



FAO-3331 and 3332 of 2006 (O&M)

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

1. FAO-3331 of 2006

Suresh Kumar and anr.

.....Appellants

Vs.

Deega Ram and ors

.....Respondents

2. FAO-3332 of 2006 (O&M)

Suresh Kumar and anr.

.....Appellants

Vs.

Rattan Singh and ors

.....Respondents

Date of Decision: October 04, 2024

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Aditya Sanghi and Mr. Lokesh Sharma, Advocates
for the appellants.

Mr. D.R. Bansal, Advocate and Mr. Neeraj Khanna, Advocate
for respondent No. 2-Insurance Co.

Mr. Shashi Kant Gupta, Advocate
for respondent No. 1 in FAO No. 3331-2016

SUDEEPTI SHARMA J. (ORAL)

1. This order shall dispose of the above two appeals, whereby challenge is to the award dated 24.02.2006 passed in the claim petitions filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Narnaul (for short, 'the Tribunal'), whereby the appellants were fastened with the liability to pay the compensation to the claimants along with interest @ 9% per annum



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FACTS NOT IN DISPUTE

2. The brief facts of the case are that Deega Ram driver alongwith Rattan Singh and Surender Singh were travelling in truck bearing registration No.HR-47-1172. Buffaloes were loaded in the said truck for being transported from Durg (Madhya Pradesh) to Narnaul (Haryana). On 29.4.1997 at about 4.00 A.M., when the truck reached near Navodya School, Shyampur-Bhopal Road, Shyampur, a Bus bearing registration No. MP-08-1071 came from the opposite side, driven in rash and negligent manner by respondent and struck against the truck. On account of the accident, Deega Ram, Rattan Singh and Surender Singh received injuries. The buffaloes also suffered injuries and died in the accident. The accident had taken place due to rash and negligent driving of Bus bearing registration No. MP-08-D-1071. A case FIR No.2121 dated 29.4.1997 was registered at Police Post, Shyampur attached to Police Station, Doraha, District Sihore (Madhya Pradesh) under Section 279 and 337 IPC.

3. Upon notice of the claim petition, appellants as well as Insurance Company appeared and denied the factum of compensation.

4. From the pleading of the parties, the Tribunal framed the following issues:-

“1. Whether the motor vehicular accident which took place on 29.4.1997 in the area of village Shyampur Police Station Daroha (District Sihore) on account of use of rash and negligent driving of Bus No.MP-08-D-1071 by its driver Suresh Kumar? OPP

2. Whether Deega Ram petitioner, in the main case is entitled to compensation on account of injuries received by him in the aforesaid accident, if so, in what amount? OPP

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3. Whether Rattan Singh petitioner, in the connected case is entitled to compensation account of injuries received by him in the aforesaid accident, if so, in what amount? OPP

4. Whether respondent No.3 is entitled to repudiate the contract of insurance grounds alleged? OPR3

8. Relief.”

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the claimants. However, the liability to pay compensation was fastened upon the appellants. The relevant portion of the award fixing the liability upon the appellants reads as under:-

“40 Now the question arises, as to from whom, the payment is to be made and in what proportion the claimants are to share the compensation.

41. Photo copy of Insurance cover note is Ex.R3, photo copy of Driving Licence of respondent No.1 is Ex.R1, photo copy of R.C. is Ex.R2. No violation in terms and conditions of the policy so as to absolve respondent No.3, has been proved. Thus the respondent No.1 being driver (Ex.R1), respondent No.2 being owner (Ex R2) respondent No.3 being insurer (Ex.R3) are jointly and and severally liable to make payment of compensation. However, primary responsibility is to pay the compensation would be of respondent No.3. Interest @9% per annum from the date of the filing of the claim petition till the payment is made, would be paid by the respondents No.1 & 2. The claimant No.3 would be liable to pay interest from the

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date, it was impleaded a party. Thus, this issue is decided favour of claimants and against the respondents.”

6. Hence the appellant filed the present appeal seeking that the liability be fastened upon the Insurance Company to pay the compensation to the claimants.

SUBMISSIONS OF THE COUNSELS FOR THE PARTIES

7. Learned counsel for the appellants has vehemently argued that the learned Tribunal has erred in law in awarding interest @ 9% per annum from the date of filing of the petition till the payment is made, as the appellant were proceeded against ex parte and the ex parte award was passed. Learned counsel for the appellants has further argued that when the appellants came to know about the ex parte award, then the applications were moved fore setting aside ex parte award and vide order dated 30.07.2005, the learned tribunal set aside the ex parte award, subject to payment of cost of Rs.3000/-. But despite this fact, when the award was again passed, then the appellants were wrongly burdened with the liability to pay the interest @ 9 per cent annum from the date of filing of the claim petition till the payment is made. The award is liable to be set aside, as the appellant No. 2 was having valid driving licence, Registration certificate and Insurance Policy.

8. Per contra, learned counsel for the Insurance Company contends that since the appellants were proceeded against *ex parte*, therefore, the appellants were rightly held liable to pay interest to the claimants @ 9 per cent per annum from the date of impleadment as party.

9. I have heard learned counsel for the parties and perused the whole record of this case.

10. A perusal of the record shows that there is no infirmity in the impugned award, since the same is passed after taking into consideration the

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evidence on record. A perusal of the record further shows that the factum of accident as well as negligence on the part of appellant No. 1-Suresh Kumar (driver of the offending vehicle) is duly proved. Therefore, the appellants were rightly held liable to pay interest @ 9 per cent per annum by the learned Tribunal.

11. In view of the above, this Court do not find any merit in the present appeals and the same are dismissed being devoid of any merit.

12. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

October 04, 2024

G Arora

Whether speaking/non-speaking : Speaking
Whether reportable : Yes