

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 194 of 2012 a/w
FAOs No. 33 to 35 of 2011, 191, 195
of 2012 & 451 to 453 of 2010

Reserved on : 22.08.2014

Decided on: 29.08.2014

1. FAO No. 194 of 2012

Shanta Kumari ...Appellant.

Versus

Maratu Devi & others ...Respondents.

2. FAO No. 33 of 2011

Santa Kumari ...Appellant.

Versus

Nirmal Kumar & others ...Respondents.

3. FAO No. 34 of 2011

Santa Kumari ...Appellant.

Versus

Sarhi Devi & others ...Respondents.

4. FAO No. 35 of 2011

Santa Kumari ...Appellant.

Versus

Gulshan Chand & others ...Respondents.

5. FAO No. 191 of 2012

Santa Kumari ...Appellant.

Versus

Bhuvneshwar & others ...Respondents.

6. FAO No. 195 of 2012

Santa Kumari ...Appellant.

Versus

Diwan Chand & others ...Respondents.
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7. FAO No. 451 of 2010
Gulshan Chand & others ...Appellants.

Versus

Smt. Shanta Kumari & others ...Respondents.
.....

8. FAO No. 452 of 2010
Nirmal Kumar & others ...Appellants.

Versus

Smt. Shanta Kumari & others ...Respondents.
.....

9. FAO No. 453 of 2010
Sarhi Devi & others ...Appellants.

Versus

Smt. Shanta Kumari & others ...Respondents.

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

FAO No. 194 of 2012
For the appellant: Mr. Ankush Dass Sood, Advocate.

For the respondents: Mr. L.S. Mehta, Advocate, for respondent No. 1.

Ms. Devyani Sharma, Advocate, for respondent No. 2.

Mr. G.N. Verma, Advocate, for respondent No. 3.
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FAOs No. 33 & 34 of 2011
For the appellant(s): Mr. Ankush Dass Sood, Advocate.

For the respondents: Mr. Ashwani Pathak, Advocate, for respondents No. 1 to 3.

Ms. Devyani Sharma, Advocate, for respondent No. 4.

Mr. G.N. Verma, Advocate, for respondent No. 5.

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FAO No. 35 of 2011

For the appellant: Mr. Ankush Dass Sood, Advocate.

For the respondents: Mr. Ashwani Pathak, Advocate, for respondents No. 1 to 4.

Ms. Devyani Sharma, Advocate, for respondent No. 5.

Mr. G.N. Verma, Advocate, for respondent No. 6.

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FAO No. 191 of 2012

For the appellant: Mr. Ankush Dass Sood, Advocate.

For the respondents: Nemo for respondent No. 1.

Ms. Devyani Sharma, Advocate, for respondent No. 2.

Mr. G.N. Verma, Advocate, for respondent No. 3.

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FAO No. 195 of 2012

For the appellant: Mr. Ankush Dass Sood, Advocate.

For the respondents: Mr. L.S. Mehta, Advocate, for respondents No. 1 and 2.

Ms. Devyani Sharma, Advocate, for respondent No. 3.

Mr. G.N. Verma, Advocate, for respondent No. 4.

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FAOs No. 451 to 453 of 2010

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

For the respondents: Mr. Ankush Dass Sood, Advocate, for respondent No. 1.

Mr. G.N. Verma, Advocate, for respondent No. 2.

Ms. Devyani Sharma, Advocate, for
respondent No. 3.

Mansoor Ahmad Mir, Chief Justice

All these nine appeals are arising out of six separate awards, dated 16th November, 2011, and 17th September, 2010, made by the Motor Accident Claims Tribunal, Mandi, H.P. (hereinafter referred to as “the Tribunal”) in six claim petitions, whereby compensation came to be awarded in favour of the respective claimants and against the respondents (hereinafter referred to as “the impugned awards”).

2. By the medium of **FAOs No. 191, 194, 195 of 2012 and 33, 34 & 35 of 2011**, the owner-insured has called in question the impugned awards so far it relate to the findings whereby the owner-insured came to be saddled with liability.

3. By the medium of **FAOs No. 451, 452 and 453 of 2010**, the claimants have questioned the impugned awards on the ground of adequacy of compensation.

