram Singh died due to rash and negligent act of the the offending driver Sushil Kumar as alleged on 21.9.2003? OPA.
2. Whether claimant is entitled to compensation if so its quantum and from whom? OPA.
3. Whether the claimant is not entitled to receive any compensation for want of necessary party as alleged in para No.1 and 2 of the Addl. Objection? OPR-1.
4. Whether the driver of the motorcycle NO.PB-11-W-14447 was not

having a valid and effective driving licence as alleged? OPR-2

5. Whether the claim petition is bad for mis-joinder and non-joinder of the necessary parties? OPR-2.

6. Relief.

9. In order to prove his case, the claimant got his statement recorded as CW1 besides examining Jagdev Singh as CW2.

On the other hand, the respondents examined Sampuran Singh, Clerk as RW1 and respondent No.1 Sushil Kumar got his own statement recorded as RW2.

10. After hearing arguments, the Tribunal vide award dated 3.10.2005 dismissed the claim petition under Section 166 of the Act but in terms of Section 140 of the Act, Rs.50,000/- were awarded to the claimant under no fault liability. Respondents No.1 and 2 were held to be jointly and severally liable to pay the payment along with interest @ 9% per annum from the date of award till actual realization of the awarded amount.

11. The petitioner/claimant as well as respondent No.2 insurance company felt aggrieved by the said award and they have filed separate appeals. In the FAO-347-2006 filed by the petitioner/claimant, he seeks enhancement of compensation, whereas in FAO-5584-2005, the appellant insurance company is praying for dismissal of the claim petition and setting aside of the impugned award granting compensation of Rs.50,000/- to the claimant under no fault liability.

12. Notice to the respective respondents in both the appeals were given, who put in appearance through counsel.

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

14. A perusal of the impugned award goes to show that learned Tribunal by considering the factual position as well as evidence brought on record by the parties, in light of the legal position had returned a finding that the accident in which Ram Singh had died had not taken place due to rash and negligent driving of motorcycle bearing registration No.PB-11-W-1447 by respondent No.1 Sushil Kumar. While coming to the conclusion various factors were taken into consideration including that Sushil Kumar rider of the motorcycle had tried to catch hold of rider on the ill-fated scooter, resultantly, the balance of the scooter got upset and riders fell down. Rather the Tribunal had come to the conclusion that nobody was at fault in happening of the accident. Although the case of respondent No.1 was that his motorcycle was not involved in the accident and he had been roped in on account of the fact that Hukam Nath had to pay Rs.10,000/- to him, which he could not pay and rather involved him in this case false case but such plea was rightly rejected by the Tribunal.

15. The finding recorded by the Tribunal that neither driver of the motorcycle nor of ill-fated scooter was at fault in happening of the accident by rash and negligent driving of the respective vehicles cannot be differed with. It being so, the Tribunal was justified in awarding compensation under no fault liability. But in view of Section 164 of the Act in case some person dies in a road side accident arising out of use of motor vehicle, a compensation of Rs.5 lakhs is to be awarded to the LRs of the victim. Though Section 164 of the Act was not there at the time

when the claim petition was adjudicated but it has come into being during pendency of the appeal. It being a piece of welfare legislation is to be given liberal interpretation. Therefore, the claimant is found entitled to get compensation of Rs.5 lakhs instead of an amount of Rs.50,000/- awarded by the Tribunal, with interest and cost, payable by both the respondents jointly and severally.

16. Therefore the FAO-347-2006 filed by claimant succeeds partly. The impugned award is modified and compensation of Rs.5 lakhs is awarded the petitioner/claimant with interest @ 7.5% per annum from the date of filing of the claim petition till actual realization of the amount besides cost of the claim petition payable by both the respondents jointly and severally. With the above modification, FAO-347-2006 is disposed of accordingly.

17. Whereas FAO-5584-2005 filed by the insurance company seeking setting aside of the impugned award and resultant dismissal of the claim petition is dismissed accordingly.

Since the FAO-347-2006 is disposed of with above modification and FAO-5584-2005 stands dismissed, the miscellaneous application(s), if any, in the appeals stand disposed of accordingly.

24.3.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No