

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

**FAO No.2337 of 1994 (O&M)
Date of decision: 20.12.2019**

United India Insurance Company Limited

....Appellant

Versus

Master Prince (Minor) and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. D.P. Gupta, Advocate,
for the appellant.

Mr. P.K. Mutneja, Advocate,
for respondent Nos.2 to 3.

RITU BAHRI J. (Oral)

United India Insurance Company Limited-appellant has come up in appeal against the award dated 17.08.1994 passed by the Motor Accident Claims Tribunal, Panipat (hereinafter referred to as 'the Tribunal'), whereby compensation of Rs.1,18,174-75 P. has been awarded in favour of claimant-respondent No. 1 on account of injuries received by him in a motor vehicular accident which took place on 18.11.1991.

Brief facts of the case are that on 18.11.1991, at about 1.00/1.30 P.M., claimant-Master Prince along with another child namely Kailash was returning from his school, situated in Model Town, Panipat, in a school rickshaw. When the said rickshaw reached near Hari Bagh Model Town Chowk, Assandh Road, a truck bearing No. HYK-6454, being driven by Leela Krishan-respondent No.2 herein (respondent No.1 in claim petition

before Tribunal) in a rash and negligent manner, came and while taking sudden turn, struck against the rickshaw, as a result of which, wooden plank, on which, the children were sitting, fell down and claimant-Master Prince got stuck to the wheel of the truck and received serious injuries. He was taken to Madan Hospital, Panipat, from where, he was taken to New Delhi for treatment. With regard to the accident, FIR was registered against the driver of offending vehicle on the statement of Girdhari Lal. Consequently, the claimant (respondent No. 1 herein) filed a claim petition before the Tribunal.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident in question had taken place on account of rash and negligent driving of the offending vehicle by its driver and thus, returned finding on issue No.1 in favour of the claimant-respondent No. 1. This finding was rightly given on the basis of deposition of Girdhari Lal (PW-7), who was an eye witness of the accident and on whose statement, the FIR Ex.P1 was registered.

Claimant Master Prince was 3½ years of age at the time of accident and was a student of Nursery Class in a Public School at Panipat. Due to the above accident, he had lost vision of his right eye and there was fracture of right temporal bone. He remained admitted in Sehgal Neurological Research Institute, New Delhi from 18.11.1991 to 05.12.1991. After going through the evidence on record, the compensation in favour of claimant was awarded as under:-

Sr. No	Heads	Amount of compensation
1	Pain and sufferings, permanent loss of vision of right eye and injury to brain	Rs.70,000/-
2	Medical expenses	Rs.38,174-75 P.

Sr. No	Heads	Amount of compensation
3	Special diet and misc. expenses	Rs.10,000/-
	Total	Rs.1,18,174-75 P.

Ultimately, the claim petition was accepted and a sum of Rs.1,18,174-75 P along with interest at the rate of 18% per annum was awarded as compensation in favour of the claimant. While allowing the claim petition, Insurance Company-respondent No.3 (appellant herein) was held liable to make payment of compensation to the claimant. Feeling dissatisfied with the impugned award, the appellant-Insurance Company has preferred the present appeal.

This Court, vide detailed order dated 11.07.2016, had dismissed the present appeal filed by the Insurance Company (appellant) with regard to the finding given by the Tribunal on issue No.1 that the accident had taken place on account of rash and negligent driving of the offending vehicle by its driver-respondent No.2 (Leela Krishan) because this finding was given on the basis of testimony of Girdhari Lal (PW-7), who was eye witness of the accident.

Thereafter, the Court proceeded to consider the arguments raised by learned counsel for the appellant on the second ground that before the Tribunal, an application had been made by the Insurance Company for appointment of the Local Commission to examine the record of the Licensing Authority, in respect of the validity of the licence possessed by respondent No.2-Leela Krishan (driver). However, the Tribunal had dismissed the said application vide order dated 11.08.1994 on the ground that the Licensing Authority, Panipat, had renewed the driving licence of respondent No.2-driver for the period from 13.10.1991 to 12.10.1994.

Hence, in view of the law prevalent at that time, to the effect that a renewed licence would amount to even a fake licence being deemed to have been validly issued, it was not felt necessary by the Tribunal to appoint a Local Commissioner.

Learned counsel for the appellant referred to a judgment passed by Hon'ble the Supreme Court in New India Assurance Company vs. Kamla, 2001 (3) RCR (Civil) 716 to contend that a licence, which was not issued by the Licensing Authority that it purports to have been issued by, would always remain a fake licence, no matter how many times it was renewed thereafter. Thereafter, he referred to a letter dated 04.01.1994, addressed to the Motor Licensing Authority, RTO, Dehradun, by a Government approved valuer.

Upon this, learned counsel for respondent Nos.2 and 3 submitted that the said letter could not be led by way of additional evidence at this stage because no such application under Order 41 Rule 27 CPC was filed. He further submitted that the subject matter of the above letter was verification of driving licence No.L-0594, issued on 14.10.1982, the endorsement of the Licensing Authority, Dehradun, was to the effect that a Licence No. L-594 was issued on 07.02.1968, not to respondent No.2-Leela Krishan, but to one Laxman Singh. He further stated that initially, the driving licence number given by the Licensing Authority was shown as N-594 with the letter 'L', thereafter, superimposed upon the letter 'N'.

Thereafter, an application (CM No.17415-CII of 2016) under Order 41 Rule 27 CPC was moved by the appellant for placing on record report (Annexure A-1) of the Licensing Authority, Dehradun. As per this report, driving licence No.L-594 was issued in the name of Laxman Singh

son of Adit Singh.

