

114.

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

FAO-3863-2016 (O&M)

Date of decision:19.01.2017

National Insurance Company Limited

... Appellant

versus

Mohd. Rafique alias Rafique Mohd. alias Mohd. Rafool, and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

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

HARI PAL VERMA, J.

CM-23911-CII-2016

Prayer in the application filed under Section 151 CPC is to place on record the statement of RW1-Ashok Kumar.

For the reasons stated in the application, the same is allowed and the statement of RW1-Ashok Kumar is taken on record, subject to all just exceptions.

CM-13117-CII-2016

Prayer in the application filed under Section 5 of Limitation Act read with Order 41 Rule 3-A read with Section 151 CPC is for condoning the delay of 3 days in filing the appeal.

For the reasons stated in the application, the same is allowed and the delay of 3 days in filing the appeal is condoned.

FAO-3863-2016

The appellant-National Insurance Company Limited has filed

Accident Claims Tribunal, Ludhiana, whereby the claim petition preferred by the claimant (respondent No.1 herein) was allowed and he was held entitled for compensation to the tune of ₹4,42,000/- along with interest @ 6% per annum from the date of filing of petition till realization.

Briefly stated, the case of the claimant is that on 07.11.2012, he along with one Rambani was coming from Giaspura to Moti Nagar, Ludhiana on foot. When they reached near Masjid, Park E-Shed, then a truck bearing registration No.PB-10-BS-1013 being driven by respondent No.2 (herein)-Ashok Kumar in a rash and negligent manner at a very high speed, without blowing any horn came from behind. The truck struck against the claimant/injured, resulting in crushing of his right leg under the rear tyre and other injuries as well. He was taken to Civil Hospital, Ludhiana, and from there, he was sent to CMC, Hospital, Ludhiana, where he remained admitted w.e.f. 08.11.2012 to 14.11.2012. He spent about ₹6 lakhs on his treatment. His right leg was amputated. An FIR No.305 dated 08.11.2012 under Sections 279, 338 IPC was registered at Police Station Focal Point, Ludhiana. The claimant, at the time of accident, was 25 years of age and was hale and hearty. He was working as a labourer and his monthly income was ₹15,000/-.

Learned counsel for the appellant has argued that the appellant-Insurance Company has taken a plea in the written statement that the driver of the truck bearing registration No.PB-10-BS-1013 was not holding valid and effective driving licence and accordingly, issue No.3 was framed by the Tribunal. But the said issue was wrongly decided against the appellant-Insurance Company. The driver of the offending truck admitted that on the date of accident, he was holding two driving licences, one from West

Bengal and another from Nagaland, whereas the Motor Vehicles Act, 1988 does not permit holding of two driving licences. The claimant did not examine the doctor to prove the disability certificate and the Tribunal, without any cogent evidence, assessed 30% functional disability and awarded compensation.

I have heard learned counsel for the appellant.

So far as the plea of the appellant as to whether the driver of the truck which caused the accident was holding a valid driving licence or not, the Tribunal has framed a specific issue No.3 which reads as under:-

“3). Whether the respondent No.1 was not holding a valid and effective driving licence at the time of accident? OPR”

The onus to prove the said issue was on the Insurance Company-appellant, but it has failed to lead any evidence to prove the said issue, whereas respondent No.2-driver-Ashok Kumar, while appearing in the witness box as RW-1, has deposed that earlier he was holding a driving licence issued by the Licensing Authority, West Bengal. However, the original driving licence was misplaced. Thereafter, he got another driving licence issued from Nagaland which was valid upto 14.11.2012. He further deposed that after getting driving licence from Nagaland, the driving licence issued by West Bengal was also traced. In this manner, the Tribunal found that the driving licence issued by the Nagaland authority was not fake. The Insurance Company has not led any evidence in rebuttal that the driving licence issued by the Nagaland State Transport Authority was fake in any manner. The plea of the appellant that the driver is holding two driving licences is dispelled for the reason that at the time when the subsequent driving licence was issued, the other licence was misplaced. No other plea

has been raised.

Considering the fact that the appellant has failed to prove that the driving licence held by respondent No.2-driver-Ashok Kumar was fake in any manner, the present appeal warrants no interference and hence, dismissed.

CM-13118-C-2016

Prayer in the application filed under Order 41 Rule 5 read with Section 151 CPC is for stay of the award dated 20.02.2016 of MACT, Ludhiana in MACT case No.11 of 2015.

Since the main appeal has been dismissed by this Court, the application has become infructuous and is dismissed as such.

(HARI PAL VERMA)
JUDGE

19.01.2017
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No