

(2012) 05 P&H CK 0161

High Court Of Punjab And Haryana At Chandigarh**Case No:** First Appeal from Order No. 5862 and 5863 of 2010 and F.A.O. No's. 90 and 91 of 2011

Veena Rani

APPELLANT

Vs

Krishna Devi and Others

RESPONDENT

Date of Decision: May 30, 2012**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 149, 149(1), 149(2), 166
- Penal Code, 1860 (IPC) - Section 279, 304A, 338, 427, 429

Citation: (2012) 4 RCR(Civil) 775**Hon'ble Judges:** Jitendra Chauhan, J**Bench:** Single Bench

Advocate: Sandeep Chabbra in FAO 5862 and 5863 of 2010 and Mr. Dinesh Arora in FAO Nos. 90 and 91 of 2011, for the Appellant; Sandeep Chabbra, Advocate for the Respondent No. 1 in FAO Nos. 90 and 91 of 2011 and Ms. Vandana Malhotra, Advocate insurance Company, for the Respondent

Judgement

Jitendra Chauhan, J.

This judgment shall dispose of four appeals (FAO Nos. 5862, 5863 of 2010, 90 and 91 of 2011) arising out of the common Award dated 31.7.2010, passed by the Motor Accident Claims Tribunal, (Fast Track Court) Rohtak, (for short "the Tribunal") in separate claim petitions-MACT Nos. 3 6 and 3 6-A of 2008 filed by the claimants. The facts are being extracted from FAO No. 5862 of 2010.

2. The brief facts of the case are that on 10.3.2008 the truck bearing No. FIR-38-C-265, owned by Veena Rani loaded with nine buffaloes and nine calves had gone to Pune from Rohtak. The truck was driven by Mukesh, driver in a rash and negligent manner. When the truck reached near Shirpur, it fell into 200 feet deep gorge/valley, as a result, two persons aged 35 years and 30 years and the 9 buffaloes and 9 calves had died in the accident. The driver Mukesh Kumar also died

in the accident. FIR No. 66 dated 10.3.2008 under sections 279/338/304A/429/427 IPC was registered at Police Station Shirpur, District Dhule. Claim petition No. 36 of 2008 was filed by Ashok Kumar, owner of the buffaloes and calves, u/s 166 of the Motor Vehicles Act, 1988 (for short "the MVA") claiming compensation to the tune of Rs. 9 lacs. He died during the pendency of the appeal. Respondents No. 1 to 4 are the LRs of Ashok Kumar in FAO No. 5862 of 2010. It was alleged that the truck was duly insured with the Insurance Company-respondent No. 5.

3. Claim petition No. 36-A of 2008 was filed by the claimants of deceased Lakhan Rai. It was alleged that at the time of accident, Lakhan Raj aged 30 years was sitting in the truck as a care taker of the nine buffaloes and 9 calves. He was a contractual labour in the milk dairy and earning Rs. 10,000/-per month.

4. Upon notice, respondent No. 1, Veena Rani owner of the truck filed written statement. The accident was admitted but remaining facts were denied. It was stated that the truck was insured with respondent No. 2 vide Policy No. OG-07-1110-1803-00000083 from 30.3.2007 to 29.3.2008. The driver of truck was having valid driving licence (No. 7341/MTR/03/5.6.2003) issued by Licensing Authority, Mathura to drive HTV w.e.f. 12.5.2006. It was pleaded that the compensation is on the higher side and the same should be paid by the Insurance Company.

5. Similar pleas were taken by the owner of the truck in claim petition No. 36-A of 2008.

6. Respondent No. 2, (in the claim petitions) the Insurance Company objected to the maintainability of the claim petition and locus standi of the claimants to file it. The accident was denied. The Insurer took a stand that nine buffaloes and nine calves were not traveling in the truck. It was stated that the said vehicle was not authorized/permitted for carrying the animals. It was further stated that the Insurance company is not liable for any compensation on account of death of animals in the accident. The truck was not involved with any offending vehicle and the claim petition does not come under the 3rd party claim. It was stated that respondent No. 1 did not intimate the alleged accident to the Insurance Company as required u/s 134C of the MV Act. The particulars of the insurance of aforesaid truck are not admitted to be correct. It was the case of the Insurance company that driver Mukesh Kumar was not having valid and effective driving licence at the time of accident. It was in the knowledge of the owner of the vehicle and thus there is willful breach to the terms and conditions of the insurance policy. It was pleaded that the deceased driver was not impleaded as party to the claim petition being allegedly died in the accident.

