IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-3685-2023 (O&M)
Reserved on : 11.09.2025
Date of Pronouncement : 22.09.2025

Om Parkash ......Appellant

Vs.

Laxmi and others ......Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present : Mr. Inderjit Singh, Advocate,
for the appellant.

Mr. Yogesh Gupta, Advocate,
for respondent No.1 to 6.

Mr. Lalit Garg, Advocate,
for respondent No.7-Insurance Company.

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SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been filed by the appellant-Om Parkash (driver and owner of the offending vehicle) against the award dated 17.03.2023 passed in the claim petition under Section 166 of the Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal'), wherein the claimants/respondents No.1 to 6 were held entitled for compensation to the tune of Rs.25,65,000/- along with interest at the rate of 7.5% per annum, on account of death of Mula Ram @ Moola Ram in a Motor Vehicular Accident, occurred on 08.12.2020 and liability was fastened upon the appellant to pay the compensation.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 08.12.2020, Mula Ram @ Moola Ram (since deceased) was travelling in Truck No.RJ04-GA-5086 as the representative/owner of the soil loaded therein. The said truck was being driven by its owner, respondent No. 1-Om Parkash, on the Hisar-Rajgarh Road. Respondent No.1 was driving it at a high speed despite foggy weather conditions. At about 8:00 a.m., when they reached Siwani bye-pass, respondent No.1 suddenly lost control over the truck, which collided with a stationary vehicle parked on the road. As a result of the impact, Mula Ram @ Moola Ram suffered multiple grievous injuries. He was taken to the hospital, where he was declared brought dead. Several persons present at the spot witnessed the accident, which was caused due to rash and negligent driving of respondent No.1. In this regard, General Diary No.16 dated 08.12.2020 was recorded at Police Station Siwani, District Bhiwani, Haryana.

3. Upon notice of the claim petition, the respondents appeared and filed their separate replies denying the factum of accident/compensation.

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

> *"1. Whether respondent No.1 had driven Truck bearing registration No.RJ04-GA-5086 in a rash and negligent manner at about 8:00 AM on 08.12.2020 near Siwani Bye-pass on Hisar-Rajgarh Road, PS Siwani, District Bhiwani, Haryana and had caused the death of Mula Ram @ Moola Ram?OPA.*

> 2. *If issue No.1 is proved, whether claimants are entitled to compensation? If so, from which of the respondents and to what extent? OPA.*
> 3. *Whether petition is not maintainable? OPR.*
> 4. *Whether claim petition is bad for non-joinder and mis-joinder of necessary parties? OPR-2*
> 5. *Whether claimants have no locus standi to file the present petition? OPR2*
> 6. *Whether respondent No.1 was not having valid driving license and travel documents of truck bearing registration No.RJ04-GA-5086 on the date of alleged occurrence.*
> 7. *Relief."*

5. In support of their pleadings, both the parties led their respective evidence.

6. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the claimants/respondents No.1 to 6. Further, the learned Tribunal has held the appellant (owner and driver) to pay the compensation. Hence, the present appeal.

SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES

7. Learned counsel for the appellant contends that learned Tribunal has erred in granting compensation to claimants/respondents No.1 to 6. He further contends that learned Tribunal has also erred in fixing the liability of appellant to pay the compensation to respondents No.1 to 6. He further contends that the insurance company was aware of all the pleadings, written statement but did not tender anything except the driving license. He further contends that Mula Ram @ Moola Ram (since deceased), was not travelling as a gratuitous passenger but was accompanying the goods in the

goods carriage to ensure their safety and proper delivery. Accordingly, he argues that the insurer alone is liable to indemnify the claimants/respondents No.1 to 6. Therefore, he prays that the present appeal be allowed and the award passed by the learned Tribunal be set aside.

8. *Per contra*, learned counsel for respondent No.7-Insurance Company contends that the liability to pay the compensation has rightly been decided by the learned Tribunal. Therefore, he prays for dismissal of the present appeal.

9. I have heard learned counsel for the parties and carefully perused the record of this Court with their able assistance.

