

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

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**F.A.O No. 5618 of 2014(O&M)
Decided on : February 24, 2014**

HDFC Ergo General Ins. Co. Ltd.

... Appellant.

Versus

Murti Devi & Anr.

... Respondents

CORAM : HON'BLE MR.JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. Vishal Aggarwal, Advocate, for the appellant.

Mahavir S. Chauhan, J. (Oral)

Heard.

Learned counsel for the appellant abandons his claim based on the document(s) allowed to be placed on record by way of additional evidence stating that he has not been able to find out the document(s).

The appeal is barred by time, but I have heard learned counsel for the appellant on merits.

It is argued by learned counsel for the appellant that the three-wheeler by which the deceased was travelling, was overloaded and it was on that account that the occurrence took place. It has further been argued by the learned counsel that the driving licence held by the driver of the three-wheeler in question was not a valid and effective driving licence. According to learned counsel, driving licence, Exhibit R/3, was found to be fake while validity of the other driving licence, Mark RX, could not be

verified as the record of the Licensing Authority, Nagaland, has been seized by Central Bureau of Investigation. He also submits that driver of the three-wheeler being a resident of Haryana could not have driving licence issued by the Licensing Authority at Nagaland. For these reasons, a presumption adverse to the driver of the three-wheeler ought to have been raised by the learned Tribunal.

Nothing more has been urged.

Factum of the occurrence is not in dispute. Similarly, the quantum of compensation is also not being questioned on behalf of the appellant. The only grievance is with regard to the manner of occurrence as also the validity of the driving licence of driver of the three-wheeler in question.

Case of the applicants before the learned Tribunal, as regards the occurrence, was that on 03.12.2010 the deceased were travelling in a three-wheeler bearing registration No. HR-73-0708 from village Khambi to village Janouli. At about 6.55 pm, when the three-wheeler reached ahead of Sugar Mill, Palwal, its driver started driving it in a rash and negligent manner and took a sudden turn when the three wheeler was running at a high speed. As a result, the three-wheeler fell into the nearby ditch and all the occupants sustained serious injuries. Driver of a Government bus shifted the injured to Able Hospital, Palwal, but on account of serious injuries two of them were shifted to Safdarjung Hospital, Delhi and others to Civil Hospital, Palwal. In the occurrence a few casualties also took place. FIR No.477 dated 03.12.2010 under Sections 279 and 337, IPC, was

also got registered in this regard.

Written statements were filed. Issues were framed and evidence was taken by the learned Tribunal. In proof of the occurrence, applicants examined Murti Devi and Tara Chand as PW-1 and PW-2, respectively. In addition, Parveen Kumar, Ahlmad of the court of Chief Judicial Magistrate, Palwal was also examined as PW-3. FIR (Exhibit P-1), remand papers (Exhibit P-2), Charge-sheet (Exhibit P-3), Post mortum report of Soni (deceased) (Exhibit P-4), medico-legal reports of Ashish Kumar and Tara Chand, Marks 'A' and 'B', respectively, were placed on record. Though the evidence brought by the applicants in support of the occurrence is not part of the file, but on the asking of Court learned counsel for the appellant has read the evidence of Murti Devi. She has supported case of the applicants in her chief-examination and has admitted in her cross-examination that the three-wheeler was overloaded, but for reasons best known to the appellant she was not even confronted with a suggestion that it was on account of overloading that the driver of the three-wheeler lost control over it and the three-wheeler fell into the nearby ditches. That being so, statement made by the witness in her chief-examination has to be deemed to have remained unchallenged as regards the manner of occurrence. It would stand repetition that in the application as also in the chief-examination of the witness examined on behalf of the applicants, rash and negligent driving of the three-wheeler by its driver has been said to be responsible for the unfortunate occurrence. That being so, the contention put forth on behalf of the appellant is liable to be rejected.

As regards the contention based on fake licence, suffice it to say that Issue No.3 was framed by the learned Tribunal in this respect and onus was put on the appellant. It is also matter of record that two driving licences, Exhibit R-3 and Mark RX, pertaining to the driver of the three-wheeler have been placed on record. Driving licence, Exhibit R/3, is stated to have been found to be fake while no verification was thought necessary as regards validity of driving licence Mark RX. It is vehemently argued by learned counsel for the appellant that validity of the driving licence Mark RX could not be ascertained as record of licensing authority, Nagaland has been seized by the Central Bureau of Investigation. However, no evidence to support this contention is shown to be available on record.

It is also contended that driver of the three-wheeler being a resident of Haryana could not be expected to get issued a driving licence from Licensing Authority at Nagaland.

I find myself unable to agree with the submission because it is nowhere the case of the appellant that driver of the three-wheeler has never been a resident of Nagaland. Be that as it may, the driving licence 'Mark RX' is shown to have been renewed by Gurgaon Licensing Authority vide endorsement, Exhibit R/5. Then, no efforts are shown to have been put in by the appellant to find out how and under what circumstances the driving licence 'Mark RX' issued in favour of the driver of the three wheeler and how a "fake" driving licence was validly renewed by the Gurgaon Licensing Authority.

As aforesaid, no further contention has been raised.

For the reasons recorded above, I do not find any reason to interfere in the well reasoned award passed by the learned Tribunal.

Dismissed.

No costs.

February 24, 2014
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[Mahavir S. Chauhan]
Judge