



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of decision : 07.05.2026

1. FAO-6745-2019 (O&M) with
XOBJC-19-2020

New India Assurance Co. Ltd.

..... Appellant

versus

Surinder Kaur and others

..... Respondents

2. FAO-2044-2021 (O&M)

Surinder Kaur and others

..... Appellants

versus

Gurmail Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. R.C. Kapoor, Advocate
for the appellant-insurance company
in FAO-6745-2019 and
for respondent No.3 in FAO-2044-2021.

Mr. Vijay Lath, Advocate
Mr. Abhishek Sharma, Advocate and
Mr. Naveen Sharma Moudgil, Advocate
for the appellants in FAO-2044-2021,
for cross-objections/respondents No.1 to 3 in
FAO-6745-2019.

PANKAJ JAIN, J. (Oral)

XOBJC-19-2020

Counsel for the applicant-respondents No.1 to 3 in FAO-6745-2019 prays for withdrawal of the cross objections filed under Order XLI Rule 22 CPC.

Permitted to do so.

Consequently, the cross objections, i.e. XOBJC-19-2020 is dismissed as withdrawn.



Main case(s)

1. By way of instant judgement, I intend to dispose off afore captioned two appeals.
2. FAO No.6745 of 2019 is at the behest of the insurance company accompanied by an application under Order XLI Rule 27 CPC disputing its liability on the ground that the driver of the insured vehicle was not holding a valid license. FAO No. 2044 of 2021 is at the behest of the claimants seeking enhancement of compensation.
3. Insurance company along with the appeal has filed an application under XLI Rule 27 CPC for leading additional evidence in form of verification report dated 08.03.2019 issued by District Transport Officer, Zunehboto, Nagaland. Relying upon the report, the insurance company wants to dispute its liability. Bare perusal of the report dated 08.03.2019 sought to be tendered by way of additional evidence reveals that the letter was written by the insurance company to the concerned authority only on 15.02.2019, whereas the award was passed on 21.02.2019. There is no explanation as to why during the course of trial, no effort was made to verify the license.
4. Order XLI Rule 27 CPC reads as under:-

“27. Production of Additional Evidence in Appellate Court.

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, But if:

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise



of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

5. The appellant has not been able to demonstrate as to how it can be held to be diligent as no effort was made to verify the license during the pendency of trial. The principles of Order XLI Rule 27 have been laid down by Supreme Court in the case of ***Union of India vs. Ibrahim Uddin (2012) 8 SCC 148***, observing as under:-

“25. The general principle is that the Appellate Court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the Appellate Court to take additional evidence in exceptional circumstances. The Appellate Court may permit additional evidence only and only if the conditions laid down in this rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, provision does not apply, when on the basis of evidence on record, the Appellate Court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the rule itself. (Vide: ***K. Venkataramiah v. A. Seetharama Reddy & Ors., AIR 1963 Supreme Court 1526; The Municipal Corporation of Greater Bombay v. Lala Pancham & Ors., AIR 1965 Supreme Court 1008; Soonda Ram & Anr. v. Rameshwaralal & Anr., AIR 1975(*) RCR (Rent) 1; and Syed Abdul Khader v. Rami Reddy &***



Ors., AIR 1979 Supreme Court 553).

26. The Appellate Court should not, ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in appeal. Similarly, where a party on whom the onus of proving a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the Court can, in such a case, pronounce judgment against him and does not require any additional evidence to enable it to pronounce judgment. (Vide: *Haji Mohammed Ishaq Wd. S.K. Mohamed Iqbal and Mohamed Ali and Co., AIR 1978 Supreme Court 798*).

27. Under Order 41, Rule 27 Civil Procedure Code, the appellate Court has the power to allow a document to be produced and a witness to be examined. But the requirement of the said Court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision does not entitle the appellate Court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. It does not entitle the appellate Court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate Court is empowered to admit additional evidence. [Vide: Lala Pancham & Ors. (supra)].

28. It is not the business of the Appellate Court to supplement the evidence adduced by one party or the other in the lower Court. Hence, in the absence of satisfactory reasons for the non- production of the evidence in the trial court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this rule. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal. (Vide: *State of U.P. v. Manbodhan Lal Srivastava, AIR 1957 Supreme Court 912; and S. Rajagopal v. C.M. Armugam & Ors., AIR 1969 Supreme Court 101, AIR 1969 SC 101*).

