

IN THE COURT OF SUBHAS MEHLA, MOTOR ACCIDENT
CLAIMS TRIBUNAL, PANCHKULA. (UID NO.HR-0047)

Case Type MACP
Filing No. MACP/1704/2017 Filing Date: 10-07-2017
Registration No. MACP/109/2017 Registration Date: 10-07-2017
CNR No. HRPK01-00-2862-2017
Date of Award 23.01.2019.

1. Smt.Balwinder Kaur, aged 54 years widow of Sh.Balbir Singh,
2. Miss Manpreet Kaur, aged about 27 years daughter of Late Shri Balbir Singh,
3. Karanvir Singh, aged 22 years son of Late Shri Balbir Singh,
All residents of House No.346-A, Ward No.2, Kurari Mohalla,
Kalka, Tehsil Kalka, District Panchkula.

.....Petitioners.

Versus

1. Honey Chauhan S/o Shri Jai Lal Chauhan, R/o Village Raban Passi, P.O. Tehsil Mori, District Uttar Kashi, Uttrakhand. (Driver of LP Truck bearing registration No.HP-64-9958).
2. Daya Kishan S/o Shri Mohinder Partap, resident of Village Mangoti, P.O. Mandodhar, Tehsil Kasauli, District Solan (HP). (Owner of LP Truck bearing registration No.HP-64-9958).
3. Shree Ram General Insurance Company, through its Managing Director/President/Authorized Signatory, E-8, RICCO Industrial Area, Sitapura, Jaipur, Rajasthan. (Insurer of LP Truck bearing registration No.HP-64-9958).

.....Respondents

Claim Petition under Section 166 of Motor Vehicle Act.

Present: Shri Sunidh Kashyap, Advocate, for the claimants.
Respondent No.1 (driver) already ex-parte vide order dated 06.01.2018.
Shri Dinesh Chopra, Advocate, for respondent No.2 (owner).
Shri Shital Bindal, Advocate, for respondent No.3 (Insurer).

AWARD:-

Petitioner No.1 being widow and petitioners No.2 and 3 being daughter and son of Balbir Singh (since deceased) have filed the present claim petition under Section 166 of the Motor Vehicles Act against respondents claiming compensation to the tune of ₹ 60,00,000/- (Sixty Lakhs only) along with interest @ 18% per annum from the date of petition till realization of the amount on account of death of Balbir Singh son of Shri Niranjana Singh in a motor vehicle accident which took place on 12.05.2017 at about 03:25 P.M. at the footpath of the road from Parwanoo to Kalka.

2. The case of the petitioners is that on 12.05.2017, at about 03:25 P.M., Balbir Singh (since deceased) along with 2-3 more persons was going on the footpath of the road from Parwanoo to Kalka. In the meantime, a LP Truck bearing registration No.HP-64-9958 which was being driven by its driver/respondent No.1 at a very high speed and in a rash and negligent manner came from back side and struck against the deceased Balbir Singh and Harish Kumar from behind and caused the accident. As a result of this accident, both the persons fell down on the road and deceased Balbir Singh has received serious injuries as well as fracture on his entire body. It is pleaded by the claimants that soon after the accident, deceased Balbir Singh was taken to ESIC Hospital, Parwanoo from where, the deceased was referred to Government Medical College and Hospital, Sector-32, Chandigarh and succumbed to the

injuries during the course of treatment due to injuries sustained by him in this accident. Thereafter, post-mortem examination was conducted on the body of deceased by the doctors of GMCH, Sector-32, Chandigarh. It is further pleaded that Balbir Singh (since deceased) was working as Supervisor with Shivalik Industries, 19-A, Sector-1, Parwanoo, HP and was getting the salary of ₹ 15,000/- per month besides rental income of ₹ 5,000/-. The deceased was an income tax payee. The accident took place due to rash and negligent driving of respondent No.1. Respondent No.1 being driver, respondent No.2 being owner and respondent No.3 being insurer of offending LP Truck bearing registration No.HP-64-9958 are jointly and severally liable to compensate the petitioners.

3. Notice of the claim petition was given to the respondents. It is pertinent to mention herein that when none appeared on behalf of respondent No.1 despite notice through registered post, he was proceeded against ex-parte vide order dated 06.01.2018 passed by the learned Predecessor of this Tribunal.

