

(316) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.2620 of 1998 (O&M)
Date of decision: 15.7.2015

Rajwati & Ors.

..... Appellants

Versus

Rajender Kumar & Ors.

..... Respondents

Present: None for the appellants.

Mr. Rohit Goswami, Advocate for
Mr. D.P. Gupta, Advocate for respondents
No.3 – National Insurance Company.

Mr. Tanmoy Gupta, Advocate for Mr. Suman Jain,
Advocate for respondent No.6.

S.S. Saron, J.

This appeal has been filed by Smt. Rajwati widow of Surender (deceased), Rameshwari Devi mother of deceased Surender, Momraj father of deceased Surender, Nitin minor son of deceased Surender against the judgment and award dated 25.7.1998 passed by the learned Motor Accident Claims Tribunal, Faridabad ('Tribunal' – for short) whereby the claim petition of the appellants has been dismissed as they did not establish their relationships with the deceased Surender.

The claim petition of the appellants was decided along with other claim petitions in relation to an accident that had occurred on 30.7.1996 at about 3-3.30 a.m. near village Kushilpur between TATA 407 vehicle with registration No.DL-II-6688 and

truck bearing No.CIJ-2292 at village Kushilpur due to rash and negligent driving of both the drivers. The learned Tribunal in terms of its impugned award insofar as the appellants are concerned considered that in the heading of the petition the appellants have mentioned their relations with deceased Surender. However, none of them appeared in the witness box to state on oath as to how Surender (deceased) was related to them and in what manner he had died, besides, what was his income. Death Certificate Ex.P7 and Ex.P10 showed that Surender had died on 2.8.1996 and was aged about 20 years at the time of his death by accident. There was no evidence that he was driver of three-wheeler and what was his income and earnings. Besides, there was no evidence regarding his relationship with the appellants. Therefore, no compensation was allowed to them. The appellants aggrieved against the order filed the present appeal.

The paper book of the case was burnt in the fire that had occurred in the High Court premises in January 2011. The paper book was reconstructed. During appeal, the appellants filed CM No.15143 of 1998 under Order 41 Rule 27 for allowing them to lead additional evidence of the widow of the deceased Surender as no evidence could be led due to change of address of the appellants. Therefore, no one appeared for the appellants on 7.5.2014. Notice was issued to Sh. Adish Gupta, Advocate for the appellants for 9.7.2014. On 9.7.2014 Mr. Sandeep Verma, Advocate for Mr. Adish Gupta, Advocate appeared and notice was issued to counsel for respondent No.3 for 13.8.2014. On 13.8.2014 it transpired from the perusal of the paper book that it was not clear as to whether notices were issued to respondents No.1, 2, 4

and 5. Accordingly, notices were issued to respondents No.1, 2, 4 and 5 for 15.10.2014. The case was then taken up on 25.3.2015. It was noticed that name of Rajender Kumar (respondent No.1) who was driver of TATA 407 vehicle was struck off from the array of the respondents as he had died. Besides, Ram Nath (respondent No.4), driver of the truck had also died and his name was also struck off from the array of the respondents. Therefore, the name of the respondents No.1 and 4 stood struck off. The National Insurance Company Limited (respondent No.3) and United India Assurance Company Limited (respondent No.6) were represented by the counsel. It was held that respondents No.2 and 5 who remained unserved need not be served since they were represented by the Insurance Companies (respondents No.3 and 6). It was also ordered that Mr. Adish Gupta, Advocate for the appellants be intimated about the date fixed. The case was adjourned to 13.5.2015. As per office report, Advocate for the appellants was intimated about the date fixed. However, on 13.5.2015 none appeared on behalf of the appellants. Reply to application under Order 41 Rule 27 CPC was filed by the National Insurance Company Limited (respondent No.3). The case was adjourned for today i.e. 15.7.2015. However, today again, no one is present on the behalf of the appellants. Therefore, it appears that the appellants are not interested in pursuing the appeal any further.

Consequently, the appeal is dismissed in default in terms of the Order 41 Rule 17 CPC.

15.7.2015
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(S.S. Saron)
Judge