2025:PHHC:126065

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1010-2000(O&M)
Reserved on: 09.09.2025
Date of decision:12.09.2025

United India Insurance Company
..Appellant

Versus

Sitawanti and others ..Respondents

CORAM: HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. D.P.Gupta, Advocate for the appellant

Mr. Sushil Saini, Advocate
for respondent No.1 and 2

None for respondent No.3

Ms. Shazia K Singh, Advocate for respondent No.4

MANDEEP PANNU, J.

1. The present First Appeal Against Order has been filed by the appellant–United India Insurance Company Limited assailing the award dated 10.01.2000 passed by the learned Motor Accident Claims Tribunal, Gurdaspur, (hereinafter referred to as 'Tribunal') whereby the claim petition filed by the claimants–respondents No. 1 and 2 has been allowed and compensation to the tune of ₹2,40,000/– along with interest @ 12% per annum from the date of filing of the petition till realization has been awarded against the appellant as well as the driver and owner of the offending vehicle.

Brief Facts

2. The claim petition was instituted under Section 166 of the Motor Vehicles Act, 1988, by the claimants, namely Smt. Sita Wanti and Sh. Charan Das, on account of the death of their son Kewal

Krishan, who was aged 26 years at the time of his death in a motor vehicle accident. The claimants arrayed as respondents, Gurmit Singh, driver of the offending truck bearing registration No. PCM–9991, Tirath Singh & Sons Company, Gurdaspur Road, near Warehouse, Pathankot through Shri Tirath Singh, being the owner of the said truck, and United India Insurance Company Limited, Dalhousie Road, Pathankot, being the insurer.

3. The case set up by the claimants was that on 12.05.1995, deceased Kewal Krishan, who was driving truck No. PAT–1526, met with an accident when truck No. PCM–9991 (a tipper) came from behind in a rash and negligent manner, without blowing any horn, and hit the truck being driven by the deceased, causing fatal injuries to him. It was further alleged that respondent No. 2, in connivance with his employees, namely Rakesh Kumar, Dharampal and Gurmit Singh, attempted to hush up the matter and exerted influence so as to prevent the registration of an FIR against respondent No. 1, the driver. However, a Daily Dairy Report (DDR) No. 16 dated 12.05.1995, was recorded at Police Station Dhar Kalan with regard to the occurrence.

4. Notice of the petition was given to the respondents. Respondent No. 1, Gurmit Singh, filed a separate written statement, contesting the claim petition and denying the allegations of rash and negligent driving attributed to him.

5. Respondent No. 2, the owner, also filed a separate written statement, specifically denying that the accident had taken place with

his truck bearing No. PCM–9991. It was his stand that the accident occurred due to the negligence of the deceased himself, who was driving truck No. PAT–1526, and could not control the same, as a result of which the vehicle slipped into the “khud.” It was pleaded that Gurmit Singh, respondent No. 1, who was following in his truck No. PCM–9991, had stopped his truck on the side of the road and had even assisted the driver of truck No. PAT–1526 in taking the injured to the hospital. It was, thus, contended that Gurmit Singh had been falsely implicated in the case.

6. Respondent No. 3 - United India Insurance Company Limited, filed its written statement taking preliminary objections that the claim petition was not maintainable. It was specifically pleaded that the driver of the vehicle did not possess a valid and effective driving licence at the time of the alleged accident and further that the vehicle did not have a valid fitness certificate. It was, thus, submitted that there had been violation of the terms and conditions of the policy and, as such, the Insurance Company was not liable. On merits, the averments of the claim petition were denied in toto.

<u>Issues</u>

7. On the basis of the pleadings of the parties, the learned Tribunal framed the following issues for adjudication:

> *1. Whether the application is not maintainable in the present form? OPR*
> *2. Whether the accident took place due to rash and negligent driving on the part of Gurmit Singh, respondent No. 1, while driving truck No. PCM–*

> *9991, resulting in the death of Kewal Krishan? OPA*
> *3. Whether the claimants are entitled to the compensation? If so, to what extent and from whom? OPA*
> *4. Whether respondent No. 1 was holding a valid driving licence at the time of the alleged accident and whether the vehicle in question was having* a valid registration certificate? *OPR*
> *5. Relief.*

Findings of the Tribunal

8. The learned Tribunal took up issues No. 1 to 4 together and, after appreciating the evidence, came to the conclusion that the accident had occurred on account of the rash and negligent driving of truck No. PCM–9991 by Gurmit Singh, respondent No. 1. Consequently, the claimants were held entitled to compensation to the tune of ₹2,40,000/– along with interest @ 12% per annum from the date of filing of the petition till realization.

9. While dealing with issue Nos. 3 and 4, the learned Tribunal, in para 12 of its judgment, observed that the offending truck was fully insured with respondent No. 3–Insurance Company. It was noticed that respondents No. 1 and 2 had alleged in their written statement that the offending truck was fully insured with respondent No. 3. The Tribunal, accordingly, held respondents No. 1 to 3 jointly and severally liable to pay the compensation amount to the claimants in equal shares.