4. Respondent No.2 appeared through his counsel and filed his written-statement raising formal preliminary objections with regard to maintainability of the claim petition, denial of involvement of vehicle in accident, claim petition being false and frivolous and that of suppression of true and material from the Court. It is pleaded that respondent No.1 has not caused any accident as alleged by the petitioners.

On merits, the contents of the claim petition were denied while pleadings that the petitioners be directed to put strict proof to prove their assertions. It is pleaded that no accident has taken place with Truck bearing registration No.HP-64-9958 as alleged and police in-collusion with each other had falsely implicated the answering respondent in present case. The present claim petition has been filed with malafide intention just to grab the money from the answering respondent. Denying all other material contents of the petition in toto, dismissal of the petition was sought.

5. Respondent No.3 appeared through counsel and filed its written statement taking preliminary objections with regard to maintainability of the petition, locus standi, cause of action etc. It is pleaded that no such alleged accident has ever taken place with LP Truck bearing registration No.HP-64-9958 on the date time and place. It is submitted that respondent No.1 was not holding a valid and effective driving licence on the date of alleged accident and the vehicle in question i.e. truck bearing registration No.HP-64-9958 was being driven in contravention of terms and conditions of insurance policy.

6. In reply on merits, contents of the claim petition were denied and it is pleaded that the claimants be directed to put strict proof to prove their assertions. It is further submitted that a false FIR has been lodged against respondent No.1 on false and manipulated facts just to get the compensation from the answering respondent in-collusion with

respondents No.1 and 2. Denying all other material contents of the petition in toto, dismissal of the claim petition was sought.

7. No replication was filed. From the pleadings of the parties, the following issues were framed by the learned Predecessor of this Tribunal vide order dated 06.01.2018:-

1. Whether Balbir Singh S/o Shri Niranjn Singh had died due to the injuries suffered by him in a road side vehicular accident which had occurred on 12.05.2017 in the area of Police Station Parwanoo, on account of rash and negligent driving of Truck bearing registration No.HP-64-9958 by respondent No.1 ? OPP.
2. If issue No.1 is answered in affirmative, then whether the claimants are entitled to be compensated, if so to what extent and by whom ? OPP.
3. Whether respondent No.1 was not holding a valid and effective driving licence at the relevant time of alleged accident, if so to what its effect ? OPR-3.
4. Whether the vehicle in question is being used for other purpose then the purpose for which it was registered as alleged in para No.10 of the preliminary objections, if so to what its effect ? OPR-3.
5. Whether the vehicle in question was being driven without valid documents i.e. valid route permit etc. and in contravention of the terms and conditions of the insurance policy, if so to what its effect ? OPR-3.
6. Relief.
8. An application under Section 170 of Motor Vehicles Act was also allowed, in favour of insurer vide Order dated 30.01.2018.
9. The claimants led the following **oral evidence**:-

PW-1	HC Ramesh Chand No.145, P.S. Parwanoo, District Solan (HP).
PW-2	Karanvir Singh, claimant No.3 (son of deceased).
PW-3	Tajinder Tuli, partner in M/s Shivalik Industries, Parwanoo.
PW-4	Harish Kumar @ Vijay S/o Sh.Ranjit Singh, an eye witness of the accident.
PW-5	Karam Chand, Tax Assistant, from the Office of Income Tax Office, Parwanoo, HP.

10. Following **documentary evidence** has been led by the claimants:-

Ex.P-1	Photocopy of FIR No.0040 dated 12.05.2017.
Ex.P-2	Photocopy of Aadhaar card of claimant No.3 Karanvir Singh.
Ex.P-3	Photocopy of Aadhaar card of deceased Balbir Singh.
Ex.P-4	Photocopy of PAN card of deceased Balbir Singh.
Ex.P-5	Photocopy of Matriculation examination of deceased Balbir Singh
Ex.P-6	Photocopy of Aadhaar card of claimant No.1 Balwinder Kaur.
Ex.P-7	Photocopy of Aadhaar card of claimant No.2 Manpreet Kaur.
Ex.P-8	Photocopy of Provisional National Trade Certificate of deceased Balbir Singh issued by Govt. of Haryana.
Ex.P-9 & P-10	Photocopies of National Trade Certificates of deceased Balbir Singh.
Ex.P-11	Photocopy of income tax return for the assessment year 2016-17 along with computation of total income.
Ex.P-12	Photocopy of Death Certificate of deceased Balbir Singh.
Ex.P-13	Attested true copy of post-mortem examination report of deceased Balbir Singh.
Ex.P-14	Attested copy of death report of deceased Balbir Singh.
Ex.P-15	Attested copy of emergency care-clinical notes of