7. In the claim petition No. 36-A of 2008, the stand of the Insurance Company is that the alleged vehicle is goods carrying commercial vehicle so the travelling of passengers is not permitted It was alleged by the claimants (Lrs of deceased Lakhan

Rai) that the deceased was a contractual labour in the milk dairy. Other similar stands were taken in this claim petition as were taken in claim petition No. 36 of 2008.

8. From the pleadings of the parties, the following issues were framed:

i) Whether the accident in question took place due to the rash and negligent driving of the vehicle bearing No. HR 38-C-2651 on 10.3.2008 ? OPP

ii) Whether nine buffaloes and 9 calves died due to the injuries suffered by them in the accident, if so, to that amount of compensation and from whom the petitioner is entitled to? OPP

iii) Whether Sh. Lakhan Rai son of Sh. Saryu Rai died due to the injuries received by him in the accident, if so, to what amount of compensation and from whom, the petitioners are entitled to? OPP

iv) Whether the respondent No. 1 was not holding an effective driving licence at the time of accident, if so, its effect? OPR

v) Relief.

9. The Ld. Tribunal decided Issue Nos. 1 to 4 by observing as under:-

16. Since these issues are inter-connected, therefore, taken together.

It is to be seen whether the accident in question took place due to the rash and negligent driving of the vehicle bearing registration No. HR-38-C-2651 on 10.3.2008 or not and whether nine buffaloes and nine calves died due to the injuries received by them in the accident, if so to what amount of compensation and from whom, the petitioner is entitled to and whether Shb. Lakhan Rai son of Sh. Saryu Rai died due to the injuries received by him in the accident, if so, to what amount of compensation and from whom, the petitioners are entitled to and whether the respondent No. 1 was not holding any effective driving licence at the time of accident. The version of the petitioners is that the accident occurred due to failure of brake and due to rash and negligent driving by the driver of the truck bearing No. HR-38-C- 2651. The respondent No. 1 owner of the vehicle has admitted the accident. The respondent No. 2 has denied the accident with the vehicle No. HR-38-C-2651. Since the respondent No. 2 has not led any evidence in this regard to rebut the version of the petitioner, therefore, it is taken as the accident occurred due to the rash and negligent driving of the vehicle.

Regarding the death of nine buffaloes and nine calves died due to the injuries suffered by them in the accident, there is the statements of Jita PW2 as well as PW3, the special power of attorney of the petitioner Ashok Kumar. The copy of the PMR of the buffaloes as well as calves is Exhibit P4. The copy of the policy is mark X. Copy of the quotation is Exhibit P8. The letter from the purchaser is mark Z and the photocopy of the cheque is mark Z1. In the cross examination PW3 Sh. Gurmeet

Singh, special power of attorney has stated that the buffaloes were not sold but were being taken for selling at Pune because there is a market of milking buffaloes at Pune. He admitted that Exhibit P8 does not relate to the present case and this is the quotation given by them qua other buffaloes but to give idea of the value of the buffaloes. It was also admitted that the copy of the cheque produced on the file mark Z1 also does not relate to the said buffaloes. It was also admitted that the quotation Exhibit P8 bears the name of Sh. Ajay Singh Chauhan but it contains the signatures of his brother Sh. Ajay Singh Chauhan as well as of him.

17. Therefore, from the above evidence on the file it is clear that the nine buffaloes and nine calves were there in the truck and these have also died due to the injuries suffered by them in the accident but since the value of the buffaloes and calves have not been clearly shown on the record, therefore, in the considered opinion of this Court awarding of lump sum amount of Rs. 2,00,000/- for the nine buffaloes and nine calves will meet the ends of justice.