Appeal by the Insurance Company

10. Feeling aggrieved by the aforesaid award, the present appeal has been filed by United India Insurance Company Limited

against the claimants as well as the driver and owner of truck No. PCM–9991.

11. Learned counsel appearing for the appellant–Insurance Company has argued that as per the case of the claimants themselves, the deceased was driving truck No. PAT–1526 when it was struck by another truck bearing No. PCM–9991 driven rashly and negligently by respondent No. 1, Gurmit Singh. It is not in dispute that truck No. PAT–1526 was insured with the appellant–Insurance Company. However, truck No. PCM–9991, i.e. the offending vehicle, was never insured with the appellant. The Insurance Company had taken a categorical stand in its written statement that the said vehicle was not insured with it. Despite this, the Tribunal proceeded to record a finding that the accident occurred due to rash and negligent driving of truck No. PCM–9991 and fastened liability upon the appellant along with the driver and owner of the said vehicle. It is contended that in the absence of proof of valid insurance coverage of vehicle No. PCM–9991 with the appellant, no award could have been passed against it.

12. It is further urged that the alleged owner of truck No. PCM–9991, in his written statement, categorically stated that truck No. PAT–1526 was in fact insured with the present appellant, and nowhere pleaded that truck No. PCM–9991, the offending vehicle, was ever insured with the appellant. The Tribunal, however, gravely erred in observing that respondents No. 3 and 4 had admitted in their written statement that the offending truck was insured with the

appellant. On this erroneous premise, the award has been passed against the appellant, which is wholly unsustainable in law.

13. During the pendency of this appeal, the appellant-Insurance Company moved an application (i.e CM-17964-CII-2014) dated 18.08.2014 for permission to lead additional evidence by placing on record Annexures A-1 to A-4 and for exemption from filing certified copies thereof. By order dated 19.05.2015 passed in CM-17964-CII-2014, the application was allowed and Annexures A-1 to A-4 were taken on record. Although, there is an interlocutory order dated 01.04.2024 referring to the status of the application for additional evidence, but Annexures A-1 to A-4 have been placed on the record in pursuance of order dated 19.05.2015 of this appeal and must be considered in the determination of the controversy raised in this appeal.

14. The materials so produced as Annexures A-1 to A-4 require a careful consideration because they go to the very foundation of the claim framed and to the correctness of the impugned conclusion that the appellant insurer was liable to satisfy the award passed by the Tribunal. In particular, Annexure A-1 is a copy of the Registration Certificate (hereinafter referred to as 'RC') of the offending vehicle bearing registration No. PCM–9991; Annexure A-2 is an insurance document which discloses the insurance particulars of truck No. PAT–1526; Annexure A-3 is an insurance policy document showing that

the offending vehicle PCM–9991 was insured in the name of M/s Dharampal Tarsem Lal for the period 13.08.1996 to 12.08.1997.

15. A plain reading of Annexure A-1 discloses that the RC of PCM–9991 was initially in the name of Amarjit Singh and was subsequently transferred in the year 1987 to M/s Dharampal Tarsem Lal (the transfer entry showing the date 15.12.1987). The accident in question took place on 12.05.1995; therefore, on the face of Annexure A-1, the record of registration indicates that by the time of the accident M/s Dharampal Tarsem Lal was the registered owner of the tipper PCM–9991. Annexure A-2, on the other hand confirms that truck No. PAT–1526, which it is alleged the deceased was driving, stood insured with the United India Insurance Company/appellant and that the name of the insured in that document is recorded as M/s Tirath Singh & Sons — the party described in the claim petition as respondent No. 2 and who is said to be the owner of PAT–1526. Annexure A-3, which is an insurance policy in respect of PCM–9991, shows a policy period from 13.08.1996 to 12.08.1997. The import of Annexure A-3 is that although PCM–9991 was at some point insured with the appellant insurer, such insurance commenced on 13.08.1996, i.e., more than a year after the accident which occurred on 12.05.1995. Taken together, these documents establish following three important facts, each of which has a decisive bearing upon the correctness of the Tribunal's recording of liability against the appellant.

16. First, Annexure A-1 points to a registered owner of PCM–9991 at the time of the accident, who is different from the person impleaded as respondent No. 2 in the claim petition; that is to say, the RC on record shows M/s Dharampal Tarsem Lal as the registered owner of PCM–9991 well prior to the date of the accident, whereas the claimants had impleaded M/s Tirath Singh & Sons as the owner of PCM–9991. This is not a mere technical discrepancy. Ownership of the offending vehicle is a material fact for purposes of adjudicating a claim under Section 166. The presence of the true owner as a party is necessary not only to determine the question of primary liability but also because the question of insurer's liability is intimately tied up with who was the owner and what insurance coverage was in force for the vehicle at the relevant time.

17. Second, Annexure A-2 corroborates that the deceased's own vehicle, PAT–1526, was insured with United India Insurance Company in the name of M/s Tirath Singh & Sons (the party who is named in the claim petition as owner of PAT–1526). This matches the case set up on behalf of the claimants about the insurance of the vehicle in which the deceased was travelling. It does not, however, resolve the critical question as to whether the offending tipper PCM–9991 was insured with the appellant at the time of the collision.

