



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

**Reserved on : 08.05.2024
Pronounced on : 13.05.2024**

104 **FAO-59-2014 (O&M)**
SHARMILA @ SARLAAppellant
VERSUS
SUNDER SINGH & ORS.Respondents

104-A **FAO-4599-2014 (O&M)**
SUKHBIR SINGH AND ORS.Appellants
VERSUS
SUNDER SINGH & ORS.Respondents

104-B **FAO-7947-2014 (O&M)**
SUKHBIR SINGHAppellant
VERSUS
SUNDER SINGH & ORS.Respondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Raman Chawla, Advocate
for the appellant in FAO-59-2014.

Mr. Mohit Garg, Advocate
for the appellants in FAO-4599-2014 & FAO-7947-2014

Mr. Jasdev Singh Thind, Advocate
for respondent No.1 in all the FAOs.

Mr. Shubham Jain, Advocate and
Ms. Suman Jain, Advocate for respondent No.3 in all the FAOs.

**ALKA SARIN, J.**

1. The present order of mine shall dispose off the above noted three appeals being FAO-59-2014, FAO-4599-2014 and FAO-7947-2014 filed by the claimants challenging the award dated 05.09.2013 passed by the Motor Accident Claims Tribunal, Bhiwani vide which their claim petitions have been dismissed.

2. The case set up was that on 17.12.2010 at about 7:30 pm Kalawati (since deceased) along with her daughter Suman (since deceased), after loading gawar in the trolley attached with tractor bearing registration No.HR-16-D-2635, was coming from their fields to their Village Jainawas. The said tractor was being driven by Jaidev son of Begraj and Suman was sitting on the right side of the tractor and when the tractor reached within the area of Village Gharwa 2 kilometers towards Bhera side, Tata-407 bearing registration No.HR-16-GA-0300 fully loaded with passengers being driven in a rash and negligent manner and at a very high speed dashed with the right side of the tractor and due to the heavy impact the Tata-407 bearing registration No.HR-16-GA-0300 turned turtle and the right side of the tractor was broken and as a result Kalawati and Suman received fatal injuries. One of the passengers travelling in the Tata-407 also died at the spot. FIR No.192 dated 18.12.2010 under Sections 279, 337 and 304-A Indian Penal Code, 1860 was registered at Police Station Siwani on the statement of one Jaidev. The petitions were contested by the respondents.



3. On the basis of the pleadings of the parties, the following issued were framed :

- 1) Whether the accident took place due to rash and negligent driving of vehicle Tata-407 bearing registration No.HR-16-GA-0300 by respondent No.1 Sunder Singh or due to rash and negligent driving of tractor bearing registration No.HR-16-D-2635 by respondent No.4 Jaidev or both, resulting into deaths of Kalawati and Suman and injuries sustained by claimant Sharmila @ Sarla as alleged ? OPP
- 2) If issue No.1 is proved, whether claimants Sukhbir etc. of claim petition No.29 of 2011 are entitled for compensation, if so, to what amount and from whom ?
OPP
- 3) If issue No.1 is proved, whether claimants Sukhbir etc. of claim petition No.30 of 2011 are entitled for compensation, if so, to what amount and from whom ?
OPP
- 4) If issue No.1 is proved, whether claimant Sharmila @ Sarla of claim petition No.64 of 2011 is entitled for compensation, if so, to what amount and from whom ?
OPP



5) Whether petitions are not maintainable in the present form ? OPR

6) Whether respondents No.1 and 4 were not having valid driving licence and offending vehicles were being driven in violation of the terms and conditions of the insurance policy at the time of the accident ? OPR-3 & 5

7) Relief.

4. The Tribunal dismissed the claim petitions on the ground that the FIR (Ex.P-5) was registered on the statement of one Jaidev, however, the said witness had not been examined. It was further held that no other witness or eye-witness was examined and only on the basis of charge sheet (Ex.P-9), challan (Ex.P-8) and FIR (Ex.P-5), it could not be held that respondent No.1 was driving the offending vehicle in a rash and negligent manner. Accordingly, the claim petitions were dismissed. Aggrieved by the same, the claimants have preferred the present appeals.

5. Learned counsel appearing on behalf of the claimants would contend that Sharmila @ Sarla, who was one of the passengers in the Tata-407 bearing registration No.HR-16-GA-0300, was duly examined and hence there was no occasion for the Tribunal concerned to dismiss the claim petitions.



6. *Per contra*, learned counsel for respondent No.3-Insurance Company has vehemently argued that in the absence of any eye-witness of the alleged accident, the claims petitions have rightly been dismissed.

7. Heard.

8. In the present case Sharmila @ Sarla, who was one of the passengers in the Tata-407 bearing registration No.HR-16-GA-0300, was duly examined and she, in her examination, stated that she was one of the passengers and that the Tata-407 bearing registration No.HR-16-GA-0300 was being driven in a rash and negligent manner and further that tractor bearing registration No.HR-16-D-2635 was also being driven in a rash and negligent manner which was coming from the opposite direction. Both the vehicles collided and due to the heavy impact two ladies sitting on the tractor and one travelling in the Tata-407 died on the spot and that she along with other occupants suffered injuries. Nothing could be elicited from her in her cross-examination. Once the eye-witness of the accident was duly examined, there was no reason for the claim petitions to have been dismissed by the Tribunal concerned. Accordingly, the impugned award cannot be sustained.

9. In view of the above, the present appeals are allowed and the impugned award passed by the Tribunal concerned is set aside. The matter is remanded back to the Tribunal concerned for deciding afresh on merits and



in accordance with law. The parties to appear before the Tribunal concerned on **24.05.2024**. Pending applications, if any, also stand disposed off.

13.05.2024

(ALKA SARIN)

Aman Jain

JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO