
(2016) 05 SHI CK 0153
In the High Court Of Himachal Pradesh
Case No : FAO No.203 of 2010

Nati Devi	Vs	APPELLANT
Maya Devi		RESPONDENT

Date of Decision : 20-05-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Motor Vehicles Act, 1988 — Section 146, Section 149, Section 173

Citation : (2017) AAC 10

Hon'ble Judges : Mr. Mansoor Ahmad Mir, CJ.

Bench : Single Bench

Advocate : Mr. Shyam Singh Chauhan, Advocate, for the Respondent No. 2/ driver; Mr. G.D. Sharma, and Mr. Deepak Bhasin, Advocates, for the Respondent No. 3/insurer; Mr. Sanjeev Bhushan, Senior Advocate, with Ms. Abhilasha Kaundal, Advocate, for the Respondent No. 1/O

Final Decision : Disposed Off

Judgement

Mansoor Ahmad Mir, C.J. (Oral) - FAO Nos.203 to 208 of 2010 have been filed by the appellants/claimants against the awards, dated 23rd March, 2009, passed by the Motor Accident Claims Tribunal- I, Sirmaur District at Nahan, H.P., (for short, the Tribunal), while FAO No.219 of 2010 is directed against the award, dated 24th March, 2009, whereby the claim petitions were allowed and the claimants, vide the awards challenged in FAO Nos.203, 204, 207 and 208 of 2010, were granted compensation, in each case, to the tune of Rs. 1,25,000/-, while Rs. 1,49,000/- each were awarded in two cases (subject matter of FAO Nos.205 and 206 of 2010), and Rs. 4,00,600/- were awarded to the claimant (subject matter of FAO No.219 of 2010), alongwith interest at the rate of 7.5% per annum from the date of filing of the claim petitions till realization and the insured was saddled with the liability, (for short, the impugned awards).

2. All these appeals are taken up together for final disposal as the same arise out of one accident caused by driver, namely, Hira Singh, on 12th August, 2005, at

village Gumrah, while driving truck bearing registration No.HP-07- 5940 rashly and negligently. In the said accident, six labourers sustained injuries and succumbed to the same, and one labourer, namely, Kalyan Singh, sustained injuries. The legal representatives of the deceased labourers filed six claim petitions (subject matter of FAO Nos.203 to 208 of 2010), and the injured, for the injuries sustained by him, also filed the claim petition (subject matter of FAO No.219 of 2010), for grant of compensation, as per the break-ups given in each claim petition.

3. The owner/insured, the driver and the insurer resisted the claim petition by filing replies. Parties, in order to prove their claim, led evidence and the Tribunal awarded compensation in favour of the claimants and the injured, as detailed above, by saddling the owner with the liability.

4. Claimants, feeling aggrieved, questioned the impugned awards, by the medium of these appeals, and have prayed for enhancement of compensation.

5. The Owner/insured, the driver and the insurer have not questioned the impugned awards, either by the medium of filing appeals or cross objections.

6. Thus, the only question to be determined in these appeals is - Whether the amount of compensation awarded by the Tribunal, in each case, is inadequate or otherwise.

7. Before answering the above question, I may advert to the arguments advanced by Mr. Sanjeev Bhushan, learned Senior Advocate, appearing for the owner/insured, who pleaded that the Tribunal has wrongly saddled the insured with the liability. He submitted that the offending vehicle was duly insured on the date of accident, the deceased and the injured were travelling in the offending truck as labourer, therefore, the insurer was to be saddled with the liability.

8. It was also submitted that in terms of Section 146 of the Motor Vehicles Act, 1988, (for short, the Act), the owner of a vehicle is under statutory obligation to get the vehicle insured, the aim and object of which is to protect third party interest. Mr. Bhushan further argued that granting of compensation under the Act is a welfare legislation so that the victims of a vehicular accident may not have to wander here and there in order to get compensation. Therefore, the learned Senior Advocate submitted that since the offending vehicle was duly insured, the impugned awards suffer from illegality and deserve to be set aside and the insurer is liable to be saddled with the liability.

