IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

244 **FAO-3337-2019 (O&M)**
XOBJC-149-2019
Date of Decision : 24.01.2025

ANGELS WORLD SCHOOL .... Appellant

VERSUS

BAJAJ ALLIANZ INSURANCE CO. AND ORS .... Respondents

244-A **FAO-3312-2019 (O&M)**

JASWINDER SINGH …. Appellant

VERSUS

PARAMJIT KAUR AND ORS …. Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sanjeev Sharma, Advocate
for the appellant in FAO-3337-2019 and
for respondent No.3 in FAO-3312-2019.

Mr. Yogesh Gupta, Advocate
for respondent No.2 in FAO-3337-2019 and
for the appellant in FAO-3312-2019.

Mr. Punit Jain, Advocate
for respondent No.1 in FAO-3337-2019 and
for respondent No.4 in FAO-3312-2019.

Mr. Parvinder Singh, Advocate
for respondents No.3 and 4 and cross-objectors
in FAO-3337-2019 and
for respondents No.1 and 2 in FAO-3312-2019.

ALKA SARIN, J. (ORAL)

1. The present order shall dispose off FAO-3337-2019 filed by the owner of the vehicle bearing registration No.PB-12-N-3441 (hereinafter

referred to as 'the offending vehicle') i.e. Angels World School; the cross-objections being XOBJC-149-2019 filed by the claimants, namely, Paramjit Kaur and Karamjit Singh and FAO-3312-2019 preferred by the driver of the offending vehicle, namely, Jaswinder Singh. Challenge in the present appeals is to the award dated 03.10.2018 passed by the Motor Accident Claims Tribunal, Mohali (hereinafter referred to as 'the Tribunal'). The parties herein are referred to as the owner, the driver, the insurance company and the claimants for the sake of clarity.

2. Since the factum of the accident is not in dispute, the facts are not being adverted to for the sake of brevity.

3. The Tribunal in the present case had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1.	Monthly income	₹9,000
2.	Future prospects @40%	[₹9,000 + ₹3,600] = ₹12,600
3.	Deduction @50%	[₹12,600 - ₹6,300] = ₹6,300
4.	Annual dependency	[₹6,300 x 12] = ₹75,600
5.	Multiplier '18'	[₹75,600 x 18] = ₹13,60,800
6.	Loss of estate	₹15,000
7.	Funeral expenses	₹15,000
	Total Compensation	**₹13,90,800**
	Interest	**@7.5%**

4. Learned counsel appearing on behalf of the owner of the offending vehicle would contend that the permit for plying the bus on the concerned route expired on 19.07.2016. A fresh permit was applied for on 30.09.2016 qua which a receipt was also issued. The accident took place on 23.08.2017 and the fresh permit was issued on 06.12.2017. It is the

contention of the learned counsel for the owner that since fresh permit had been applied for on 30.09.2016, hence the owner cannot be held to be at fault for the delay in issuance of the permit by the authorities concerned. It is further the contention that once the receipt of the payment had been issued, the owner was at liberty to ply the bus. It is further contended that RW-4, namely, Prabhjit Singh Dhanoa, Section Officer, RTA Office, Mohali had stepped into the witness box and had stated that the receipt dated 30.09.2016 (Ex.RW-2/H) was issued online.

5. *Per contra*, learned counsel for the driver of the offending vehicle would contend that even if it is held that there was no route permit the liability cannot be fastened on the driver of the offending vehicle. He would further contend that there was no privity of contract between the insurer and the driver of the offending vehicle. It is further the contention that the driver can be held liable if the accident took place due to rash and negligent driving of the driver and not in a case where the insurer is not found liable for the payment on the ground that there was deficiency in the documentation and that the bus was being plied *sans* the route permit at the time of the accident. In support of his arguments, learned counsel for the driver of the offending vehicle has relied upon the orders passed by this Court in **FAO-691-2017 decided on 29.04.2019 titled as Bhushan Verma & Anr. V/s Sarwan Singh & Ors.; FAO-5968-2018 decided on 23.01.2020 titled as Kuldeep Singh V/s National Insurance Company Limited & Ors. and FAO-2751-2011 decided on 16.11.2015 titled as Smt. Azad Kaur & Anr. V/s Sunil @ Sunil & Ors.**.

