

(2011) 03 P&H CK 0709
In the Punjab And Haryana At Chandigarh
Case No : FAO No"s. 1227 and 1269 of 1998

Balwinder Kaur and Another

APPELLANT

Vs

Jit Singh and Others
 Jit Singh and Another Vs
Balwinder Kaur and Others

RESPONDENT

Date of Decision : 17-03-2011

Acts Referred:

Citation : (2011) 03 P&H CK 0709

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—Both the appeals are connected. FAO No. 1227 of 1998 is at the instance of the claimant and FAO No. 1269 of 1998 is at the instance of the owner and driver who had been made liable in the accident for the claim arising out of the accident.

2. The accident was said to have taken place when the deceased who was 24 years of age and a bachelor was travelling in the insured's truck driven by his father Jit Singh. By his negligent driving the vehicle turned turtle and his own boy died. The manner of how the accident took place was given by P.W. 2 who claimed that he was following the said vehicle and he saw that the vehicle turned turtle by the rash and negligent driving of the driver of the insured's truck.

3. The petition had been filed on an expressed statement that deceased was a cleaner in the truck earning Rs. 2500/-. The statement by the insured admitted to the status of the deceased as a cleaner. The insurance company, however, denied the same. The Tribunal found that since no evidence was given by the owner himself, he must be taken to be a gratuitous passenger.

4. When the status of the deceased as a cleaner in the insured's truck was not denied even by the owner in his written statement, the mere fact that the owner was not examined cannot lead to claim that the deceased was a gratuitous

passenger. It was in evidence that Clove had been loaded at Bombay and the accident took place during transit within the State of Rajasthan. The insurance company has an insurance to cover the risk for a commercial vehicle that includes also coverage of risk on premium paid for two drivers and one cleaner. If there was only the deceased alongwith the driver in the truck, I would understand that the deceased must have been the cleaner for, goods which would normally have a cleaner, when more especially, goods were being actually transported. The policy itself makes a specific provision for covering risk to a cleaner. The insurance company shall, therefore, be liable for the claim arising out of the accident. The deceased was said to be earning Rs. 2500/- and since the accident has taken place on 11.11.1995 and it is also in evidence that he was supporting his mother and his siblings alongwith his father, I will apply the scales of compensation provided under Schedule II. The loss of dependency will be computed as $\text{Rs. } 2500/- \times 2/3 \times 12 \times 17 = \text{Rs. } 3,40,000/-$. I will also add Rs. 4500/- towards loss to estate and funeral expenses and round of the claim at Rs. 3,44,500/-.

5. The amount in excess over what has already been awarded by the Tribunal shall attract interest @ 6% from the date of petition till the date of payment. The additional amount shall be payable to the first claimant-mother and the other claimants in that ratio of 75:25.

6. The appeals are allowed as above making the insurer liable and allowing for the owner and driver the right of indemnity.