9. On the other hand, the learned counsel for the insurer argued that since the owner/insured has not challenged the impugned awards, by filing appeals, therefore, the question of saddling the owner with the liability cannot be determined by this Court.

10. The argument advanced by the learned counsel for the appellant, though attractive, is devoid of any force for the reason that proceedings instituted under Section 166 of the Act are to be taken to the logical end by following a summary

procedure.

11. It is apt to record herein that Part VII of the Code of Civil Procedure (for short, CPC) provides for filing of appeals arising out of decrees and orders. Section 96 provides for appeals from original decree. It is apt to reproduce Section 96 of the CPC hereunder:

"1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed ex parte.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognisable by Courts of Small Cause, when the amount or value of the subject-matter of the original suit does not exceed three thousand rupees."

12. Section 107 of the CPC deals with the "Powers of the Appellate Court" and sub-section (2) thereof, provides specifically that the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed on the trial Court. It is apt to reproduce Section 107(2) of the CPC, as under:

"107. Powers of appellate court.-

(1) xxxxx xxxxxxxx xxxxxxxxx

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein."

13. Section 176 of the Act empowers the State Government to make rules for the purpose of implementing the provisions contained in Sections 165 to 174 of the MV Act. It is apt to reproduce Section 176 of the Act, hereunder:

"176. Power of State Government to make rules.

A State Government may make rules for the purpose of carrying into effect the provisions of sections 165 to 174, and in particular, such rules may provide for all or any of the following matters, namely:--

a. The form of application for claims for compensation and the particulars it may contain, and the fees, if any, to be paid in respect of such applications;

b. The procedure to be followed by a Claims Tribunal in holding an inquiry under this Chapter;

c. The powers vested in a Civil Court which may be exercised by a Claims Tribunal;

d. The form and the manner in which and the fees (if any) on payment of which an appeal may be preferred against an award of a Claims Tribunal; and

e. Any other matter which is to be, or may be, prescribed."

14. In terms of the mandate of Section 176(c) of the Act, the Claims Tribunals are vested with the powers of Civil Court.

15. Now, the question is whether the Appellate Court while hearing an appeal under Section 173 of the Act can pass such an order which ought to have been passed by the Tribunal, without there being any appeal or cross objections from the person against whom the order has been made. The answer is in the affirmative for the reasons given hereinabove, read with the mandate of the Apex Court and of the High Courts.

16. Part VII and Order 41 of the CPC deal with the powers and the scope of the Appellate Court in appeal proceedings.

17. The Apex Court in *Sharanamma and others v. Managing Director, Divisional Contr., North-East Karnataka Road Transport Corporation*, (2013) 11 SCC 517, has held that there are no fetters on the powers of the appellate Court to consider the entire case on facts and law, while hearing an appeal under Section 173 of the Act. It is apt to reproduce paragraphs 10, 11 and 12 of the said decision hereunder:

"10. When an Appeal is filed under Section 173 of the Motor Vehicles Act, 1939 (hereinafter shall be referred to as the "Act"), before the High Court, the normal Rules which apply to Appeals before the High Court are applicable to such an Appeal also. Even otherwise, it is well settled position of law that when an Appeal is provided for, the whole case is open before the Appellate Court and by necessary implication, it can exercise all powers incidental thereto in order to exercise that power effectively. A bare reading of Section 173 of the Act also reflects that there is no curtailment or limitations on the powers of the Appellate Court to consider the entire case on facts and law.

11. It is well settled that the right of Appeal is a substantive right and the questions of fact and law are at large and are open to Review by the Appellate Court. Thus, such powers and duties are necessarily to be exercised so as to make the provision of law effective.

12. Generally, finding of fact recorded by Tribunal should not be interfered with in an Appeal until and unless it is proved that glaring discrepancy or mistake has taken place. If the assessment of compensation by the Tribunal was fair and reasonable and the award of the Tribunal was neither contrary nor inconsistent with the relevant facts as per the evidence available on record then as mentioned hereinabove, the High Court would not interfere in the Appeal. In the case in

hand, nothing could be pointed out to us as to what were the glaring discrepancies or mistakes in the impugned Award of the Tribunal, which necessitated the Appellate Court to take a different view in the matter."