	deceased Balbir Singh.
Ex.P-16	Attested copy of OPD slip of deceased Balbir Singh of ESI Hospital, Parwanoo.
Ex.P-17	Attested copy of new patient's registration of deceased Balbir Singh.
Ex.P-18	Attested copy of OPD card of deceased Balbir Singh of GMCH, Chandigarh.
Ex.P-19	Attested copy of OPD card of deceased Balbir Singh of GMCH, Chandigarh.
Ex.P-20	Attested copy of Health Record Chart of deceased Balbir Singh of GMCH, Chandigarh.
Ex.P-21	Photocopy of certificate of Provisional Registration of Form GST REG-25 of Shivalik Industries.
Ex.P-22	Attendance register for the month of May, 2017.
Ex.P-23	Salary certificate of deceased Balbir Singh.
Ex.P-24	Photocopy of register of Adult Workers of Ms/ Shivalik Industries, Sector-2, Parwanoo (HP).
Ex.PW5/1	Copy of letter dated 27.04.2018 written by Income Tax Officer, Parwanoo.
Ex.PW5/2	Photocopy of acknowledgement of E-filing return
Ex.PW5/3	Photocopy of details of PAN card of deceased Balbir Singh.

Thereafter, learned counsel for the petitioners closed the evidence of claimants in affirmative vide separately recorded statement.

11. Respondent No.2 Daya Kishan has been examined by way of additional evidence as RW-3.

12. Following **documentary evidence** has been led by respondent No.2:-

Ex.R-1	Photocopy of salary certificate of deceased Balbir Singh.
Ex.R-1	Photocopy of insurance policy of offending vehicle.
Ex.R-2	Photocopy of registration certificate of offending vehicle.
Ex.R-3	Photocopy of National Permit for Goods Carriage of offending vehicle.

13. Thereafter, learned counsel for respondent No.2 closed the evidence vide separately recorded statement.

14. **Oral evidence** of respondent No.3 Insurance Company:-

RW-1	Ms.Rekha Kashyap, Junior Office Assistant, IT/Criminal Ahlmad in Juvenile Justice Board, Solan (HP).
RW-2	Head Constable Madan Gopal No.450, P.S. Parwanoo, Solan (HP).

15. Following **documentary evidence** has been led by respondent No.3:-

Ex.R-1	Photocopy of recovery memo of Truck No.HP-64-9958.
Ex.R-2	Attested photocopy of affidavit of Daya Krishan dated 18.05.2017
Ex.R-3	Photocopy of Pariwar Register of respondent No.1 Honey Chauhan @ Munna.
Ex.R-4	Photocopy of bail bonds of Honey Chauhan.
Ex.R-5	Photocopy of application for the custody of the juvenile moved by Daya Krishan.
Ex.R-6	Photocopy of undertaking given by the parent or guardian or fit person given interim custody in

	pending inquiry.
Ex.R-7	Copy of certificate-cum-policy Schedule of offending vehicle.
Ex.RW2/A	Photocopy of driving license of Ishwar Singh.

16. Thereafter, learned counsel for respondent No.3 insurance company closed its evidence vide separately recorded statement.

17. I have heard learned counsel for the parties and gone through the case file. The issue wise finding is as under:-

ISSUE NO.1:

18. Onus to prove this issue was on the petitioners. In support of their claim, petitioners examined Harish Kumar alias Vijay, an eye witness of the occurrence as PW-4, who tendered in evidence his duly sworn affidavit Ex.PW4/A, wherein he reiterated the mode and manner of accident as stated in para No.26 of the petition. He being the eye witness of the occurrence categorically stated that the accident in question had taken place due to rash and negligent driving of respondent No.1, driver of vehicle i.e. LP Truck bearing registration No.HP-64-9958 in which Balbir Singh died due to injuries sustained in this accident.

19. In order to substantiate their case, petitioners also examined HC Ramesh Chand, who brought the original record of FIR No.40 dated 12.05.2017, under Sections 279, 337,304-A IPC and u/s 187 of M.V. Act, P.S. Parwanoo and deposed that case was registered against respondent No.1 and proved on record copy of FIR as Ex.P-1. He further deposed that challan in this case is presented in the Courts at Solan and trial of

accused is pending and accused Honey Chauhan @ Munna is facing trial before the Court.

