

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

**FAO No.1584 of 2014 (O&M)
Date of Decision: March 27, 2018.**

Raman Kishore and another

.....APPELLANT(s).

VERSUS

Nafe Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Lalit Kumar, Advocate for
Mr. John Kumar, Advocate
for the appellant (s).

Mr. Ram Bilas Gupta, Advocate
for respondent No.1.

Mr. Sanjeev Goyal, Advocate
for respondent No.3-insurance company.

SURINDER GUPTA, J.

Motor Accident Claims Tribunal, Palwal (hereinafter referred to as 'the tribunal') vide award dated 01.11.2013 allowed compensation of ₹6,66,0067/-/- for death of Vishal son of appellants No.1 and 2, in a motor vehicle accident with Motorcycle bearing registration No.HR-51U-7861 (later referred to as 'the offending vehicle')

As the only issue involved in this appeal relates to quantum of compensation and liability to pay the same, detailed facts of the case are being skipped for the sake of brevity.

The tribunal while awarding compensation of ₹6,66,007/- to the

claimants, has directed the insurance company to deposit the amount of compensation and allowed right to recover the same from respondent No.2 i.e. owner of the offending vehicle. The appeal against respondent No.2 was dismissed vide order dated 21.09.2016, which reads as follows:-

“Counsel for the appellants has failed to furnish correct address of respondent No. 2, in compliance with order dated 17.05.2016.

A relevant extract from order dated 17.05.2016 reads as follows:-

Appellants to furnish the correct details of address of 2nd respondent in the Registry in a week's time, failing which, the appeal against the 2nd respondent shall stand dismissed.

Issue fresh notice to 2nd respondent, after the needful is done, for hearing on 21.09.2016.

As the appellants have failed to furnish details of address of 2nd respondent, the appeal already stands dismissed qua respondent No. 2. An adverse effect of dismissal of appeal qua No. 2 would be seen at the time of final disposal of the appeal.

Registry is directed to make necessary endorsement on the memo of parties.

List on 21.03.2017.”

Learned counsel for the insurance company has argued that primary liability to pay the compensation is of the owner of the offending vehicle. Insurance Company has to indemnify the owner being insurer. Once the appeal is dismissed against owner of the offending vehicle, no liability can be foisted on the insurer, particularly when it has been allowed recovery rights.

Learned counsel for the appellants has argued that first liability

of pay the compensation is of insurer of the offending vehicle. Even after the dismissal of appeal against respondent No.2, the recovery rights against him shall remain intact.

On giving a careful thought to the submission of learned counsel for the parties, I find himself in agreement with the submission of learned counsel for the respondent (insurer) for the reason that the primary liability to pay compensation is of owner of the offending vehicle. In this case, the recovery rights have been allowed to insurer against the owner of the offending vehicle. After dismissal of the appeal against respondent No.2, the award has attained finality qua him and in case, the appeal is decided on merits and the compensation is enhanced, the insurer cannot have any recovery rights as per the award. Even otherwise, the liability of the insurer is to indemnify the insured and once a claim/appeal is dismissed against insured, no liability to pay compensation travels from insured to insurer.

In view of the above discussion, this appeal has no merits.

Dismissed.

March 27, 2018.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No