

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

**FAO No.2659 of 2012(O&M)
Date of decision : 29.01.2016**

Mithu Lal and another Appellants

versus

Santosh and others Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Atul Yadav , Advocate for the appellants.

Mr.Suvir Dewan, Advocate for respondent No.5.

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

AJAY TEWARI, J. (Oral)

This appeal has been filed by the owner and driver contesting the finding of the Tribunal that the driver did not have a valid driving licence.

The brief facts in this case are that on 11.12.2008 Ashok Kumar and Zile Singh were returning to their houses from village Janaula. They had taken lift in a motor cycle from bus stand Janaula and were proceeding towards Pataudi when in the meanwhile a truck/traula bearing no. HR55G-5288 being driven at a high speed came from front side and hit against the motor cycle. As a result of the impact all the occupants of the motor cycle fell on the road and sustained injuries. Ashok Kumar and Zile Singh sustained injuries in the accident. Ashok Kumar had sustained injuries all over his

body including the head and died on his way to hospital. Since the deceased was not wearing helmet and the motor cycle was also being driven in violation of traffic rules with two pillion riders, the Tribunal held the negligence of the motorcyclist as also of the deceased as 30% and that of the driver of the truck/traula as 70% and a compensation of Rs. 3,33,640/- was awarded to the claimant-respondents and insurance company was held liable to pay the compensation with a right to recover the same from the driver and owner of the offending vehicle. That is the reason they both have come up in appeal.

Twofold argument has been raised in this case. The first argument is that as per the version of the respondent No.5, insurance company, the driver did have a valid licence prior to and after the accident but the licence was not valid on the date when the accident took place. However, the appellant-driver had moved an application for additional evidence to place on record the endorsement whereby the licence had been renewed even for the period during which the accident had taken place and that application was allowed and the Tribunal erred in not noticing this fact while passing the final judgment. Learned counsel for respondent No.5 has fairly accepted this.

The second limb of argument is that even the assertion that the licence was not proved because neither the investigator who investigated and gave his report was produced as a witness nor any staff member of the concerned RTA was examined and, therefore, in any case the respondent No.5-insurance company had failed to discharge the onus of proving that the licence was not valid. Learned counsel for respondent No.5 has not been able to deny that while placing the report of the investigator and the RTA on record neither the investigator nor any official from the RTA

staff was produced as a witness. In the circumstances both these arguments of learned counsel for the appellants have to be accepted and judgment of the Tribunal to the extent absolving respondent No.5-insurance company is set aside and it is directed that respondent No.5 would be jointly and severally liable with the appellants i.e. the owner and driver to pay the compensation. The amount deposited by the appellants be refunded to them.

(AJAY TEWARI)
JUDGE

January 29, 2016
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