

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

F.A.O No. 5659 of 2012 (O&M)

Date of decision:- 05.09.2017

Tek Ram and anr.

...Appellants

Versus

Urmila and ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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

Mr. Sanjay Vashisth, Advocate
for respondent No. 1.

Mr Rajnish Malhotra, Advocate
for respondent No. 3.

RITU BAHRI J.

C.M. No. 26124-CII-2012

Application is allowed as prayed for. Accordingly, petitioner is granted permission to place on record copy of permit (Annexure A-1) by way of additional evidence.

C.M. No. 26125-CII of 2012

For the reasons mentioned in the application, delay of 665 days in filing of the present appeal is condoned.

The application stands disposed of accordingly.

FAO No. 5659 of 2012

The present appeal has been preferred by the owner and driver-appellants (for short 'the appellants') against the award dated 16.09.2010 passed by the learned Motor Accident Claims Tribunal, Rewari (for short, 'the Tribunal') granting the recovery rights to the Insurance Company against the present appellants.

The facts in brief are that on 12.09.2009, the deceased along with his nephew Udai Singh was coming from village Kapiwas towards Daruhera on a motorcycle bearing registration No. HR36H-2517. Udai Singh was driving the motorcycle and the deceased was pillion rider. When they crossed the village Malpura stand, a truck known as DUMPER bearing registration No. HR55P-3007 which was coming from back side of the motorcycle i.e from Delhi side with a very high speed and zig zag manner, being driven by respondent No. 1 hit the motorcycle from behind, as a result of which they fell down on the road and sustained grievous injuries on the vital parts of the body of the deceased. The deceased was admitted in Apex Hospital and Trauma Centre Dharuhera but he died on the same day.

The learned Tribunal after going through the evidence led by the parties, awarded the compensation of Rs.27,74,266/-. However, the Tribunal held that motorcyclist as well as respondent No. 1 were contributory negligent in driving their vehicle and hence held the claimants to be entitled to 50% of the compensation. The respondent-Insurance Company were given recovery rights to recover the awarded compensation amount from respondent No. 1 and 2/appellants.

Learned counsel for the appellant at the very outset contended that the learned Tribunal has wrongly held that the present appellants are liable to pay the compensation on the sold ground that appellant No. 1 was not having the valid national permit w.e.f 17.08.2009 to 16.08.2010.

Learned counsel for the appellants submits that the copy of driving licence, copy of registration certificate, copy of insurance policy as well as copy of national permit valid we..f 17.08.2009 to 16.08.2010 were handed over by the appellants to their counsel to place on record the same

but the counsel for the appellants due to oversight or negligence on his part could not produce the National permit.

Learned counsel for the appellants has referred to Annexure A-1 issued by the Regional Transport Authority, Gurgaon which shows that appellant No. 1 was having the permit w.e.f 17.08.2009 to 16.08.2010, which was valid for Delhi, Rajasthan and Chandigarh, which clearly shows that at the time of accident on 12.09.2009, appellant No. 1 was having the valid national permit.

Learned counsel for respondent No. 3-Insurance Company has not filed any reply to the application i.e. C.M. No. 26124-CII-2012 seeking placing on record Annexure A-1 and thus this permit is taken to be true.

Since appellant No. 1 was having the valid national permit at the time of accident, the award dated 16.09.2010 is modified to the extent that the appellants are not liable to pay compensation and the Insurance Company is liable to make the payment of entire compensation to the claimants.

The appeal stands partly allowed to the above extent.

Further it is hereby directed that the amount of Rs.25,000/- deposited by the appellants at the time of filing of appeal, vide receipt No. 438920 dated 09.10.2012 in the Registry of this Court be returned to them.

05.09.2017

G Arora

(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No