18. Now to see from whom the petitioner is entitled to receive the same.

19. Since the version of the petitioner is that the accident occurred due to the failure of brake as well as due to rash and negligent driving of the vehicle by its driver and the submission of the learned counsel for the respondent No. 2 is that the failure of brake does not come in the negligence of the driver and it is essential to be proved for the petition u/s 166 of the Motor Vehicles Act, but since, the petitioner has also alleged regarding the rash and negligent act on the part of the driver of the truck bearing No. HR-38-C-2651 along with the failure of brake, therefore, in the considered opinion of the Court, there is no force in the contention of the learned counsel for the respondent No. 2 in this regard. Further PW2 Jita, the eye witness has also stated that the accident took place due to the rash and negligent driving of the truck No. IIR-38-C-2651 by its driver and in his cross-examination, he has stated that the accident in question took place due to the sole negligence of the driver of the offending truck and also failure of brake, therefore, in the considered opinion of the Court and in view of the authorities relied upon by the learned counsel for respondent No. 2 in this regard the respondent No. 1 is liable to pay the compensation.

20. Now to see whether Sh. Lakhan Rai died due to the injuries received by him in the accident, if so, to what amount of compensation and from whom the petitioners are entitled to.

21. Since PW 1 Smt. Hiramuni wife of Sh. Lakhan Rai has said that her husband was a contractual worker in the milk dairy of Sh. Surender Singh Chauhan at Rohtak and her husband died in a Motor Vehicle accident on 10.3.2008 and PW2 Jeeta has also stated that he had seen the falling of the truck into the deep pit on the road and Sh. Lakhan Rai and the driver, nine buffaloes and nine calves died on the spot, therefore, is proved that Sh. Lakhan Rai died in this accident.

22. Now to see to what amount of compensation, petitioners are entitled to and from whom?

23. Since Smt. Hiramuni PW 1 has stated that her husband was 37 years old and he was a contractual worker in the milk dairy of Sh. Surender Chauhan at Rohtak and he was earning Rs. 10,000/- per month and he died in the accident and she spent Rs. 20,000/- on the last rites of her husband but since she has not produced any proof regarding his income on the file, therefore, his income is taken as Rs. 3,600/- per month.

Since the deceased was married and the number of dependents are four as the petitioner No. 1 is his widow and petitioners No. 2, 3 and 4 are his minor children, therefore, as per the [Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another](#), the deduction should be 1/4 for the personal expenses therefore, the amount becomes Rs. 3,600/- Rs. 900/- = Rs. 2,700/-. Therefore, the annual loss of dependency becomes Rs. 2,700/- x 12 = Rs. 32,400/-. Now to see the multiplier. Since the deceased was aged 37 years therefore, the multiplier should be 15. Therefore, the total amount becomes Rs. 32,400 x 15 = Rs. 4,86,000/-. Rs. 5,000/- is given under the head of loss of Estate. Rs. 5,000/- for cremation charges/transport expenses. Rs. 10,000/- as loss of consortium. Now to see from whom the petitioners are entitled to receive the same. Since the rash and negligent act on the part of the driver of the truck bearing registration No. HR-38-C-2651 is proved as there is no evidence in rebut of the evidence of the petitioners, and Sh. Lakhan Rai was not authorized to travel as per the policy, therefore, the respondent No. 2 is not liable to pay the compensation.

10. Aggrieved against the findings of the Ld. Tribunal, appellant Veena Rani, owner of the truck preferred two appeals (FAO Nos. 5862 and 5863 of 2010) on the ground that the Award passed by the Ld. Tribunal is perverse and deserves to be set aside. Impugning Issue No. (ii) it was submitted that the Ld. Tribunal erred in fastening the liability on the appellant to pay the compensation to the claimants in claim petition Nos. 36 and 36-A of 2008.

11. FAO Nos. 90 and 91 of 2011 have been preferred by the LRs of Ashok Kumar, who died during the pendency of the appeal and that of claimants of Lakhan Rai, deceased, for the enhancement of the awarded amount.

12. Learned counsel for the appellant (in FAO No. 91 of 2011) contends that the deceased Lakhan Rai was working as a contractual labour in the dairy of Surender Singh Chauhan. Having expertise in his work of looking after the cattle, he used to be deputed to various places for the purpose of selling and buying the cattle from the market including Bombay and Pune etc. He further contends that owner Ashok Kumar of another dairy sent deceased Lakhan Rai alongwith his cattle stock to Pune as his agent and care taker to look after the cattle stock in transit. On the way to Pune, due to rash and negligent driving of driver of truck No. HR-38-C-2651, the

truck fell into 200 feet deep gorge resulting in the death of cattle stock, driver and Lakhan Rai, who was sitting in the cabin of the driver. He submitted that the accident was witnessed by PW2 Jeeta, who was in another vehicle of cattle stock and was the eye witness to prove the rash and negligent driving of the driver of the truck. As per statement of Jeeta, due to fast speed of the truck, the driver lost control over the vehicle and it fell into a deep gorge. All the cattle i.e. 9 buffaloes and 9 calves along with the driver and the caretaker of the cattle stock died on the spot. Learned counsel has argued that the Ld. Tribunal has erred in assessing the income of the deceased Lakhan Rai at Rs. 3,600/per month only whereas the deceased was earning Rs. 10,000/per month being an expert in looking after the cattle. He submitted that the deceased was travelling in the truck as a care taker or the agent of the owner of cattle stock and the owner of the truck and the Insurance Company did not deny that deceased was not traveling in the truck. In support of his submissions, he placed reliance on Amrutbai and others v. Jabbar and others, 2010 A.C.J. 2336; [Bajaj Allianz General Insurance Co. Ltd. Vs. Sajjan and Others, ; Branch Manager, National Insurance Co. Ltd. Vs. Khushboo and Others](#)

13. Lastly, learned counsel prayed for enhancement of the compensation on the ground that deceased was traveling as an agent in the cabin of the truck and had died due to rash and negligent driving of the truck driver.

14. Learned counsel for the appellant in FAO Nos. 5862 and 5863 of 2010, filed by the owner of the truck, submitted that the Ld. Tribunal has erroneously decided issue No. (ii) fastening the liability on the appellant alone and absolving the Insurance company to pay compensation to the claimants in both the claim petitions. He submitted that the deceased Lakhan Rai was traveling in the truck along with the cattle stock as a representative of the owner of the truck. This fact finds mention in the statements of PW2 Jeeta and PW3 Gurmeet Singh and there is no cross-examination on behalf of the Insurance Company. He further submitted that it is proved that the deceased had died alongwith the driver of the truck and cattle stock, when the truck fell into the deep gorge. He submitted that Truck was insured with Bajaj Allianz General Insurance Company Limited vide Policy No. OG-07-1110-1803-00000083 for the period 30.3.2007 to 29.3.2008 and in the policy, damage to the property of third party is also covered. He further submitted that where there is an effective insurance policy of the vehicle, the Insurance Company is liable to indemnify the owner against any claim as per Section 149(1) of the MV Act. Some exceptions are provided u/s 149(2) of the Act and except the defences available in Section 149(2) of the Act, no other ground can be taken by the Insurance Company to deny the claim to the claimants. He pointed out that there was no breach of policy conditions by the Insured and thus the onus is upon the Insurance Company to prove the breach of conditions of the policy but no evidence was brought on record to show that the deceased was a gratuitous passenger. He further submitted that absolving the liability of the Insurance Company is contrary to the provisions of the MV Act and thus prays that the Award may be modified to

the extent that the Insurance Company is liable to pay the compensation.

15. On the other hand, learned counsel for the Insurance Company refers to the assertions made by the claimants-appellant that deceased was in the service of Surender Singh Chauhan, whereas the cattle stock were owned by Ashok Kumar, therefore, he cannot be considered to be the authorized agent of Ashok Kumar and was traveling in the truck as a gratuitous passenger, therefore, the Insurance Company is not liable to pay any compensation to satisfy the Award. She submits that there is no documentary evidence to prove that the deceased was sitting in the cabin of the truck. Therefore, she prays that the appeals may be dismissed.

