



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(i) FAO-2200-1999 (O&M)

National Insurance Company Ltd.

...Appellant

VERSUS

Surjit Kaur and others

...Respondents

(ii) FAO-2201-1999 (O&M)

National Insurance Company Ltd.

...Appellant

VERSUS

Nirmala Devi alias Kamal Bala and others

...Respondents

Date of Decision: January 10, 2025

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Brij Bhushan Sharma, Advocate for
Mr.Deepak Suri, Advocate
for the appellant.

Mr.Amandeep Singh, Advocate
for respondent No.5.

Mr.Vishaldeep Goel, Advocate
for respondents No.6 and 7.

ARCHANA PURI, J.

At the very outset, it is pertinent to mention that unfortunately
the record of learned Tribunal is not available, on account of the same



having destroyed in the fire incident, which took place in the High Court in the year 2011. However, some of the copies of the pleadings and evidence produced before learned Tribunal has been placed on record by learned counsel for the appellant, but the same are not complete. Learned counsel for the parties further expressed their inability to place on record any other documents.

In the given circumstances, learned counsel for the parties have stated at bar that they have no objection, if the appeals are decided, on the basis of the material available on record.

These are two appeals, filed at the instance of appellant-insurance company thereby, assailing the Award dated 23.04.1999 passed by learned Motor Accident Claims Tribunal, vide which, the compensation was granted on account of death of Jaswinder Singh and Inder Pal, in a motor vehicular accident.

The facts germane, to be noticed, are as follows:-

That on 05.09.1992, at about 3.30 p.m., Jaswinder Singh and Inder Pal, while being occupants of motorcycle, were travelling in the area of village Khajurla and the same had a collision with truck bearing registration No.PBS-4185, coming from the opposite side. The accident was asserted to have taken place, on account of rash and negligent driving of the said truck, driven by respondent-Mangat Singh. Both, Jaswinder Singh and Inder Pal had sustained injuries, which proved fatal, as a result whereof, two claim petitions were filed by the legal heirs of Jaswinder Singh and Inder Pal. Notice of the claim petitions were issued to the respondents and respondent-Mangat Singh, who is driver of the truck in question, had denied the

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allegations levelled in the claim petitions and pleaded that the accident had taken place, due to rash and negligent driving of the motorcycle, whose driver was drunk.

Also, it is pertinent to mention that owners of the truck i.e. respondents No.3, 4 and 5, were proceeded against ex-parte, but later on, they were allowed to join the proceedings and cross-examine the witnesses. Even, insurance company had filed a separate reply, wherein, it had pleaded that driver of the offending truck was not holding valid and effective licence, as a result whereof, the insurance company is not liable to pay the compensation.

However, on appraisal of the evidence, brought on record, learned Tribunal had worked upon the dependency and the compensation to the extent of Rs.2,40,000/- awarded, on account of death of Jaswinder Singh and an amount of Rs.2,66,400/- was awarded, on account of death of Inder Pal, in the accident in question.

At this juncture, it is pertinent to mention that a specific issue was framed by learned Tribunal, with regard to Mangat Singh (driver of the offending truck) not having valid driving licence, at the time of accident and if so, to what effect. However, no evidence, as such, was led by the insurance company and considering the same, this issue was decided against the insurance company and the liability of the respondents to pay the compensation, as worked upon by learned Tribunal, was held to be joint and several of driver, owner and insurer of the offending truck.

Feeling aggrieved, the insurance company has filed the present appeals.

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Learned counsel for the parties heard.

Since, the quantum of compensation, as such, is not disputed, the controversy now only relates to the question of Mangat Singh-driver of the offending truck, to be having valid driving licence or not, at the time of accident.

In this regard, it is pertinent to mention that learned Tribunal had observed that reasonable opportunity was given to the second respondent i.e. insurance company to prove this issue, but no evidence was led and in the absence of any evidence, on this issue, it is arduous to hold that first respondent-driver was not holding a valid driving licence. On this account, it was further held that the second respondent i.e. insurance company, is thus liable to make payment of the compensation to the claimants, as the offending vehicle was insured with it, at the time of accident. Also, it is evident from the record that no evidence, as such, was led by the insurance company to prove this issue.

While making reference to the photostat copies of the documents placed on record, it is submitted by learned counsel for the appellant that the application for sending the interrogatories to the District Judge, Hyderabad, for verification of the driving licence of No.2001/90 alleged to be issued by Licensing Authority M.V. Department, Hyderabad, in the name of Mangat Singh, was filed but however, the same was not decided by learned Tribunal. In the given circumstances, a prayer has also been made for the remand of the case.

However, as observed aforesaid, the record has been destroyed and in the absence of record, it is difficult to ascertain, as to whether this

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application remained pending or not. Otherwise also, from the grounds of appeal, it is evident that this application allegedly was filed on 16.04.1998 and reply to the same had also come. The impugned Award was passed on 23.04.1999. Even if it was so pending, it was required on the part of the appellant-insurance company, to have brought it to the notice of the Tribunal and insist upon the disposal of the aforesaid application.

Furthermore, in the grounds of appeal, there is also mention made about the application for issuance a commission having filed on 24.03.1999 for the issuance of a local commissioner, at the expense of the appellant, for the purposes of examining the Clerk of the licensing authority at Hyderabad, but the same was allegedly dismissed and further, the case was fixed for the recording of the respondents' evidence. Also, there is mention made in the grounds of appeal about another application having filed on 31.03.1999, for examining the Clerk of licensing authority, Hyderabad, by calling him as a witness, on the payment of airfare, but the same was dismissed.

Allegedly, the said applications were filed much prior to the passing of the impugned Award. There is total silence, as to whether the aforesaid orders, passed by learned Tribunal, were further challenged or not.

In these circumstances, the Tribunal ought to consider the copy of the driving licence, which is coming on record. The photocopy of the driving licence has been brought on record, at the instance of learned counsel for the appellant. Perusal of the same reveals that the date of issuance of licence is 10.10.1990 to 09.10.1993, which as such, covers the date of accident i.e. 05.09.1992. The driver was authorized to drive Heavy Transport Vehicle also, throughout India. In the given circumstances, there

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is no further evidence, brought on record, to challenge the recitals of the said driving licence.

Thus, there is no merit in the assertions about Mangat Singh-driver of the offending truck, to be not having valid driving licence. Hence, the findings recorded by learned Tribunal, are hereby affirmed. As such, both the appeals, sans merit and the same are hereby dismissed.

January 10, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No