

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

FAOs No. 339, 340, 460 & 461 of 2007
Decided on : 28.11.2014

1. FAO No. 339 of 2007

United India Insurance Company Limited
.....Appellant
Versus
Smt. Poonam Sharma & others ...Respondents

2. FAO No. 340 of 2007

United India Insurance Company Limited
Appellant
Versus
Smt. Sheela Devi & othersRespondents

3. FAO No. 460 of 2007

Smt. Sheela Devi
Appellant
Versus
Ashok Kumar & othersRespondents

4. FAO No. 461 of 2007

Smt. Poonam Sharma
Appellant
Versus
Ashok Kumar & othersRespondents

Coram:

The Hon'ble Mr. Justice Mansoor Ahmad Mir, Chief Justice.
Whether approved for reporting?

FAOs No. 339 & 340 of 2007

For the appellant(s) : Mr. Ashwani K. Sharma, Advocate.

Mr. S.C. Sharma, Advocate, for
respondent(s) No. 1.

Mr. Ajay Sharma, Advocate, for
respondent(s) No. 2 & 3.

FAOs No. 460 & 461 of 2007

For the appellant(s) : Mr. S.C. Sharma, Advocate.

Mr. Ajay Sharma, Advocate, for
respondent(s) No. 1 & 2.

Mr. Ashwani K. Sharma, Advocate,
for respondent(s) No. 3.

Mansoor Ahmad Mir, Chief Justice (oral

All these appeals are outcome of a common award dated 22.06.2007, made by the Motor Accident Claims Tribunal, Shimla, (hereinafter referred to as "the Tribunal") in M.A.C.C. No. 42-S/2 of 2003, titled *Smt. Poonam Sharma versus Shri Ashok Kumar & others* and M.A.C.C. No. 43-S/2 of 2003, titled as *Smt. Sheela Devi versus Shri. Ashok Kumar & others*, whereby compensation to the tune of ₹ 1,75,000/- and ₹ 3,54,000/, came to be awarded in favour of the claimants in Claim Petition No. 42-S/2 of 2003, and Claim Petition No. 43-S/2 of 2003, respectively, with interest @ 7.5% per annum from the date of filing of the claim petitions till its realization and the United India Insurance Company, being the insurer of the vehicle, was saddled with liability, in both the claim petitions, for short the "impugned award".

BRIEF FACTS:

2. Claimants, Smt. Poonam Sharma in M.A.C.C. No. 42-S/2 of 2003 and Smt. Sheela Devi in M.A.C.C. No. 43-S/2 of 2003, have invoked the jurisdiction of the Tribunal, for grant of compensation to the tune of ₹ 5,00,000/- and ₹10,00,000/- respectively, with interest @ 18% per annum, as per the break-ups given in the claim petitions, on the ground that driver, namely, Jeet Ram, was driving vehicle-bus bearing registration No. HP-19-4870, rashly and negligently, on 09.12.1999, at about 6.50 p.m., at Kinnu, Police Station, Amb; caused the accident; Akash Kumar and Sanjeev Kumar sustained injuries and succumbed to the injuries and the claimants have lost their bread-earners.

3. The respondents have resisted the claim petitions on the grounds taken in the memo of objections.

4. Common issues came to be framed by the Tribunal in both the petitions on 27.10.2004. It is apt to reproduce the issues framed in claim petition No. 42-S/2 of 2003:-

“i) Whether the death of Akash Kumar took place due to rash and negligent driving of Bus No. HP-19-4870 by the respondent Jeet Ram? ..OPP

- ii) *In case Issue No. 1 is proved in affirmative to what amount of compensation the petitioner is entitled to? ...OPP*
- iii) *Whether the vehicle in question at the time of accident was being driven by a person not holding a valid and effective driving licence and in violation of terms and conditions of the Insurance Policy?*
- iv) *Whether the petition is filed by the petitioner in collusion with the respondents No. 1 and 2? OPR-3*
- v) *Whether the petition is bad for mis-joinder of necessary parties? OPR-3*
- vi) *Relief."*

5. The parties led evidence. The Tribunal after examining the pleadings and scanning the evidence on record, held that the deceased sustained injuries; succumbed to the injuries in a vehicular accident, which was caused by driver Jeet Ram, while driving the offending bus, rashly and negligently; the claimants are entitled to compensation to the tune of ₹ 1,75,000/- and ₹ 3,54,000/- in claim petitions No. 42-S/2 of 2003 and 43-S/2 of 2003, respectively, with interest at the rate of 7.5% per annum from the date of filing of the claim petitions till its realization and saddled the insurer with liability.

6. The insured-owner and the driver have not questioned the impugned award, on any count. Thus, it has attained finality so far as it relates to them.

7. The Insurer-United India Insurance Company has questioned the impugned award on the ground that the Tribunal has fallen in error in saddling it with liability.

8. The claimants have also questioned the impugned award on the ground of adequacy of compensation.

Issue No. 1

9. The findings returned by the Tribunal on this issue are not in dispute. However, I have gone through the impugned award, pleadings and the evidence on the record. The claimants have proved by leading oral as well as documentary evidence that the driver had driven the offending vehicle in a rash and negligent manner on the fateful day and caused the accident, in which the deceased sustained injuries and succumbed to the injuries. Thus, the findings returned by the Tribunal on this issue are upheld.

Issues No. 4 & 5

10. There is no dispute regarding these issues. Accordingly, the findings returned by the Tribunal on these issues are upheld.

Issue No. 3.

11. The onus to prove this issue was upon the insurer-Insurance Company, but it has failed to discharge the same.

12. It is beaten law of the land that insurer has to plead and prove that the owner of the offending vehicle has committed willful breach of the terms and conditions of the insurance policy and mere plea here and there cannot be a ground for seeking exoneration.

13. My this view is fortified by the Apex Court judgment in the case of **National Insurance Co. Ltd. versus Swaran Singh & others**, reported in **AIR 2004 SC**

1531. It is apt to reproduce relevant portion of para 105 of the aforesaid judgment, herein:

“105.
(i)
(ii)
(iii)

(iv) *The insurance companies are, however, with a view to avoid their liability, must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefore would be on them.*

(v).....

(vi) *Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer*

would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149 (2) of the Act."

14. The insurer-insurance company has failed to prove this issue, thus the Tribunal has rightly recorded the findings on this issue. Accordingly, the findings returned by the Tribunal on this issue are also upheld.

Issue No. 2

15. The claimants have also sought the enhancement of compensation on the ground that the award amount is inadequate. The Tribunal has made discussion in para 40 of the impugned judgment in claim petition No. 42-S/2 of 2003 and paras 41 to 45 of the judgment, *supra*, in claim petition No. 43-S/2 of 2003, about the grant of compensation. The Tribunal has rightly assessed the compensation, which cannot be said to be inadequate, in any way. Accordingly, the findings returned by the Tribunal on this issue are also upheld.

16. Having said so, I am of the considered view that the Tribunal has rightly assessed the adequate and just compensation and saddled the insurer-United India

Insurance Company with liability to satisfy the award and all these appeals merit to be dismissed; are dismissed as such and the impugned award is upheld accordingly.

17. Registry is directed to release the awarded amount in favour of the claimants, strictly as per the terms and conditions, contained in the impugned award.

18. Send down the records after placing copy of the judgment on the record.

November 28, 2014.
(hemlata)

(Mansoor Ahmad Mir),
Chief Justice