16. I have heard the counsel for the parties and perused the record with their able assistance.

17. Admittedly, as per the claim petition, deceased Lakhan Rai was in the service of Surender Singh Chauhan. He gained expertise in sale and purchase of buffaloes. Ashok Kumar was the neighbour of dairy farm of Surinder Singh Chauhan and being an expert, the deceased was sent by Ashok Kumar to sell his cattle stock at Pune. It is not in dispute that the live stock is not owned by Ashok Kumar and that the death of deceased Lakhan Rai occurred in the accident. From the record, it is proved that another truck carrying live stock of buffaloes owned by Surender Singh Chauhan was also there, therefore, the presence of PW2 Jeeta is established. PW2 has given the detailed version of the accident, which cannot be disbelieved simply on the ground that the buffaloes in question were not owned by Ashok Kumar. It is normal practice in trade and business that expertise, knowledge and skill of workers are engaged by small enterprenuers. As the factum of death of Lakhan Rai is proved in the accident proved by the PWs, this Court do not agree with the arguments raised by learned counsel for the Insurance Company that claim of the deceased Lakhan Rai deserves to be dismissed, on the ground that the live stock was not owned by Surender Singh Chauhan, with whom the deceased was working. From the statement of PW2 Jeeta, the negligence of the driver of the truck is proved. His statement is reproduced as under:

On 5.3.2008, seven buffaloes and seven calves were loaded in the truck of Pawan and nine buffaloes and nine calves were loaded in the truck No. HR-38C/2651 of Ashok Seth for carrying them to Pune. I went with the buffaloes in the truck of Pawan and Lakhan Rai in the truck of Ashok Seth. The driver of truck bearing registration No. HR-38C/2651 was driving the truck rashly and negligently at a very high speed. On the way, when we stopped for a short while in order to take tea, we advised the driver of the offending truck to drive it slowly and moderately but he did not pay any heed and again started driving the truck at a very high speed. When we reached near Bijasan Ghat in the area of Dhula district in the State of Maharashtra, due to the fast speed, he lost control over the truck and the truck fell into a deep pit on the road side. All the nine buffaloes along with nine calves and the driver and one Lakhan Rai who was going with the buffaloes died on the spot. The accident

took place due to rash and negligent driving of the truck No. HR-38C/2651 by its driver. Police reached the spot and recorded my statement. I and Lakhan Rai had been going with the buffaloes in the vehicles on different stations and I used to get Rs. 60/- per day with total milk yielding of the buffaloes and I am earning Rs. 8,000/- to Rs. 10,000/- per month. The deceased Lakhan Rai also used to earn Rs. 8,000/- to Rs. 10,000/- per month. He was a tea totaler.

18. The fact of accident is further fortified from the statement of PW3 Gurmeet Singh, power of attorney of Ashok Kumar. As per his statement, Ashok Kumar was a cancer patient and could not move out of the bed. It has come in the statement of Gurmeet Singh that accident occurred due to rash and negligent driving of driver of truck in which nine buffaloes, nine calves, driver and agent of owner died on the spot. He also referred to the FIR, Exh. P/3 and other documents like vouchers, copy of billiti Mark-X, copy of RC of truck Ex. P5 which goes to show that buffaloes were traveling in the offending truck, "therefore, it is proved that the accident took place on 10.3.2008 due to the rash and negligent driving of truck driver, so the findings on Issue No. 1 are affirmed.

19. A perusal of the Award shows that the income assessed by the Ld. Tribunal is on the lower side i.e. Rs. 3,600/-per month. The accident took place in the year 2008. As per Notification No. 48372-48473 dated 20.11.2008, the minimum wages of a skilled worker were Rs. 4,055/- per month. The deceased Lakhan Rai being an expert in identifying good quality of cattle and looking after the cattle stock is considered as a skilled worker and his income assessed by the Ld. Tribunal on the lower side. In the opinion of this Court, the income should be assessed at Rs. 4,055/- treating him a skilled worker. The Award passed by the Ld. Tribunal in claim petition No. 36-A of 2008 is enhanced in the following terms:-

20. In view of the above, appeal Nos. 5862 and 5863 are partly allowed and the respondent-Insurance Company is held liable to pay the compensation to the claimants in both the claim petitions (Nos. 36 and 36-A of 2008). A perusal of the record shows that the truck was duly insured with the Insurance Company. The deceased driver was holding a valid and effective driving licence to drive such type of vehicle. There was no breach of policy conditions by the insured. In [National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others](#), Hon"ble the Apex Court dealing with the question of liability of the Insurer to third party claims, observed as under:

14. Sub Section (7) of Section 149 of 1988 Act clearly indicates in what manner sub section (2) of Section 149 has to be interpreted. Subsection (7) of Section 149 provides that no insurer to whom the notice referred to in subsection (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in subsection (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the

reciprocating country, as the case may be. The expression "manner" employed in sub-section (7) of Section 149 is very relevant which means an insurer can avoid its liability only in accordance with what has been provided for in subsection (2) of Section 149. It, therefore, shows that the insurer can avoid its liability only on the statutory defences expressly provided in sub-section (2) of Section 149 of 1988 Act. We are, therefore, of the view that an insurer cannot avoid its liability on any other ground except those mentioned in subsection (2) of Section 149 of 1988 Act.

