

Appellate Court was correct in its conclusion that late Shaikaji had made arrangements with regard to his property during his lifetime and the said arrangements had been subsequently recorded in Ex.D7, which had been duly acted upon by the revenue authorities by dividing the suit property into two different parts namely, CTS No.883/A and CTS No.883/B. It is not in dispute that the property which had been divided by late Shaikaji was in occupation of the respective parties and the said fact has also been recorded in the revenue record.

13. It is true that there is no concept of joint family in Muslims but it was open to late Shri Shaikaji to give his property to his children in a particular manner during his lifetime, which he rightly did, so as to avoid any dispute which could have arisen after his death. The arrangement so made was duly accepted by the family members and it was also acted upon. Only thereafter a formal record of the said fact was made by late Shaikaji in Ex. D.7.

14. In our opinion, genuineness of Ex.D7 was rightly not questioned by the lower Appellate Court and the High Court was not correct when it questioned its legality and validity, especially when the plaintiffs had filed a suit after more than 25 years of the aforesaid understanding, which had taken place during or prior to 1958.

15. For the reasons stated hereinabove and more particularly those stated by the lower Appellate Court, we allow the appeal and set aside the judgment delivered by the High Court so as to give effect to the judgment and decree passed by the lower Appellate Court.

16. Thus, the appeal stands disposed of as allowed with no orders as to costs.

Appeal allowed.

PUNJAB AND HARYANA HIGH COURT

Before: Darshan Singh, J.

FAO No.9080 of 2014

Decided on: 27.04.2016

Suman and others

Appellants

Versus

Somveer and others

Respondents

Alongwith

FAO No.9772 of 2014 (O&M), Royal Sundaram Alliance Insurance Company Ltd. v. Suman and others

Present: Mr. S.S. Kharab, Advocate for appellants in FAO No.9080 of 2014 and for respondents No.1 to 3 in FAO No.9772 of 2014.

Mr. P.K. Hooda, Advocate for respondent No.1 in FAO No.9080 of 2014 and for respondent No.4 in FAO No.9772 of 2014.

Mr. Lalit Kumar Gupta, Advocate for respondents No.2 to 9

in FAO No.9080 of 2014 and for respondent No.5 (i) to 5(viii) in FAO No.9772 of 2014.

Mr. D.K. Prajapati, Advocate for Mr. R.S. Madan, Advocate for respondent No.10-Insurance Company in FAO No.9080 of 2014 and for appellant in FAO No.9772 of 2014.

A. Motor Vehicles Act, 1988 (59 of 1988), Section 166 -- Accident proof -- Details of vehicle/ Driver missing in FIR -- Effect of -- Mere fact that the vehicle number is not mentioned in the FIR, is of no consequence -- It was not expected that one would mention the vehicle number and name of the driver in the FIR.

(Para 19)

B. Motor Vehicles Act, 1988 (59 of 1988), Section 166 -- Claim petition in motor vehicle accident case -- Filing of charge-sheet -- Proof of accident -- Copy of the report u/s 173 Cr.P.C. and the charge framed by the Court is available on record, which shows that respondent-driver has been charge sheeted for causing the injuries while driving the tractor in question in a rash and negligent manner -- Charge-sheet establishes that pillion rider has also suffered the injuries in this very accident -- Driver of the tractor has stepped into the witness box and admitted that he is facing the trial in the criminal Court for causing this accident -- He also admitted that on the date of the accident he was driving the tractor -- He has simply denied the accident and deposed that no accident has taken place with his tractor -- Bald statement of respondent-driver cannot rebut the oral as well as documentary evidence adduced by the claimants on the mode of negligence and involvement of the vehicle.

