

208(I)

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

FAO No.1739 of 2011 (O&M)
Date of Decision: 14.11.2018

The National Insurance Company Ltd., Chandigarh.

Appellant

Versus

Darshan Singh and others

Respondents

2.
Darshan Singh

FAO No.2495 of 2014 (O&M)

Appellant

Versus

Baldev Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R.C. Kapoor, Advocate
for the appellant [in FAO No.1739 of 2011]
for respondent No.3 [in FAO No.2495 of 2014].

Mr. Naveen Sharma, Advocate
for respondent No.1 [in FAO No.1739 of 2011]
for the appellant [in FAO No.2495 of 2014].

Mr. Vivek Suri, Advocate
for respondents No.2 & 3 [in FAO No.1739 of 2011]
for respondents No.1 & 2 [in FAO No.2495 of 2014]

AVNEESH JHINGAN, J (Oral):

This order shall dispose of two appeals bearing FAO No.1739 of 2011 and FAO No.2495 of 2014, both the appeals arise from same award.

The award dated 17.12.2010 passed by Motor Accident Claims Tribunal, Rupnagar (for brevity 'the Tribunal') has been assailed by filing appeals by National Insurance Company Ltd. i.e.

insurer of truck bearing registration No. HP-23A-1470 (hereinafter referred to as 'offending vehicle') and the claimant.

A motor vehicular accident took place on 19.07.2008. Darshan Singh was riding his bicycle. On his way, he was hit by rashly and negligently driven offending vehicle, as a result, he suffered injuries. A claim petition under Section 166 of Motor Vehicles Act, 1988 (for brevity 'the Act') was filed. The Tribunal held that accident occurred due to rash and negligent driving of the offending vehicle. The owner, driver and insurer of offending vehicle were held jointly and severally liable to pay compensation. The Tribunal awarded compensation of ₹5,50,000/- alongwith interest @ 6% per annum.

The insurer of the offending vehicle is in appeal contending that the driving licence held by the driver of the offending vehicle was not valid, hence, recovery rights should be granted.

The claimant [in FAO No.2495 of 2014] is in appeal for enhancement of compensation awarded by the Tribunal. The appeal is accompanied by an application under Section 5 of the Indian Limitation Act, 1963 for condonation of delay of 1134 days in filing the appeal. The respondents have filed reply to the application.

Learned counsel for the insurer contended that a driving licence (Ex.R-1) was produced by the driver and owner of offending vehicle before the Tribunal. As per the statement of Mahender Kumar, Clerk of office of Registering & Licensing Authority,

Sundernagar (RW-1), albeit licence was issued by the authority, but the driver was not authorised to drive any commercial vehicle. He further contended that another licence (Ex.R-4) was produced which, the insurance company has verified during the pendency of appeal and found it to be fake. He has moved an application for adducing additional evidence so as to place on record the verification report.

Learned counsel for the driver and owner of offending vehicle contended that he has filed reply to the application for adducing additional evidence and alongwith that he has produced a report from the concerned authority stating that the driving licence (Ex.R-4) has been validly issued.

Since insurer, owner and driver of offending vehicle are relying upon the driving licence (Ex.R-4) for the purpose of deciding the liability to pay compensation, a pin-pointed controversy which needs adjudication is as to whether driving licence (Ex.R-4) has been validly issued by Registering & Licensing Authority, Mathura or not.

Two different verification reports have been produced by both the sides. In such circumstances, evidence needs to be adduced to verify the genuineness of driving licence (Ex.R-4).

To decide the *lis*, the matter is remitted back to the Tribunal to decide the issue as to whether driving licence (Ex.R-4) has been validly issued by the licensing authority concerned or not.

Before dealing with the appeal for enhancement of

compensation, application for condonation of delay is to be considered. It would be pertinent to note that Insurance Company had filed appeal in the year 2011. Notice of motion was issued on 24.02.2011 and it remained pending in *kacha peshi* thereafter. The claimant was entitled to file the cross-objection, but instead appeal was preferred for which the condonation of delay has been sought. The award was already challenged before this Court and the matter was pending.

It is pertinent to note that the issue regarding liability to pay compensation has already been remanded. In the interest of justice, for the reasons mentioned in the application, which is duly supported by an affidavit, the delay of 1134 days is condoned.

Since the matter regarding liability to pay compensation has already been remanded, the Tribunal shall also consider the matter for enhancement of compensation.

It is, however, clarified that remand with regard to quantum of compensation shall not affect the amount already awarded by the Tribunal to the claimant.

Both the appeals are disposed of in the manner indicated above. Parties are directed to appear before the Tribunal on 18.12.2018.

[AVNEESH JHINGAN]
JUDGE

November 14, 2018

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| 1. Whether speaking/ reasoned | : | Yes/ No |
| 2. Whether reportable | : | Yes/ No |