

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAOs No. 325, 326 of 2009, 154, 156, 388, 389, 390 & 391 of 2012 a/w Cross Objections No. 479 of 2012 in FAO No. 154 of 2012 and Cross Objections No. 413 of 2012 in FAO No. 156 of 2012.

Decided on : 30.09.2016.

FAO No. 325 of 2009

Oriental Insurance Company LimitedAppellant
Versus	
Jeewan Singh & others	...Respondents

FAO No. 326 of 2009

Oriental Insurance Company LimitedAppellant
Versus	
Chuni Lal & others	...Respondents

FAO No. 154 of 2012

Oriental Insurance Company LimitedAppellant
Versus	
Raj Kumar & others	...Respondents

FAO No. 156 of 2012

Oriental Insurance Company LimitedAppellant
Versus	
Meena Kumari & others	...Respondents

FAO No. 388 of 2012

Oriental Insurance Company LimitedAppellant
Versus	
Shyam Lal & others	...Respondents

FAO No. 389 of 2012

Oriental Insurance Company LimitedAppellant
Versus	
Nand Lal & others	...Respondents

FAO No. 390 of 2012

Oriental Insurance Company LimitedAppellant
Versus	
Payal & others	...Respondents

FAO No. 391 of 2012

Oriental Insurance Company LimitedAppellant
Versus	
Kamla Devi & others	...Respondents

Coram:

<i>The Hon'ble Mr. Justice Mansoor Ahmad Mir, Chief Justice</i>	
<i>Whether approved for reporting ?</i>	<i>Yes.</i>

FAO No. 325 of 2009

For the Appellant :	Mr. Ashwani Sharma, Senior Advocate with Mr. Ishan Thakur, Advocate.
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For the Respondents:	Mr. Surinder Saklani, Advocate, for respondent No. 1.
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Mr. G.R. Palsra, Advocate, for respondents No. 2 & 3.

FAO No. 326 of 2009

For the Appellant : Mr. Ashwani Sharma, Senior Advocate with Mr. Ishan Thakur, Advocate.

For the Respondents: Mr. Surinder Saklani, Advocate, for respondents No. 1 to 3.

Mr. G.R. Palsra, Advocate, for respondents No. 5 & 6.

Respondent No. 4 deleted.

FAOs No. 154 & 156 of 2012

For the Appellant : Mr. Ashwani Sharma, Senior Advocate with Mr. Ishan Thakur, Advocate.

For the Respondents: Mr. Vijay Chaudhary, Advocate, for respondent No. 1.

Mr. Ajeet Jaswal, Advocate, for respondents No. 2 & 3.

FAO No. 388, 389, 390 & 391 of 2009

For the Appellant : Mr. Ashwani Sharma, Senior Advocate with Mr. Ishan Thakur, Advocate.

For the Respondents: Mr. Abhay Kaushal, Advocate, for respondent No. 1.

Mr. Ajeet Jaswal, Advocate, for respondents No. 2 & 3.

Mansoor Ahmad Mir, Chief Justice (oral)

All these appeals and cross-objections are outcome of a motor vehicular accident, which was allegedly caused by driver, namely, Gaitri Datt, while driving vehicle i.e. bus bearing registration No. HP-33-2861, rashly and negligently, on 15.08.2006, at about 8.30 a.m., near Village Kawalkot (Malramaslt) on Ratti Leda Road, District Mandi, in which, so many persons sustained injuries and one person succumbed to the injuries.

2. The claimants in Claim Petitions No. 117, 105 of 2006, 100 & 140 of 2009, subject matters of FAOs No. 325, 326 of 2009, 154 & 156 of 2012, respectively, filed claim petitions before the Motor Accident Claims Tribunal, Mandi, District Mandi, H.P. and the claimants in Claim Petitions No. 51, 52, 53, 54 of 2008, subject matters of FAOs No. 391, 388, 389 & 390 of 2012, respectively, filed claim petitions before Motor

Accident Claims Tribunal, Bilaspur, District Bilaspur, H.P., for short 'the Tribunals' and compensation, as per the details given in the respective awards, came to be awarded in favour of the claimants, for short the 'impugned awards'.

3. The insured-owner and driver have not questioned the impugned awards, on any count, thus have attained finality, so far the same relate to them.

4. The claimants have not questioned the impugned awards, except in Claim Petition No. 100 of 2009, subject matter of FAO No. 154 of 2012 and Claim Petition No. 140 of 2009, subject matter of FAO No. 156 of 2012. They have questioned the impugned awards on the grounds of adequacy of compensation, by the medium of Cross Objections No. 479 of 2012 and 413 of 2012, filed in said appeals.

5. The claimants in other appeals, have not questioned the impugned awards, on any ground, thus have attained finality, so far the same relate to them.

