

**(2016) 12 SHI CK 0010**  
**In the High Court Of Himachal Pradesh**  
**Case No : FAO No. 489 of 2012**

|                                     |            |
|-------------------------------------|------------|
| New India Assurance Company Limited | APPELLANT  |
| Vs                                  |            |
| Fata Chand                          | RESPONDENT |

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**Date of Decision :** 09-12-2016

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 173

**Citation :** (2017) LatestHLJ(HP) 260

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

**Bench :** Single Bench

**Advocate :** FAO No. 489 of 2012; Mr. Ratish Sharma, Advocate, for the Appellant; Mr. Ashwani Pathak, Senior Advocate with Bhim Raj Sharma, Advocate, for the Respondent Nos. 1 to 7; Ms. Ritta Goswami, Advocate, for the Respondent Nos. 8 to 14; Mr. Sameer Thakur, Advoc

**Final Decision :** Dismissed

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## Judgement

Mansoor Ahmad Mir, C.J.(Oral) - All these appeals are outcome of a motor vehicular accident, thus are being clubbed and disposed of by this common judgment and order.

2. 30 claim petitions were filed before various Motor Accident Claims Tribunals, for short "the Tribunals" and separate awards came to be passed, whereby compensation was granted to the claimants and insurer came to be saddled with liability.

3. The owner and driver have not questioned the impugned awards on any count, thus, all the impugned awards have attained finality, so far the same relate to them.

4. The insurer has questioned the impugned awards on the grounds taken in the memo of appeals.

5. Some of the claimants, by the medium of FAO No. 4119 of 2013, Cross-Objections No. 183 of 2013 in FAO No. 493 of 2012, Cross Objections No. 4001

of 2013 in FAO No. 115 of 2013 and Cross Objections No. 29 of 2014 in FAO No. 67 of 2014, have sought enhancement of the compensation.

6. Three questions arise for determination in these appeals:

(i) Whether the Tribunals have rightly held that Driver Sunil Kumar was driving the offending vehicle, rashly and negligently, at the time of accident?

(ii) Whether the risk was covered?

(iii) Whether the amount awarded is adequate?.

7. All the claimants in their claim petitions have pleaded and proved that driver-Sunil Kumar was driving the offending vehicle rashly and negligently and caused the accident.

8. The Tribunals after scanning the evidence, oral as well as documentary, held that driver-Sunil Kumar has caused the accident, while driving the offending vehicle, rashly and negligently.

9. On the last date of hearing, learned Counsel for the insurer stated that one Rajesh Kumar was convicted by the Chief Judicial Magistrate, Lahaul-Spiti at Kullu, H.P., vide judgment dated 30.12.2014, passed in Criminal Case No. 17-1/2007, whereby it was held that Rajesh Kumar was driving the offending vehicle, rashly and negligently, at the relevant time. He has produced photocopy of the said judgment, made part of the file.

10. Learned Counsel for the owner and driver stated that the aforesaid judgment was set aside by the Additional Sessions Judge, Kullu, vide judgment dated 05.10.2016, passed in Criminal Appeal No. 9 of 2015, whereby Rajesh Kumar was acquitted and it was held that Sunil Kumar had driven the offending vehicle at the time of accident. He has also produced photocopy of the said judgment, made part of the file.

11. I have gone through both the aforesaid judgments. Learned Additional Sessions Judge in the judgment dated 05.10.2016, passed in Criminal Appeal No. 9 of 2015, has held that Sunil Kumar was driving the offending vehicle at the relevant point of time. It is apt to reproduce 32 of the aforesaid judgment herein:-

"32. From the perusal of statement of PW- 28, Dr. Paljore that in the prescription slip the name of driver of the bus in question was written as Sunil Kumar and the same was written after due inquiry since he was the driver of the vehicle in question and was mentioned in the MLC by the doctor.

12. Learned Counsel for the insurer was asked whether any appeal has been filed against the judgment passed in Criminal Appeal No. 9 of 2015, supra? He answered the said question in negative.

13. The Tribunals have rightly made the discussion and returned the findings in all the impugned awards that Sunil Kumar had driven the offending vehicle,

rashly and negligently, are accordingly upheld.

14. Admittedly, the seating capacity of the offending vehicle is 42 and 30 claim petitions have been filed. Thus, the risk of all the claimants was covered.

15. It is beaten law of land that the insurer has to satisfy the award to the extent of the risk covered and if the claim petitions are more than the risk covered, then it is for the insured-owner to satisfy the same.