10. Before proceeding further, it is apposite to reproduce the relevant portion of the award dated 17.03.2023 passed by learned Tribunal:-

> *"**ISSUES NO.1 AND 2.***
> ***12.** Both these issues are interconnected, and, their fate also depends upon appreciation of common evidence. Both these issues, therefore, are being taken up together for adjudication.*
> ***13.** To prove these issues claimants examined above noted two PWs. PW-1 is claimant No. 1 Laxmi the widow of deceased Mula Ram. In her examination-in-chief she reiterated the entire version of petition and proved on file documents Ex.P-1 to Ex.P-10. Out of these, documents Ex.P-1 to Ex.P-7 are copies of Aadhar Cards of claimants and deceased reflecting their inter se relationship. Ex.P-8 is copy of postmortem report of deceased, Ex.P-9 is copy of his death certificate and Ex.P-10 is copy of above said GD No. 16 dated 08.12.2020 concerning the involved occurrence. Her cross-examination is formal where she had admitted that she had not witnessed the referred ill-fated incident. She*

also stated that deceased was having Truck No. RJ04-GA5515. Remaining suggestions were denied by her.

14. *Claimants then examined eyewitness Manka Ram who while appearing as PW-2 deposed in his examination-in-chief that on 08.12.2020 at about 8:00 AM, he was in truck No. RJ04-GA-5515 (owned by deceased as is evident from permit Ex.R-7) and was following the truck No. RJ04-GA-5086. Latter was being driven by respondent No. 1 and his brother Mula Ram @ Moola Ram deceased was also accompanying him in that truck. Respondent No. 1 was driving the said truck at a high speed in the fog. When they (occupants of truck No. RJ04- GA-5086) reached near Siwani Bye-pass on Hisar-Rajgarh Road, suddenly respondent No. 1 lost his control over the truck and it struck into another vehicle standing on the road resulting into an accident. Mula Ram suffered multiple grievous injuries and was immediately taken to hospital where the doctors declared him brought dead. PW-2 further deposed that the accident had occurred due to sole negligence on the part of respondent No. 1 as he was driving the same at very high speed and in a zigzag manner. In cross-examination he stated that he had made statement before the police but was not aware if the same was included in the proceedings by the police or not. He further stated that the vehicle with which the truck No. RJ04-GA-5086 collided, escaped from the spot after collision and he could not note down the registration number of that vehicle. He denied the remaining suggestions of respondents.*

14. *Respondent No. 1 in his written statement has admitted the taking place of this occurrence though denying if it was caused due to rashness or negligence on the part of respondent No. 1. He also has not led any evidence to rebut the eyewitness account of PW-2. In view of these circumstances, and from unrebutted deposition of PW-2, it has to be concluded that this occurrence was the result of rash and negligent driving of above said truck by respondent No. 1 in which admittedly one of its occupants Mula Ram @ Moola Ram died. His postmortem report Ex.P-8 shows that in the occurrence he had suffered multiple injuries and it was opined that cause of death was due to haemorrhage and shock as a result of such injuries to vital organs of his body. Respondent No. 1 also has not denied his* *ownership of the involved truck. RC Ex.R-2 also shows so. Insurance Policy copy Ex.R-3 also shows this factum of ownership of truck by respondent No. 1 and this vehicle being duly insured with respondent No. 2 on 08.12.2020. The outcome, therefore, is that respondent No.1 patently is liable to answer the claim under reference in favour of the claimants.*