(Para 19)

C. Motor Vehicles Act, 1988 (59 of 1988), Section 166 -- Claim petition in motor vehicle accident case -- Acquittal in criminal case -- Effect of -- Standard of proof in the criminal case and the claim case is entirely different -- Findings in the claim case/civil case is to be recorded on the principle of preponderance of probabilities, whereas in the criminal case the prosecution has to prove the charge to the hilt i.e. by eliminating the possibility of any doubt which may arise in favour of the accused -- Issue regarding negligence is to be decided on the basis of the evidence adduced by the parties in the case -- Subsequent acquittal of respondent-driver is no ground to upset the findings of the issue of negligence recorded by the learned Tribunal.

(Para 20)

D. Motor Vehicles Act, 1988 (59 of 1988), Section 166 -- Compensation in motor vehicle accident case -- Accident occurred in 2011 -- Deceased was 23 years old and was motor mechanic -- No cogent and convincing evidence to establish the profession and income of the deceased -- Income of the deceased taken to be Rs.4500/- p.m. -- Future prospects shall be admissible to the self-employed persons -- 50% of his income shall be added towards the future prospects -- Three dependents, so 1/3rd of the income of the deceased shall be deducted towards his personal and living expenses -- Multiplier of 18 shall be applicable -- Total loss of dependency comes to Rs.9,72,000/- -- Appellant-claimant widow

shall be entitled to Rs.1,00,000/- towards loss of consortium -- Minor son and the widowed mother of the deceased shall also be entitled to Rs.1,00,000/-, each, towards loss of love and affection -- Claimants shall also be entitled to a sum of Rs.25,000/- towards funeral and last right expenses -- Total compensation comes to be Rs.12,97,000/-

(Para 23-25)

E. Motor Vehicles Act, 1988 (59 of 1988), Section 166 – Compensation in motor vehicle accident case – Loss of cover-note by Insurance company – Proof of -- Liability of insurance company -- Insurance Company is disputing its liability on the plea that cover note was never issued by it and the same was lost -- So, it was incumbent upon the appellant-Insurance Company to establish the loss of cover note -- Insurance Company has not been able to establish the loss of the cover note in question -- Appellant-Insurance Company cannot escape from its liability.

(Para 29, 30)

Cases referred:

1. Anita and others Vs. Narender Singh and others 2014(1) TAC 319.
2. National Insurance Company Ltd. Vs. Bimla and others 2011(3) PLR 797.
3. Balbir alias Leela and another Vs. Vikas and others 2014(1) PLR 459.
4. National Insurance Company Ltd. Vs. Satwinder Kaur and others 2010(4) PLR 797.
5. The Oriental Insurance Company Ltd. Vs. Kamla and others 2016 (1) L.A.R. 635 (P&H).
6. Bimla Devi Vs. Himachal Road Transport Corpn., 2009 ACJ 1725.
7. Kusum Lata and others Vs. Satbir and others 2011 ACJ 926.
8. N.K.V. Bros. (P.) Ltd. Vs. M. Karumai Ammal and others etc. AIR 1980 SC 1354.
9. Ram Karan Vs. Zile Singh 2001(3) RCR (Civil) 582.
10. Abdul Rashid s/o Abdul Ajij and Anr. Vs. Shelprabha w/o Harish Pathak and Ors. 1991(2) ACC 444.
11. P.N. Handa Vs. Sandeep Sharma 2013(1) PLR 28.
12. National Insurance Company Ltd. Vs. Pushpa and others, 2015 (9) SCC 166.
13. Munna Lal Jain and another Vs. Vipin Kumar Sharma and others, 2015 (3) L.A.R. 198 (SC).

JUDGMENT

DARSHAN SINGH, J. –

This judgment of mine shall dispose of both the appeals mentioned above, as both these appeals have arisen out of the same award dated

08.05.2014, passed by learned Motor Accidents Claims Tribunal, Panipat (hereinafter called the 'Tribunal'), vide which the appellants-claimants in FAO No.9080 of 2014 have been awarded compensation to the tune of Rs.6,98,000/- along with interest on account of death of Pawan in the motor vehicular accident, which took place on 17.03.2011.

2. FAO No.9080 of 2014 has been filed by claimants for enhancement of the amount of the compensation. FAO No.9772 of 2014 has been filed by Royal Sundaram Alliance Insurance Company Ltd. (respondent No.3 before learned Tribunal) to assail the award and its liability to pay the compensation.

