

CR No.4401 of 2013 (O&M)

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

**CR No.4401 of 2013 (O&M)
Date of decision:05.02.2015**

Surjit Singh

...Petitioner

Versus

Joginder Singh and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rahul Rampal, Advocate,
for the petitioner.

Mr. Rajbir Wasu, Advocate,
for respondent no.2.

Rakesh Kumar Jain, J.

The respondent no.2 filed an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (here-in-after referred to as the “CPC”) for setting aside the *ex parte* award dated 18.12.2006 which has been dismissed by the Tribunal vide its order dated 29.09.2012.

Initially, learned counsel for respondent no.2 had argued that the impugned order is appealable under Order 43 Rule 1 of the CPC but counsel for the petitioner had submitted that as per Rule 232 of the Punjab Motor Vehicles Rules, 1989, Order 43 Rule 1 of the CPC is not applicable to this case and hence, the revision petition is maintainable.

Counsel for respondent no.2 has thus submitted that the revision petition may be heard and decided on merits.

Counsel for the petitioner has argued that he has a good case on merits because the Tribunal has granted recovery rights on the ground that

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the driving license was not having the endorsement to drive Heavy Transport Vehicle and was only meant for driving Light Transport Vehicle. In this regard, he has submitted that the Clerk of the District Transport Office, Ludhiana, who had appeared as AW1, has stated that respondent no.1 had applied in the office of the District Transport Office, Ludhiana for endorsement of Heavy Transport Vehicle on 11.12.2003, deposited ₹250/- vide receipt no.209119/30 dated 11.12.2003 and passed the driving test, whereas the accident had taken place on 25.01.2004, therefore, respondent no.1 was entitled to drive Heavy Transport Vehicles as well.

Counsel for respondent no.2 has, however, submitted that the issue involved in this case is not as to whether respondent no.1 was having a valid license to drive the Heavy Transport Vehicles but as to whether the *ex parte* award has rightly been passed against him or not? In this regard, he has referred to the finding of the Tribunal in which it has been held that the petitioner has tried to shift the entire burden upon his advocate without taking any action against him.

Although learned counsel for the petitioner has vehemently argued that he has been wrongly proceeded against *ex parte* and the *ex parte* award deserves to be set aside but he could not cause a dent in the finding of the Tribunal recorded in para 9 of the impugned order.

Consequently, I find no merit in the present revision petition and hence, the same is hereby dismissed.

January 05, 2015
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(Rakesh Kumar Jain)
Judge