20. Petitioners tendered on record the documents as explained in para No.10 of Award. A perusal of FIR Ex.P-1 shows that FIR No.0040 dated 12.05.2017 under Sections 279, 337, 304-A IPC and 187/181 of M.V. Act, P.S. Parwanoo, District Solan (HP) was registered against driver of vehicle i.e. LP Truck bearing registration No.HP-64-9958. As per attested true copy of postmortem examination report Ex.P-13, postmortem examination on the dead body of Balbir Singh was conducted by Assistant Professor, Government Medical College & Hospital, Sector-32, Chandigarh on 13.05.2017. Death report and other medical records Ex.P-14 to Ex.P-20 support the version of petitioners regarding cause of death of deceased Balbir Singh in this accident. The police after thorough investigation arrested respondent No.1 Honey Chauhan being driver of offending vehicle i.e. LP truck in question and found him rash and negligent while driving the offending vehicle and submitted inquiry report and then respondent No.1 being minor was released on bail, on furnishing undertaking by Daya Krishan as is clear from documents Ex.R-1 to Ex.R-6.

21. Respondent No.1 is proceeded ex-parte as he fails to appear and opted not to contest the present claim petition. So, from the aforesaid oral as well as documentary evidence brought on file by the claimants and respondents No.2 and 3, it is established that respondent No.1 was rash

and negligent while driving the offending vehicle i.e. LP Truck bearing registration No.HP-64-9958 in which Balbir Singh lost his life. Evidence led by the claimants goes unchallenged and unrebutted and even find support and corroborations from the evidence led by respondent No.3 i.e. RW-1 and RW-2. so there is no reason to disbelieve the same. In case law **Girdhari Lal Vs. Radhey Shyam and others 1993(2) PLR 109 (P&H)**, our Hon'ble High Court held that in a case where driver was being tried on account of rash and negligent driving, it is prima facie safe to conclude that the accident occurred on account of rash and negligent driving of the driver. This view also finds support from case law **Sudama Devi and others Vs Kewal Ram and others-Vol.CXLIX-(2008-1) 444(P&H)**.

22. In case law **Kusum Lata and others Vs Satbir and others-2011(2) RCR 379**, it has been held by Hon'ble High Court that in a case under Motor Accident Claims the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep the distinction in mind. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.

23. Thus, in view of above discussion, it is proved on file that the accident in question took place due to sole rash and negligent driving of respondent No.1, who was behind the steering wheel of the offending vehicle at the relevant time. Hence, this issue is decided in favour of

petitioners.

ISSUE NO.2:-

24. Now question arises for consideration is that as to what amount of compensation, the petitioners are entitled to and from whom?

25. Petitioner No.3 Karanvir Singh stepped into the witness box as PW-2 and filed his affidavit Ex.PW-2/A in his evidence and deposed that his father Balbir Singh (since deceased) expired in a road side accident, which took place on 12.05.2017 due to rash and negligent driving of respondent No.1. He further pleaded that his father was working as Supervisor with Shivalik Industries, 19-A, Sector-1, Parwanoo and was earning ₹ 20,000/- per month for livelihood of himself as well as his family members i.e. claimants. Petitioners were fully dependent upon the income of Balbir Singh and he was the only bread earner to his family. Petitioners in claim petition pleaded that at the time of death, deceased Balbir Singh was aged about 55 years. In cross-examination, he stated that his deceased father was covered under E.S.I.C. and they have applied the same to the concerned ESIC hospitals, Parwanoo, but they have not received any amount from ESIC. He stated that he is a student and is doing Hotel Management Course.

26. In support of their assertions, petitioners also examined Shri Tajinder Tuli, one of the partner of M/s Shivalik Industries, Parwanoo, as PW-3 and this witness deposed that their firm is registered with Government of India and Government of HP vide registration certificate

Ex.P-21. He further stated that late Balbir Singh S/o Sh.Niranjan was working with them as a Factory Supervisor since 01.02.2011 and getting the salary of ₹ 18,000/- per month. He proved on record the salary certificate of deceased Balbir Singh as Ex.P-23 and register of joining as Ex.P-24. He also brought the original register of the attendance and proved last month attendance register i.e. May, 2017 as Ex.P-22. In cross-examination, he admitted that their firm is registered under ESI Act and they have deducted the monthly amount of employee share towards ESI scheme.