3. The facts of the case are being taken from FAO No.9080 of 2014 filed by appellants-claimants Suman and others. The status of the parties shall also be referred as per this FAO.

4. The brief facts of the case are that on 17.03.2011 Pawan (deceased) along with his friend Mohit (PW-4) was coming to Panipat on motorcycle bearing registration No.HR-06R-7860 being driven by Pawan. Mohit was the pillion rider. At about 10:30 p.m., when they reached in front of Chautala Road turn on G.T. Road, in the area of village Siwah, a tractor along with dumper bearing registration No.HR-31-5826 driven by respondent No.1 Somveer at a very high speed and in a rash and negligent manner, came from the other side of the G.T. Road and hit the motorcycle. Both the occupants of the motorcycle suffered grievous injuries. Pawan succumbed to injuries. The criminal case for this accident was registered bearing FIR No.242 dated 18.03.2011 under sections 279, 337 and 304-A of the Indian Penal Code, 1860 (for short 'IPC') against respondent No.1 at Police Station Chandni Bagh, Panipat. Appellants-claimants Suman and others have filed the claim petition for grant of compensation.

5. The respondents contested the claim petition. Respondent No.1-driver Somveer has filed the written statement wherein he pleaded that no accident has taken place between tractor bearing registration No.HR-31-5826 driven by him and the motorcycle driven by the deceased. The tractor has been falsely involved in this accident just to claim compensation.

6. In the written statement filed on behalf of respondent No.2 (through his LRs)-owner of the tractor bearing registration No.HR-31-5826, it was pleaded that the tractor has been falsely involved in this case by the claimants just to claim the compensation. It was further pleaded that the tractor was duly insured with respondent No.3-Insurance Company.

7. In the written statement filed on behalf of respondent No.3-Insurance Company, it was pleaded that vehicle bearing registration No.HR-31-5826 was not at all insured with it. The Insurance Company never covered the risk of the said vehicle. It was pleaded that respondent No.1 was not holding a valid and effective driving licence and the insured has violated the terms and conditions of the insurance policy. It was further pleaded that the petition against the respondent-Insurance Company is not maintainable.

8. From the pleadings of the parties, the following issues were framed by learned Tribunal:

1. Whether the deceased died in the motor vehicle accident due to the rash and negligent driving of respondent No.1 of the vehicle bearing registration No.HR-31-5826? OPP

2. Whether the claimants are entitled to be compensated by the respondents on account of death of deceased Pawan in the motor vehicle accident, if yes, how much and from whom? OPP
3. Whether respondent No.1 has infringed the conditions of insurance policy, if so, what its effect? OPR
4. Relief.

9. On appreciating the evidence on record, the learned Tribunal came to the conclusion that the accident had taken place due to rash and negligent driving of tractor bearing registration No.HR-31-5826 by respondent No.1 and Pawan son of Balram died due to multiple grievous injuries suffered by him in the accident. The learned Tribunal has computed the amount of compensation payable to the claimants to be Rs.6,98,000/- and all the respondents have been held jointly and severally liable to pay the amount of compensation and the claim petition was allowed accordingly.

10. I have heard learned counsel appearing for the parties and gone through the record of the case carefully.

11. Learned counsel for the appellants-claimants contended that the deceased was 23 years of age. He was a motor mechanic. The learned Tribunal has not awarded any amount towards future prospects to the income of the deceased. Learned Tribunal has also awarded less amount towards the other non-conventional heads. Thus, he contended that the compensation awarded is highly inadequate.

