

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**FAO No.2921 of 2001 (O&M)
Date of decision : 29.02.2016**

National Insurance Company Ltd.

.....Appellant

Versus

Suresh Wati and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

- 1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes*
- 2. To be referred to the Reporters or not ? Yes*
- 3. Whether the judgment should be reported in the Digest? Yes*

Present: Mr. Ravinder Mohan Suri, Advocate for appellant.

None for respondents No.1 to 5.

DARSHAN SINGH, J.

CM-15796-CII-2001

There is delay in re-filing the present appeal. The appellant has filed an application under Section 151 of the Code of Civil Procedure, 1908 for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed.

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2. The present appeal has been preferred by the National Insurance Company Ltd. against the award dated 28.03.2001, passed by learned Motor Accidents Claims Tribunal, Ambala (hereinafter called the 'Tribunal'), vide which respondents No.1 to 4 have been awarded the compensation to the tune of Rs.2,02,000/- on account of death of Jai Pal in the motor vehicular accident, which took place on 30.04.1999.

3. The present appeal has been preferred by respondent No.3-National Insurance Company Ltd. to assail the award.

4. Notice of this appeal was issued to the respondents. Respondents No.1 to 5 did not appear despite service for 31.07.2014. Respondent No.6 has been served for today through publication in the newspaper "Ajit" dated 20.02.2016. So, he is also proceeded against ex parte.

5. Learned counsel for the appellant contended that it was not established that the present accident has taken place due to rash and negligent driving of truck bearing registration No.PB-11J-2101 by respondent No.1. No cogent and convincing evidence was adduced by the claimants to prove the issue of negligence. He further contended that the respondent-Insurance Company was not liable to pay the amount of compensation as the original licence was not produced by respondents No.1 & 2 in their evidence.

6. I have duly considered the aforesaid contentions. The same are devoid of merits.

7. The factum of accident has been admitted by respondents

No.1 & 2 in the written statement but they have alleged that deceased himself was negligent because he was under the influence of liquor. When respondent No.1 blew horn he turned his cycle towards wrong side. Another cyclist turned his cycle towards katcha portion of the road. Respondent No.1 tried to save the deceased but he could not be saved. Thus, in the written statement, the factum of accident has been very much admitted. There is also no dispute with the identity of the vehicle involved in the accident and its driver. The respondents have also admitted in the written statement that the another cyclist was Purshotam Lal. So, even the presence of PW2 Purshotam Lal the witness of occurrence has been admitted by respondents No.1 & 2.

8. The claimants have examined said Purshotam Lal as PW2. He has fully supported the version of the claimants and deposed that he along with his brother Jai Pal started from the factory on their cycles. His brother was ahead. He stopped for a while for urinating and, thereafter, started following his brother. In the meanwhile truck No.PB-11J-2101 came from the Delhi side which was being driven in a rash and negligent manner by respondent No.1 and it hit the cycle of his brother from behind. As a impact, deceased sustained multiple and grievous injuries on various parts of his body and succumbed to the injuries. The aforesaid statement shows that the cycle of the deceased was hit from behind which itself shows the negligence on the part of respondent No.1. The statement of PW2 Purshotam Lal is also corroborated from the copy of FIR Ex.P3 and the postmortem Ex.P2. No evidence has been led by respondents in rebuttal to the aforesaid evidence of the claimant. So, there was no reason

to disbelieve the un-rebutted evidence adduced by the claimants on the issue of negligence and there is no escape from the conclusion that the present accident has taken place due to rash and negligent driving of truck bearing registration No.PB-11J-2101 by respondent No.1, which resulted into fatal injuries to deceased Jai Pal.

9. Respondents No.1 & 2 have placed on file the photocopy of the driving licence Ex.R1 in their evidence. The learned Tribunal has mentioned that perusal of the driving licence Ex.R1 depicts that the same was issued by the Licencing Authority, Amritsar in the year 1993 i.e. 15.07.1993 and it was valid upto 14.07.1996. Then it was renewed on 20.10.1996 and it was valid upto 19.10.1999. The accident occurred on 30.4.1999. So, Ex.R1 was valid on the day of accident.

10. There was no necessity to produce the original driving licence nor it can be practicable as the original driving licence is daily required by the driver plying the vehicles. The purpose of producing the copy of the driving licence is to give an opportunity to the Insurance-company to get the particulars of the driving licence verified from the concerned Licencing Authority with respect to its validity and genuineness. After the production of the photocopy of driving licence Ex.R1 the appellant-Insurance Company has not made any effort to get the said licence verified and to produce any report from the office of the concerned Licencing Authority to show that the driving licence produced by respondents No.1 & 2 was fake. So, there is no evidence on record to show that respondent No.1 was not holding any valid and effective licence on the date of accident.

11. Thus, keeping in view my aforesaid discussion, the present appeal has no merits and same is hereby dismissed.

29.02.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**