6. Thus, I deem it proper to determine all the appeals and the cross-objections by this common judgment for the reason that the same are outcome of the same accident and the questions involved are similar.

7. The insurer has questioned the impugned awards on the grounds that the insured-owner had sold the offending vehicle, the risk was not covered, thus there was breach of the insurance policy. It has also questioned the impugned award passed in Claim Petition No. 105 of 2006, subject matter of 326 of 2009, on the ground of adequacy of compensation.

8. The following questions are to be determined in these appeals:

- (i) *Whether the Tribunals have rightly saddled the insurer with liability?*
- (ii) *Whether the amount awarded in claim petitions No. 105/2006, 100/2009 & 140 of 2009, subject matters of FAOs No. 326 of 2009, 154 and 156 of 2012, is adequate or otherwise?*

9. Learned Counsel for the insurer argued that the offending vehicle was transferred and the registered owner had no right to obtain insurance policy.

10. While going through the evidence led by the parties and the documents placed on record, one comes to an inescapable conclusion that the registered owner had obtained insurance policy. The evidence also discloses that the vehicle was sold.

11. In the given circumstances, it was for the insurer to follow the mandate of Section 157 of the Motor Vehicles Act, for short 'the MV Act'.

12. Section 157 of the Act reads as under:

"Transfer of certificate of insurance.

(1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.

[Explanation.—For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.]

(2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance.”

13. While going through the aforesaid provision, one comes to an inescapable conclusion that the insurer has to follow the mandate of the MV Act and mere transfer of a vehicle cannot absolve the insurer from third party liability and the insurer has to satisfy the award.

14. My this view is fortified by the Apex Court Judgment in case titled as **G. Govindan versus New India Assurance Company Ltd. and others,** reported in **AIR 1999 SC 1398.** It is apt to reproduce paras-10, 13 & 15 of the aforesaid judgment herein:

“ 10. This Court in the said judgment held that the provisions under the new Act and the old Act are substantially the same in relation to liability in regard to third party. This Court also recognised the view taken in the separate judgment in Kondaiah's case that the transferee-insured could not be said to be a third party qua the vehicle in question. In other words, a victim or the legal representatives of the victim cannot be denied the compensation by the insurer on the ground that the policy was not transferred in the name of the transferee.

11.

12.

13. In our opinion that both under the old Act and under the new Act the Legislature was anxious to protect the third party (victim) interest. It appears that what was implicit in the provisions of the old Act is now made explicit, presumably in view of the conflicting decisions on this aspect among the various High Courts.

14.

15. As between the two conflicting views of the Full Bench judgments noticed above, we prefer to approve the ratio laid down by the Andhra Pradesh High Court in Kondaiah's case (AIR 1986 Andh Pra 62) as it advances the object of the Legislature to protect the third party interest. We hasten to add that the third party here will not include a transferee whose transferor has not followed procedure for transfer of policy. In other words in accord with the well-settled rule of interpretation of statutes we are

inclined to hold that the view taken by the Andhra Pradesh High Court in Kondaiah's case is preferable to the contrary views taken by the Karnataka and Delhi High Courts (supra) even assuming that two views are possible on the interpretation of relevant sections as it promotes the object of the Legislature in protecting the third party (victim) interest. The ratio laid down in the judgment of Karnataka and Delhi High Courts (AIR 1990 Kant 166 (FB) and AIR 1989 Delhi 88) (FB) (supra) differing from Andhra Pradesh High Court is not the correct one."

15. The Apex Court in case titled as **Rikhi Ram and another versus Smt. Sukhrania and others**, reported in **AIR 2003 SC 1446** held that in absence of intimation of transfer to Insurance Company, the liability of Insurance Company does not cease. It is apt to reproduce paras 5, 6 & 7 of the judgment, *supra*, herein:-

"5. The aforesaid provision shows that it was intended to cover two legal objectives. Firstly, that no one who was not a party to a contract would bring an action on a contract; and secondly, that a person who has no interest in the subject matter of an insurance can claim the benefit of an insurance. Thus, once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 94 does not provide that any person who will use the vehicle shall insure the vehicle in respect of his separate use.

6. *On an analysis of Ss. 94 and 95, we further find that there are two third parties when a vehicle is transferred by the owner to a purchaser. The purchaser is one of the third parties to the contract and other third party is for whose benefit the vehicle was insured. So far, the transferee who is the third party in the contract, cannot get any personal benefit under the policy unless there is a compliance of the provisions of the Act. However, so far as third party injured or victim is concerned, he can enforce liability undertaken by the insurer.*

7. *For the aforesaid reasons, we hold that whenever a vehicle which is covered by the insurance policy is transferred to a transferee, the liability of insurer does not ceases so far as the third party/victim is concerned, even if the owner or purchaser does not give any intimation as required under the provisions of the Act.”*

16. The Apex Court in latest judgment titled as **United India Insurance Co. Ltd., Shimla versus Tilak Singh and others,** reported in **(2006) 4 SCC 404** has held the same principle. It is apt to reproduce paras- 12 & 13 of the said judgment herein:

“12. In Rikhi Ram v. Sukhrania [(2003) 3 SCC 97 : 2003 SCC (Cri) 735] a Bench of three learned Judges of this Court had occasion to consider Section 103-A of the 1939 Act.