4. All these appeals are outcome of a motor vehicular accident, which was allegedly caused by the driver, namely Shri Uttam Chand, while driving a Tata Sumo, being owned by Smt. Shanta Kumari, rashly and negligently on 6th March, 2009, at about 6:30 A.M., near Kateru, in which the occupants of the vehicle sustained injuries, out of which some of the occupants sustained injuries and succumbed to the injuries. Therefore, I deem it proper to determine all these appeals by a common judgment.

5. The dependents of the deceased, namely Shri Budhi

Singh, Shri Leela Prakash, Smt. Jhoom Dassi, Shri Mangat Ram and Shri Puran Chand, filed claim petitions, being Claim Petition No. 42 of 2009, titled as Sarhi Devi & others versus Smt. Shanta Kumari & others; Claim Petition No. 43 of 2009, titled as Goda Devi alias Godawari Sharma & others versus Smt. Shanta Kumari & others; Claim Petition No. 44 of 2009, titled as Nirmal Kumar & others versus Smt. Shanta Kumari & others; Claim Petition No. 66 of 2009, titled as Diwan Chand & another versus Smt. Shanta Kumari & others, and Claim Petition No. 67 of 2009, titled as Maratu Devi versus Smt. Shanta Kumari & others, for grant of compensation, as per break-ups given in the respective claim petitions.

6. The injured, namely Shri Bhuvneshwar, filed Claim Petition No. 53 of 2009, for grant of compensation to the tune of ₹ 25,00,000/- as per the break-ups given in the claim petition.

7. The owner-insured, the driver and the insurer-National Insurance Company Limited resisted the claim petitions on the grounds taken in the respective memo of objections.

8. The Tribunal, on the pleadings of the parties, framed separately the following issues in each of the Claim Petitions on the different dates:

"1. Whether on 6-3-2009 at 6.30 A.M. near Kateru, the respondent No. 2 was driving applied Tata Sumo rashly and negligently and as such caused death of Sh. Mangat Ram? OPP

2. If issue No. 1 is proved, to what amount of compensation the petitioner is entitled and from whom? OPP

3. Whether the driver applied for Tata Sumo was not holding valid and effective driving licence to drive Tata Sumo at the time of accident? OPR

4. Whether the driver was driving applied for Tata Sumo without registration-cum-fitness certificate and route permit at the time of the accident? OPR

5. Whether the petitioner was travelling in the Tata Sumo as gratuitous passenger? OPR

6. Relief.”

11. The parties have led evidence and placed on record various documents in support of their claim petitions. After scanning the evidence, oral as well as documentary, all the claim petitions were granted in terms of the impugned awards.

12. The owner-insured has questioned all the six impugned awards by the medium of FAOs No. 191, 194, 195 of 2012 and 33, 34 & 35 of 2011, to the extent whereby she has been saddled with liability.

13. The claimants in Claim Petitions No. 42, 43 and 44 of 2009 have questioned the impugned awards made in the said claim petitions by the medium of FAOs No. 451, 452 and 453 of 2010, on the ground of adequacy of compensation. The claimants in Claim Petitions No. 53, 66 and 67 of 2009 have not questioned the impugned awards, on any count, thus, have attained finality so far it relate to them.

14. The insurer-National Insurance Company Limited and the driver have not questioned any of the impugned awards on any count, thus, have attained finality so far it relate to them.

15. Learned counsel for the owner-insured-appellant in FAOs No. 191, 194, 195 of 2012 and 33, 34 & 35 of 2011 argued that the owner-insured has not committed any breach and the insurer-National Insurance Company Limited has not pleaded and proved that the owner-insured has committed any willful breach. Further

argued that the owner-insured and the driver of the offending vehicle have specifically pleaded and have also led evidence that on the date of accident, i.e. 6th March, 2009, the said vehicle was being driven by the driver in order to get the route permit and registration certificate from the office of RTO and the deceased/injured had to go to hospital, made a request for providing lift; the driver conceded to their request, they boarded the vehicle and the vehicle met with the accident.

16. Learned counsel for the insurer-National Insurance Company Limited argued that the owner-insured had admittedly committed the breach for the simple reason that the owner-insured had obtained temporary registration certificate for a period of one month, i.e. w.e.f. 2nd October, 2008 to 1st November, 2009, and otherwise also, the temporary registration, in terms of Section 43 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the MV Act”), can be granted only for a period of one month, thus, on the date of accident, neither the owner-insured was having the registration certificate/fitness certificate nor the route permit.

