IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-2538-2008 (O&M)
Date of Decision: 26.03.2025

Lekh Ram and anr. ......Appellants

Vs.

Gouri and ors ......Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present:- Mr. J.S. Cooner, Advocate
for the applicants/appellants.

Mr. D.P. Gupta, Advocate
for respondent/Insurance Company

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SUDEEPTI SHARMA J.

C.M. No. 15265-CII-2008

The present application has been filed by the applicants-appellants under Order 41 Rule 27 CPC for leading additional evidence. The present appeal pertains to the year 2007 and the claim petition was decided in the year 2007 itself. The applicants/appellants had every opportunity to produce the evidence before the learned Tribunal which he now wants to place on record by way of filing the present application. Since, the additional evidence which the applicants/appellants want to place on record at this stage with the application, could be placed before the learned Tribunal at the time when the claim petition was to be decided and no reasoning for not placing the additional evidence before the learned Tribunal is given in the present application, therefore, this Court finds no merit in the present application and the same is dismissed.

FAO No 2538-2008

1. Owner of the offending vehicle is in appeal against the award dated 04.09.2007 passed in the claim petition bearing MACT Case No. 183-2005, filed under Section 163-A of the Motor Vehicles Act, 1988, by the learned Motor Accident Claims Tribunal, Panchkula, (Haryana) (for short, 'the Tribunal') whereby, the claim petition filed by the claimants for grant of compensation, was allowed and the Insurance Company was granted recovery rights to recover the compensation amount from the owner/appellant No. 1 of the offending vehicle.

FACTS NOT IN DISPUTE

2. Brief facts of the case are that on 04.09.2005 Sawan Kumar along with his mother was crossing the road while coming from village Sukhomajri to GS Bricks Kiln. In the meanwhile, a truck bearing registration No. HP-24-A-2410 came from Nalagarh side and hit the Sawan Kumar who was rushed to Shori Hospital, Pinjore from where he was referred to PGI, Chandigarh. On 05.09.2005, he succumbed to his injuries. FIR No. 128 dated 5.9.2005 was registered at P.S. Kalka under Section 279/304-A of IPC regarding the accident.

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

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

> *"1. Whether Sawan Kumar died in a vehicular accident arising out of the use of truck bearing registration No. HP-24-A-2410, as alleged? OPP.*

2. If issue No.1 is proved, whether the petitioners are entitled to compensation under section 163-A the Act, if so to what extent and from whom? OPP

3. Whether the driver of the truck was not holding a valid and effective driving licence on the date of accident, if so what effect? OPR-3

4. Relief."

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the claimants. However, the appellant-Insurance Company was held liable to pay the compensation at first instance with liberty to recover the same from the owner of the offending vehicle.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES.

6. Learned counsel for the appellant/owner of the offending vehicle submits that the learned Tribunal has wrongly allowed the claim petition in favour of the claimants, since the offending vehicle was not involved in the accident. He further contends that respondent No.-3/driver of the offending vehicle was having a valid licence at the time of accident, therefore, the learned Tribunal has erred in granting the recovery rights to the Insurance Company to recover the compensation amount from the owner of the offending vehicle. Therefore, he prays that the present appeal be allowed.

7. Per contra, learned counsel for the respondent-Insurance Company vehemently argues that the learned Tribunal has wrongly allowed the claim petition of the claimants and awarded the compensation to the claimants. He further contends that the Learned Tribunal has erred in law in directing the appellant/Insurance Company to first pay the amount of compensation and

thereafter to recover the same from the owner of the offending vehicle. Moreover, that in FAO No.4528-2007, the respondent-Insurance Company has also challenged the award rendered by the Learned Tribunal on the ground of liability to pay the compensation. He further contends that the learned Tribunal has wrongly decided Issue No. 1 in favour of the claimants since the deceased himself was negligent and the claim petition under Section 163-A of the Motor Vehicles Act, 1988 is not maintainable.

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

9. Before proceeding further, it is relevant to reproduce the relevant portion of the award, which reads as under:-

> *"11. PW-2 Gouri tendered in evidence her affidavit Ex. PB and offered herself for cross-examination. Preponderance of testimony of PW-2 Gouri is that on 5.9.2005, she alongwith her minor son Sawan Kumar was crossing the road for coming from village Sukhomajri to G. S. Bricks Kiln and in the meantime, a truck bearing registration No. H-24-A-2410 being driven rashly and negligently came from Nalagarh side and hit the deceased who was rushed to Shori Hospital, Pinjore and was thereafter referred to PGI, Chandigarh and there he succumbed his injuries. FIR under sections 279 and 304-A IPC was registered against the respondent No. 1 on 5.9.2005 regarding the accident at police station Pinjore.*
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> *12. PW-1 Jagpal Singh fully supported the testimony of PW-Gouri regarding the accident and stated that the accident took place due to rash and negligent driving of the offending truck*

by respondent No.1 Ramesh Kumar. PW-1 Jagpal also stated that FIR Ex.P-1 was registered on the basis of statement of Maan Singh.

13. The respondent No.1 and 2 did not produce any evidence despite opportunity including last opportunity and, as such, their evidence was closed by this Tribunal.