18. Third, Annexure A-3 demonstrates that even though the offending vehicle at some later point stood insured with the appellant, the policy period begins from 13.08.1996 and not earlier. Since the

accident occurred on 12.05.1995, Annexure A-3 shows that PCM–9991 was not covered by the policy shown at Annexure A-3 on the date of the accident. On the admitted facts on record and from the additional documents now taken in evidence, it appears that the insurance policy relied upon by the Tribunal as a basis for fastening liability upon the appellant post-dates the occurrence and therefore, cannot be said to establish a subsisting policy in favour of PCM–9991 on 12.05.1995.

19. The learned Tribunal in the impugned judgment appears to have proceeded on the view that an admission had been made or that, by virtue of the pleading of respondent-owners, it stood proved that the offending vehicle was insured with the appellant. The Tribunal's observation that the offending truck was "fully insured with respondent No.3" is recorded in paragraph 12 of the judgment. That conclusion was, however, reached in the absence of any contemporaneous or on-record documentary proof showing the existence of a policy in respect of PCM–9991 operative on the date of the collision. The documents, which do exist on the record, and which have now been taken on record in this appeal as Annexures A-1 to A-4, tell a materially different tale. The RC speaks of a different owner of PCM–9991 (M/s Dharampal Tarsem Lal) and the only insurance policy placed on the record in respect of PCM–9991 post-dates the accident. In these circumstances, the finding that the appellant insurer

was liable to satisfy the award against PCM–9991 cannot be sustained.

20. It is necessary to emphasise that the Tribunal, before fastening liability upon an insurer, must be satisfied on the basis of admissible evidence that the vehicle in question was covered under the insurance policy at the relevant time. A mere reference in a pleading or a generalized assertion that “the vehicle is insured with respondent No. 3” cannot substitute for proof, where the documentary records point in the opposite direction. Further, the question whether the proper and necessary parties are before the Court is not a matter of mere procedural nicety; it impacts on the jurisdiction and competence of the forum to adjudicate the claim comprehensively and fairly. If, as Annexure A-1 indicates, the registered owner of the offending tipper at the time of the accident was M/s Dharampal Tarsem Lal and that owner was not impleaded in the claim petition, then the Tribunal’s adjudication on liability without the presence of such necessary party, vitiates the exercise and renders the result unsafe.

21. Learned counsel for the claimants has submitted that the award has already been executed and that the claimants have received the awarded amount and therefore, this Court should be reluctant to interfere. While the execution of an award and the possible prejudice or inconvenience to a successful litigant in execution are factors, which a Court may take into account, in the exercise of its appellate jurisdiction, such considerations cannot be permitted to eclipse the

larger principle that litigation must be decided between the real parties in interest and upon the true facts. Where a Tribunal proceeds to fix liability against a party in circumstances in which the documentary record demonstrates that the party ought not to have been held liable and where a necessary party (here, the registered owner of the offending vehicle) has never been before the Tribunal to answer allegations or explain the insurance position, the appellate forum cannot countenance a result which is fundamentally untenable in law. The fact that the award has been executed and payments made is regrettable insofar as it complicates restoration of rights, but it cannot validate a judgment, which proceeds upon erroneous findings of ownership and insurance coverage.

22. For the reasons recorded above — namely, (i) the RC in Annexure A-1 showing M/s Dharampal Tarsem Lal as the registered owner of PCM–9991 prior to the accident; (ii) Annexure A-2 confirming that the vehicle in which the deceased was travelling (PAT–1526) stood insured in the name of M/s Tirath Singh & Sons (the party impleaded as owner of PAT–1526); and (iii) Annexure A-3 demonstrating that the insurance in respect of PCM–9991 (if any) commenced only on 13.08.1996, well after the accident of 12.05.1995 — the Tribunal's conclusion that the appellant-insurer was liable to pay the award in respect of PCM–9991 cannot be sustained. In addition, the pleadings on record in the trial indicate a mismatch between the party described as owner of PCM–9991 in the claim

petition and the owner as disclosed by the RC record now on file. This misjoinder/non-joinder of the true owner of offending vehicle is a substantial defect which goes to the root of the adjudication.

23. In consequence, I am of the view that the impugned award dated 10.01.2000 cannot be permitted to stand. The correct and just course, in the aforesaid circumstances, is to set aside the award and to remit the matter to the learned Motor Accident Claims Tribunal for fresh adjudication after impleading the necessary and proper party/parties and after giving all parties an opportunity to lead evidence.

24. Accordingly, the impugned award dated 10.01.2000 is hereby set aside and the matter is remitted back to the learned Motor Accident Claims Tribunal to decide it afresh, after impleading necessary parties in the claim petition.

25. As the result of the above, the appeal is allowed to the extent indicated above. Parties shall bear their respective costs in this Court. The matter is remitted back to the Tribunal for fresh disposal in the manner directed above.

26. All the pending miscellaneous applications, if any, are also disposed of.

(MANDEEP PANNU)
JUDGE

12.09.2025
rekha

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