

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 2330 of 2013 (O&M)

Date of Decision: 4.12.2017.

The New India Assurance Company Ltd.

.....Appellant

Versus

Smt. Shamima and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rajesh K. Sharma, Advocate
for the appellant.

Mr. Arun Luthra, Advocate and
Ms. Deep Mala, Advocate
for respondents No. 5 and 6.

AVNEESH JHINGAN, J.

C.M. No. 10905-CII of 2013

This is an application for condonation of delay of 133 days in filing the appeal.

For the reasons stated in the application, which is duly supported by an affidavit and after hearing learned counsel for the parties, the application is allowed and delay of 133 days in filing the appeal is condoned.

FAO No. 2330 of 2013

The present appeal has been filed against the award dated 7.8.2012 passed by the Motor Accidents Claims Tribunal, Faridabad (for short 'the Tribunal').

The Insurance Company has filed the present appeal being aggrieved that inspite of deposition of RW-1, the Tribunal has held that the licence was valid licence.

The present litigation is outcome of a road accident that occurred on 29.6.2009 in which Khurshid Ahmed lost his life.

In the said accident, the offending vehicle was Truck bearing registration No. HR-55-H-4335.

Legal heirs of Khurshid Ahmed filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'). The Tribunal awarded a sum of Rs.12,81,000/- along with interest at the rate of 9% per annum.

It may be mentioned here that there is no dispute with regard to the compensation or its quantum. The only issue is the liability to pay compensation .

Learned counsel for the Insurance Company stated that they have actually paid the compensation amount to the claimants. He further argued that the Licencing Clerk from the office of RTO Mathura deposed as RW-1 and in his examination-in-chief he has specifically stated that licence No.9253/M/03 dated 8.7.2003 was issued in the name of Tika Ram s/o Shri Budhan r/o Kotiwara Ka Nangla, Ramgarh, Alawalpur, Faridabad and not in the name of respondent No.1.

Learned counsel for respondents No. 5 and 6 contended that the deposition of RW-1 could not be relied upon as in his cross examination he has admitted that he has separate registers of light motor vehicle and heavy motor vehicle but he has not brought the record of heavy motor vehicle. He further contended that even if the validity was in doubt, he is supported by

the decision of Hon'ble the Apex Court in **Pepsu Road Transport Corporation Versus National Insurance Company Ltd.** 2013 ACJ 2440.

I have heard learned counsel for the parties and perused the paper book as well as the record.

There cannot be any quarrel on the proposition that the onus is upon the insurance company to prove that the licence of the driver of the offending vehicle was not valid.

The facts in the present case are bit strange. The driving licence was produced. The number and date of issue has been mentioned above. The Licencing Clerk from Mathura specifically deposed that the said number of licence has not been issued to the driver of the offending vehicle but to one Tika Ram. The Tribunal relied upon the fact that in his cross-examination he has stated that he has not brought the record which is being separately maintained for heavy motor vehicles. It cannot be assumed that two driving licences of same serial number are issued for the light motor vehicle and for heavy transport vehicle. Once, he has specifically so stated that this number of licence was issued to Tika Ram, the issue of not bringing the register of heavy motor vehicles, has lost relevance. In any case, the possibility cannot be ruled out that the same number might have been used for issuing the licence for heavy vehicle also.

In such circumstance, it would be appropriate to remit the matter back to the Tribunal to decide the issue of liability only. Both the parties will be at liberty to adduce their evidence in support of their case.

At this stage, it may be mentioned that reliance of respondent No. 5 and 6 on the decision of ***Pepsu Road Transport Corporation's case*** (*supra*) at this stage is not called for because that issue will only arise if it

is held that the licence was not valid.

This remand will not curtail the defences available to respondents No. 5 and 6.

Ordered accordingly.

Parties are directed to appear before the Tribunal on 10.1.2018.

4.12.2017.
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No