27. PW-5 Karam Chand, Tax Assistant from the office of Income Tax Office, Parwanoo, HP brought the income tax return filed by Balbir Singh having PAN No.ANNPS0964L in their office on 30.03.2017 for the assessment year 2015-16 through e-file, copy of which is Ex.PW5/2. He also proved on record the details of PAN card of Balbir Singh as Ex.PW5/3. In cross-examination, he deposed that neither he has prepared this income tax return nor make entry in this regard.

28. As per the version of the petitioners, Balbir Singh (since deceased) was aged about 55 years at the time of accident but as per photocopy of Aadhar Card Ex.P-3 and PAN card Ex.P-4, date of birth of deceased Balbir Singh is mentioned as 16.12.1961 and same will be treated as authentic document with assumption that deceased himself had disclosed the same at the time of preparing his documents. The date of accident is 12.05.2017. So, it is clear that deceased was aged about 56

years at the time of accident and his untimely death. No contrary evidence is led from the side of respondents to show that deceased was more than 56 years of age. In this scenario, the age of the deceased at the time of his death, is taken as 56 years.

29. As per version of PW-2 Karanvir Singh, Balbir Singh (since deceased) was doing the job of Supervisor with M/s Shivalik Industries and he was earning ₹ 20,000/- per month.

30. The learned counsel for the claimants contended that the income of deceased be taken on the basis of his income tax returns as no contrary evidence was led to prove otherwise and also prayed that in present case, addition towards future prospects be also made. In support of his arguments, learned counsel referred to the authorities reported as United India Insurance Co. Ltd. Versus Indiro Devi & Ors., 2018(3) RCR (Civil) 455 (SC); Sushma Arora Vs. Sunil Kumar Arora, 2014(2) C.C.C. 653 (P&H)(DB) and Kalpanaraj & Ors. Vs. Tamil Nadu State Transport Corpn., 2014(3) CCC 456 (SC).

31. Learned counsel for the petitioners further contended that the petitioners are entitled for the compensation on account of future prospects in the present income of deceased. In support of his arguments, learned counsel for claimants referred to the cases law titled as Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram & Ors., 2018 (4) RCR (Civil) 333 (SC); Hem Raj Versus The Oriental Insurance Company Limited and Ors., (2018-2)190 The Punjab Law Reporter 480

(SC); Suresh Chandra Bagmal Doshi & Anr. Versus The New India Assurance Company Limited & Ors., (2018-2)190 The Punjab Law Reporter 483 (SC); Surender Singh Dahiya Versus Kapil Sharma, 2018(2) RCR (Civil) 293 (P&H); Reliance General Insurance Company Ltd. Versus Shalu Sharma and Ors., 2018(2) RCR (Civil) 118 (SC) and Mannat Johal and others Versus Darshan Singh and others 2018(4) R.C.R. (Civil) 166 (P&H).

32. As per salary certificate dated 22.05.2017 Ex.R-1 filed by the claimants with the claim petition and put up during cross-examination to PW-3, deceased Balbir Singh was drawing the salary of ₹ 15,000/- per month including all perks and same has been issued after the date of accident i.e. 12.05.2017 and thus, same will be treated as the income of deceased for assessing the compensation. In income tax return, annual income of deceased is shown as ₹ 1,80,000/- per annum meaning thereby @ ₹ 15,000/- per month. With regard to rental income of ₹ 5,000/-, there is no evidence on record brought by the claimants to prove that deceased has any rental income. So, from the evidence brought on file regarding the income of the deceased, it is established that he is earning ₹ 15,000/- per month by working as a Factory Supervisor. Rental income mentioned in the income tax return has no basis as no evidence was led that he was rented any property and getting rent. No description of the property or proof of rental income was placed on record. So, his income was taken as ₹ 15,000/- per month.

33. As per observation in case law National Insurance Company Limited Vs. Pranay Sethi and Ors., Special Leave Petition (Civil) No. 25590 of 2014 (SC), petitioners are entitled for the compensation on account of future prospects with addition of 10% in the income of deceased and multiplier of 9 is appropriate in the case in hand.

34. At the time of arguments, learned counsel for the claimants disclosed that mother of deceased Smt.Satwant Kaur is also alive and father of deceased is no more in this World but she is not impleaded as claimant or proforma respondent. However, counsel for the claimants fairly conceded at bar that mother of deceased namely Smt.Satwant Kaur is also entitled for compensation.