17. Further argued that it is not known as to why the owner-insured had not got the registration certificate/fitness certificate and route permit after the expiry of the period of one month. The vehicle cannot be used unless it is having requisite documents in terms of the mandate of the MV Act read with the insurance policy. The insurance policy is on the record in Claim Petition No. 67 of 2009 as Ext. RX, which provides that the owner-insured cannot drive the vehicle unless he is having the route

permit and other documents. She also argued that the owner-insured has committed willful breach in terms of the provisions of Section 149 of the MV Act.

18. Heard.

19. The owner-insured and the driver have filed joint reply. They have admitted in their reply that the deceased/injured were travelling in the offending vehicle. It is not pleaded as to in what capacity they were travelling in the said vehicle. It is also not pleaded that the driver had taken the offending vehicle for the purpose of obtaining the route permit/registration certificate/fitness certificate.

20. The owner-insured and the driver have tried to carve out a case by pressing a defence into service that the driver had driven the offending vehicle on the fateful day for obtaining the said documents by way of evidence, though not pleaded in their reply.

21. The question is – how a defence can be pressed into service by any party to the lis which is not pleaded? Pleadings play the vital role in determining the disputes, rights and interest. If a defence, which is a question of fact, is not pleaded, how evidence can be led to that effect.

22. Admittedly, the temporary registration was granted for one month and that has expired on 1st November, 2008. There is nothing on the file as to what was the reason that the owner has failed to get the registration certificate, route permit and other documents after their expiry.

23. Section 43 of the MV Act deals with temporary

registration which provides that temporary registration can be granted only for a period of one month. It is apt to reproduce Section 43 of the MV Act herein:

“43. Temporary registration.

(1) Notwithstanding anything contained in section 40 the owner of a motor vehicle may apply to any registering authority or other prescribed authority to have the vehicle temporarily registered in the prescribed manner and for the issue in the prescribed manner of a temporary certificate of registration and a temporary registration mark.

(2) A registration made under this section shall be valid only for a period not exceeding one month, and shall not be renewable:

Provided that where a motor vehicle so registered is a chassis to which a body has not been attached and the same is detained in a workshop beyond the said period of one month for being fitted with a body or any unforeseen circumstances beyond the control of the owner, the period may, on payment of such fees, if any, as may be prescribed, be extended by such further period or periods as the registering authority or other prescribed authority, as the case may be, may allow.

(3) In a case where the motor vehicle is held under hire-purchase agreement, lease or hypothecation, the registering authority or other prescribed authority shall issue a temporary certificate of registration of such vehicle, which shall incorporate legibly and prominently the full name and address of the person with whom such agreement has been entered into by the owner.”

24. A bare perusal of this Section do disclose that the temporary registration cannot be granted for more than one month and is not renewable. Meaning thereby, the owner has to obtain the registration of the vehicle in terms of the provisions contained in Chapter IV of the MV Act.

25. It is not forthcoming why the owner waited till 6th March, 2009, for registration of the vehicle or the stand taken is just

an afterthought in order to give a slip to law; that too, without the pleadings to that effect.

26. Chapter V of the MV Act deals with the control of transport vehicles and Section 66 of the MV Act provides for necessity of granting a permit. Section 87 provides for temporary permit. It also provides that temporary permit can also be granted for a period of not more than four months. It is apt to record herein that the owner has not placed any document on the file in proof of the fact that the temporary permit was granted in her favour.

27. From the perusal of the record it appears that the owner has filed applications under Order 1 Rule 10 of the Code of Civil Procedure (hereinafter referred to as "the CPC") in all the claim petitions for impleading M/s Satluj Motors, Lunapani, Tehsil Sadar, District Mandi, H.P. and TATA Motors and Regional Sales Office TATA Motors Ltd., SCO-170-171-172, Sector-17 D, Chandigarh as respondents No. 4 and 5 in the array of respondents on the grounds taken in the said applications. The owner has given the details in the said applications as to what were the reasons for not obtaining the registration certificate and the temporary route permit/fitness certificate within the time frame and till 6th March, 2009. But the said applications have been dismissed in some claim petitions by the Tribunal and in some claim petitions, the owner has not pressed the same.

