

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.413 of 2011 (O&M)

Date of decision: 31.03.2015

Govindas Global Export Pvt. Limited

..... Appellant

versus

The Oriental Insurance Company Limited & others

..... Respondents

FAO No.414 of 2011 (O&M)

Govindas Global Export Pvt. Limited

..... Appellant

versus

The Oriental Insurance Company Limited & others

..... Respondents

CORAM: Hon'ble Mr. Justice Kuldeep Singh

Present: Mr. Sandeep K. Sharma, Advocate for the appellant
Mr. R. K. Bashamboo, Advocate for respondent No.1

1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether the judgment should be reported in the Digest?

Kuldeep Singh, J. (Oral)

This order will dispose of FAO No.413 of 2011 and FAO No.414 of 2011, arising out of the same award dated 10.9.2010, passed by the Motor Accident Claims Tribunal, Rohtak (for brevity, 'the Act').

Two claim petitions were filed. One by the legal heirs of Satyawar – deceased and another by Smt. Santosh -injured. It was stated in the claim petitions that on 6.5.2007, Satyawar deceased

along with Santosh, was going on his motorcycle bearing registration No.HR12-J-7504. Satyawan was driving the motorcycle and Santosh was riding the pillion. Near Quilla road turn at Rohtak, a truck / trolly bearing registration No.HR-38-L-2771, being driven in rash and negligent manner by its driver, hit the motorcycle. As a result of the accident, Satyawan died, whereas Santosh received multiple injuries.

Respondent No.2 owner, who is present appellant, contested the case and denied the rash and negligent driving of its driver and rather stated that Satyawan was driving rashly and negligently and he is responsible for the same. The Insurance Company also denied the accident.

During the hearing before the Tribunal, respondent No.1 was not served on several dates, ultimately, counsel for the claimant requested for removing his name from the array of the respondents and accordingly, his name was deleted before framing of the issues.

Thereafter, both the parties led evidence and ultimately, the Tribunal passed the award for Rs.8,74,000/- in MACT Case No.7 of 2007 regarding death of Satyawan. A sum of Rs.20,000/- was awarded to Santosh in MACT Case No.50 of 2007 in relation to the injuries received by her. The Insurance Company was given recovery rights against owner respondent No.2.

The owner, being not satisfied, has come up in the present appeals.

I have heard learned counsel for the parties and have also carefully gone through the file.

Learned counsel for the appellant has argued that there

was a valid driving licence and the findings of the Tribunal in this regard are incorrect. A perusal of the copy of the driving licence produced before the Tribunal shows that the licence (Ex.R3) was valid from 26.10.2008 to 25.10.2011, which shows that in the year 2007, when the accident took place, there was no valid driving licence. The mere fact that the original licence was issued in the year 2004, is no ground to presume it remained valid till the present licence was issued. A perusal of the award further shows that the Insurance Company has produced another driving licence (Ex.R12) issued by the Licencing Authority, Mewat. Verification report (Ex.R10) was also produced, showing that the licence was fake.

It being so, no fault can be found with the findings of the Tribunal that the driver of the trolly was not holding a valid driving licence at the time of accident.

Learned counsel for the appellant has further argued that the proceedings against Nain Singh driver were dropped. Therefore, he was not party before the Tribunal and no finding could be recorded against him at his back. A perusal of the record shows that admittedly, name of the driver was deleted from array of the respondents. However, liability was of the owner of the vehicle as his vehicle was involved in the accident. Vehicle was insured with the Insurance Company. Therefore, even if the driver was not before the Tribunal, it was for the owner to defend the case that his vehicle was not being driven rashly and negligently by his agent. Even though the driver was deleted as respondent, yet there was no bar in producing him in his evidence by the owner to show that he was not

rash and negligent. The owner has not produced the driver in evidence to rebut the statement of injured Santosh, who has proved that truck/ trolly was being driven rashly and negligently. Statement of Santosh went un-rebutted. It being so, no fault can be found with the findings recorded by the Tribunal.

Accordingly, I do not find any force in the present appeals.

The same are accordingly dismissed.

31.03.2015

gk

**(Kuldip Singh)
Judge**