35. Since petitioner No.1 is widow, petitioner No.2 is daughter, petitioner No.3 is son and Smt.Satwant Kaur is mother of deceased Balbir Singh, hence, claimants No.1 to 3 along with Smt.Satwant Kaur is entitled for compensation on account of accidental death of Balbir Singh being widow, daughter, son and mother. Deceased must spent 1/4th for his personal expenses. So, the annual dependency of claimants comes to ₹ 12,375/- (15000 + 1500 (15000 x 10%) = 16500 – 4125 {16500 x 1/4th}) per month i.e. ₹ 1,48,500/- (12,375 x 12) per annum.

36. Besides this, a sum of ₹ 40,000/- is granted to petitioner No.1 Balwinder Kaur as consortium and another sum of ₹ 30,000/- is also awarded to the claimants on account of loss of estate and funeral expenses.

37. The petitioners are entitled to get compensation under following different heads:-

(1)	Dependency of claimants per annum assessed by this Tribunal: (₹ 12,375 x 12)	₹ 1,48,500/-
(2)	Compensation (after multiplier of 9 is applied (₹ 1,48,500 x 9)	₹ 13,36,500/-
(3)	Consortium	₹ 40,000/-
(4)	Loss of Estate and Funeral Expenses	₹ 30,000/-
	Total (2+3+4)	₹ 14,06,500/-

38. Hence, the total amount of compensation comes to ₹ **14,06,500/- (Rupees Fourteen Lakhs Six Thousand Five Hundred only)** and petitioner No.1 being widow, petitioners No.2 and 3 being daughter and son and Smt.Satwant Kaur mother of deceased are entitled to receive the amount of compensation along with interest at the rate of 7½ per cent from the date of filing of this petition till its realization to the claimants. Hence this issue is decided accordingly in favour of petitioners.

ISSUES NO.3 TO 5:-

39. All these issues are inter-linked and inter-connected, so, they are taken up together.

40. In order to prove these issues, respondent No.3 insurance company examined Ms.Rekha Kashyap, Junior Office Assistant IT/Criminal Ahlmad in Juvenile Justice Board, Solan (HP) as RW-1 and she has brought the record pertaining to case file title as “State Vs. Munna @ Honey Chauhan”, bearing FIR No.40 dated 12.05.2017, under

Sections 279, 337, 304-A IPC and sections 181/187 of M.V. Act, P.S. Parwanoo pending before Principal Magistrate, Juvenile Justice Board, Solan. She proved on record the recovery memo of truck No.HP-64-9958 as Ex.R-1, affidavit of Daya Krishan as Ex.R-2, copy of Pariwar Register of Honey Chouhan @ Munna as Ex.R-3, bail bond of Honey Chauhan as Ex.R-4, application for custody of juvenile moved by Daya Krishan as Ex.R-5 and undertaking given by Daya Krishan to the Court as Ex.R-6.

41. RW-2 HC Madan Gopal deposed that he is posted at P.S. Parwanoo on general duty for the last August, 2017 and general criminal jurisdiction of Parwanoo police station is vested with the Criminal Courts of Kasauli, whereas the jurisdiction of minor/juvenile vested with the Juvenile Justice Board, at Solan.

42. On the contrary, respondent No.2 Daya Kishan himself stepped into the witness-box as RW-3 and deposed that he is owner of LP Truck bearing registration No.HP-64-9958. He further deposed that he has employed Ishwar Singh S/o Sh.Chukh Ram as his driver after verifying his driving skill since three years alleged date of accident i.e. 12.05.2017. He proved on record the photocopy of driving license of Ishwar Singh as Ex.RW2/A and same is valid up to 23.12.2018.

43. The contention of learned counsel for respondent No.2, who is owner of the offending truck, is that he has employed Ishwar Singh as a driver, who has a valid driving license and placed on record his license Ex.RW2/A on the file and if his driver employed any helper at his own

level, he is not liable for any negligency on his part and he has disclosed this fact to the police also and regarding this, affidavit has been filed before the police, which is Ex.R-2 and prayed that the liability be fastened upon the insurance company. In support of his arguments, learned counsel relied upon the case law titled as "Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan & Ors.", AIR 1987 SC 1184.

