

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

FAO-5217-2006 (O&M)
Date of decision: 15.01.2018

Mohinder Singh and another

.... Appellants

Versus

Onkar Nath and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present:- Mr. Arvind Kashyap, Advocate
for the appellants.

Mr. Maninder Arora, Advocate
for respondent No.3-Insurance Company.

Avneesh Jhingan, J.

The present appeal has been filed against the award dated 15.02.2006 passed by Motor Accidents Claims Tribunal, Gurdaspur (hereinafter referred to as 'Tribunal').

The record of this case was burnt and has been reconstructed from the salvaged record and copies supplied by counsels, subject to all just exceptions.

In a motor vehicular accident that occurred on 10.09.1994, Rajesh Kumar lost his life. In the said accident, a maruti car bearing registration No.HP-38-4055 and a truck bearing registration No. PBN-9145 were involved. The deceased was driver of the maruti car.

A claim petition under Section 166 of the Motor Vehicles Act,

1988 (for short, 'the Act') was filed by the parents of the deceased. The respondents were Manohar Sahni-owner of the truck, Mohinder Singh-driver of the truck and the National Insurance Company, Pathankot. The said claim petition was decided exparte against respondents No.1 and 2 vide award dated 16.02.2000. In the said award, National Insurance Company was exonerated.

An application was made by Manohar Sahni for setting aside the exparte award. The said application was allowed and exparte award was set aside vide order dated 09.04.2004. Thereafter, Manohar Sahni took a plea that he was not the owner of the said truck. In such circumstances, the claimants substituted Onkar Nath son of Gujjar Mal instead of Manohar Sahni as respondent No.1 and National Insurance Company, Amritsar instead of Pathankot was impleaded as a party.

In the earlier exparte award, the Insurance Company was exonerated on the ground that the claimants were not able to prove that the truck was insured with respondent No.3. The Tribunal vide award dated 15.02.2006 dismissed the claim petition being not maintainable in the form it was. Liberty was given to the claimants to file fresh petition against the newly impleaded respondents. Against the said dismissal, the present appeal has been filed.

Learned counsel for the appellants contended that the Tribunal should have adjudicated the said claim petition and should not have dismissed the same. The contention raised by learned counsel cannot be accepted for the reason that it was not merely that respondents No.1 and 3

were substituted but the entire nature of claim petition had changed. It would have needed fresh evidence to decide the claim petition under Section 166 of the Act against the newly added respondents.

Even otherwise, it was a futile exercise on the part of the claimants to have contested the said award. Had a fresh claim petition been filed, it would have been decided on the basis of the fresh evidence produced. No prejudice was caused to the claimants as there was no limitation for filing the fresh claim petition. Not only the owner of the truck was changed but even the branch of the Insurance Company was also changed. It changed the nature of the case as earlier the Insurance Company was exonerated on the ground that the claimants were not able to prove that the truck was insured with the said branch of National Insurance Company. The substituted respondent No.3 i.e. Amritsar Branch of Insurance Company was made a party as the counsel contends that it came to their knowledge that the said truck was insured with National Insurance Company Amritsar Branch.

In view of the liberty granted by the Tribunal to file fresh claim petition, no interference is called for, if so advised, the claimants may avail their remedies as per law for filing a fresh claim petition.

Dismissed.

(AVNEESH JHINGAN)
JUDGE

15.01.2018

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1. Whether the order is speaking/reasoned: Yes

2. Whether the order is reportable : Yes