12. On the other hand, Mr. D.K. Prajapati, Advocate for Mr.R.S. Madan, Advocate for appellant-Insurance Company in FAO No.9772 of 2014 contended that it was not proved that the accident has taken place due to involvement of the insured vehicle and negligence of its driver. The FIR has been lodged on statement of PW-2 Ravinder, who has admitted in the cross-examination that he was not the eye-witness of the occurrence. No number of the vehicle has been mentioned in the FIR. He further contended that presence of PW-4 Mohit is extremely doubtful. He has alleged that he also received injuries in this accident but no medical evidence has been produced by the claimants to show any injury on the person of Mohit. He further contended that there is no corroboration to the statement of PW-4 Mohit on the mode of occurrence. He further contended that the driver of the vehicle has been acquitted in the criminal case. Thus, he contended that the claimants have not been able to establish that vehicle bearing registration No.HR-31-5826 was involved in the accident and the accident has taken place due to rash and negligent driving of said tractor by respondent Sombir. To support his contentions, he relied upon cases **Anita and others Vs. Narender Singh and others 2014(1) TAC 319, National Insurance Company Ltd. Vs. Bimla and others 2011(3) PLR 797, Balbir alias Leela and another Vs. Vikas and others 2014(1) PLR 459, National Insurance Company Ltd. Vs. Satwinder Kaur and others 2010(4) PLR 797 and The Oriental Insurance Company Ltd. Vs. Kamla and others FAO No.55 of 2013 decided by Coordinate Bench of this Court on 04.03.2016 = 2016 (1) L.A.R. 635 (P&H).**

13. Learned counsel for the appellant-Insurance Company further contended that the deceased was only a casual worker. Hence, no future prospects were required to be added to the income of the deceased. He further

contended that the learned Tribunal has taken into consideration all the heads separately while computing the compensation. He further contended that otherwise the claimants are not entitled for any amount of compensation as they have failed to establish the involvement of the vehicle and the negligence.

14. I have duly considered the aforesaid contentions.

15. Learned counsel for the appellant-Insurance Company has raised the contentions on the issue of involvement of the vehicle and negligence as if the claimants were required to establish the issue of negligence beyond shadow of reasonable doubt like a criminal charge.

16. It is settled principle of law that the proceedings before the Tribunal are in the nature of summary inquiry, whereas in a criminal case, the rule is to prove the case beyond shadow of reasonable doubt and in civil cases rule of preponderance of probabilities. If there is some evidence before the criminal Court regarding the involvement of the vehicle and the negligence of its driver, it is not appropriate to non-suit the claimants simply on the basis of doubt or suspicion. The Hon'ble Supreme Court in case **Bimla Devi Vs. Himachal Road Transport Corpn., 2009 ACJ 1725** has laid down as under :-

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. 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.....”

17. The same ratio of law has been reiterated by the Hon'ble Apex Court in case **Kusum Lata and others Vs. Satbir and others 2011 ACJ 926**. From the aforesaid ratio of law, it can be safely concluded that the claimants were not required to establish the issue of negligence like a criminal charge beyond shadow of reasonable doubt. They were merely required to establish their case on the touchstone of preponderance of probabilities.

18. As per the case of the claimants, deceased Pawan along with his friend Mohit was travelling on motorcycle bearing registration No.HR-06R-7860. The motorcycle was being driven by deceased Pawan and PW-4 Mohit was the pillion rider. When they reached in front of Chautala Road turn on G.T. Road, village Siwah, respondent No.1 Somveer came there driving his tractor bearing registration No.HR-31-5826 along with dumper at a very high speed rashly and negligently from the other side of the G.T. Road and after crossing negligently from the divider, suddenly came before the motorcycle of the deceased, due to which the motorcycle of the deceased dashed with the tractor. Both the occupants of the motorcycle suffered the injury. This fact is not disputed that the criminal case for causing this accident has been registered against respondent No.1 Somveer vide FIR No.242 dated 18.03.2011 registered at Police Station Chandni Bagh, Distt. Panipat under Sections 279, 337 and 304-A IPC. After thorough investigation of the case, the report under Section 173 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') has been presented against him in the Court of the Judicial Magistrate First Class, Panipat.