18. It is also beaten law of the land that Claims Tribunal is within its powers to award compensation more/higher than claimed and compensation can be enhanced by the appellate Court while deciding the appeal under Section 173 of the Act, even in the absence of any appeal or cross objections. The Apex Court in the case of Nagappa v. Gurudayal Singh and others, reported in AIR 2003 Supreme Court 674 has taken the same view. It is apt to reproduce paras 7, 9 and 10 of the judgment herein:

"7. Firstly, under the provisions of Motor Vehicles Act, 1988, (hereinafter referred to as "the MV Act") there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal/Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. Only embargo is - it should be "Just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the M.V. Act. Section 166 provides that an application for compensation arising out of an accident involving the death of or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Under the proviso to sub-section (1), all the legal representatives of the deceased who have not joined as the claimants are to be impleaded as respondents to the application for compensation. Other important part of the said Section is subsection (4) which provides that "the Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act." Hence, Claims Tribunal in appropriate case can treat the report forwarded to it as an application for compensation even though no such claim is made or no specified amount is claimed.

8.

9. It appears that due importance is not given to subsection (4) of Section 166 which provides that the Tribunal shall treat any report of the accidents forwarded to it under sub-section (6) of Section 158, as an application for compensation under this Act.

10. Thereafter, Section 168 empowers the Claims Tribunal to "make an award determining the amount of compensation which appears to it to be just". Therefore, only requirement for determining the compensation is that it must be

"just". There is no other limitation or restriction on its power for awarding just compensation."

19. The Apex Court In the cases, titled as State of Haryana and another v. Jasbir Kaur and others, reported in AIR 2003 Supreme Court 3696, The Divisional Controller, K.S.R.T.C. v. Mahadeva Shetty and another, reported in AIR 2003 Supreme Court 4172, A.P.S.R.T.C. & another v. M. Ramadevi & others, reported in 2008 AIR SCW 1213, and Oriental Insurance Co. Ltd. v. Mohd. Nasir & Anr., reported in 2009 AIR SCW 3717, while discussing the ratio laid down in the judgments rendered in the cases titled as Nagappa v. Gurudayal Singh & Ors, (2003) 2 SCC 274; Devki Nandan Bangur and Ors. v. State of Haryana and Ors. 1995 ACJ 1288; Syed Basheer Ahmed & Ors. v. Mohd. Jameel & Anr., (2009) 2 SCC 225; National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700; Punjab State Electricity Board Ltd. v. Zora Singh and Others (2005) 6 SCC 776; A.P. SRTC v. STAT and State of Haryana & Ors. v. Shakuntla Devi, 2008 (13) SCALE 621, has held that the Appellate Court was within its jurisdiction and powers in enhancing the compensation despite the fact that the claimants had not questioned the adequacy of the compensation.

20. The Apex Court in another case titled as Ningamma & another v. United India Insurance Co. Ltd., reported in 2009 AIR(SCW) 4916, held that the Court is duty bound to award just compensation to which the claimants are entitled to. It is profitable to reproduce paragraph 25 of the judgment herein:

"25. Undoubtedly, Section 166 of the MVA deals with "Just Compensation" and even if in the pleadings no specific claim was made under section 166 of the MVA, in our considered opinion a party should not be deprived from getting "Just Compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the Court is duty bound and entitled to award "Just Compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not. However, whether or not the claimants would be governed with the terms and conditions of the insurance policy and whether or not the provisions of Section 147 of the MVA would be applicable in the present case and also whether or not there was rash and negligent driving on the part of the deceased, are essentially a matter of fact which was required to be considered and answered at least by the High Court."