14. The respondent No.3 was accorded permission to defend his petition on all aspects of the case vide order dated 16.4.2007. However, the respondent No.3 did not produce any evidence regarding negligent aspect of the case. Thus the evidence of the petitioners has remained unrebutted all along. Non-producing of evidence by the respondents is also a prima facie proof of their accepting the claim of the petitioners as correct and therefore, hold that respondent No.1 Ramesh Kumar drove the offending truck bearing registration no. HP 24-A-2410 on 5.9.2007 rashly and negligently and caused the accident in question.

15. Ex.R-2 copy of insurance policy shows that the truck bearing registration No. HR-24-A-2410 was owned by Lekh Ram and was insured with the Oriental Insurance Company Ltd. from 24.10.2004 to 23.10.2005. The accident took place on 4.9.2005 and thus it is found that on the date of accident, the offending truck had a valid insurance cover. Copy of post-mortem report is Ex. P-2 which proves death of Sawan Kumar son of Jagpal Singh due to shock and haemorrhage due to injuries. Sawan Kumar was seven years old and, therefore, he *had no income of his own. His family, therefore, did not suffer any monetary loss. However, on account of death of their beloved son, the petitioners have suffered great mental pain and agony and have lost expectation of a nice living and support in the evening of their lives. The deceased was a student of class-II. Taking into account all the circumstances of this case, in my opinion, a sum of Rs.2,00,000/- as compensation to be shared equally by them on account of death of their son Sawan Kumar.*

16. In view of my above discussion, I answer both these issues in favour of the petitioners to the extent indicated above.

ISSUE NO.3:

17. The learned counsel for the respondent No-3 has argued that respondent Ramesh Kumar was holding a driving licence to drive a light motor vehicle only that at the time of accident, he was driving heavy transport vehicle and, therefore, the insurer is not liable to indemnify the insured in view of violation of the policy. To prove this fact, the learned counsel for the respondent No-3 referred to Ex.R-1 entry of register of Motor Registering and Licencing Authority, Karsog, District Mandi (HP). In support of his contention, the learned counsel for the respondent No.3 has placed reliance upon the observations of the Hon'ble Supreme Court in National Insurance Co. Ltd. Vs. Kusum Rai Ors. 2006 (2) RCR (Civil) 313 wherein the Hon'ble Apex Court observed that the *insurance company is not liable to pay compensation where the driver was not holding a valid driving licence.*

18. In this view of the matter, I answer issue No.3 in favour of the respondent No-3 and against the petitioners and others respondents."

10. A perusal of the award indicates that the claim petition was filed under Section 163-A of the Motor Vehicles Act. Compensation granted under this section is determined by a structured forumula, constituting a final award, without requiring proof of negligence by the driver or the owner of the vehicle involved in the accident. It is a well settled legal principle, as affirmed by the Hon'ble Supreme Court in ***United India Insurance Company Ltd. versus Sunil Kumar***, Civil Appeal No.9694 of 2013 that claims under Section 163-A of the Motor Vehicles Act, 1988 are predicated on principle of no fault liability and compensation is to be awarded without the necessity of proving negligence. The relevant extract of the same is reproduced as under:-

"8. From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by Section 163A(2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions of Section 163A of the Act to be

contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163A of the Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time.

In fact, to understand Section 163A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention.

9. For the aforesaid reasons, we answer the question arising by holding that in a proceeding under Section 163A of the Act it is not open for the Insurer to raise any defence of negligence on the part of the victim."

11. A bare perusal of the entire evidence on record leaves no room for doubt that the accident in question was caused by the involvement of the offending truck bearing registration No. HP-24-A-2410. The testimonies of PW2-Gouri, coupled with registration of FIR (Ex. P1) and the circumstances of the case, clearly demonstrate that the accident arose out of the use of the above vehicle, thereby satisfying the statutory requirement under Section 163-A of the Motor Vehicles Act, 1988.

12. The impugned award, particularly Ex. R-1 establishes that appellant No. 2, Ramesh Kumar, was in possession of a driving licence authorizing him to operate only a Light Motor Vehicle (LMV). However, the vehicle involved in the accident was a Heavy Transport Vehicle (HTV). In light of this, learned Tribunal

correctly held that appellant No. 2 was not in possession of a valid and effective driving license for the class of vehicle, he was operating at the time of the accident.

13. Additionally, the insurance policy (Ex.R-2) unequivocally establishes that the vehicle in question was duly insured on the date of the accident. However, it is a well-settled principle of law that an insurer cannot completely absolve itself of liability towards third party solely on the ground of a breach of policy conditions by the insured. The Hon'ble Supreme Court in ***National Insurance Co. Ltd. v. Swaran Singh & Ors., 2004 ACJ 1 (SC)***, has categorically held that even in cases where a breach of policy conditions is established, the insurer remains statutorily obligated to indemnify the third party in the first instance. The insurer, however, retains the right to recover the compensated amount from the insured if a fundamental breach of policy conditions is proved.

14. Consequently, the learned Tribunal correctly held the respondent/insurance company to satisfy the award and granted liberty to recover the amount from appellant No. 1/the owner of the offending vehicle.

15. Given the cogent evidence and well-settled legal position, the findings of the learned Tribunal do not warrant any interference by this Court. The award is legally sound and does not suffer from any perversity.

16. Accordingly, the present appeal is dismissed being devoid of any merits.

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

(SUDEEPTI SHARMA)
JUDGE

March 26, 2025
Gaurav Arora

Whether speaking/non-speaking : Speaking
Whether reportable : Yes