

In the High Court for the States of Punjab and Haryana, at
Chandigarh

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FAO-6199-2012(O&M)

Date of decision: 5.2.2015

New India Assurance Co. Ltd.

Appellant

Versus

Bhupinder Kaur and others

..Respondents

Coram: **Hon'ble Mr. Justice Mahavir S. Chauhan**

Present: Mr. Vinod Gupta, Advocate
for the appellant.
Mr. Karan Gupta, Advocate
for Mr. Rakesh Gupta, Advocate
for the respondents.

Mahavir S.Chauhan, J.(Oral)

This is insurer's appeal to challenge award dated 24.7.2012 whereby learned Motor Accident Claims Tribunal, Patiala (for short,"the Tribunal") has awarded compensation amounting to Rs. 3,93,600/- along with interest at the rate of 9 % per annum in favour of the applicants, i.e., dependents of Kamal Kumar who was killed in a motor vehicle accident caused on account of rash and negligent driving of a truck bearing registration No. PB-11-W-3981 by respondent Som Nath on 25.11.2007. The application was made alleging loss of dependency. It was contested by the respondents including the present appellant by filing written statements. From the pleadings of the parties, learned Tribunal framed following issues:-

1. Whether deceased died in a motor accident caused due

to rash and negligent driving of offending vehicle truck No. CHW-7091, by its driver respondent No.1, near village Jalalpur, on Tasimli to Lalru Road, on 25.11.2007, at about 8:00 p.m.?OPA

2. Whether the claimants are entitled to the compensation, if so, to what amount and from whom?OPA

3. Whether driver of the offending vehicle was not holding a valid and effective driving license. If so, its effect?OPR

4. Relief.

Both the sides adduced evidence and were heard by the learned Tribunal to reach a conclusion that the applicants were able to prove factum and manner of the occurrence as also their entitlement to receive compensation. Accordingly, application was allowed vide award dated 24.7.2012 which, as aforestated, is under challenge in this appeal.

I have heard learned counsel for the parties.

Learned counsel for the appellant has very strenuously argued that earlier a claim application under Section 163-A of the Motor Vehicles Act, 1988 (for short,"the Act") was filed by the applicants but it was dismissed by the learned Tribunal vide award dated 9.10.2009(Exhibit P1) and that being so, second application on the same cause of action though under a different section of the Act could not be maintained. It is next contended by the learned counsel for the appellant that respondent Som Nath, driver of the offending vehicle, has been acquitted in the criminal proceedings

and, therefore, the plea of the applicants about rash and negligent driving of said Som Nath falls to the ground. The contentions however are resisted by learned counsel appearing for respondent Nos.7 and 8 while other respondents have chosen not to appear despite service.

The first contention raised on behalf of the appellant is negated by a perusal of the award dated 9.10.2009, copy whereof is available on record as Exhibit P1. While dismissing application of the applicants under Section 163-A of the Act, learned Tribunal had allowed them liberty to make a fresh application either under section 166 of the Act or under Section 163-A thereof after impleading necessary parties. This part of the award, Exhibit P1, has not been challenged by the appellant by way of an appeal or revision. That being so, the appellant is deemed to have accepted as correct the findings recorded by the learned Tribunal to the aforesaid effect and, then has allowed the findings to attain finality. In such a situation, the appellant is not entitled to raise this plea now.

As regards the second plea that Som Nath, driver of the offending vehicle has been acquitted by the criminal court as the author of the first information report, namely, Nasib Singh made a different statement before the criminal court than the one made before the learned Tribunal, a reference to evidence of Nasib Singh (PW2) would reveal that he very categorically deposed on the lines of the plea put forth by the applicants in the claim application and when he was tendered for being cross-examination on behalf of

respondents including present appellant, he was not confronted with the statement statedly made by him before the criminal court and that being so provisions of Section 145 of the Indian Evidence Act, 1872 have remained un-complied with. That being a situation, no benefit can be derived by the appellant of the statement made by said witness before the criminal court statedly contrary to what is stated by him before the learned Tribunal.

No other point has been urged on behalf of either side.

In view of the above, I regret my disinclination to interfere with the impugned award.

Dismissed.

February 5,2015
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(MAHAVIR S.CHAUHAN)
JUDGE