15. *The version of claimants further is that respondent No. 2 Insurance Company also is liable to answer this claim in their favour. Their stance is that deceased Mula Ram was travelling in the ill-fated Truck No. RJ04-GA-5086 of respondent No. 1 as owner of the soil loaded therein. Respondent No. 2 Insurance Company has vehemently denied this aspect contending that the deceased was travelling in that truck as a gratuitous passenger and, therefore, respondent No. 2 has no liability to shoulder much less as the insurer of that truck. To substantiate this aspect both the learned counsel for claimant party and respondent No. 1 have referred to document Ex.R-7 which patently is of no help to them. As is already noted above, this document is a copy of permit to transport goods in Truck No. RJ04-GA-5515 which as per this document is in the name of Mula Ram deceased himself. It is a separate Truck on which statedly PW-2 was travelling. Besides this document there is no proof on file even to reflect that the ill-fated truck had soil belonging to deceased. In the GD report Ex.P-10 it is mentioned that the deceased was none else but cousin of respondent No. 1 himself. It is also categorically mentioned in it that respondent No. 1 himself had loaded and was carrying the soil in that truck. Neither this document talks about deceased being owner of such sand nor there is any other document on record to show so. The outcome, therefore, is that the sand in that truck was belonging to respondent No. 1 and not to the deceased. An attempt has been made in a dexterous manner by the claimants and respondent No. 1 to procure compensation from insurer of the ill-fated truck i.e. respondent No. 2 on the basis of Insurance Policy Ex.R-3. Learned counsel for claimants and respondent No. 1 have referred to the Liability column on page 3 in this policy but therein also nothing is mentioned about payment of premium except for the owner-driver himself. Then the effort is made by them, by referring to judgments* ***National Insurance Co. Ltd.***

Vs. Urmila and others, 2006(2) RCR (Civil) 268 *and* ***United India Insurance Company Ltd., Hyderabad Vs. Kasu Shekaraiah, Adilabad and another, 2022(1) TAC 234****, which again do not apply to the present facts when the deceased is not proved owner of referred sand loaded in the truck. In judgment* ***United India Assurance Co. Ltd., Shimla Vs. Tilak Singh and Others, 2006 (4) SCC 404*** *the Hon'ble Apex Court has observed that the Insurance Company owed no liability towards the injuries suffered by the deceased in that case who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger. The outcome, therefore, is that deceased Mula Ram @ Moola Ram was travelling in this truck as a gratuitous passenger only. Insurance Company respondent No. 2 consequently cannot be held liable for compensation in view of the law laid down in this judgment* ***United India Assurance Co. Ltd., Shimla Vs. Tilak Singh and Others (supra)*** *of Hon'ble Apex Court.*

16. *As a result of discussion made above it is concluded that respondent No. 2 Insurance Company is not liable to pay any compensation to claimants.*

17. *As per petition and also as per deposition of PW-1 Laxmi the deceased was earning Rs.60,000/- per month but no proof in this regard is brought on file. Learned counsel for claimants submitted during arguments that the income may be assessed as per minimum wages applicable. Accident took place in December, 2020. Deceased was just 39 years old. His income by way of approximation is assessed as Rs.12,000/- per month when he cannot be termed as unskilled person in view of his ownership of a truck reflected in permit Ex.R-7. His annual income comes to Rs.1,44,000/- (12,000/- x 12). In view of judgment* ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*** *addition of 40% is to be made to this annual income of deceased as future prospects. His annual income comes to Rs.2,01,600/- [Rs.1,44,000/- + 57,600/- (40%)]. Claimants are 6 in number. By virtue of judgment* ***Smt. Sarla Verma and Others Versus Delhi Transport Corporation and Anr, 2009(3) RCR (Civil) 77(SC)****, deduction of 1/4th of this income is to be made as personal expenses of deceased. The annual dependency of claimants, hence, comes to Rs.1,51,200/-*

> *per annum. In view of this judgment, the multiplier of 15 is to be applied. Total compensation of claimants on this count comes to Rs.22,68,000/- (1,51,200/- x 15).*
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> ***18.*** *In addition to this amount of Rs.22,68,000/-, the claimants are also entitled to Rs.16,500/- on account of funeral expenses and another amount of Rs.16,500/- on account of loss of estate of deceased, besides Rs.44,000/- for each of the claimants for loss of consortium in view of judgments* ***National Insurance Company Limited vs. Pranay Sethi and others (supra) and New India Assurance Co.Ltd. Versus Somvati and others, 2020 ACJ 2321****. Total of these amounts comes to Rs.25,65,000/- (Rs.22,68,000/-) + (Rs.16,500 x 2) + (44,000 x 6).*
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> ***19****. Resultantly, both these issues are decided in favour of claimants and against respondent No. 1 while holding that latter is liable to pay total compensation of Rs.25,65,000/- in favour of claimants."*

11. A perusal of the impugned award reveals that the learned Tribunal has carefully appreciated the evidence adduced on record and has rightly returned the finding that accident in question occurred due to rash and negligent driving of the offending vehicle by respondent-driver.

