

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

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FAO No. 1213 of 2012 (O&M)

Date of Decision: September 06, 2016

BALWANT SINGH

-APPELLANT

VS

**VISHAL (MINOR) THRU HIS GRAND MOTHER SUNITA DEVI AND
OTHERS**

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

**Present: Mr.Shiv Kumar, Advocate
for the appellant.**

**Mr.Gaurav Sharma, Advocate for
Mr.R.K.Sharma, Advocate
for respondents No.1 and 2.**

**Mr.Jagjit Singh Chatrath, Advocate for
Mr.Ashwani Talwar, Advocate
for respondent No.4.**

RAJ MOHAN SINGH, J. (ORAL)

**This is an appeal preferred by owner of the offending
vehicle i.e. Truck bearing No.HR-38H-1304 against the award dated
02.11.2011 passed by Motor Accident Claims Tribunal, Faridabad.**

Accident took place on 22.12.2009 at about 8.15 PM

when the deceased Smt.Phool Kali was crushed under the wheels of the offending vehicle and died at the spot.

The claimants filed petition under Section 166 of Motor Vehicles Act, 1988 for grant of compensation on account of death of Smt.Phool Kali in the aforesaid accident. The Tribunal awarded a sum of Rs.4,02,700/- as compensation on account of death of Smt.Phool Kali along with interest @ 7.5% per annum from the date of filing of petition till final realization of the amount. The driving licence of the driver of the offending vehicle was not found genuine and therefore, Insurance Company was held entitled to recover the amount from the insurer i.e. owner of the offending vehicle by executing the award. The driver and owner of the offending vehicle were jointly and severally held liable for making good the payment of compensation. Since the claim was in respect of third party and the offending vehicle/truck was validly insured with the Insurance Company/respondent No.4 herein, therefore, at the first instance, respondent/Insurance Company was directed to pay the awarded amount and then to recover the same by way of process of

execution.

During course of hearing of the appeal on 14.09.2015,
following order was passed:-

“Perusal of the record shows that vide order dated 05.05.2014, the appellant was allowed to summon the officer/official from the DTO's office to produce the record relating to the document filed as additional evidence. However, it is submitted by counsel for the appellant that he had not filed any document rather the driving license which he intends to get proved by summoning the officer/official from DTO's office is already on the Tribunal record and is exhibited as Ex.R5 and this is the original driving license of Driver-Rajesh Mishra.

Considering the submission made and the liberty to lead additional evidence already granted to the appellant, the matter is sent to concerned Motor Accident Claims Tribunal, Faridabad for summoning the officer/official of DTO's office alongwith the record relating to the document exhibited as Ex.R5 on the Tribunal Record.

The Tribunal record be sent back forthwith.

Parties are directed to appear before the Tribunal on 05.10.2015.

After recording the statement of DTO's officer/official, learned Tribunal will send its report alongwith the statement to this Court on or before 12.01.2016.”

On 12.01.2016, this Court further passed an order in continuation to order already passed which reads as under:-

“By order dated 14.09.2015 this Court had directed the Tribunal to record the statements of the official of the DTO and send its report on the validity or otherwise of the driving licence. The Tribunal has sent the deposition of RW-2 but has not given its report about the validity of the driving licence.

I find it very strange that the Tribunal has not complied with the order of this Court. One more opportunity is granted to the Tribunal to give its report on the validity of the driving licence.

Adjourned to 11.05.2016.

Let record be sent back once again to the

Tribunal.”

Pursuant to the aforesaid order, both the parties appeared before the Tribunal. Ashutosh Shukla, Senior Clerk (Registration of Heavy Vehicles), ARTO Administration, Farukhabad, U.P. was examined by the Tribunal. The witness was cross-examined on behalf of the Insurance Company as well. After necessary evidence, learned District and Sessions Judge, Faridabad has submitted a report along with the evidence collected during the proceedings to the effect that driving licence Ex.R5 of Rajesh Mishra shows that the driving licence No.PC 666/FKD/1999 was issued to Rajesh Mishra and the same was also renewed from 30.06.2008 till 29.06.2011 as per deposition made by RW2 Asutosh Shukla before the Tribunal. Verification report Ex.R6 dated 22.05.2012 also indicated that the same was signed and stamped by ARTO Fatehgarh, District Farukhabad (UP). It has also come on record that initially when the driving licence was issued on 11.03.1999, Rajesh Mishra was licensed to drive motorcycle and light motor vehicle (private) and the said licence was valid upto 29.06.2011. Thereafter,

as per driving licence Ex.R5 as well as verification report Ex.R6, Rajesh Mishra was authorized/licensed to drive transport vehicle (T) w.e.f. 30.06.2008 till 29.06.2011.

In view of report submitted by Id. District and Sessions Judge, Faridabad, the driving licence Ex.R5 of driver Rajesh Mishra was found to be genuine at the time when accident had taken place.

In view of the aforesaid report, the impugned award to the extent of recovery rights given to respondent No.4 has to be set aside, therefore, it is ordered that claimants are held entitled to claim the amount under award as ordered by the Tribunal and the appellant and respondents No.3 and 4 are jointly and severally liable to make good the amount of compensation.

With the aforesaid observations, the present appeal is disposed of.

September 06, 2016
jyoti Y.

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No