21. The Apex Court in a latest judgment in a case titled Sanobanu Nazirbhai Mirza & others v. Ahmedabad Municipal Transport Service, reported in 2013 AIR SCW 5800, has specifically held that compensation can be enhanced while deciding the appeal, even though prayer for enhancing the compensation is not made by way of appeal or cross appeal/objections. It is apt to reproduce paragraph 9 of the judgment herein:

"9. In view of the aforesaid decision of this Court, we are of the view that the legal representatives of the deceased are entitled to the compensation as

mentioned under the various heads in the table as provided above in this judgment even though certain claims were not preferred by them as we are of the view that they are legally and legitimately entitled for the said claims. Accordingly we award the compensation, more than what was claimed by them as it is the statutory duty of the Tribunal and the appellate court to award just and reasonable compensation to the legal representatives of the deceased to mitigate their hardship and agony as held by this Court in a catena of cases. Therefore, this Court has awarded just and reasonable compensation in favour of the appellants as they filed application claiming compensation under Section 166 of the M.V. Act. Keeping in view the aforesaid relevant facts and legal evidence on record and in the absence of rebuttal evidence adduced by the respondent, we determine just and reasonable compensation by awarding a total sum of Rs. 16,96,000/- with interest @ 7.5% from the date of filing the claim petition till the date payment is made to the appellants."

22. The Apex Court in a latest judgment in the case titled as Smt. Savita v. Bindar Singh & others, reported in 2014 AIR SCW 2053, has laid down the same proposition of law and held that the Tribunal as well as the Appellate Court can ignore the claim made by the claimant in the application for compensation. It is apt to reproduce paragraph 6 of the judgment herein:

"6. After considering the decisions of this Court in Santosh Devi (AIR 2012 SC 2185) as well as Rajesh v. Rajbir Singh (supra), we are of the opinion that it is the duty of the Court to fix a just compensation. At the time of fixing such compensation, the court should not succumb to the niceties or technicalities to grant just compensation in favour of the claimant. It is the duty of the court to equate, as far as possible, the misery on account of the accident with the compensation so that the injured or the dependants should not face the vagaries of life on account of discontinuance of the income earned by the victim. Therefore, it will be the bounden duty of the Tribunal to award just, equitable, fair and reasonable compensation judging the situation prevailing at that point of time with reference to the settled principles on assessment of damages. In doing so, the Tribunal can also ignore the claim made by the claimant in the application for compensation with the prime object to assess the award based on the principle that the award should be just, equitable, fair and reasonable compensation."

22-A. The Apex Court in Giani Ram v. Ramjilal, 1969 (1) SCC 813, held that Order 41, Rule 33 CPC empowers the appellate Court to pass any decree which justice may require. It is apt to reproduce paragraphs 8 and 9 of the said decision hereunder:

"8. Order 41, Rule 33 of the CPC was enacted to meet a situation of the nature arising in this case. In so far as it is material, the rule provides:

"The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or

other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection.

The expression "which ought to have been passed" means "which ought in law to have been passed". If the Appellate Court is of the view that any decree which ought in law to have been passed, but was in fact not passed by the subordinate court, it may pass or make such further or other decree or order as the justice of the case may require.

9. If the claim of the respondents to retain any part of the property after the death of Jwala is negatived, it would, be perpetrating grave injustice to deny to the widow and the two daughters their share in the property to which they are in law entitled. In our view, the case was one in which the power under Order 41, Rule 33, CPC ought to have been exercised and the claim not only of the three sons but also of the widow and the two daughters ought to have been decreed."

23. The Apex Court in the cases in *Narayanarao (dead) through LRs and others v. Sudarshan*, 1995 Supp.(4) SCC 463, *Mahant Dhangir and another v. Madan Mohan and others*, 1987 (Supp.) SCC 528 and in *T.N. Rajasekar v. N. Kasiviswanathan and others*, AIR 2005 SC 3794 held that the High Court, in order to do complete justice to the parties, can invoke the powers under Order 41, Rule 33 of the CPC and pass orders accordingly.

24. The Apex Court in *Delhi Electric Supply Undertaking v. Basanti Devi and another*, JT 1999 (7) SC 486, while replying upon its earlier decision in *Mahant Dhangir* (supra), it was held as under in paragraph 19:

"19. Conditions as laid in provision of Order 41, Rule 33 are satisfied in the present case. When circumstances exist which necessitate the exercise of discretion conferred by Rule 33, the Court cannot be found wanting when it comes to exercise its powers."

