



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

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FAO-2263-2007

Date of Decision: January 29, 2025

Jaswant and another

.....appellant(s)

Vs.

Raj Kumar and another

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. J.P. Sharma, Advocate
for the appellant

Mr. Neeraj Khanna, Advocate for
Mr. R.N. Singal, Advocate for
for the respondent-Insurance Company

SUDEEPTI SHARMA J. (ORAL)

1. The instant appeal has been preferred by the owner and driver of the offending vehicle for setting aside the award dated 05.10.2006 passed by the learned Motor Accident Claims Tribunal, Narnaul (for short, 'the Tribunal'), whereby the claimants were awarded compensation of Rs.1,40,000/- along with interest @ 7 % per annum.

FACTS NOT IN DISPUTE

2. The brief facts of the case as mentioned in the claim petition are that on 17.4.2005, the appellant was travelling in truck bearing registration No.RJ-18G/2376 as conductor and the said truck left Delhi for Narnaul, which was being driven by respondent No.1-Jaswant in a rash and negligent manner at a high speed. It is alleged that the appellant requested respondent No.1 to drive the truck at a slow speed but he did not pay any heed and continued to drive the



truck in the same fashion. It is alleged that at about 4.30 a.m., when the truck reached near Nadha turning of village Majra, in the meantime, a TATA four-wheeler came from the opposite side and the truck hit against the four-wheeler. As a result of which, the truck turned turtle and the appellant received injuries. He was taken to Civil Hospital Rewari where he was medico-legally examined and after giving first aid, he was taken to Pooja Hospital Narnaul. It is alleged that the accident had taken place due to rash and negligent driving of truck No.RJ-18G/2376 by respondent No.1. FIR No.57 dated 17.4.2005 was registered at Police Station Khol, under sections 279, 337, 429 IPC by one-Satish.

3. Upon notice of the claim petition, respondents appeared, filing written statement denying the factum of accident/compensation.

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

- 1. Whether the petitioner received injuries in a motor vehicular accident which took place on 17.4.2005 in the area of village Majra due to rash or negligent driving of truck No.RJ-18G/2376 by respondent No.1 owned by respondent No.2 and insured with respondent No.3, as alleged? OPP*
- 2. To what amount of compensation the petitioner is entitled to and from whom? OPP*
- 3. Whether the petition is not maintainable? OPR*
- 4. Whether respondent No.1 was not holding a valid and effective driving licence on the date of alleged accident? OPR*
- 5. Relief*
- 6. It pertinent to mention here that during the course of arguments, it came to the notice of the Tribunal that issue*



No.1 was not properly framed and the same has been re-casted as under:-

1. Whether the petitioner received injuries in an accident that arose out of use of motor vehicle No.RJ-18G/2376 on 17.4.2005 in the area of village Majra, driven by respondent No.1, owned by respondent No.2 and insured with respondent No.3? OPP

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the tune of Rs.1,40,000/-, along with interest @ 7% per annum and Jaswant-driver (respondent No.1), Sanju Kumar-owner (respondent No.2) were jointly and severally held liable to pay the said amount. Since the vehicle was insured with respondent No.3-Oriental Insurance company Ltd., initially respondent No.3/Insurance Company was directed to make payment of compensation with the liberty to recover the amount of compensation payable to the claimants from the respondents No.1 and 2. Hence, the driver and owner-respondents No.1 and 2 filed the present appeal.

SUBMISSIONS OF THE COUNSELS FOR THE PARTIES

6. The learned counsel for the appellants contends that recovery rights have been wrongly granted by the Ld. Tribunal to the Insurance Company. He further contends that the claimant-Raj Kumar was working as conductor on the offending truck and he was not a gratuitous passenger. Therefore, the Tribunal has wrongly granted the recovery rights to the Insurance Company and prays that the award may be set aside and the appeal be allowed.



7. *Per contra*, learned counsel for the respondent No.2-Insurance Company, however, vehemently argues that the Ld. Tribunal has rightly granted the recovery rights to the Insurance Company since the Insurance Company was not made liable to pay the compensation by the Ld. Tribunal. He prays for dismissal of the appeal.

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

9. The relevant portion of the award dated 05.10.2006 is reproduced as under:-

“18. After assessing the quantum, the question of liability of compensation to be paid has attracted the attention of the Tribunal. Respondent No.1 Jaswant Singh was the driver of the offending truck. Copy of driving licence Ex.R1 has been placed on record which is valid up to 13.9.2007 for driving transport vehicle. The offending truck was insured with respondent No.3 vide insurance policy Ex.R2 w. e .f. 29.1.2005 to 28.1.2006 in the name of respondent No.2. The accident had taken place on 17.4.2005; therefore, the respondent No.1 was having a valid and effective driving licence.

19. It is the vehement contention of the counsel for the respondent No.3 insurance company that the insurance company is not liable to pay the compensation as the petitioner was travelling in a goods vehicle as gratuitous passenger.

20. As against this, learned counsel for the petitioner has contended that there is no force in the contention of the learned counsel for the respondent No.3 and the liability of the insurance company in case of gratuitous passenger is joint and several with the driver as well as the owner of the vehicle. In support of his contention, he has placed reliance upon case law M/s. National



Insurance Co. Ltd. Vs. Baljit Kaur and others 2004 (2) LJR 393 wherein it has been observed that the interest of justice will be sub-served if the appellant therein is directed to satisfy the awarded amount in favour of the claimant if not already satisfied and recover the same from the owner of the vehicle.

21. In the given circumstances, it can be conclusively said that all the respondents being driver owner and insurer are liable to pay the amount of compensation to the petitioner and insurance company cannot be absolved of its liability but it may recover the amount from the owner. Hence these issues are decided accordingly.

x x x x x x

23 In view of my findings on the above issues, the claim petition is partly allowed and a sum of Rs.1,40,000/- is awarded as compensation to the petitioner alongwith interest @ 7% per annum from the date of filing of the petition till realization. The liability is fastened on all the respondents jointly and severally but the insurance company can recover the amount from the owner of the offending vehicle. Memo of costs be prepared and the file be consigned to the record-room.”

10. Upon a thorough examination of the record, it is evident that the Learned Tribunal has correctly applied the settled principles of law in determining the liability of the parties. Insofar as the appellant’s contention that the claimant, Raj Kumar, was employed as a conductor on the offending truck and was not a gratuitous passenger is concerned, the argument lacks merit. A perusal of the impugned award reveals that the claimant failed to discharge the burden of proof through any documentary evidence substantiating his



employment as a conductor. Furthermore, he did not produce any independent witness to corroborate his claim.

11. In sequel of the above, the learned tribunal rightly arrived at a well-reasoned finding that the claimant was a gratuitous passenger in the truck.

12. It is well established that an insurance company is not liable to compensate a gratuitous passenger traveling in a goods vehicle. However, in view of the judgment rendered by Hon'ble the Supreme Court in *National Insurance Co. Ltd. v. Baljit Kaur & Others, 2004 (2) LHR 393*, the insurer is required to satisfy the compensation awarded to the claimant in the first instance, with the liberty to recover the same from the vehicle owner.

13. In view of the foregoing legal position and the well-reasoned findings of the Learned Tribunal, I find no legal infirmity in the impugned award. The same is accordingly upheld.

14. Consequently, the present appeal, being devoid of merit, stands ***dismissed***.

15. The Insurance Company is hereby directed to disburse the current scheduled fee to Mr. R.N. Singal, Advocate within a period of 20 days from the date of receipt of copy of this order.

16. All the pending applications also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

January 29, 2025
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Whether speaking/reasoned:	Speaking
Whether reportable	Yes / No