6. Learned counsel for the Insurance Company would contend that merely because the receipt had been issued would not absolve the owner and make the Insurance Company liable as no route permit had been issued till after the accident. In support of his contention, learned counsel for the Insurance Company has relied upon the order passed by this Court in **FAO-7555-2015 decided on 26.09.2017 titled as M/s Middle High School & Anr. V/s Usha & Ors.** wherein it was held that merely because a receipt qua the amount deposited with the transport authority for issuance of a permit had been produced would not make the Insurance Company liable in the absence of the permit having actually been issued. It is further contended that the said order passed by this Court in FAO-7555-2015 decided on 26.09.2017 was affirmed by the Hon'ble Supreme Court vide order dated 22.11.2017 passed in **Special Leave to Appeal (C) No.31406-2017**.

7. Learned counsel for the claimants, who have filed cross-objections being XOBJC-149-2019, would contend that though the Tribunal has assessed the income of the deceased, the deduction, the multiplier and the future prospects correctly, however, the amount awarded under the head loss of estate, funeral expenses is not consonance with the judgments of the Hon'ble Supreme Court. It is further the contention that no amount has been awarded under the head loss of consortium. In support of his arguments learned counsel for the claimants has relied upon the judgment of the Hon'ble Supreme Court in the cases of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**, **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors.**

[(2018) 18 SCC 130] and **N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]**.

8. Heard.

9. In the present case the fact that the owner of the offending vehicle had applied for issuance of fresh permit and a receipt being Ex.RW-2/H qua the same had also been issued would not absolve the owner. This Court in **FAO-7555-2015 titled as M/s Middle High School & Anr. V/s Usha & Ors.** (supra) has held as under :

> *'To be fair to the appellants, counsel has tried to derive some mileage from receipt Ex.R4 with regard to deposit of an amount of Rs.850.00 with the concerned Transport authority. Counsel for the appellants has failed to point out any provisions in law/rules that merely because owner of a transport vehicle has deposited some money/fee with the authority concerned, it would amount to issuance of a permit in his favour. In other words, if the owner of a transport vehicle has deposited fee/charges with the authority concerned, it either creates a mandate for the authority to issue a permit much less constituting a permit being possessed by the insured. In this view of the matter, the appellants cannot derive any advantage from the factum of deposit of Rs.850/-.*

In view of the discussions made here-in-before, findings of the Tribunal that the offending vehicle did not possess a permit at the relevant time and the same constitutes a valid defence in favour of the insurance company under Section 149(2) of the Act are liable to be affirmed and ordered accordingly.

The Tribunal has conferred recovery right in favour of the insurer and against the owner and driver of the offending vehicle. It is an obligation of the insured to have a permit under Section 66 of the Act. The defences under Section 149(2) of the Act are available to the insurer only against the insured and not driver of the vehicle. As per the settled position in law, the driver of a vehicle is not a privy to contract of insurance between the insurer and the insured. Under the circumstances, the insurer cannot claim right of recovery against driver of the offending vehicle. As such, findings of the Tribunal giving recovery right against driver of the offending vehicle as well cannot stand the test of judicial scrutiny and ordered to be set aside.'

The order passed by this Court in FAO-7555-2015 (supra) was affirmed by the Hon'ble Supreme Court in **Special Leave to Appeal (C) No.31406-2017**.

