

(2014) 07 P&H CK 0867

High Court Of Punjab And Haryana At Chandigarh**Case No:** First Appeal from Order Nos. 1980 of 1999 and 1653 of 2000 (O and M)

Sunil Kumar

APPELLANT

Vs

Mann Singh

RESPONDENT

Date of Decision: July 24, 2014**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 2(13)

Citation: (2014) 176 PLR 746**Hon'ble Judges:** K. Kannan, J**Bench:** Single Bench**Advocate:** Ashit Malik and Sagar Aggarwal, Advocate for the Appellant; R.S. Mamli, Advocate for the Respondent

Judgement

K. Kannan, J.

Both the appeals are in relation to the same accident. FAO No. 1980 of 1999 is at the instance of the claimant seeking for enhancement of compensation though the Insurance Company is on an issue of liability on the ground that the claimant was travelling in an insured's truck as a gratuitous passenger. The case was decided with yet another case relating to the claim for compensation for death of yet another passenger in the truck. There were two appeals in respect of said case also, the appeal by the Insurance Company was FAO No. 286 of 2000, while the appeal in FAO No. 1309 of 1999 was in respect of a claim for enhancement of compensation. FAO No. 286 of 2000 was taken up first before a Division Bench. The only objection taken before the Bench was that the driver did not have a valid driving licence. The plea that the passenger in a truck was not entitled to make the insurer liable was not taken up as an argument and the Bench had, therefore, no occasion to consider the same. The appeal in FAO No. 286 of 2000 was dismissed. When the appeal for enhancement of compensation for death was taken in FAO No. 1309 of 1999, the issue for consideration was only the issue of quantum, for liability issue had been decided already by a Division Bench. The amount of compensation was enhanced

and the insurer was made liable. The insurance Company sought to review the judgment taking up a plea of liability but the review application was dismissed holding that the liability issue had been final between the parties in appeal in FAO No. 286 of 2000 and hence, it could not be reopened. The parties in this case are different and a bar of res judicata which will be appropriate if adjudication were between the same parties or when a common judgment had been delivered between the same parties will not be applicable.

2. When an argument for enhancement is made, I will only think it will be appropriate and fair that the additional liability that is sought to be fastened should be made only on the owner and driver, for, they have committed a breach which is specifically brought before the court, a benefit which the Bench did not have at the time when FAO No. 286 of 2000 was decided. The claimant had suffered serious pelvic injury and the Medical Board which had assessed his suitability for continuance in military service as Naik found him to be not fit for rigorous duties. A proper assessment to the exact nature of disability was not brought at the trial and the claimant rest contended with the projection of the opinion of the Medical Board as evidence before the Tribunal. The document showed that he had been placed in category-c which meant that he would be withdrawn from the field and he had lost his chance for improving his career prospects in terms of higher posting or higher salary. I would take this circumstance as justifying an assessment for an addition of Rs. 1 lakh as loss of earning capacity. The Tribunal has already provided for medicines and assessed Rs. 10,000/- as compensation for pain and suffering, I will increase it to Rs. 25,000/-. The Tribunal has provided Rs. 20,000/- for the disability caused which I will retain and has also provided Rs. 50,000/- for loss of quality of life in view of the fact that there was evidence that he had become impotent and he had no child, although married. The assessment to Rs. 50,000/- under the head is appropriate. All this would mean that the claimant will have an additional amount of Rs. 1,15,000/- with interest at 7.5% per annum from the date of petition till date of payment.

3. The counsel appearing on behalf of owner and driver-Mr. Mamli wants to contend that the persons, who were travelling in the truck, were persons, who were picked up at the railway station and were travelling along with the goods. It is a wrong understanding of the concept of "goods". The "goods" under Section 2(13) of the Motor Vehicles Act excepts luggage or personal effects. A person that carries luggage in a train and carries it in a truck is not carrying "goods" within the definition of the Act. The goods which is contemplated under the Act for transport in a goods carriage is goods which are booked in a truck principally for being transported only through a truck and the accompaniment of the owner is merely incidental. Any amount that has been paid by the Insurance Company to the claimants shall not be pressed for recovery in the view that I have taken that only the additional amount now assessed shall be recoverable from the driver and owner. The additional liability as assessed shall be only on the owner and driver of

the vehicle. The award stands modified and the appeal in FAO No. 1980 of 1999 is allowed to the above extent. FAO No. 1653 of 2000 is allowed casting the liability additionally on the owner and driver and exonerating the Insurance Company.