25. This Court in *H.P. Road Transport Corporation v. Pt. Jai Ram and etc. etc.*, AIR 1980 Himachal Pradesh 16, held that under Order 41, Rule 33 of the CPC, wide powers have been given to the appellate Court and once it is seized of a matter in its appellate jurisdiction, it is within its power to do complete justice between all the concerned parties. It is apt to reproduce relevant portion of paragraph No.39 and paragraph 40 of the said decision hereunder:

"????...Moreover, theme of Order 41 and especially the wide powers given to the Court under Rule 33 Order 41 suggests that the intention of the Legislature is to see that "once the Court is seized of a matter in its appellate jurisdiction, it is able to do complete justice between all the concerned parties. To us, therefore, it is very clear that the provision enabling a respondent to file cross-objections made in Rule 22 is a procedural provision under which even if a respondent has not preferred any appeal, the Court is enabled to do complete justice to the

parties by allowing the respondent concerned to prefer cross-objections within the period of limitation. Under these circumstances, with great respect to the learned Judges of the Allahabad High Court, we find ourselves unable to accept their view that provision enabling a respondent to file cross-objections is a substantive provision and not a procedural one.

40. In view of our finding that provision for filing cross-objections contemplated by Order 41, Rule 22 is a procedural provision, the ratio of the above referred two decisions of the Supreme Court would at once be attracted, and this Court being seized of an appellate jurisdiction conferred by Section 110-D of the Motor Vehicles Act, It has to exercise that jurisdiction in the same manner in which it exercises its other appellate jurisdiction allowing the respondents in such appeals to prefer cross-objections."

26. Keeping in view the ratio of the judgment supra, it can safely be held that the appellate Court is competent to pass any order in the interest of justice.

27. The High Court of Rajasthan, while dilating upon the powers of the Appellate Court under Order 41, Rule 33 , held in *United India Insurance Co. Ltd. v. Dama Ram and others*, 1994 ACJ 692, that the appellate Court can rectify the error invoking Order 41, Rule 33 even in the absence of Cross Objections or appeal by the claimants. It is apt to reproduce paragraph 7 of the said decision hereunder:

"7. The Tribunal has not passed award in any case against the owner (insured) of the vehicle. It has passed awards against the appellant insurance company only. It is not in dispute that the Tribunal has categorically held that the said accident took place due to rash and negligent driving of the truck by its driver. As such his employer, namely, Mohd. Rafiq, owner of the said truck, was liable for his negligent act. Thus the Tribunal committed a serious error in not making liable the owner and driver of the offending truck to pay the said amounts of compensation. This error can well be corrected by this court by invoking the provisions of Order 41, Rule 33 , Civil Procedure Code, even if no cross-objection or appeal has been filed by the claimants-respondents. It has been observed in *Kok Singh v. Deokabai* AIR 1976 SC 634, paras 6 and 7, as follows:

In *Giani Ram v. Ramji Lal* AIR 1969 SC 1144, the court said that in Order 41, Rule 33 , the expression "which ought to have been passed" means "what ought in law to have been passed" and if an appellate court is of the view that any decree which ought in law to have been passed was in fact not passed by the court below, it may pass or make such further or other decree or order as the justice of the case may require.

(7) Therefore, we hold that even if the respondent did not file any appeal from the decree of the trial court, that was no bar to the High Court passing a decree in favour of the respondent for the enforcement of the charge.

Reference of *Murari Lal v. Gomati Devi* 1986 ACJ 316 (Rajasthan), may also be made here. Similar view has been taken by me while deciding *United India Ins.*

Co. Ltd. v. Dhali 1992 ACJ 1057 (Rajasthan)."

28. The High Court of Orissa at Cuttack, in *M. Adu Ama v. Inja Bangaru Raja and another*, 1995 ACJ, 670, has laid down the same principle of law.