16. My this view is fortified by the judgment of the Apex Court in the case titled as United India Insurance Company Limited v. K.M. Poonam & others, reported in 2011 ACJ 917. It is apt to reproduce para 24 of the judgment herein:

"24. The liability of the insurer, therefore, is confined to the number of persons covered by the insurance policy and not beyond the same. In other words, as in the present case, since the insurance policy of the owner of the vehicle covered six occupants of the vehicle in question, including the driver, the liability of the insurer would be confined to six persons only, notwithstanding the larger number of persons carried in the vehicle. Such excess number of persons would have to be treated as third parties, but since no premium had been paid in the policy for them, the insurer would not be liable to make payment of the compensation amount as far as they are concerned. However, the liability of the Insurance Company to make payment even in respect of persons not covered by the insurance policy continues under the provisions of sub-section (1) of Section 149 of the Act, as it would be entitled to recover the same if it could prove that one of the conditions of the policy had been breached by the owner of the vehicle. In the instant case, any of the persons travelling in the vehicle in excess of the permitted number of six passengers, though entitled to be compensated by the owner of the vehicle, would still be entitled to receive the compensation amount from the insurer, who could then recover it from the insured owner of the vehicle."

17. It is also apt to reproduce para 15 of the judgment of the Apex Court in the case titled as National Insurance Company Limited v. Anjana Shyam & others, reported in 2007 AIR SCW 5237, herein:

"15. In spite of the relevant provisions of the statute, insurance still remains a contract between the owner and the insurer and the parties are governed by the terms of their contract. The statute has made insurance obligatory in public interest and by way of social security and it has also provided that the insurer would be obliged to fulfil his obligations as imposed by the contract and as overseen by the statute notwithstanding any claim he may have against the other contracting party, the owner, and meet the claims of third parties subject to the exceptions provided in Section 149(2) of the Act. But that does not mean that an insurer is bound to pay amounts outside the contract of insurance itself or in respect of persons not covered by the contract at all. In other words, the insured is covered only to the extent of the passengers permitted to be insured or directed to be insured by the statute and actually covered by the contract. The

High Court has considered only the aspect whether by overloading the vehicle, the owner had put the vehicle to a use not allowed by the permit under which the vehicle is used. This aspect is different from the aspect of determining the extent of the liability of the insurance company in respect of the passengers of a stage carriage insured in terms of Section 147(1)(b)(ii) of the Act. We are of the view that the insurance company can be made liable only in respect of the number of passengers for whom insurance can be taken under the Act and for whom insurance has been taken as a fact and not in respect of the other passengers involved in the accident in a case of overloading."

18. This Court in batches of appeals, FAO No. 257 of 2006, titled as National Insurance Company Ltd. v. Smt. Sumna @ Sharda & others, being the lead case, decided on 10.04.2015, and FAO No. 224 of 2008, titled as Hem Ram & another v. Krishan Chand & another, being the lead case, decided on 29.05.2015, has laid down the same principle.

19. By the medium of FAO No. 4119 of 2013, the claimants have questioned the award passed in M.A.C Petition No. 32 of 2008, titled as Fata Chand & others v. Shri Gauri Dutt & others, whereby compensation to the tune of Rs.3,99,000/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition, came to be awarded in favour of the claimants on the ground of adequacy of compensation and sought for enhancement of compensation.

20. Cross-Objections No. 183 of 2013 in FAO No. 493 of 2012, Cross Objections No. 4001 of 2013 in FAO No. 115 of 2013 and Cross Objections No. 29 of 2014 in FAO No. 67 of 2014, have also been filed for enhancement of compensation.

21. In Claim Petition No. 58 of 2008, titled as Shri Ved Prabhat v. Shri Gauri Dutt & others, subject mater of FAO 493 of 2012, the claimants have been granted compensation to the tune of Rs.15,62,022/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition.

22. In Claim Petition No. 43 of 2008, titled as Shri Jagdish Chand v. Shri Gauri Dutt & others, subject mater of FAO 115 of 2015, the claimants have been granted compensation to the tune of Rs.5,15,000/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition.

23. In Claim Petition No. 40 of 2011/2007, titled as Jhalu Devi & another v. Gauri Dutt & others, subject mater of FAO 67 of 2014, the claimants have been granted compensation to the tune of Rs. 4,52,000/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition.

24. I have gone through the record and the impugned awards and am of the considered view that the Tribunal has rightly made the assessment and it cannot be said that the compensation is excessive or meager, in any way. Accordingly, it is held that the just and appropriate compensation has been granted by the Tribunals in the aforesaid claim petitions.

25. Having glance of the above discussions, all the appeals and the cross-

objections are dismissed and the impugned awards are upheld.

26. Registry is directed to release the awarded amount in favour of the claimants strictly as per the terms and conditions contained in the respective impugned awards through payees' cheque amount or by depositing the same in their respective accounts.

27. Send down the record after placing copy of the judgment on each of the Tribunal's files.