15. It is relevant to note that the Parliament, while enacting sub-section (2) of Section 149 only specified some of the defences which are based on conditions of the policy and, therefore, any other breach of conditions of the policy by the insured which does not find place in sub-section (2) of Section 149 cannot be taken as a defence by the insurer. If the Parliament had intended to include the breach of other conditions of the policy as a defence, it could have easily provided any breach of conditions of insurance policy in sub-section (2) of Section 149. If we permit the insurer to take any other defence other than those specified in sub-section (2) of Section 149, it would mean we are adding more defences to insurer in the statute which is neither found in the Act nor was intended to be included.

16. For the aforesaid reasons, we are of the view that the statutory defences which are available to the insurer to contest a claim are confined to what are provided in sub-section (2) of Section 149 of 1988 Act and not more and for that reason if an insurer is to file an appeal, the challenge in the appeal would confine to only those grounds.

17 to 27. xx xx xx xx xx

28. We have noticed the legislative development in regard to third party rights in England and found that the object of those legislations was to protect the interest of third party rights. The 1939 Act as well; as 1988 Act both were enacted on pattern of English statute with the object to relieve the distress and miseries of victims of accidents and reduce the profitability of the insurer in regard to occupational hazard undertaken by them by way of business activities and not to promote business interests of insurance companies even though they may be nationalized companies.

29. For the aforesaid reasons, as well as that the learned Judge in [United India Insurance Co. Ltd. Vs. Bhushan Sachdeva and Others](#), have failed to notice the limited grounds available to an insurer u/s 149(2) of the Act, we are of the view that the decision in United India Insurance (supra) does not lay down the correct view of law.

21. The findings of the Ld. Tribunal holding respondent No. 1 liable to pay the compensation are erroneous. It is held that the driver, owner and Insurer are jointly and severally liable to pay the compensation. The deceased driver was holding a valid and effective driving licence at the time of accident as held by the Ld. Tribunal.

22. In view of what has been discussed above, this Court finds that there is no breach in the terms and conditions of policy by the insured, therefore, the Insurance Company is liable to indemnify the Award to the claimants. The Award in these appeals (FAO Nos. 5862 and 5863) is modified to the above extent. FAO Nos. 5862 and 5863 of 2010 are partly allowed.

23. In FAO No. 91 of 2011, the appeal is partly allowed and the Award passed by the Ld. Tribunal is enhanced in the manner indicated above. The balance enhanced amount of Rs. 61,560/- shall be paid within 45 days from the date of receipt of copy of this judgment, in default, the claimants in claim petition Nos. 36 and 36-A of 2008 (appellants in FAO No. 91 of 2011) shall be entitled to interest at the rate of 7-112% per annum. The enhanced amount, so deposited, shall be disbursed to the claimants in equal shares. The amount fallen in the share of minor-claimants shall be kept in some nationalized bank in the shape of F.D.R's in carrying maximum rate of interest.

24. In FAO No. 90 of 2011, this Court feels that the amount of Rs. 2 lacs awarded as compensation for nine buffaloes and nine calves that died in the accident, is on the lower side. The accident took place in the year 2008. Keeping in view the fact that all the buffaloes were milk yielding at the time of accident, this Court is of the opinion that increase of Rs. One lac would meet the ends of justice i.e the claimants will get Rs. 3 lacs for the loss of nine buffaloes and nine calves. This appeal is dismissed with modification in the Award, in the above manner. The four appeals are disposed of in the above terms. The statutory amount deposited in FAO Nos. 5862 and 5863 of 2010 at the time of filing of these appeals, be remitted to the Ld. Tribunal, for disbursement of the claimants. R.M.S. - Appeal disposed of