29. This High Court in *Himachal Road Transport Corporation v. Saroj Devi and others*, 2002 ACJ 1146, held that appellate Court is not precluded from passing order which it considers just in the facts of the case, without there being any cross objection or cross appeal. It is profitable to reproduce paragraph 15 of the said decision hereunder:

"15. Keeping in view the aforesaid decisions of Supreme Court and different High Courts including this Court , we feel that there being no prohibition in law, i.e., either under Motor Vehicles Act or under the provisions of Civil Procedure Code, this Court is not precluded from passing order which it considers just in the circumstances of a case without there being either cross-objection or cross-appeal. As such we are further of the view that Order 41, Rule 33 is fully applicable to the appeals under the Motor Vehicles Act."

30. In *National Insurance Co. Ltd. v. Mast Ram and others*, 2004 ACJ 1039, the question arose before this High Court was - Whether the appellate Court can modify the award in the absence of cross-appeal. This High Court answered in the affirmative. It is apt to reproduce paragraph 13 of the said judgment hereunder:

"13. Because of what has been held in this judgment, it is felt necessary to exercise power vested in this court under Order 41, Rule 33 of the Civil Procedure Code to set aside the findings in the operative portion of the award requiring the appellant to pay the amount and then to recover it from the "insurer" (it should have been "insured"?). This is a direction in the impugned award that needs to be set aside. On this aspect, Mr. Sharma had argued that there is no cross-appeal by the owner of the vehicle. To meet such a situation, legislature had enacted Order 41, Rule 33 in the Civil Procedure Code even in cases where an appeal is not filed by a party, like the owner in the present appeal. As such, this plea cannot be accepted."

31. This High Court in *LAC Solan and another v. Bhoop Ram*, 1997(2) Sim.L.C. 229, modified the awards in exercise of powers under Order 41, Rule 33 of the CPC.

32. Faced with the similar situation, the Jammu and Kashmir High Court, in *State Bank of India v. M/s Sharma Provision Store and another*, AIR 1999 J&K 128, held that a High Court can pass a decree which ought to have been passed by the trial Court. It is apt to reproduce relevant portion of paragraph 7 of the said decision hereunder:

"7. ????????.This is an exceptional situation which authorises this Court in the present appeal to pass such decree as ought to have been passed or as the nature of the case demands. Similarly discretion vested in this Court under the

aforesaid provision of law will not be refused to be exercised simply because respondents have not either filed an appeal or cross-objections."

33. Thus, it can easily be deduced that the mandate of Section 96, Section 107(2) and Order 41, Rule 33 of the CPC is just to rectify the errors and achieve the aim and object of the legislation. The purpose of Order 41, as discussed hereinabove, is to enable the appellate Court to do complete justice between the parties and to pass order which ought to have been passed while keeping in view the facts and circumstances of the case.

34. Accordingly, keeping in view the mandate of Section 146 of the Act and aim and object of granting compensation read with above discussion, it is held that this Court has the power to examine the question whether the Tribunal has rightly saddled the owner with the liability, even if the owner has not questioned the impugned award.

35. From the submissions advanced by the learned Senior Advocate, appearing for the insured, the next point emerges for determination is - Whether the Tribunal has rightly exonerated the insurer from its liability.

36. Admittedly, on the date of accident, the offending vehicle was duly insured with the insurer. The insurance policy has been proved on record as Ext.RW-1/C, wherein the sitting capacity of the vehicle in question was mentioned as "6", meaning thereby that the risk of six labourers was covered.

37. The learned counsel for the insurer would contend that the deceased persons as well as the injured were travelling in the offending vehicle as gratuitous passengers, therefore, the insurer is not liable to pay the compensation.

38. For that, I may make a brief reference to the pleadings of the parties. The claimants, in all the cases, have specifically pleaded that the deceased (in six cases) and the injured (in one case) were engaged, on the fateful day, for loading and unloading cement, and after unloading the cement and potatoes, when the offending truck was coming back, it met with the accident, in which six labourers succumbed to the injuries sustained by them, while one labourer was injured.

39. The owner filed replies in all the claim petitions, wherein she never denied that the deceased and the injured were not travelling in the offending vehicle as labourer on the fateful day, rather she admitted the said fact.