19. Mere this fact that the vehicle number is not mentioned in the FIR, is

of no consequence as PW-2 Ravinder Singh, on whose statement the FIR has been recorded was not the eye witness of the occurrence. So, it was not expected that he would mention the vehicle number and name of the driver in the FIR. PW-4 Mohit is the injured witness. He has categorically deposed in his affidavit Ex.PW4/A with respect to the negligence, identity of the vehicle and driver. He being an injured witness, his presence at the spot cannot be doubted. The non-production of the evidence with respect to the injuries on the person of Mohit is no ground to doubt his presence as in the present claim petition no compensation was claimed for the injuries suffered by Mohit. The copy of the report under Section 173 Cr.P.C. and the charge framed by the Court is available on record. Copy of the charge framed by the criminal Court is Ex.C8, which shows that respondent No.1 Somveer has been charge sheeted for causing the injuries to PW-4 Mohit while driving the tractor in question in a rash and negligent manner. So, the charge-sheet Ex.C8 establishes that PW-4 Mohit has also suffered the injuries in this very accident. So, there is absolutely no reason to disbelieve his testimony on the mode of occurrence. He has categorically deposed that the accident has been caused by respondent No.1 Somveer by driving the tractor in question in a rash and negligent manner. His statement is also corroborated from other evidence available on record. Respondent No.1 Somveer the driver of the tractor has stepped into the witness box as RW-2. He has admitted that he is facing the trial in the criminal Court for causing this accident. He also admitted that on the date of the accident he was driving the tractor. He has simply denied the accident and deposed that no accident has taken place with his tractor on 17.03.2011. This bald statement of respondent No.1 cannot rebutted the oral as well as documentary evidence adduced by the claimants on the mode of negligence and involvement of the vehicle.

20. Learned counsel for the appellant-Insurance Company has pleaded that respondent No.1 Somveer the driver of the tractor has been acquitted in the criminal case but the acquittal of respondent No.1 in the criminal case is of no consequence and has no effect on the merits of this claim case. As already mentioned, the standard of proof in the criminal case and the claim case is entirely different. The findings in the claim case/civil case is to be recorded on the principle of preponderance of probabilities, whereas in the criminal case the prosecution has to prove the charge to the hilt *i.e.* by eliminating the possibility of any doubt which may arise in favour of the accused. In the instant case, the issue regarding negligence is to be decided on the basis of the evidence adduced by the parties in this case. The subsequent acquittal of respondent No.1 Somveer is no ground to upset the findings of the issue of negligence recorded by the learned Tribunal. Reference can be made to cases ***N.K.V. Bros. (P.) Ltd. Vs. M. Karumai Ammal and others etc. AIR 1980 SC 1354, Ram Karan Vs. Zile Singh 2001(3) RCR (Civil) 582, Abdul Rashid s/o Abdul Ajij and Anr. Vs. Shelprabha w/o Harish Pathak and Ors. 1991(2) ACC 444 and P.N. Handa Vs. Sandeep Sharma 2013(1) PLR 28.***

21. Cases relied upon by learned counsel for the appellant-Insurance Company are quite distinguishable on facts. In case ***National Insurance Company Ltd. Vs. Bimla and others*** (supra), the involvement of the vehicle was accepted by the Tribunal simply on the basis of admission of the owner of the vehicle. The Insurance Company has raised the plea that the claimant and owner of the vehicle have colluded with each other to lodge a false complaint.

In case **Anita and others Vs. Narender Singh and others** (supra) also there was finding recorded by the learned Tribunal with respect to collusion between claimant, driver and owner of the offending car. In case **Balbir alias Leela and another Vs. Vikas and others** (supra), the witnesses of occurrence examined by the claimants were not the injured witnesses. In case **National Insurance Company Ltd. Vs. Satwinder Kaur and others** (supra), the version of the eye-witness was not found truthful. There was also the plea of collusion. In case **The Oriental Insurance Company Ltd. Vs. Kamla and others** (supra), the acquittal in the criminal case was recorded as the eye-witness of the occurrence has turned hostile, whereas in the instant case it cannot be disputed by learned counsel for the appellant-Insurance Company that Mohit, the eye-witness of the occurrence has not resiled from his evidence in the criminal case. There is also no material to show that there was any collusion between the claimants, driver and owner of the vehicle.