10. Further RW-4 had stepped into the witness box, who was the Section Officer from the RTA Office, Mohali, and clearly stated that the fee was deposited online and the receipt (Ex.RW-2/H) was an online receipt and that the file was not submitted for issuance of the permit when the fees was deposited. He had further categorically stated in the cross-examination that the file was submitted on 01.12.2017 and the permit was issued on 06.12.2017. The statement of the said witness clearly reveals that though the fees had been deposited vide receipt Ex.RW-2/H, however, the file itself was submitted on 01.12.2017 and the permit was accordingly issued on 06.12.2017 i.e. after the date of the accident which took place on 23.08.2017. In view thereof, the argument of the learned counsel for the owner of the offending vehicle that fresh permit was applied and receipt qua the same had also been issued and that it would amount to issuance of a fresh permit cannot be accepted.

11. The argument of the learned counsel for the driver of the offending vehicle deserves to be accepted in view of the orders passed by this Court in **FAO-691-2017** decided on 29.04.2019; **FAO-5968-2018** decided on 23.01.2020 and **FAO-2751-2011** decided on 16.11.2015 as also in view of the order passed in **FAO-7555-2015** decided on 26.09.2017 (supra). Learned counsel for the owner as well as the Insurance Company have not been able to show any law to the contrary holding that there was

privity of contract between the insurer and the driver of the offending vehicle. Therefore, for violation of any terms and conditions of the policy, the driver cannot be held liable. In view thereof, the recovery rights granted against the driver of the offending vehicle cannot be sustained and the same are accordingly set aside. However, the recovery rights granted against the owner of the offending vehicle are kept intact.

12. The argument of the learned counsel for the claimants that the amount awarded under the head loss of estate and funeral expenses is not in consonance with the judgment of the Hon'ble Supreme Court and that no amount had been awarded under the head loss of consortium deserves to be accepted. Hence, as per the law laid down by the Hon'ble Supreme Court in the cases of **Pranay Sethi** (supra), **Magma General Insurance Company Limited** (supra) and **N. Jayasree** (supra), the claimants would be entitled to ₹18,000 (₹15,000 + 20% increase) towards loss of estate and ₹18,000 (₹15,000 + 20% increase) towards funeral expenses. The claimants, being parents of the deceased, would also be entitled to ₹48,000/- each (₹40,000 + 20% increase) towards loss of consortium. Since there is no challenge to the income of the deceased, the deduction made, the multiplier applied and the addition towards future prospects as assessed by the Tribunal, the same are maintained.

13. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1.	Monthly income	₹9,000
2.	Future prospects @40%	[₹9,000 + ₹3,600] = ₹12,600
3.	Deduction @50%	[₹12,600 - ₹6,300] = ₹6,300
4.	Annual dependency	[₹6,300 x 12] = ₹75,600
5.	Multiplier '18'	[₹75,600 x 18] = ₹13,60,800
6.	Loss of estate	₹18,000
7.	Funeral expenses	₹18,000
8.	Loss of consortium	₹96,000
	Total Compensation	**₹14,92,800**

14. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @7.5% per annum from the date of filing of the claim petition till the realization of the entire amount. The amount shall be apportioned between the claimants as directed by the Tribunal. The statutory amount deposited by the driver of the offending vehicle along with his appeal, be released to him if not remitted to the Tribunal and if remitted to the Tribunal, the Tribunal concerned shall release the same to him. Similarly, the statutory amount deposited by the owner of the offending vehicle along with his appeal, be released to the Insurance Company if not remitted to the Tribunal and if remitted to the Tribunal, the Tribunal concerned shall release the same to the Insurance Company.

15. In view of the above discussion, the impugned award passed by the Tribunal is modified in the above terms. The appeal being FAO-3337-2019 filed by the owner of the offending vehicle is dismissed; the appeal being FAO-3312-2019 filed by the driver of the offending vehicle is allowed

and the cross-objections being XOBJC-149-2019 filed by the claimants stand disposed off. Pending applications, if any, also stand disposed off.

24.01.2025 **(ALKA SARIN)**
Aman Jain **JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No