

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

112

FAO-6335-2015 (O&M)

Date of Decision:02.04.2018

Daya Nand and another

.....Appellants

Versus

Bimla Devi and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

**Present: Mr. Dheeraj Narula, Advocate,
for the appellants.**

**Ms. Vandana Malhotra, Advocate,
for respondent No.5-Insurance Company.**

HARI PAL VERMA, J.(Oral)

CM-6223-CII-2018

Applicant seeks permission to place on record typed copy of Annexure R-1 (wrongly typed as Annexure A-1) and also seek exemption from filing the certified copy thereof.

Application is allowed, as prayed for. Annexure R-1 is permitted to be placed on record. Exemption sought is granted.

On the joint request made by learned counsel for the parties, main case which is fixed for 20.08.2018 is preponed and taken up for hearing on board today itself.

FAO-6335-2015 (O&M)

This appeal has been filed by the appellants, who are owner and

driver of the offending vehicle bearing registration No.RJ-31-GA-5329.

In a claim-petition filed by the respondents-claimants under Section 166 of the Motor Vehicles Act, 1988, the Tribunal has passed the award dated 12.01.2015 and awarded a total compensation of ₹8,25,000/- to the claimants on account of death of Rakesh in the motor vehicular accident, which took place on 28-29.10.2013. As regards the liability to pay compensation, the Tribunal has held that as the offending truck was being driven by the driver at the time of accident without any permit, the Insurance Company was granted the recovery rights from the appellants. Along with the appeal, the appellants-owner and driver have moved an application bearing CM-19945-CII-2015 under Order 41 Rule 27 read with Section 151 CPC for leading additional evidence as Annexure A-1. Annexure A-1 is a copy of the permit issued by the District Transport Officer, Hanumangarh, valid from 04.10.2013 to 02.11.2013 with reference to the offending vehicle bearing registration No.RJ-31-GA-5329.

Learned counsel for the appellants states that document (Annexure A-1) has wrongly been shown as Annexure P-1 and it is because of some typographical error that instead of Annexure A-1, it has been typed as Annexure P-1. He further states that as on the date of accident, the offending vehicle was carrying a valid permit and the recovery rights issued against the appellants need to be set aside and the Insurance Company should be held liable to pay the compensation to the respondents-claimants.

Learned counsel appearing on behalf of respondent No.5- Insurance Company has referred to the verification report dated 16.03.2018 and to that effect CM-6223-CII-2018 has been filed, so as to place on record certified copy of the document/verification report as Annexure R-1 (wrongly typed as Annexure A-1). She categorically states that the permit is

valid and has been found to be genuine and in order.

I have heard the learned counsel for the parties and considering the fact that the Tribunal has passed the award and given recovery rights to the Insurance Company solely on the basis that the offending vehicle was not carrying a valid permit, but on the basis of verification report so submitted by the Insurance Company, it has been found that the offending vehicle was carrying a valid licence on the date of accident. Therefore, this Court finds that the liability so fastened upon the appellants is liable to be shifted to the Insurance Company.

Accordingly, the award dated 12.01.2015 is modified to the extent that the recovery rights passed against the appellants are set aside and it would solely be the liability of the Insurance Company. The statutory amount so deposited by the appellants is ordered to be refunded.

The present appeal stands disposed of accordingly.

April 02, 2018
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(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No