12. The testimony of the sole eyewitness, PW-2 Manka Ram, assumes significance. He narrated the entire sequence of events leading to the accident and categorically attributed negligence to respondent-driver, who was driving the offending vehicle at a high speed in foggy conditions and lost control, resulting in the collision. His testimony remained unimpeached inasmuch as he was not subjected to effective cross-examination. In the absence of any rebuttal evidence from the driver, the learned Tribunal was fully justified in recording a finding that the accident occurred due to rash and negligent driving on the part of respondent No.1.

These findings being borne out of the evidence on record do not call for any interference.

13. Adverting now to the second limb of contention advanced by the appellant that the deceased was not a gratuitous passenger but was, in fact, travelling in the offending vehicle as owner of the goods, the Court finds merit in the said submission.

14. A close scrutiny of the record reveals that the conclusion of the learned Tribunal treating the deceased as a gratuitous passenger is not supported by the evidence. On the contrary, the testimony of PW-2, who is an eyewitness to the occurrence, unequivocally states as under:-

> "With these both the trucks, the deponent and his brother left for Tohana in Haryana. The truck RJ-04-GA-5515 was being driven by the deponent while the hired truck RJ-04-GA-5086 was being driven by respondent No.1, and my deceased brother, namely Mula Ram alias Moola Ram, was sitting in the said truck being the owner of the soil loaded therein."

15. This deposition is material, as it establishes that the deceased had engaged the services of the offending vehicle for transportation of his goods and was accompanying the consignment in his capacity as owner thereof. Notably, this testimony remained unrebutted, since PW-2 was not cross-examined on this material aspect. Despite this, the learned Tribunal sought to disbelieve his statement without any cogent basis, and in doing so, it misdirected itself.

16. The written statement filed by respondent No.1–driver further fortifies this position. In reply to the claim petition, the driver admitted that the deceased had hired his truck for transporting soil and was travelling therein as owner of the consignment. This categorical admission demolishes the plea of gratuitous passenger set up by the insurer/Insurance Company.

17. It is trite law that the burden lies squarely upon the insurer to establish any violation of the terms and conditions of the insurance policy, particularly when the insurer sets up a defence to avoid liability. In the present case, however, the Insurance Company has miserably failed to discharge such burden. No witness was examined on its behalf to prove that the deceased was travelling as a gratuitous passenger, nor cross-examined the witnesses to that effect. Thus, the defence raised by the insurer remains a mere assertion without evidentiary foundation.

18. The further contention advanced by the learned counsel for the Insurance Company, that there is no reference in the DDR of the presence of PW-2 at the site of the accident, is equally devoid of merit. It is a settled proposition of law that the FIR or DDR is not intended to be an encyclopedia of all facts or a substitute for substantive evidence. Its limited purpose is to set the criminal law in motion. Omission of the name of an eyewitness in such a document, by itself, cannot be a ground to discard his otherwise credible testimony. In the present case, PW-2, during cross-examination, categorically affirmed his presence at the scene of occurrence, and his testimony on this material aspect remained unimpeached. Hence,

the argument raised by the Insurance Company is devoid of legal substance and cannot be accepted.

19. In the aforesaid circumstances, the finding recorded by the learned Tribunal treating the deceased as a gratuitous passenger is manifestly perverse, being contrary to the evidence on record and resting only upon conjectures and surmises. Such a finding, being legally untenable, is liable to be set aside.

