

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

FAO-5723-2004 (O&M)

Date of decision: 23.2.2016

Naresh Kumar Aggarwal

...Appellant

Versus

Indresh Devi and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.RK Rana, Advocate for the appellant

Mrs.Vandana Malhotra, Advocate
for respondent- Insurance Company

SNEH PRASHAR, J.

There are applications for condonation of delay of 788 days in refiling and 112 days in filing the appeal.

No reply has been filed by the respondents.

For the reasons mentioned in the applications and the submissions made on behalf the parties, both the applications are allowed and delay of 788 days in refiling and 112 days in filing the appeal is condoned.

Main appeal

The present appeal has been filed by the owner of the offending truck assailing the award dated 27.5.2002 passed by learned Motor Accident Claims Tribunal, Rohtak (for short 'the Tribunal') vide

which, a compensation of Rs.3,09,400/- alongwith interest @ 9% per annum was awarded to claimants-respondents No.1 to 4 and Insurance Company -respondent No.5 was directed to first pay the amount of compensation and thereafter, recover the amount so paid from the appellant.

On 22.7.2000, Parveen Kumar, since deceased alongwith his uncle Madan Pal was going on his scooter bearing registration No.UP-14A-1913 from Simbhawali. District Gaziabad to Garh. When they reached near a bridge on a canal in village Simbhawali, a truck bearing registration No. DL-1GA-8524 (hereinafter referred to 'the offending truck') being driven by respondent No.6 came from opposite side and struck against their scooter. Due to the impact, they fell down and suffered multiple injuries. Firstly, they were taken to a nearby hospital, but the condition of Parveen Kumar being serious, he was referred to Govt. Hospital, Gaziabad, where he succumbed to the injuries. First Information Report No.167/2000 under Sections 279/427/304-A of the Indian Penal Code was recorded at Police Station Simbavli, District Gaziabad.

Claimants (respondents No.1 to 4) being the legal heirs of deceased Parveen Kumar filed a claim petition invoking the provisions of Section 166 of the Motor Vehicles Act, 1988, which was allowed and the compensation was awarded as indicated above. Since, it was held that the driver of the offending truck was not holding a valid

driving licence, the owner and driver were held liable for satisfying the award, but the Insurance Company was directed to pay the compensation to the claimants and thereafter recover the amount so paid from the appellant (owner) as well as driver of the offending truck.

Being aggrieved by the impugned award, the appellant owner filed the present appeal.

The submissions made by learned counsel for the appellant as well as learned counsel for respondent- Insurance Company have been heard and record perused.

Learned counsel for the appellant referred to Ex.R-3, report received from Licencing Authority, Meerut and submitted that as per the said report, the driver of the offending truck was holding a valid and effective driving licence to drive 'heavy transport vehicle' at the time of accident and thus, there was no violation of terms and conditions of the insurance policy on part of the appellant-insured and it was the liability of the Insurance Company to indemnify the insured.

On the other hand, learned counsel representing the Insurance Company disputing the report of licencing authority submitted that the driving licence held by the driver of the offending truck was valid only for driving '**LMV (P)**' and not for '**heavy transport vehicle**'.

Admittedly, the offending vehicle in the accident that took

place on 22.7.2000 was a truck which falls in the category of 'transport vehicle'. Perusal of the record shows that the appellant-owner had tendered in evidence the photocopy of the driving licence of the driver of the truck alongwith verification report Ex.R1. As per the said report dated 18.2.2000, given by Licencing Authority, Motor Vehicle Department, Meerut (UP), the driving licence No. DL No.B-10609/MRT/87 dated 15.10.1987, was issued in the name of Brij Pal and by way of endorsement on the driving licence, it was valid for driving 'heavy transport vehicle' w.e.f. 23.4.1997 to 22.4.1997 and 12.4.2000 to 11.6.2002. The accident took place on 22.7.2000 and apparently on the date of accident the driving licence was valid and effective for driving a 'heavy transport vehicle'. The finding of learned Tribunal regarding validity of the driving licence being perverse is set aside.

In the above premise, the present appeal is allowed and the award to the extent of giving recovery right to the Insurance Company is modified and the Insurance Company is held liable for payment of the compensation to the claimants.

23.2.2016
gsv

(SNEH PRASHAR)
JUDGE