Learned counsel for respondent Nos.2 and 3 has argued that the above application has been made after a gap of almost 22 years from the date of passing of the impugned award. There is no explanation for such a long delay in making the application. He further argued that as per report Annexure A-1, this licence, which was issued in the name of Laxman Singh, was valid upto 06.02.1971 and this evidence could have been led before the Tribunal or after filing of this appeal on 10.11.1994. On account of such a long delay, this application is liable to be dismissed.

Heard. Short question for consideration for consideration in this appeal is, whether after a gap of 22 years, application under Order 41 Rule 27 CPC can be allowed or not.

As per verification report (Annexure A-1), driving licence No. L-594 was issued in favour of Laxman Singh and was valid upto 06.02.1971. In the facts of the present case, the accident had taken place on 18.11.1991. Even if, report (Annexure A-1) is examined, the licence in question, which was issued to Laxman Singh, was valid upto 06.02.1971. From this report, it cannot be ascertained that after 06.02.1971, the said licence was renewed or not. Therefore, this report in itself would not be of any help to the Insurance Company for reversing the finding given by the Tribunal in favour of driver and owner-respondent Nos.2 and 3 (respondent Nos. 1 and 2 before the Tribunal). Moreover, the provision of Order 41 Rule 27 CPC is enabling provision, where the Court can allow an evidence to be led at the appellate stage. The object of the above said provision is to allow a party to produce evidence, **which it could not produce before the trial Court/Tribunal despite its due diligence.** In case, this condition is

not fulfilled, then an application under Order 41 Rule 27 CPC cannot not be allowed. Reference, at this stage, can be made to a judgment passed by Hon'ble the Supreme Court in **A. Andisamy Chettiar vs. A. Subburaj Chettiar**, 2015 (17) Supreme Court Cases 713, wherein it has been held as under:-

“12. From the opening words of sub-rule (1) of Rule 27, quoted above, it is clear that the parties are not entitled to produce additional evidence whether oral or documentary in the appellate court, but for the three situations mentioned above. The parties are not allowed to fill the lacunae at the appellate stage. It is against the spirit of the Code to allow a party to adduce additional evidence without fulfillment of either of the three conditions mentioned in Rule 27. In the case at hand, no application was moved before the trial court seeking scientific examination of the document (Ex.A-4), nor can it be said that the plaintiff with due diligence could not have moved such an application to get proved the documents relied upon by him. Now it is to be seen whether the third condition, i.e. one contained in clause (b) of sub-rule (1) of Rule 27 is fulfilled or not.

13. [In K.R. Mohan Reddy v. Net Work Inc.](#), 2007 (14) SCC 257, this Court has held as under: -

“19. The appellate court should not pass an order so as to patch up the weakness of the evidence of the unsuccessful party before the trial court, but it will be different if the court itself requires the evidence to do justice between the parties. The ability to pronounce judgment is to be understood as the ability to pronounce judgment satisfactorily to the mind of the court. But mere difficulty is not sufficient to issue such direction.”

14. In **North Eastern Railway Admn. v. Bhagwan Das**, 2008 (8) SCC 511, this Court observed thus:

“13. Though the general rule is that ordinarily the appellate court should not travel outside the record of the lower court and additional evidence, whether oral or documentary is not admitted but Section 107 CPC, which carves out an exception to the general rule, enables an appellate court to take additional evidence or to require such evidence to be taken subject to such conditions and limitations as may be prescribed. These conditions are prescribed under Order 41 Rule 27 CPC. Nevertheless, the additional evidence can be admitted only when the circumstances as stipulated in the

said Rule are found to exist.”

A Co-ordinate Bench of this Court in **Punjab State Civil Supplies Corporation Ltd. and another vs. Sher Singh and another**, RSA No.4382 of 2017 (decided on 14.01.2019), while examining the provisions of Order 41 Rule 27 CPC, held that unless a party seeking to lead additional evidence explains that the evidence was not available with it and it could not produce the same at the time of evidence before the Court below, application under Order 41 Rule 27 CPC could not be allowed. It has been further observed as under:-

“9. Learned counsel for the applicant-appellants asserts that although the Enquiry Officer had exonerated respondent No.1 of the charges served upon him, but the Punishing Authority had given a dissenting note and had proceeded to impose the punishment of recovery. She contends that the said dissenting note is essential for a just decision of the case as it would throw light on the aspect with regard to the order of punishment as imposed upon respondent No.1.

10. I have considered the submissions made by learned counsel for the applicant-appellants and on going through the judgments passed by the Courts below, find that the present application is an effort made by the applicant-appellants at a belated stage. There is nothing on the record to indicate that the said document was not available with the applicant-appellants or that the said document could not be produced at the time of evidence before the Courts below.”

In the facts of the present case, after the present appeal was admitted, no attempt was made by the Insurance Company-appellant to get the verification report and place it on record by way of an application under Order 41 Rule 27 CPC. Even, in the present application, as per Annexure A-1, validity of driving licence No.L-594 was upto 06.02.1971. This application has been filed after 22 years of filing of this appeal. Therefore, on this ground itself the present application is dismissed.

In view of the above discussion, after going through the impugned award, this Court is of the view that findings on all the issues have rightly been given by the Tribunal and no ground is made out to interfere therein. The evidence has been appreciated in the right perspective.

Resultantly, finding no merits, present appeal is dismissed.

(RITU BAHRI)
JUDGE

20.12.2019
ajp