

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO (MVA) No.47 of 2002 alongwith
Cross Objections No.194 of 2002.
AND
FAO(MVA) No.311 of 2002.

Judgment reserved on: 28.12.2005.

Date of decision: 11th January, 2006.

FAO No.47 of 2002.

Ram Lok and another		...Appellants
	Versus	
Bagga Ram and another		...Respondents

FAO No.311 of 2002:

National Insurance Company Ltd.	Appellant
	-Versus-	
Bagga Ram and others	Respondents

Coram:

The Hon’ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting?

For the Appellants: Mr.Ramakant Sharma, Advocate (in FAO
No.47 of 2002)
Mr.Ashwani Sharma, Advocate (in FAO
No.311 of 2002).

For Respondents: Mr.N.K.Thakur, counsel for respondent No.1
(in both FAOs)
Mr.Ashwani Sharma, counsel for respondent
No.2 (in FAO No.47 of 2002)
Mr.Ramakant Sharma, counsel for R-2&3(in
FAO No.311 of 2002)

Deepak Gupta, J.

This judgment shall dispose of two appeals being FAO Nos.47 of
2002 and 311 of 2002 as well as Cross Objections No.194 of 2002 filed
in FAO No.47 of 2002, as they arise out of the same accident and
award.

The claimant Bagga Ram filed a petition under Section 166 of the Motor Vehicles Act alleging that on 14.3.1999 when he was on his motor-cycle and was going to Haripur via Barotiwala Tractor No.HP-12-8329 came from the other side. The Tractor which was owned by Ram Lok was being driven by his brother Ashok Kumar in a rash and negligent manner. The tractor hit against the motorcycle and the left leg of the claimant got fractured. The owner and driver of the tractor denied that any accident had taken place. The Insurance Company took up various pleas including the plea that the driver did not have a valid driving license.

The Tribunal on the basis of the evidence recorded before it came to the conclusion that the accident had occurred and that the accident was a result of the rash and negligent driving of the driver of the tractor. He has awarded Rs.one lakh in favour of the claimant. Though it has been held that the driver of the tractor did not have a valid driving license the Insurance Company has been held liable to satisfy the award with liberty reserved to it to recover the awarded amount from the insured.

FAO No.47 of 2002 has been filed by the owner and driver of the tractor in which the main ground taken is that the accident in question had not taken place with the tractor. In this appeal cross objections have been filed by the claimant for enhancement of compensation.

FAO No.311 of 2002 has been filed by the Insurance Company mainly on the ground that since it has been held that the driver of the tractor did not have a valid driving license the Insurance Company should not have been made liable to satisfy the award.

As far as the first issue with regard to the negligence is concerned it would be pertinent to mention that PW-1 i.e. the claimant has supported his case and stated that the accident occurred with the tractor and that the tractor was being driven rashly and negligently by Ashok Kumar. FIR with regard to the incident was lodged with the police station Barotiwala copy of which is Ext.PW-3/A. This shows that an accident had taken place and the number of the tractor is mentioned in this FIR. This FIR is lodged on 14.3.1999 the date of the accident at 12.20 a.n. i.e. within one and an half hours of the accident.

PW-5 Balbir Singh has also stated that the tractor in question had hit the motor-cycle. The owner and driver of the scooter did not step into the witness box and therefore adverse inference has to be drawn against them. The finding of the Tribunal on the issue of negligence is correct and is accordingly upheld.

As far as the contention of the Insurance Company is concerned it may be noticed that the Apex Court in **National Insurance Company vs. Swaran Singh** , 2004 ACJ 1, in para 102 (x) held as follows:-

“**102 (x)** Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149(2) read with sub-section (7), as interpreted by this court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of the claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued

by the Tribunal to the Collector in the same manner under section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.”

The directions given by the Tribunal whereby the Insurance Company has been ordered to satisfy the award is in consonance of the aforesaid legal position. The Insurance Company can recover the amount paid by it alongwith interest by filing appropriate execution proceedings before the MACT concerned and without having to take recourse to any other legal proceedings.

In view of the above discussion, both the appeals are dismissed with no order as to costs.

Cross Objections No.194 of 2002:

In view of the judgment of the full Bench of this Court rendered in **FAO No.267/1993 titled Ms.Lata vs. United India Insurance Company and others** decided on 27th October, 2004 the cross objections filed by the claimants are not maintainable, hence rejected

January 11, 2006.
PV

(Deepak Gupta),
Judge