

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

FAO No. 3896 of 2012 (O&M)
Date of Decision: 14.08.2018

Nirmal Singh

...Appellant

Versus

Gurmeet Singh and others

....Respondents

FAO No. 5737 of 2012

Gurmeet Singh

...Appellant

Versus

Nirmal Singh and others

....Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Rajeshwar Singh, Advocate
for the appellant in FAO No.3896 of 2012 and
respondent No.1 in FAO No.5737 of 2012.

Mr. R.S. Sidhu, Advocate
for the appellant in FAO No.5737 of 2012 and
for respondent No.1 in FAO No.3896 of 2012.

Mr. Narinder Kumar Awasthi, Advocate
for respondent No.2 in both the appeals.

Mr. Lalit Garg, Advocate
for respondent No. 3-insurance company.

B.S.WALIA, J. (Oral)

1. This order shall dispose of aforementioned two appeals as the same arise from award dated 02.04.2012 passed by the learned Motor Accidents Claims Tribunal, Tarn Taran (hereinafter referred to as 'the Tribunal).

2. Two appeals have been filed by the driver and claimant, seeking remand of the case to the learned Tribunal on the ground that liability has been imposed solely on the driver on account of the claim petition qua owner of the offending vehicle having been dismissed under Order 9 Rule 2 CPC contrary to law. Plea is that in the circumstances, the claim petition ought not to have been dismissed qua the owner, instead the owner ought to have been proceeded ex parte and the Insurance Company made liable with liberty to effect recovery.

3. Learned counsel appearing on behalf of the appellant contend that the owner of the offending vehicle put in appearance pursuant to service of summons and his presence was marked on 15.12.2010 and 16.02.2011. However, on 16.02.2011 counsel made a statement that he had no instructions on behalf of the owner leading to passing of order dated 25.5.2011 dismissing the claim petition against the owner of the vehicle under Order 9 Rule 2 CPC.

4. Learned counsel by referring to paragraph No.8 of the grounds of appeal contend that although respondent No.2-Karam Singh is the registered owner of the mini Bus, Amrik Singh Randhawa attorney holder of Karam Singh-respondent No.2 had got released the mini bus on superdari and had put in appearance on 15.12.2010 through counsel Sh. B.S. Handa, Advocate and filed power of attorney. Thereafter on 16.02.2011, Sh. B.S. Handa, Advocate made a statement that he had no instructions on behalf of respondent No.2 leading to dismissal of claim petition qua respondent No.2 on 25.05.2011 on account of non filing of correct address. Learned counsel contend that once Amrik Singh Randhawa

had put in appearance as attorney on behalf of the registered owner of the mini bus i.e. respondent No.2 Karam Singh, then the question of dismissal of the claim petition under Order 9 Rule 2 CPC did not arise and in the circumstances respondent No.2 ought to have been proceeded ex parte instead of directing fresh service leading to non-filing of correct address and consequentially dismissal of the claim petition under Order 9 Rule 2 CPC qua the owner of the offending vehicle.

5. Learned counsel further contend that the insurance as well as driving licence of the driver of the offending vehicle both were valid, therefore, in the circumstances, the liability, if any, was to devolve upon the respondents jointly and severally and further that the liability to make payment of the awarded amount was to be that of the insurance company with liberty to recover payment of compensation from the owner. Learned counsel for the claimant has also contended that the compensation awarded is on the lower side.

6. Per contra, learned counsel for the respondent-insurance company states that the claimant has already been awarded much more than he was entitled to.

7. Learned counsel for the appellant-driver contends that in view of the dismissal of the claim petition against the owner of the registered vehicle, rights of the driver have been prejudiced inasmuch as liability has been imposed on him only and that once the insurance as well as the driving licence are valid then the insurance company is liable to make the payment of compensation though it can recover the same from the owner in case of breach of any of the terms and conditions of the insurance policy.

8. Learned counsel for the appellant-claimant on the other hand contended that the rights of the claimant have also been prejudiced by dismissal of the claim petition qua the owner instead of proceeding ex parte against him as they have been deprived of the right to recover compensation awarded from the insurance company.

9. In the circumstances, learned counsel contend that the dismissal of the claim petition under Order 9 Rule 2 CPC against the owner of the registered vehicle was unjustified and at best he ought to have been proceeded ex-parte.

10. Learned counsel pray that in the circumstances, the matter be remanded to the learned Tribunal by setting aside the dismissal of the claim petition against the owner for fresh decision as per law.

11. Learned counsel appearing on behalf of respondent No.2/ owner of the registered vehicle states that he has no objection to the remand of the case for adjudication afresh in accordance with law after giving adequate opportunity to lead evidence in the matter.

12. In the light of the position as noted above as also statement of learned counsel for the parties, dismissal of the claim petition qua respondent No.2 i.e. owner of the registered vehicle, as also the impugned award are set aside and the case remanded to the learned MACT, Taran Tarn to consider and decide the same afresh by giving appropriate opportunity to the parties to lead evidence in accordance with law. Parties through counsel are directed to put in appearance before the learned Tribunal on 20.09.2018. Learned Tribunal is requested to decide the claim petition as expeditiously as possible preferably within three months from

the date when the parties put in appearance. Record be transmitted to the learned MACT, Taran Tarn well before the date fixed.

(B.S.WALIA)
JUDGE

14.08.2018
sandeep

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No