This Court reaffirmed the decision in G. Govindan case and added that the liability of an insurer does not cease even if the owner or purchaser fails to give intimation of transfer to the Insurance Company, as the purpose of the legislation was to protect the rights and interests of the third party.

13. *Thus, in our view, the situation in law which arises from the failure of the transferor to notify the insurer of the fact of transfer of ownership of the insured vehicle is no different, whether under Section 103-A of the 1939 Act or under Section 157 of the 1988 Act insofar as the liability towards a third party is concerned. Thus, whether the old Act applies to the facts before us, or the new Act applies, as far as the deceased third party was concerned, the result would not be different. Hence, the contention of the appellant on the second issue must fail, either way, making a decision on the first contention unnecessary, for deciding the second issue. However, it may be necessary to decide which Act applies for deciding the third contention. In our view, it is not the transfer of the vehicle but the accident which furnishes the cause of action for the application before the Tribunal. Undoubtedly, the accident took place after the 1988 Act had come into force. Hence it is the 1988 Act which would govern the situation."*

17. Having said so, the Tribunal has rightly saddled the insurance company with the liability.

18. Learned Counsel for the insurer further argued that the amount awarded in Claim Petition No. 105 of 2006, subject matter of FAO No. 326 of 2009, is excessive.

19. The Tribunal has rightly assessed the income of the deceased at ₹ 2500/- per month.

20. From the perusal of the impugned award, I am of the considered view that the Tribunal has fallen in an error in applying the multiplier of '17'.

21. Admittedly, the age of the deceased was 31 years at the time of accident. The multiplier of '15' was applicable in this case, in view of the 2nd Schedule appended to the MV Act read with the ratio laid down by the Apex Court in **Sarla Verma (Smt.) and others** versus **Delhi Transport Corporation and another**, reported in **AIR 2009 SC 3104**, upheld by a larger Bench of the Apex Court in a case titled as **Reshma Kumari & others** versus **Madan Mohan and another**, reported in **2013 AIR (SCW) 3120** read with the judgment rendered by the Apex

Court in case titled as **Munna Lal Jain & another versus Vipin Kumar Sharma & others**, reported in **2015 AIR SCW 3105**.

22. Accordingly, it is held that the claimants are entitled to compensation to the tune of ₹ 2500 x 12 x 15 = ₹4,50,000/- under the head 'loss of dependency'.

23. The claimants are also entitled to compensation to the tune of a sum of ₹10,000/- each, under the heads 'loss of love and affection', 'loss of consortium', 'loss of estate' and 'funeral expenses', is accordingly granted.

24. Viewed thus, the claimants are held entitled to total compensation to the tune of ₹4,50,000/- + 40,000/- = ₹ 4,90,000/- with interest as awarded by the Tribunal from the date of filing of the claim petition till its realization.

25. The amount awarded in Claim Petition No. 100 of 2009, subject matter of FAO No. 154 of 2012, is meager, for the following reasons.

26. The Apex Court in **R.D. Hattangadi versus M/s Pest Control (India) Pvt. Ltd. & others**, reported in **AIR 1995 SC 755**, **Arvind Kumar Mishra versus New India Assurance Co. Ltd. & another**, **2010 AIR SCW 6085**, **Ramchandruppa versus The Manager, Royal Sundaram Aliance Insurance Company Limited**, **2011 AIR SCW 4787** and **Kavita versus Deepak and others**, **2012 AIR SCW 4771**, has clearly laid down the principles as to how compensation has to be awarded in cases where the claimants have suffered permanent disability and how the assessment is to be made.

27. The Apex Court in its latest decision in **Jakir Hussein vs. Sabir and others**, **(2015) 7 SCC 252**, while discussing its earlier pronouncements, observed that in injury cases, the compensation would include not only the actual expenses incurred, but the compensation has to be assessed keeping in view the struggle which the injured has to face throughout his life due to the

permanent disability and the amount likely to be incurred for future medical treatment, loss of amenities of life, pain and suffering to undergo for the whole life etc. It is apt to reproduce paragraphs 11 and 18 of the said decision hereunder:

“11. With regard to the pain, suffering and trauma which have been caused to the appellant due to his crushed hand, it is contended that the compensation awarded by the Tribunal was meagre and insufficient. It is not in dispute that the appellant had remained in the hospital for a period of over three months. It is not possible for the courts to make a precise assessment of the pain and trauma suffered by a person whose arm got crushed and has suffered permanent disability due to the accident that occurred. The appellant will have to struggle and face different challenges as being handicapped permanently. Therefore, in all such cases, the Tribunals and the courts should make a broad estimate for the purpose of determining the amount of just and reasonable compensation under pecuniary loss. Admittedly, at the time of accident, the appellant was a young man of 33 years. For the rest of his life, the appellant will suffer from the trauma of not being able to do his normal work of his job as a driver. Therefore, it is submitted that to meet the ends of justice it would be just and proper to award him a sum of Rs.1,50,000/- towards pain, suffering and trauma caused to him and a further amount of Rs.1,50,000/- for the loss of amenities and enjoyment of life.

.....

18. Further, we refer to the case of Rekha Jain & Anr. v. National Insurance Co. Ltd., 2013 8 SCC 389 wherein this Court examined catena of cases and principles to be borne in mind while granting compensation under the heads of (i) pain, suffering and (ii) loss of amenities and so on. Therefore, as per the principles laid down in the case of Rekha Jain & Anr. and considering the suffering undergone by the appellant herein, and it will persist in future also and therefore, we are of the view to grant Rs.1,50,000/- towards the pain, suffering and trauma which will be undergone by the appellant throughout his life. Further, as he is not in a position to move freely, we additionally award Rs.1,50,000/- towards loss of amenities & enjoyment of life and happiness.”

28. The claim of the claimant for enhancement has to be tested in view of the principles laid down by the Apex Court in the decisions, *supra*.

29. The Tribunal has fallen in an error in awarding compensation to the tune of ₹ 2,000/- under the head ‘pain and sufferings’.

30. The claimant-injured has undergone pain and sufferings and has to undergo the same throughout the life. He remained under treatment for about one year, has suffered 10% permanent disability, in terms of

Disability Certificates Ext. PW-2/A and Ext. PW-3/A. In view of the above, the claimant-injured is held entitled to ₹ 50,000/- under the head 'pain and sufferings'.

31. The Tribunal has awarded ₹ 20,000/- under the head 'loss of enjoyment of life', which is too meager.

32. It appears that because of the said injury, the claimant-injured is deprived of the amenities of life, as the injury has shattered his physical frame and affected his charm of enjoyment of life. The claimant-injured is held entitled to ₹ 50,000/- under the head 'loss of enjoyment of life.'

33. The amount awarded under the other heads is maintained.

34. Viewed thus, the claimant-injured is held entitled to compensation to the tune of ₹1,90,029/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realization. Accordingly, Cross Objections No. 479 of 2012 are allowed.

35. In Claim Petition No. 140 of 2009, subject matter of FAO No. 156 of 2012, the Tribunal has awarded compensation to the tune of ₹10,000/- under the head 'pain and suffering' and ₹40,000/- under the head 'loss of enjoyment of life', which is too meager.

36. The claimant-injured has suffered permanent disability to the extent of 20%, in terms of Disability Certificate Ext. PW-2/A, which has affected her earning capacity.

37. In view of the ratio laid by the Apex Court in the judgments, *supra*, the claimant-injured is held entitled to ₹50,000/- under the head 'pain and sufferings' and ₹50,000/- under the head 'loss of enjoyment of life.'

38. The compensation amount awarded under the other heads is maintained.

39. Viewed thus, the claimant-injured is held entitled to compensation to the tune of ₹ 1,24,919/- with interest at the rate of 7.5% per annum from the

date of filing of the claim petition. Accordingly, Cross Objections No. 413 of 2012 are allowed.

40. Having said so, all the appeals except FAO No. 326 of 2009, are dismissed.

41. The impugned award passed in Claim Petition No. 105 of 2006, subject matter of FAO No. 326 of 2009, is modified, as indicated above.

42. The amount awarded in Claim Petitions No. 100 & 140 of 2009, subject matter of FAOs No. 154 & 156 of 2012, is enhanced, as indicated above. Accordingly, the impugned awards passed in the said claim petitions, are modified.

43. The insurer is directed to deposit the enhanced amount in FAOs No. 154 & 156 of 2012, within a period of six weeks from today. On deposit, the Registry is directed to release same in favour of the claimants, strictly in terms of the conditions contained in the impugned awards, through payees' account cheque or by depositing the same in their accounts.

44. The excess amount, if any, deposited in FAO No. 326 of 2009, be refunded to the insurer through payees' account cheque or by depositing the same in its account.

45. Accordingly, the appeals and cross objections are disposed of.

46. Send down the record after placing a copy of the judgment on each of the Tribunals' file.

September 30, 2016
(hemlata)

(Mansoor Ahmad Mir),
Chief Justice