210.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2690 of 2010 (O&M)
Date of decision:18.02.2016

Kor Singh ... Appellant

versus

Chaur Lal and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Madan Pal, Advocate,
for the appellant.

Mr. Baljinder Singh, Advocate,
for Mr. Rose Gupta, Advocate,
for respondents 1 and 2.

Mr. D.R. Bansal, Advocate,
for respondent No.3.

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1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

<u>K.Kannan, J</u>. *(Oral)*

<u>CM No.12917-CII of 2009</u>

For the reasons stated in the application, delay of 346 days in filing the appeal is condoned.

Application stands disposed of.

<u>FAO No.2690 of 2010</u>

1. The appeal is by the claimant seeking damages as a third party for the vehicle that was involved in a motor accident for

collision by the insured's truck. The claimant's vehicle was a tractor which had been kept in a state of disrepair and parked with the side of the road. The insured's truck dashed against it and when a claim was made for damages, the contention was that the tractor did not have a valid permit; his driver did not have a valid driving licence and there had been no boulders or contrivances set around the tractor to indicate that it was in a state of disrepair and stationary.

2. The defence accepted by the Tribunal is untenable. The possession of a driving licence is surely irrelevant in a situation of the vehicle was being stationary and the driving skills of the driver was hardly a point at issue for determining the liability. A like issue has actually been considered by the Supreme Court in ***<u>National Insurance Company Limited Versus Swaran Singh (2004) 3 SCC 297</u>*** as illustrating the situation when even the absence of driving licence cannot absolve the Insurance Company of liability. The same shall be a point of consideration also for the fact that the vehicle did not have a valid permit at the relevant time. After all the vehicle was not being run or transporting the goods at the relevant time. If the vehicle had been parked in a place and yet another vehicle dashed against it, the driver of the other vehicle which dashed against a stationary vehicle must take the blame for the collision unless it was a situation of the accident having resulted in a thick of night when there were no parking lights. The accident had

taken place on broad day light around 2:30 PM. I, therefore, make the insured's driver as responsible for the accident.

3. While disallowing the claim for compensation, the court was holding that the claimant had not proved any of the bills and that only copies of the bills had been proved. I find the observation to be erroneous. Each one of the persons, who had issued the bills, had been examined as witnesses and they have themselves given the evidence about the charges; one having collected for the crane services of lifting the tractor, another motor mechanic for the cost of spare parts and the cost of repairs. PW6 was the Crane Operator, who has stated that he has charged ₹2,000/- in support of Ex.P11. PW7 is the Proprietor of the Workshop who has given proof of the collection of repair charges of ₹1,900/- under Ex.P12. PW8 is yet another person, who has carried out repairs and painting who has issued a cash voucher for ₹800/- and also give evidence, while PW10 was a Proprietor of Denting Centre who has collected ₹2,220/- and given evidence about Ex.P15. The spare parts sold by him have also been brought through a cash memo which has been filed in court and exhibited as P16. Even the proprietor of Motor Store has also been examined as PW12. Everyone connected with the documents has been examined and it was a complete lack of application of judicial mind for a Tribunal to reject the claim. I will allow for the claim of ₹33,000/- to be issued in favour of the

appellant and will provide for interest from the date of petition till the disposal of the award and from the date of filing of appeal before this court to the date of award, excluding the period when there was a delay in filing the appeal.

4. There had been restriction of liability for the insurer to ₹6,000/- which I set aside, for, there is no scope for such a presumption and the liability is restricted only to ₹6,000/-, in the absence of the insurance policy. The Tribunal has, however, allowed for right of recovery against the driver and owner of the insured's vehicle for violation of terms of policy regarding the absence of a valid driving licence for the driver who dashed against the stationary tractor. The said fact is not interfered with. Consequently the insurer shall be the benefit of effecting recoveries against the owner and driver of the truck after satisfying the award.

5. The award of dismissal is set aside and the appeal is allowed on the above terms.

(K.KANNAN)
JUDGE

18.02.2016
sanjeev