44. On the other hand, learned counsel for respondent No.3 insurance company contended that the vehicle is driven by respondent No.1 at the relevant time, who is a minor and facing trial before Juvenile Justice Board, Solan and regarding this, evidence on behalf of respondent No.3 is produced as RW-1 and RW-2. Learned counsel also stated that after thorough investigation, respondent No.1 is sent for trial for causing this accident and regarding this, there are also material available on the file and police also challaned him under Sections 181/187 of M.V. Act as is clear from the criminal proceedings. Learned counsel for insurance company further contended that respondent No.2 has not pleaded in his written-statement that he has employed some Ishwar Singh as his driver and even not produced that Ishwar Singh in support of his stand, which also shows that Ishwar Singh is a fictitious driver and later on introduced to take a defence to escape from the liabilities. Learned counsel for insurance company also drawn the attention of this Tribunal towards cross-examination of respondent No.2, who appeared as RW-3 in the witness-box and whose cross-examination was deferred to bring the

record regarding the employment of Ishwar Singh from truck union and when he second time appeared, he failed to show any record. So, it is a clear cut case that the offending vehicle was handed over to a minor, who is not having any driving license and not competent to drive the vehicle as per conditions of Sections 3/4 of the Motor Vehicles Act. Respondent No.1 is employed by respondent No.2 as he admitted in his cross-examination. So, the insurance company be exonerated from the liability. In support of his arguments, reliance can be placed on the case law titled as United India Insurance Co. Ltd. Versus Rakesh Kumar Arora and others, 2008(4) R.C.R.(Civil) 684, wherein Hon'ble Supreme Court of India in similar case, where a boy of 15 years was driving the vehicle and caused the accident held that the insurance company is not liable to compensate the insured.

45. Learned counsel for the claimants contended that if the Tribunal comes to a conclusion that the vehicle was driven in contravention of the terms and conditions of the insurance policy, then recovery rights be given to the insurance company and insurance company be directed to pay the amount of compensation to claimants first. In support of his arguments, learned counsel for the claimants relied upon the case law titled as Lal Singh Marabi Versus National Insurance Company Ltd. and others, 2017(3) 187 PLR 501 SC; Pappu and Ors. Versus Vinod Kumar Lamba and Anr., 2018(2) R.C.R. (Civil) 42 (SC) – Law Finder Doc Id # 964715; Managing Director, K.S.R.T.C. Versus

New India Assurance Co. Ltd. & Anr., 2015 (3) Apex Court Judgments 577 (SC); Manuara Khatun & Ors. Versus Rajesh Kr. Singh & Ors., 2017(2) RCR (Civil) 108 SC; Teja Ram and another Versus United India Insurance Co. Ltd. and another, 2016(4) RCR(Civil) 239 (P&H); Manjit Singh Janda Versus Amardeep Kaur and other, 2016 (1) R.C.R. (Civil) 995 (P&H); ICICI Lombard General Insurance Company Limited Versus Ramwati and others, 2017(2) RCR (Civil) 82 (P&H); National Insurance Company Limited Versus Smt.Saroj Bala and others, 2017(3) RCR (Civil) 1053 (P&H); Joginder Kaur and others Versus Mangal Singh and others, 2017(5) RCR (Civil) 370 (P&H); Pawan Kumar and another Versus Satbir and others, 2015 RCR (Civil) 226 (P&H); ICICI Lombard General Insurance Company Versus Jigneshbhai Manilal Shah & Ors., 2017(5) RCR (Civil) 745 (Hon'ble Gujarat High Court); The Executive Director, Index Chits & Finance Pvt. Ltd., Thriprayar Versus V.K. Balan, 2016 RCR (Civil) 811 Hon'ble Kerala High Court (DB); Savitri Devi Versus Sher Singh and Ors., 2014(3) RCR (Civil) 1015 (P&H); United India Insurance Co. Ltd. Versus Smt. Shashi Prabha Sharma & 4 Ors., 2015(7) ADJ 177 (Allahabad) (F.B.) and Shiv Lochan Singh @ Bhola Versus National Insurance Co. Ltd. and others, 2018(1) R.C.R. (Civil) 559 (P&H) - Law Finder Doc Id # 959475.

