

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

FAO No.2866 of 2002 (O&M)

Date of decision : 07.07.2017

M/s Green Auto, G.T. Road, Karnal

...Appellant

Versus

Dhanno and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Ashit Malik, Advocate for the appellant.

Mr. V. Ramswaroop, Advocate for respondent No.7.

AMIT RAWAL, J. (Oral)

The appellant-owner is in first appeal against the order of MACT owing to the fastening of the liability of compensation of ₹2,64,200/- alongwith interest at the rate of 9% p.a.

Mr. Ashit Malik, learned counsel appearing on behalf of appellant submits that Ravinder Kumar owner of Santro Car bearing registration No.HR-05G-0912 though admitted the accident but stated that it was Rattan Singh who was driving the vehicle and was having the valid driving licence. The Ld. MACT yet has exonerated the insurance company from indemnification on the point that owner has not been able to prove the actual driver or salary proof or the salary paid to the driver. In fact, the opinion formed by the MACT is that Rattan Singh was having the driving licence whereas vehicle was driven by some other person who did not have valid driving licence. All these factors weighed in the minds of the Court.

The aforementioned findings are illegal and erroneous as the owner has

discharge the onus and he has relied upon the statement of RW1 Ravinder Kumar. The factum of the payment of the compensation to the LRs of the deceased has not been denied as certificate of the receipt of the amount of compensation has been given by her. The accident had taken place on 22.10.1999 and deceased was aged 40 years and was working as Operating Bioler in Rice Mill (Skilled Worker). The factum of the vehicle being having insured with the insurance company is also not denied, therefore, there is no reasons of exoneration.

Mr. V. Ramswaroop, learned counsel appearing on behalf of Insurance Company submits that appellant has not been able to establish the proof of engagement of the driver and rightly so MACT has exonerated the liability, whereas it is fit case of dismissal.

I have heard learned counsel for the parties and appraised the paper book.

For appreciating the arguments of Mr. Ashit Malik, Advocate, it would be apt to reproduce the statement of RW1 in toto, which reads as under:-

“RW1

Shri Ravinder Kumar son of Shri Ram Kishan, aged 43 years, Businessman, r/o Karnal on SA.

I am the owner of Santro Car bearing registration No.HR-05-G-0912. It is correct that the accident took place with the abovesaid vehicle on 22.10.1999 when Rattan Singh respondent No.1 was driving the vehicle and was coming from Chandigarh. This accident took place due to rash and negligent driving of deceased himself.

Xxxxx Shri Anil Munjal Counsel for claimant.

It is correct that vehicle involved in the accident was in the name of Green Auto at the time of accident. It is correct that at the time of accident, respondent No.1 Rattan Singh was my driver. It is also correct that respondent No.1 is facing trial for the aforesaid accident. It is correct that in the above said accident case, I received the vehicle on sapurdari from the court and also received the OD claim for the vehicle from the insurance company. It is incorrect to suggest that accident took place due to rash and negligent driving of the driver of Santro car.

Xxxxxx by Shri Ashok Vohra counsel for respondent No.3.

I employed Rattan Singh, as driver in the month of October, 1999. I cannot produce any document regarding his employment as he was temporary. He remained as driver with me for 1 ½ months. I am assessee. I have not shown Rattan Singh as driver anywhere in any document. I cannot tell as to when my driver was arrested by the police. On the day of occurrence, my car was coming back after leaving my friend at Chandigarh. I have no record regarding the monthly salary paid to my driver. Since long I have not met Rattan Singh. It is incorrect to suggest that the driver has been inserted in the FIR and claim petition only to grab compensation in collusion with me. It is further incorrect to suggest that Rattan Singh has come as driver before the Motor Accident Claims Tribunal in more than 15 cases. It is incorrect to suggest that I am deposing falsely in order to help the claimant in the false case.

RO&AC

Sd/- MACT, Karnal, 6.11.2001”

On going through cross-examination conducted by the Insurance Company, owner has not been able to establish or answer effectively with regard to the employment of Rattan Singh as it has come on evidence that he had applied in the month of October 1999, much less, no

proof of salary or any other proof has been placed on record like salary certificate, statement of account or any attenuating circumstances, collateral evidence to establish that Rattan Singh was driving the vehicle. The factum of facing of the trial would not be a exclusive piece of evidence and is based upon preponderance of evidence. However, each and every case has to be decided on the basis of the evidence led in particular case. On cumulative reading of evidence as extracted above leaves no manner of doubt that Rattan Singh was not actual driving the vehicle and somebody else and the employer was afraid of things that truth will surfaced as the original driver would not having a driving licence. Owner has claimed OD claim for the vehicle from the insurance company. This is a self-serving statement without any evidence. Had any evidence placed on record perhaps it would enable the Court to form different opinion. In fact, bank statement receiving cheque from the insurance company could have been proved through the testimony of any bank witness. In the absence of the same, this Court cannot made to draw the presumption against the Insurance Company.

I do not intend to differ with the findings rendered by MACT, much less, based upon the appreciation of the oral and documentary evidence.

Accordingly, present appeal stands dismissed.

07.07.2017

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No