

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

Civil Revision No. 325 of 2011 (O&M)

Date of Decision: 20.01.2015

Smt. Munni Devi and others

..... Petitioners

Vs.

Bishnumati and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Arvind Singh, Advocate for the petitioners.

Mr. Rajbir Sehrawat, Advocate for respondent No.1-claimant.

Ms. Meenakshi Poswal, Advocate
for respondent No.2-driver of offending vehicle.

None for respondent No.3.

Mr. Ravinder Arora, Advocate
for respondent No.4-Insurance Company.

JASWANT SINGH, J. (ORAL)

LRs of the owner of the offending Maruti Car, namely, Budh Ram, are in revision aggrieved by the order dated 07.10.2010 (**P-8**), passed by the learned Motor Accident Claims Tribunal, Hisar whereby their application under Order 9 Rule 7 read with Rule 13 Civil Procedure Code for setting aside the *ex parte* award dated 21.12.2004 qua owner, in favour of the claimant-Bishnumati awarding a sum of ₹ 1,50,000/- along with interest @ 6% P.A. as compensation on account of death of son of the claimant has been dismissed; as also the award dated 21.12.2004 (**P-1**) absolving the Insurance Company to that extent of their liability and granting them recovery rights.

It is not in dispute that vide the Award dated 21.12.2004 (**P-1**), the Insurance Company was absolved of its liability to pay the compensation in view of the driver-Joginder Singh having failed to produce the original driving licence and also prove that he had a valid driving licence on the date of accident i.e. on the intervening night of 18/19.03.2000. Since the Insurance Company paid the awarded compensation in the first instance, and then sought to recover it from the owner and driver of the offending vehicle, the present petitioners claim that they became aware of the *ex parte* award qua Budh Ram after much delay.

It is contended by learned Counsel for the petitioners that no doubt, Budh Ram-owner of the vehicle had been negligent in pursuing the claim petition, however, in view of the subsequent development inasmuch as the driving licence of the driver-Joginder Singh of the offending vehicle had been duly verified by the Insurance Company from the Licensing Authority, Fatehabad, Haryana, wherein it has come on record that said Joginder Singh did possess a valid driving licence for driving of motorcycle, scooter, car and jeep, a mercy plea for contesting the findings regarding the recovery rights of the Insurance Company is prayed for. It is submitted that as far as the claimant-mother and the other parties are concerned, no prejudice to the rights whatsoever would be caused.

On the other hand, learned Counsel for the Insurance Company very fairly states that pursuant to the directions passed by this Court, the Insurance Company had sought verification report and it has been found that the driver-Joginder Singh did possess a valid driving licence at the time of accident. Said report dated 29.01.2014 has been placed on record as **Annexure P-16**. He, thus, concedes that the finding qua Issue No.3 whereby the Insurance Company was absolved of the vicarious liability has to be modified.

After hearing learned Counsel for the parties and in view of undisputed document (**P-16**), the impugned award dated 21.12.2004 (**P-1**) itself is ordered to be modified to the extent that the driver-Joginder Singh is hereby held to be in possession of a valid driving licence on the date of the accident, therefore, the Insurance Company being the insurer of the offending car is vicariously liable for the awarded compensation.

In view of the aforesaid, accordingly, the impugned award (**P-1**) is ordered to be modified to that extent. If any amount by the petitioners pursuant to the award has been deposited with the Executing Court or with the Insurance Company, the same shall be liable to be refunded immediately. For the delay and the inconvenience caused by the petitioners, the Insurance Company is held entitled to a cost of ₹ 5000/-.

With the aforesaid observation, petition stands disposed of.

January 20, 2015
Manoj/Gagan

(JASWANT SINGH)
JUDGE