46. I have heard the learned counsel for the parties and duly considered the contention of both the parties.

47. From the oral and documentary evidence placed on the file, it is clear that for causing this accident, respondent No.1 is sent for trial and he is facing trial before Juvenile Justice Board, at Solan. Regarding this fact, RW-1 Rekha Kashyap has appeared and deposed to prove this fact. Respondent No.2 has not moved any application to any authority that he has employed Ishwar Singh, who handed over the vehicle to respondent No.1, who is a minor nor it is the pleading of respondent No.2 in his written-statement that he has even employed Ishwar Singh S/o late Sh.Chukh Ram as his driver. Ishwar Singh has not been produced by him to prove these facts and he also failed to place on record any documentary proof regarding the employment of Ishwar Singh on his truck, which is admittedly owned by him. So, his self serving statement and affidavit is considered insufficient to prove his stand. Moreover, his evidence are beyond pleadings. So, from the evidence on the file, it is crystal clear that at the time of accident, vehicle was driven by respondent No.1, who is facing trial before Juvenile Justice Board, Solan and a minor at that time and not having a valid driving licence. It is clear that sections 181/187 of M.V. Act incorporated in the FIR against him by the police. Moreover, respondent No.1 has not opted to contest the claim petition. So, in these circumstances, this Tribunal is of the considered view that respondent No.2 is liable to pay the compensation amount to the claimants and insurance company is exonerated from its liability as vehicle is being driven in contravention of the terms and conditions of the

insurance policy and insurer handed over the vehicle to a minor, who was not competent to drive the said vehicle.

48. The authority Kokilaben's case (supra) as relied by learned counsel for respondent No.2 is not applicable to the case in hand being distinguishable as in that case, driver of a truck handed over the control of his vehicle to the cleaner while its engine was running and the ignition key was in the ignition lock. Here in the present case, so called Ishwar Singh is not the driver of the offending truck nor it is the version of respondent No.2 in his written-statement and interestingly, he has not been impleaded as driver in the claim petition. Similarly, the authorities cited by learned counsel for the claimants are also not applicable to the facts of present case being based on different distinguish facts of the case in hand as in these cases, violations are of different types. The insurance company is not liable to reimburse the owner. Respondent No.2 alone is liable to pay the assessed compensation to the claimants. Hence, issues No.3 to 5 are answered in favour of the claimants, respondent No.3 insurance company and against respondent No.2.

ISSUE NO.6 (RELIEF).

49. In view of aforesaid discussion and findings on the aforesaid issues, this petition is hereby partly allowed with costs. An Award of **₹ 14,06,500/- (Rupees Fourteen Lakhs Six Thousand Five Hundred only)** along with interest at the rate of 7½ per cent per annum from the date of filing of the petition till realization is hereby passed in

favour of the petitioners and against the respondents. As held above, respondent No.2 (owner) has been held liable to pay the compensation amount to the claimants. Respondent No.3 Insurance Company has been exonerated from the liability.

50. On realization, 70% of the awarded amount along with amount of consortium (i.e. ₹ 14,06,500 - 40,000/- = ₹ 13,66,500/-) i.e. ₹ 9,56,550/- + ₹ 40,000/- = ₹ 9,96,550/- along with interest be disbursed to petitioner No.1, who is widow of deceased Balbir Singh. In case of payment of compensation, 50% of the amount of her share be given to her in cash for day to day expenses of family and remaining 50% be deposited in her name in the form of FDR in some nationalized bank and be disbursed to her after a period of three years. Remaining 30% amount of ₹ 4,09,950/- (30% of ₹ 13,66,500/-) along with interest be given to petitioners No.2 and 3 and Smt.Satwant Kaur (mother of deceased Balbir Singh) in equal shares and on payment, same be given to them in cash.

51. Counsel's fee is assessed at ₹ 5500/-. Memo of costs be prepared accordingly.

52. Original un-exhibited documents be returned to the parties concerned as per rules after retaining the photocopy of the same on the file. All undisbursed miscellaneous amount and diet amount be disbursed to the concerned parties as per Rules. Summoned files, if any, be detached and sent to the concerned quarter.

53. Ahlmad is directed that the file for consignment should be prepared as per clauses 3,4, 5 and 6 of Chapter 16F Volume-IV of High Court Rules and Orders (i.e. arranging the files in Part A & B) so that the record which is to be destroyed/weeded out shall be kept separately from the initial stage. Reader/Ahlmad are also directed to prepare the list of the witnesses and exhibits, if any, at the end in an annexure form as per clause (9) of Rule 2 of Chapter 11, Volume-I, Part A of the Rules and Orders of Punjab and Haryana High Court.

Pronounced in open Court on
this 23rd day of January, 2019.
Jaiveer

(Subhas Mehla)
Motor Accident Claim Tribunal,
Panchkula. (UID No. HR0047)