IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3402 of 2013 (O&M)
Date of Decision:16.01.2015

Jaswant Singh

….Appellant

Versus

Sunita Kumari and others

….Respondents

CORAM: HON’BLE MS. JUSTICE NAVITA SINGH

Present: Ms. Bindu Goel, Advocate for the appellant.

NAVITA SINGH, J.

Notice was issued only to respondent No.4, who was reported to be missing since long. Therefore, it is only the appellant who has been heard.

CM-13909-CII of 2013

Counsel for the appellant submits that she had been engaged by the appellant through legal aid. The appellant was not in a position to pay anything as he had no source of income and was convicted under Section 304-A of the Indian Penal Code and was in custody. He was later on released on bail but was out of job.

Keeping in view the position explained above, the appellant is exempted from depositing statutory amount.

CM stands disposed of.

CM-13910-CII of 2013

In view of the reasons given in the application and the accompanying affidavit, CM is allowed and the delay of 147 days in filing the appeal is condoned.

FAO No.3402 of 2013

1. The appeal was filed by the appellant, who was driver of the offending vehicle and it was held by Motor Accident Claims Tribunal, Hoshiarpur (Tribunal for short) that the appellant had been driving TATA Sumo No. HR-01F-3487 rashly and negligently and was responsible for causing the accident on 22.10.2009 in which Gurdev Singh had died.

2. The vehicle was not insured and, therefore, liability was fastened on the appellant and respondent No.4 herein. The owner who was respondent No.2 before the Tribunal had not appeared there and the award was passed ex parte against him. Here also, report was received on his summons that he was missing since very long.

3. Counsel for the appellant referred to Section 166 of the Motor Vehicles Act (the Act) stating that the driver could not be held liable as it was the duty cast by law on respondent No.4, who was the owner of the vehicle, to have got the vehicle validly insured. Since the owner had floated the law and had not got the vehicle insured, the driver could not be held liable.

4. Counsel for the appellant probably overlooked the explanation given under sub Section 1 of Section 146 of the Act where the person driving a motor vehicle would not be responsible for contravening the above said provisions of law unless he knew or had reason to believe that there was no such insurance policy in force. A person driving any motor vehicle, therefore, has to be unaware that the vehicle was not insured or at least reason to believe so. If the person driving the vehicle was aware that there was no insurance policy or had a reason to believe that no such policy was in force at the time he was driving the vehicle, he cannot be exonerated.

5. In the instant case, the appellant was the driver of respondent No.4. It is not denied that he was employed as driver by the owner of the vehicle. It is, therefore, not believable that he did not know that the vehicle was not insured. If by any chance, he was not aware, he should have come in the witness box to state so. He was not driving a borrowed vehicle or had not driven it just once so as to say that he may not be in the know of the fact that the vehicle was not insured. It is, therefore, presumed and rather is held that the appellant had knowledge that the vehicle was not insured at the time when he was driving it and the accident occurred.

6. In the circumstances delineated above, the appellant has no escape. The plea of his counsel that the amount of compensation was huge is immaterial. If the appellant was liable, he would remain liable irrespective of the amount of compensation.

7. The appeal is dismissed.

(NAVITA SINGH)
JUDGE

16.01.2015
Ishwar

Whether to be referred to reporter: Yes