29. The inadvertence of the party or his inability to



understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not realise the importance of a document does not constitute a "substantial cause" within the meaning of this rule. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal.

30. The words "for any other substantial cause" must be read with the word "requires" in the beginning of sentence, so that it is only where, for any other substantial cause, the Appellate Court requires additional evidence, that this rule will apply, e.g., when evidence has been taken by the lower Court so imperfectly that the Appellate Court cannot pass a satisfactory judgment.

31. Whenever the appellate Court admits additional evidence it should record its reasons for doing so. (Sub-rule 2). It is a salutary provision which operates as a check against a too easy reception of evidence at a late stage of litigation and the statement of reasons may inspire confidence and disarm objection. Another reason of this requirement is that, where a further appeal lies from the decision, the record of reasons will be useful and necessary for the Court of further appeal to see, if the discretion under this rule has been properly exercised by the Court below. The omission to record the reasons must, therefore, be treated as a serious defect. But this provision is only directory and not mandatory, if the reception of such evidence can be justified under the rule.

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36. Where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record such application may be allowed.

37. To sum up on the issue, it may be held that application for taking additional evidence on record at a belated stage cannot be filed as a matter of right. The court can consider such an application with circumspection, provided it is covered under either of the prerequisite condition



incorporated in the statutory provisions itself. The discretion is to be exercised by the court judicially taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such an evidence could not be led in the court below and as to whether the applicant had prosecuted his case before the court below diligently and as to whether such evidence is required to pronounce the judgment by the appellate court. In case the court comes to the conclusion that the application filed comes within the four corners of the statutory provisions itself, the evidence may be taken on record, however, the court must record reasons as on what basis such an application has been allowed. However, the application should not be moved at a belated stage.”

6. Applying the aforesaid principles to the present case, this Court is of the opinion that the appellant does not satisfy the parameters laid down by Supreme Court in ***Ibrahim case (supra)***. Thus, the application filed under Order XLI Rule 27 CPC is hereby dismissed.

7. In view of ratio of law laid down by Supreme Court in the case of ***National Insurance Co. Ltd. v. Swaran Singh*** reported as ***(2004) 3 SCC 297***, the onus to prove breach of terms of the insurance policy lies upon the insurance company. The insurance company having failed to lead any evidence to prove the breach of the terms of the insurance policy, this Court finds that the appeal preferred by the insurance company *sans* merit and deserves dismissal.

8. Keeping in view the ratio of law laid down by Supreme Court in the case of ‘***National Insurance Company Limited vs. Pranay Sethi and others***’, ***(2017) 16 SCC 680*** and ‘***Smt. Sarla Verma & others vs. Delhi Transport Corporation & another***’ ***(2009) 6 SCC 121*** and ***Magma General Insurance Company Ltd., Vs. Nanu Ram @ Chuhru***



Ram & ors., Civil Appeal No.9581 of 2018 arising out of SLP (Civil) No.3192 of 2018 decided on 18.09.2018, the compensation awarded by the Tribunal needs to be re-worked. Apart from the conventional heads, another issue has been raised by counsel for the claimants to submit that the Tribunal erred in taking net salary of the deceased ignoring ITRs on record.

9. ITR filed by the deceased under form 16 is on record as Ex.P13 as per which the annual income of the deceased is shown to be Rs.6,41,648/-. Accordingly, the compensation awarded by the Tribunal is reworked as under:-

Details	Compensation claimed
Income	Monthly: 53,471/- Annual: 6,41,648/-
Deduction	1/3
Future prospects	15%
Multiplier	11
Loss of dependency	54,11,230/-
Loss of estate	18,000/-
Funeral expenses	18,000/-
Loss of consortium	48,000/- x 3 = 1,44,000/-
Interest	7%

10. With the aforesaid modification in impugned award, it is ordered as under:-

- (i) FAO No.6745 of 2019 titled as “*New India Assurance Co. Ltd. vs. Surinder Kaur and others*” is ordered to be dismissed.
- (ii) FAO No.2044 of 2021 titled as “*Surinder Kaur and others vs. Gurmail Singh and others*” is ordered to be disposed off.



- 11. Ordered accordingly.
- 12. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.
- 13. A photocopy of this order be placed on the file of other connected case.

**(PANKAJ JAIN)
JUDGE**

07.05.2026
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No