22. Thus, I have no reason to differ with the findings recorded by the learned Tribunal that the accident had taken place due to rash and negligent driving of tractor bearing registration No.HR-31-5826 by respondent No.1, which resulted into fatal injuries to deceased Pawan.

23. Learned Tribunal has awarded a sum of Rs.6,98,000/- as compensation to the claimants on account of death of Pawan in the present accident. The present claim petition has been filed by Smt.Suman, the widow, Vansh, the minor son and Smt.Ram Rati, the widowed mother of deceased Pawan. Learned Tribunal has taken the income of the deceased to be Rs.4500/- per month. It was alleged that deceased was a mechanic of motorcycles and used to earn Rs.50,000/- per month. But no cogent and convincing evidence was adduced to establish the profession and income of the deceased. So, the learned Tribunal has rightly taken the income of the deceased to be Rs.4500/- per month. The learned Tribunal has not awarded any amount towards the future prospects to the income of the deceased. The deceased was 23 years of age. He was a young, hale and hearty person. Even if he would have been working as a casual labourer, there were bright prospects of the appreciation in his income with the lapse of time. Even the State Government revises the minimum wages of skilled/unskilled labourer regularly. So, there is no reason to presume that there could be no appreciation in the income of the casual labourer with the passage of time. Learned counsel for the appellant-Insurance Company has contended that the question regarding future prospects has been referred to the larger Bench of Hon'ble Apex Court in case **National Insurance Company Ltd. Vs. Pushpa and others, 2015 (9) SCC 166**. But in a latter judgment delivered by three Judges Bench of Hon'ble Apex court in case **Munna Lal Jain and another Vs. Vipin Kumar Sharma and others, 2015 (3) L.A.R. 198 (SC) = 2015(3) PLR 304**, it has been laid down that the future prospects shall be admissible even to the self-employed persons. Thus, in view of the latter view of Hon'ble Apex Court, the future prospects cannot be denied towards the income of the deceased. The deceased was 23 years of age, so 50% of his income shall be added towards the future prospects. The total income comes to Rs.6750/- per month i.e. Rs.81,000/- per annum.

24. There were three dependents, so 1/3rd of the income of the deceased shall be deducted towards his personal and living expenses. The remainder

comes to Rs.54,000/- per annum. In view of the age of the deceased, the multiplier of 18 shall be applicable. Thus, the total loss of dependency comes to Rs.9,72,000/-.

25. The learned Tribunal has awarded only Rs.20,000/- towards loss of consortium, Rs.25,000/- towards loss of love and affection and Rs.10,000/- towards funeral and last right expenses. These amounts awarded by the learned Tribunal are on the lower side. Appellant-claimant Smt. Suman, the widow of Pawan shall be entitled to Rs.1,00,000/- towards loss of consortium. Appellant-claimant No.2 Vansh, the minor son and appellant-claimant No.3 Smt. Ram Rati, the widowed mother of the deceased shall also be entitled to Rs.1,00,000/-, each, towards loss of love and affection. The claimants shall also be entitled to a sum of Rs.25,000/- towards funeral and last right expenses. Thus, the appellants-claimants are entitled to total amount of Rs.12,97,000/- as compensation on account of death of Pawan in this accident, instead of Rs.6,98,000/- as awarded by the learned Tribunal.

