

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No.35 of 2007 with FAO No.264 of 2007

Decided on: August 29, 2014.

FAO No.35 of 2007:

New India Assurance Company	...Appellants
VERSUS	
Sonia Kumari and others	...Respondents.

FAO No.264 of 2007:

Jawala Ram	...Appellant
VERSUS	
Sonia Kumari and others	...Respondents

Coram

The Hon'ble Mr.Justice Mansoor Ahmad Mir, Chief Justice.

Whether approved for reporting? Yes.

For the Appellant(s):	Mr.B.M. Chauhan, Advocate, in FAO No.35 of 2007. Mr.Vinod Thakur, Proxy Counsel, in FAO No.264 of 2007.
For the Respondents:	Mr.Ramakant Sharma, Advocate, for respondents No.1 to 4, (in both appeals). Mr.Vinod Thakur, Proxy Counsel, for respondents No.5 and 6. (FAO No.35/2007). Mr.B.M. Chauhan, Advocate, for respondent No.5 in (FAO No.264 of 2007). Nemo for respondent No.6 in (FAO No.264 of 2007).

Mansoor Ahmad Mir, C.J. (Oral)

Both these appeals are directed against the award, dated 19th October, 2006, passed by Motor Accident Claims Tribunal, Fast Track Court, Una, Himachal Pradesh, (hereinafter referred to as the Tribunal), whereby claim petition, titled as Sonia Kumari and others vs. Balwinder Singh and others, came to be determined by

...2...

awarding compensation to the tune of Rs.8.00 lacs, with interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realization, in favour of the claimants (respondents No.1 to 4 herein) and against the insurer with a right of recovery from the owner, namely, Jawala Ram, (for short, the impugned award).

2. Since both the appeals arise out of the single award, therefore, both are being disposed of by this common judgment.

3. Facts of the case, in brief, are that the claimants (respondents No.1 to 4 herein) filed a Claim Petition before the Tribunal under Section 166 of the Motor Vehicles Act, (for short, the Act), for grant of compensation to the tune of Rs.15.00 lacs, as per the break-ups given in the Claim Petition, on the ground that on 7th February, 2002, the deceased Dev Dutt Sharma took lift in truck bearing registration No.HIB-851 at Mehatpur, which was being driven by its driver, namely, Balwinder Singh, (respondent No.6 herein), rashly and negligently. When the said truck reached near Dehlan, it got tilted on one side of the road, as a result of which said Dev Dutt Sharma sustained multiple injuries and later on succumbed to the same. Accordingly,

...3...

the claimants, being dependants upon the deceased, preferred the Claim Petition for grant of compensation.

4. The insurer, the driver and the owner filed replies and contested the claim petition.

5. On the pleadings of the parties, the following issues were framed by the Tribunal:

- "1. Whether the Truck No.HIB-851 was being driven in rash and negligent manner by Balwinder Singh and while driving so on dated 7.2.2002 at about 1.05 a.m. near Dehlan as such the truck went out of control and met with an accident in which one of the occupants of the said truck Dev Dutt Sharma sustained fatal injuries and as such succumbed to the same on the spot?. OPP.*
- 2. If point No.1 is proved in the affirmative, whether the petitioners being L.Rs. of deceased Dev Dutt Sharma are entitled for compensation, if so, to what extent? OPP.*
- 3 Whether the petitioners have no cause of action? ...OPR 1 & 2.*
- 4. Whether Dev Dutt Sharma since deceased was traveling in the truck at the relevant time unauthorizedly, as alleged? OPR 1 & 2.*
- 5. Whether the driver of truck No.HIB-851 was not holding a valid and effective driving licence at the time of the accident? OPR.3.*
- 6. Whether the truck was being driven in violation of the terms and conditions of insurance, route permit/registration certificate, as alleged? OPR.3.*
- 7. Relief."*

6. Parties have led their evidence. The Tribunal, after scanning the pleadings and the evidence, held that the deceased was traveling in the offending truck as a gratuitous passenger and directed the insurer to satisfy the award, with a right of recovery from the owner.

7. Feeling aggrieved and dissatisfied with the impugned award, the insurer has challenged the same, by way of FAO No.35 of 2007, on the ground that the Tribunal has fallen in error by directing the insurer to satisfy the impugned award, with a right of recovery from the owner.

8. In FAO No.264 of 2007, the owner has questioned the impugned award on the ground that the Tribunal has wrongly held that the deceased was traveling in the offending vehicle as gratuitous passenger.

9. Both the appeals merit to be dismissed for the following reasons. Admittedly, the deceased Dev Dutt Sharma was traveling in the offending truck as gratuitous passenger. It is nowhere pleaded in the Claim Petition that he was traveling in the said truck as a labourer. While going through the Claim Petition, one comes to the inescapable conclusion that the deceased was not traveling in the offending truck as labourer. It was also not the case of the owner/appellant that the deceased was traveling in the vehicle as labourer or in any other capacity permissible by the provisions of the Act or insurance policy. Thus, the pleadings do disclose that the deceased was traveling as a gratuitous passenger in the offending vehicle.

...5...

10. The parties have not questioned the findings recorded by the Tribunal that the driver was driving the offending truck rashly and negligently. However, the evidence on the file, oral as well as documentary, do disclose that the driver, namely, Balwinder Singh had driven the offending truck, on the fateful day, rashly and negligently and caused the accident in which the deceased sustained injuries and succumbed to the same. Thus, the findings recorded under issue No.1 are upheld.

11. Findings recorded under Issues No.3 and 5 are also not disputed, are upheld.

12. The claimants, being the victims of the vehicular accident, caused by the driver of the offending truck, have approached the Tribunal for grant of compensation. Therefore, issue No.3 is decided in favour of the claimants.

13. It was for the insurer to plead and prove that the driver was not having a valid and effective driving licence, has failed to do so. The learned counsel for the insurer/appellant in FAO No.35 of 2007 has not argued or questioned the findings returned by the Tribunal on Issue No.5. Accordingly, the same are upheld.

14. Issues No.4 and 6 are interconnected with Issues No.3 and 5, are covered by the findings already recorded.

...6...

15. The parties have not questioned the adequacy of compensation. Accordingly, the amount of compensation awarded by the Tribunal is upheld.

16. Having said so, both the appeals merit to be dismissed and the same are dismissed accordingly, and the impugned award is upheld.

29th August, 2013.
(filak)

**(Mansoor Ahmad Mir),
Chief Justice.**