

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

FAO No.1546 of 1997

Date of Decision.01.08.2017

M/s Inder Singh Bir Singh

.....Appellant

Vs

Mahabir Singh and others

.....Respondents

Present: Mr. Manvinder Sidhu, Advocate
for the appellant.

Mr. R.C. Kapoor, Advocate
for the insurance company.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The appeal has been preferred on behalf of owner of the vehicle, who has been fastened with liability to pay compensation of ₹50,000/- on account of death of 6 ½ years old child, being crushed by truck bearing registration No.HR-24-9677.

Learned counsel appearing on behalf of the appellant submits that the deceased-Sandeep aged 6 ½ years had gone to the market along with his uncle. When they were crossing the road, the truck bearing registration No.HR-24-9677 loaded with stone, being driven rashly and negligently by respondent No.1-Durga Singh, hit against the deceased and for 10-15 steps dragged under the rear tyre. The deceased was crossing the road without looking left and right, therefore, the liability should not have been fastened upon the driver and owner of the truck. It should have been contributory negligence of the uncle of having not taken care of the child and therefore, at least the amount of compensation to be paid by the owner is liable to be reduced to the extent of 50%. The vehicle was insured with

the insurance company, who had identified the insured but owing to the evidence brought on record, the Tribunal found that the driving licence was not genuine and fastened liability upon the appellant, therefore, at the first instance the liability should have been fastened upon the insurance company and at the best, the recovery rights should be given but the fact remains that the fakeness of the licence has not been proved to the hilt, thus, the award is liable to be set aside.

Mr. R.C. Kapoor, learned counsel appearing on behalf of the insurance company submits that even if the argument of the counsel for the appellant is accepted viz-a-viz the fastening of the liability upon the insurance company, the owner would not be benefitted, in case the third party rights are granted as it would entail into payment of enormous interest, As regards the genuineness of the driving licence, it has been proved through the testimony of the witness i.e. RW-2, Jeewan Kumar from the Registration and Licensing Authority, Una (Himachal Pradesh.), thus, urges this Court for dismissal of the appeal by upholding the award.

I have heard learned counsel for the parties and appraised the paper book and of the view that the amount of compensation on account of death of a 6 ½ years old child to the tune of ₹50,000/- with interest @12% per annum is fair and justified. In the absence of any direct and cogent evidence, the liability cannot be reduced by applying the doctrine akin to contributory negligence. The appellant-owner was not able to prove the negligence of the uncle of the deceased. Be that as it may, even if the story narrated in the claim petition is to be believed *per se*, the fact remains that the family has been deprived of the love and affection and other obligations of a young child, therefore, the compensation awarded by the Tribunal

cannot be said to be onerous.

Qua granting of recovery rights to the insurance company is concerned, it is too late in a day, as the accident is of the year 1994. By this time, the award must have been satisfied as there is no interim order granted by this Court. In case such order is passed, the owner would unnecessarily be burdened with liability of interest, therefore, I do not accept the argument of Mr. Sidhu.

In view of the aforementioned, the award passed by the Tribunal is upheld. No ground for interference is made out. The appeal stands dismissed.

(AMIT RAWAL)
JUDGE

August 01, 2017
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No