26. Learned counsel for the appellant-Insurance Company has also disputed its liability to pay the amount of compensation. He contended that the tractor in question was never insured with the appellant-Insurance Company. In fact, some cover notes including cover note No.LUN-0999410 were lost and the report was lodged with Police Station Solan Sadar vide G.D. Entry No.12(A) dated 25.09.2009. The accident has taken place much after the loss of the aforesaid cover note. He contended that the appellant-Insurance Company has examined RW-1 Sunil Baweja, the Territory Manager of the appellant-Insurance Company, who has categorically deposed about the loss of the cover note and said cover note was never issued by the appellant-Insurance Company in favour of Ran Singh (respondent No.2 in the claim petition). Even no premium was received by the appellant-Insurance Company against the said cover note. The appellant-Insurance Company has also examined HC Madan Singh as RW-2, who proved G.D. No.12(A) dated 25.09.2009. The certificate Ex.RZ shows that cover note in question pertains to cover note book No. LUB0062441. Thus, he contended that no liability can be fastened on the appellant-Insurance Company.

27. On the other hand, learned counsel for respondents No.2 to 9 (LRs of deceased Ran Singh, respondent No.2 in the claim petition), owners of the tractor contended that the tractor in question was duly insured with the appellant-Insurance Company vide cover note No.LUN 099941, which was issued on 11.10.2010 and was effective upto 10.10.2011. The said cover note is Ex.R2. He contended that the evidence adduced by the Insurance Company does not prove the loss of this cover note.

28. I have duly considered the aforesaid contentions.

29. The appellant-Insurance Company is disputing its liability on the plea that cover note No. LUN 0999410 was never issued by it and the same was lost. So, it was incumbent upon the appellant-Insurance Company to establish the loss of cover note No.LUN 0999410. RW-1 Sunil Baweja, the Territory Manager has deposed about the loss of said cover note in his affidavit. But in the cross-examination, he deposed that he could not tell to whom the concerned cover note book was issued. He further said that the same was issued to the agent of the company but he does not know the name of that agent. He admitted that no agent of the company has reported regarding

missing of the cover note book. He also could not tell the name of the agent who had issued the false cover notes. RW-1 Sunil Baweja has admitted that the cover note book was issued to the agent of the company but the appellant-Insurance Company has not disclosed the identity of the said agent. The said agent was the best witness to prove the loss of the cover note but he has not been examined.

30. The G.D. Entry Ex.R-3 has also not been lodged by RW-1 Sunil Baweja rather the same has been lodged by one Pankaj Sethi, who also has not been examined by the appellant-Insurance Company. In the G.D. Entry, the loss of some cover note books has been mentioned. It is also not established that the cover note Ex.R-2 was the part of the said cover note books. The appellant-Insurance Company has relied upon the certificate/letter Ex.RZ but it is not known as to who is the signatory of this letter. The officer/official of the company who has issued this letter has not been examined. There is no material to show as to on what basis it has been mentioned that cover note No.LUN 0999410 pertains to cover note book LUB0062441. Thus, in these circumstances the appellant-Insurance Company has not been able to establish the loss of the cover note in question. The cover note Ex.P2 shows that the tractor of respondent Ran Singh was duly insured with the appellant-Insurance Company on the date of accident. So, the appellant-Insurance Company cannot escape from its liability.

31. Thus, keeping in view my aforesaid discussion, FAO No.9080 of 2014 filed by appellants-claimants Suman and others is hereby allowed. Appellants-claimants Suman and others shall be entitled to a total sum of Rs.12,97,000/- as compensation, instead of Rs.6,98,000/- as awarded by the learned Tribunal. They shall also be entitled to interest on the enhanced amount of compensation at the rate as determined by the learned Tribunal, from the date of filing the petition till realisation. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award. However, the FAO No.9772 of 2014 filed by the appellant-Insurance Company has no merits and the same is hereby dismissed accordingly.

Order accordingly.

PUNJAB AND HARYANA HIGH COURT

Before: Darshan Singh, J.

CR No. 6702 of 2013

Decided on: 27.04.2016

Teja Singh

Petitioner

Versus

Pritam Singh and others

Respondents

Present: Mr. Rajesh Kumar, Advocate for the petitioner.

None for respondents no.1 to 4.

Mr. A.S.Khinda, Advocate for respondents no.5 to 7.

**A. Code of Civil Procedure, 1908 (V of 1908), Order 1 Rule 10 –
Necessary party -- Impleadment of subsequent purchaser as defendant –**