20. It is by now well settled that the insurer is liable to indemnify the insured and satisfy the award when the victim of an accident is either the owner of the goods or his duly authorized representative travelling in the goods carriage along with the consignment. Reference may usefully be made to the authoritative judgment of the Hon'ble Supreme Court in **New India Assurance Co. Ltd. v. Asha Rani, AIR 2003 SC 607**, wherein it has been held that the insurance company is statutorily bound to cover the risk of the owner of goods or his representative while travelling with the goods. The relevant extracts of the same is reproduced as under:-

> *"In Satpal's case (supra) the Court assumed that the provisions of Section 95(1) of Motor Vehicles Act 1939 are identical with Section 147(1) of the Motor Vehicles Act 1988, as it stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was not necessary for the insurer to insure against the owner of the goods of his authorised representative being carried in a goods vehicle. On an erroneous impression this Court came to the conclusion that the insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the*

owner of the goods or his authorised representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicle Amended Act of 1994 is examined, particularly Section 46 of the Act 6 of 1991 by which expression 'injury to any person' in the original Act stood substituted by the expression 'injury to any person including owner of the goods or his authorised representative carried in the vehicle the conclusion is irresistible that prior to the aforesaid amendment Act of 1994, even if widest interpretation is given to the expression 'to any person' it will not cover either the owner of the goods or his authorised representative being carried in the vehicle. The objects and reasons of Clause 46 also states that it seeks to amend Section 147 to include owner of the goods or his authorised representative carried in the vehicle for the purposes of liability under the Insurance Policy. It is no doubt true that sometimes the legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression 'including owner of the goods or his authorised representative carried in the vehicle which was added to the pre-existed expression 'injury to any person' is either clarificatory or amplification of the pre-existing statute. On the other hand it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury. The judgment of this Court in Satpal's case, therefore must be held to have not been correctly decided and the impugned judgment of the Tribunal as well as that of the

> *High Court accordingly are set aside and these appeals are allowed. It is held that the insurer will not be liable for paying compensation to the owner of goods or his authorised representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of goods or his representative dies or suffers any bodily injury."*

*13. Further, in **National Insurance Co. Ltd. v. Baljit Kaur & Ors., (2004) 2 SCC 1**, Hon'ble the Supreme Court, while reaffirming the ratio in **Asha Rani**, clarified the scope of liability of insurer under such circumstances and held as under :-*

> *"It is therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authoirsed representative remains the same. Although the owner of the goods or his authoirsed representative would now be covered by the policy of insurance in respect of a good vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people."*

*14. The above legal position has also been followed by Division bench of this court in **National Insurance Co. Ltd. v. Ram Chander & Anr., 2007 (2) RCR (Civil) 51,** wherein the Hon'ble Court held as under :-*

> *"We have heard the learned counsel for the parties at length. The only question that has to be determined is whether the claimants were the gratuitous passengers so as to exclude the insured from the purview of the policy as it amounted to a breach of a condition thereof. To establish the factum of the status of the claimants in the light of the provisions of the amended provisions of Section 147(1), we have also perused the evidence with specific reference to the cross-examination of the witnesses who had testified before the Tribunal. The claimants, whose cases were the subject matter of the aforementioned appeals, were the persons who were accompanying their goods to be*

> *carried to the fair. PW2, PW5, PW6, PW7, PW11 and PW12 had testified that bags of fodder, shoes, wooden planks and cattle feed were the goods which were being ferried in the offending vehicle to the accompaniment of the claimants. They could, therefore, not be gratuitous passengers so as to absolve the insurance company of its liability to pay the amount of compensation as determined by the Tribunal since they were all owners of the goods travelling in the vehicle at the time of accident."*

21. In light of the foregoing discussion, while the findings of the learned Tribunal with regard to rash and negligent driving of respondent No.1 are upheld, the finding treating the deceased as a gratuitous passenger is set aside. It is held that the deceased was travelling in the offending vehicle as owner of the goods and, therefore, the insurer is liable to indemnify the insured.

22. Consequently, the appeal is **partly allowed**. The award dated 17.03.2023 stands modified to the extent that respondent No.7–Insurance Company is held solely liable to pay the entire amount of compensation to the claimants/respondents No.1 to 6.

23. Pending application(s), if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

22.09.2025
Virender

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