2025:PHHC:138234

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on: September 30, 2025
Pronounced on: October 01, 2025

FAO No.511 of 2000 (O&M)

State of Haryana . . . . Appellant

Vs.

Bhag Singh and others . . . . Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- ***Mr. Gaurav Garg, AAG, Haryana for the appellant.

*Mr. Amit Jaiswal, Advocate
for respondent No.3-Insurance Company.

DEEPAK GUPTA, J.

Short and simple issue involved in the present appeal is as to whether the insurer can be held liable to pay compensation amount, in a claim petition under Section 166 of the Motor Vehicle Act, 1988 *(hereinafter referred as 'the M.V. Act')*, in the absence of driver and owner of the offending vehicle.

2. A police jeep bearing registration No.HR-05-C-8181 belonging to the appellant-State of Haryana was damaged in a motor vehicular accident on 22.04.1997, allegedly due to rash and negligent driving of a truck bearing registration No.HP-34-3055, regarding which an FIR was also registered.

3. In order to seek damages/compensation, the State of Haryana, i.e. appellant filed a claim petition under Section 166 of the M.V. Act against driver, owner and insurer of the offending vehicle. However, despite numerous opportunities, the claimant-appellant failed to provide correct addresses of the driver & owner of the offending vehicle, due to which they

could not be served and consequent thereto, the claim petition qua the said driver & owner was dismissed by the Motor Accident Claims Tribunal, Karnal *(herein after referred as 'the Tribunal')* on 18.09.1999. There is nothing on record to suggest that said order dated 18.09.1999 was challenged by the appellant and thus, the same attained finality.

4. The claim petition proceeded only against the Insurance Company, but the same was dismissed by the Tribunal on 17.11.1999 by holding that in the absence of driver and owner of the offending vehicle, no award could be passed against the insurer.

5. Assailing the aforesaid order of the Tribunal, it is contended by learned AAG for the appellant, i.e. State of Haryana that the policy issued by respondent No.3 was a comprehensive policy in respect of the offending vehicle and therefore, the Insurance Company is liable to pay the compensation amount.

6. There is no merit in the aforesaid contention.

7. Section 166 (2) of the Act provides that an application for compensation shall be made against the owner and driver of the vehicle involved in the accident or against both, and the insurer of the vehicle. Thus, the statutory scheme contemplates that the owner and driver are necessary parties, whereas, the insurer is a proper party, whose liability flows only through the liability of the owner/driver.

8. Hon'ble Supreme Court, while dealing with a similar issue in ***'The Oriental Insurance Company Limited V/s Meena Variyal' AIR 2007 SC 1609,*** has observed as under:

> "9. Before we proceed to consider the main aspect arising for decision in this Appeal, we would like to make certain general observations. It may be true that the Motor Vehicles Act, insofar as it relates to claims for compensation arising out of accidents, is a beneficent piece of legislation. It may also be true that subject to the rules made in that behalf, the Tribunal may follow a summary procedure in dealing with a claim. That does not mean that a Tribunal approached with a claim for compensation under the Act should

ignore all basic principles of law in determining the claim for compensation. Ordinarily, a contract of insurance is a contract of indemnity. When a car belonging to an owner is insured with the insurance company and it is being driven by a driver employed by the insured, when it meets with an accident, the primary liability under law for payment of compensation is that of the driver. Once the driver is liable, the owner of the vehicle becomes vicariously liable for payment of compensation. It is this vicarious liability of the owner that is indemnified by the insurance company. A third party for whose benefit the insurance is taken, is therefore entitled to show, when he moves under Section 166 of the Motor Vehicles Act, that the driver was negligent in driving the vehicle resulting in the accident; that the owner was vicariously liable and that the insurance company was bound to indemnify the owner and consequently, satisfy the award made. Therefore, under general principles, one would expect the driver to be impleaded before an adjudication is claimed under Section 166 of the Act as to whether a claimant before the Tribunal is entitled to compensation for an accident that has occurred due to alleged negligence of the driver. Why should not a Tribunal insist on the driver of the vehicle being impleaded when a claim is being filed? As we have noticed, the relevant provisions of the Act are not intended to jettison all principles of law relating to a claim for compensation which is still based on a tortious liability. The Tribunal ought to have, in the case on hand, directed the claimant to implead Mahmood Hasan who was allegedly driving the vehicle at the time of the accident. Here, there was also controversy whether it was Mahmood Hasan who was driving the vehicle or it was the deceased himself. Surely, such a question could have been decided only in the presence of Mahmood Hasan who would have been principally liable for any compensation that might be decreed in case he was driving the vehicle."

[underlined portion emphasized by this court]

9. A Full Bench of this Court in ***"The Oriental Fire & General Insurance Co. Ltd., Bombay v. Bachan Singh and others", 1982 PLR 280*** has also held that pre-condition of the liability of the insurer arises when a judgment is obtained against the insured person, who has taken up the policy of insurance. It is then and then alone that the insurer is obliged to pay the claimant the amount due under such a judgment, as if the insurer was the

judgment debtor and therefore, in the absence of a judgment obtained against the insured, no liability whatsoever would arise against the insurer.

10. It is thus clear that in a claim petition under Section 166 of the Motor Vehicles Act, 1988, arising out of an accident based on alleged negligence, the driver of the offending vehicle is a necessary party. This is because the primary liability in law to pay compensation is that of the driver (as the tortfeasor), with the owner being vicariously liable and the insurer indemnifying the owner. There exists no privity of contract between the third-party claimant and the insurer. The insurer's liability flows solely from the contract of insurance entered into with the insured (i.e., the vehicle owner). Consequently, the insurer becomes liable to indemnify the insured only after the driver and the owner are first held liable to pay compensation to the claimant.

11. As such, it is held that the Tribunal did not commit any error in dismissing the claim petition seeking compensation only against the Insurance Company, when appellant-claimant failed to provide the address of driver and owner of the offending vehicle so as to serve them.

12. Consequently, finding the present appeal to be devoid of any merit, the same is hereby dismissed.

October 01, 2025 **(DEEPAK GUPTA)**
Sarita **JUDGE**

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No