40. Thus, it was for the insurer to dislodge the version of the owner and the claimants that the deceased and the injured were not travelling in the offending vehicle as labourer. It is settled proposition of law that it is the duty of the insurer to plead and prove that the insured had committed wilful breach of the terms and conditions of the insurance policy read with the mandate of Sections 147 to 149 of the Act, has not led any evidence and has failed to discharge the onus.

41. My this view is fortified by the Apex Court judgment in the case of National Insurance Co. Ltd. v. Swaran Singh & others, reported in AIR 2004 Supreme Court 1531. It is apt to reproduce relevant portion of para 105 of the judgment hereinbelow:

"105.

(i)

(ii)

(iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in subsection (2) (a) (ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability, must not only establish the available defence(s) raised in the said proceedings: but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefore would be on them.

(v).....

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149 (2) of the Act."

42. It is also profitable to reproduce para 10 of the latest judgment of the Apex Court in the case of Pepsu Road Transport Corporation v. National Insurance Company, reported in (2013) 10 Supreme Court Cases 217 hereinbelow :

"10. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check

whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh case. If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the Insurance Company is not liable for the compensation."

43. In view of the above discussion, the awards impugned in FAO Nos.203 to 208 of 2010 are set aside and it is held that, on the day of accident, the deceased were travelling in the offending vehicle as labourers, the offending vehicle was duly insured and the risk of six labourers was covered, therefore, the insurer is saddled with the liability.

44. Now coming to the question of adequacy of compensation, the deceased in each case, were below the age of 25 years, were bachelors and were doing the job of a labourer. Thus, in each case, the monthly income of each deceased can be said to be Rs. 3,000/-. Since the deceased were bachelors, therefore, in view of the decision of the Apex Court in Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another, (2009) 6 SCC 121, which decision was also upheld by the larger Bench of the Apex Court in Reshma Kumari and others v. Madan Mohan and another, 2013 AIR (SCW) 3120, 1/2 has to be deducted from their monthly income towards their personal expenses. Accordingly, the monthly loss of source of dependency to the claimants, in each case, except the case filed by injured Kalyan Singh, can be said to be Rs. 1,500/-.

45. The deceased were below the age of 25 years at the time of accident. Therefore, in view of the judgment of the Apex Court in Sarla Verma's case supra and 2nd Schedule attached to the Act, multiplier of "15" is just and appropriate and is applied accordingly.

46. In view of the above discussion, the claimants in each case, i.e. in FAO Nos.203 to 208 of 2010, are held entitled to Rs. $1500 \times 12 \times 15 =$ Rs. 2,70,000/-, under the head "loss of source of dependency". The amount shall carry interest at the rate of 7.5% per annum from the date of filing of the claim petitions till deposit.

47. The insurer is directed to deposit the amount of Rs. 2,70,000/- in each case i.e. in FAO Nos.203 to 208 of 2010, alongwith up-to-date interest, within a period of eight weeks from today, in the Registry of this Court, and on deposit, the Registry is directed to release the amount in favour of the claimants through their respective bank accounts strictly in terms of the impugned awards.

48. Now coming to the appeal filed by the injured Kalyan Singh for enhancement of compensation i.e. FAO No.219 of 2010. I have gone through the impugned award as well as the pleadings of the parties. The Tribunal has rightly made discussion in paragraphs 36 to 39 of the impugned award and has rightly assessed the compensation under different heads. Therefore, the compensation, by no stretch of imagination, can be said to be on the lower side.

49. Since in terms of the insurance policy, the risk of only six labourers was covered, as has been held supra, therefore, in this case, (FAO No.219 of 2010), the owner is saddled with the liability. The owner is directed to deposit the entire amount, alongwith interest, as awarded by the Tribunal, within a period of eight weeks from today and on deposit, the Registry is directed to release the same in favour of the claimant forthwith.

50. It is made clear that if owner/insured has deposited the award amount in the above said six claim petitions/appeals, after the passing of the awards, impugned in FAO Nos.203 to 208 of 2010, the Tribunal is directed to refund the same to the insured/owner. It is also made clear that if the said amount stands already disbursed, in that event, the owner/insured is at liberty to approach this Court for the release.

51. All the appeals stand disposed of accordingly.