28. It is worthwhile to mention herein that the owner-insured-appellant in FAOs No. 191, 194, 195 of 2012 and 33, 34 & 35 of 2011 has not questioned the orders of rejection of those

applications in the memo of appeals and has not set out the grounds of attack in terms of Section 105, Order 41 of the CPC read with Section 168 of the MV Act and the Himachal Pradesh Motor Vehicles Rules, 1999 (hereinafter referred to as “the MV Rules”).

29. The insurance policy contains a clause “Limitation as to use”, which reads as under:

“Limitation as to use:

The policy covers use only under a permit within the meaning of the Motor Vehicle Act, 1988 or such a carriage falling under Sub-section 3 of Section 66 of the Motor Vehicles Act 1988.

The Policy does not cover use for

- a) Organised Racing*
- b) Pace Making*
- c) Reliability Trails*
- d) Speed Testing”*

30. It provides that the policy covers risk only when a vehicle is being used as per the route permit within the meaning of Section 66 (3) of the MV Act. Admittedly, there was no route permit at the relevant point of time, thus, the vehicle was being used in breach of the terms and conditions of the insurance policy.

31. Chapter XI of the MV Act deals with the insurance of the motor vehicles against third party risks. It contains Section 145 to Section 164. Section 146 of the MV Act provides as to what is the necessity of insurance against third party risk. Section 147 of the MV Act provides as to what are the requirements of the policies and limits of liability. Section 149 of the MV Act provides that the insurer has to satisfy the judgment and awards against person insured in respect of third party risks. Sub-section (2) of Section 149 of the MV Act provides as to what are the grounds available to the insurer to seek exoneration and avoid liability.

32. It is apt to reproduce Section 149 (2) of the MV Act herein:

“149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. -

(1)

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment of award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—

(i) a condition excluding the use of the vehicle—

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the nondisclosure of a material fact or by a representation of fact which was false in some material particular.

(3)."

33. It provides that no sum shall be paid by the insurer if the owner has committed any breach of the conditions of the policy and if the vehicle is being used in breach of the permit or where the vehicle is not used as per the mandate of the law.

34. In the instant case, it is the admitted case that the temporary registration certificate has lost its efficacy with efflux of time. Neither any registration certificate nor any route permit was issued after the expiry of the temporary registration certificate. Thus, in the given circumstances, the Tribunal has rightly held that the owner-insured has committed breach.

35. It appears that the claimants were the third parties and the sufferers of the traffic accident, have been deprived of their source of dependency and the injured has also lost the source of income. The third party claim cannot be defeated on the said grounds. The claimants have not received the compensation for the last five years. The Tribunal had to command the insurer to satisfy the award at the first instance with a right to recover the same from the owner-insured.

36. Thus, I deem it proper to modify the impugned awards by providing that the insurer has to satisfy the claims of the third party in view of the mandate of Chapter XI of the MV Act read with the insurance policy with a right to recover the same from the owner-insured.

37. Mr. Ashwani Pathak, learned counsel for the claimants-appellants in 451, 452 and 453 of 2010, argued that the amount awarded is inadequate and prayed that the same be enhanced.

38. I have gone through the impugned awards and am of the considered view that the Tribunal, after scanning the pleadings and the evidence led by the parties, has rightly assessed the compensation at the relevant point of time and cannot be said to be inadequate in any way. No doubt, in view of the change of price rise or change of socio-economic conditions at this stage, the Court can enhance the compensation, but, it cannot be a ground for enhancement of the compensation that has been assessed at the relevant point of time.

39. Having said so, the appeals filed by the claimants, being FAOs No. 451, 452 & 453 of 2010, are dismissed. The appeals filed by the owner-insured, being FAOs No. 191, 194, 195 of 2012, 33, 34 & 35 of 2011, are disposed of by providing that the insurer-National Insurance Company Limited has to satisfy the awards at the first instance with a right to recover the same from the owner-insured and the impugned awards are modified, as indicated hereinabove.

40. The insurer-National Insurance Company Limited is directed to deposit the awarded amount within eight weeks before the Registry and Registry, on deposition of the same, to release the awarded amount in favour of the claimants strictly as per the terms and conditions contained in the impugned awards.

41. Send down the records after placing copy of the

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judgment on each of the files.

(Mansoor Ahmad Mir)
Chief Justice

August 29, 2014
(rajni)