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

**FAO No.2524 of 2019 (O&M)
Date of Decision: 22.05.2019**

Jagdish Singh

Appellant

Versus

The New India Assurance Company Ltd. And others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rajbir Singh Mundra, Advocate
for the appellant.

Mr. Paul S. Saini, Advocate
for respondent No.1.

AVNEESH JHINGAN, J (Oral):

The award dated 21.04.2016 passed by the Motor Accident Claim Tribunal, Chandigarh [for brevity 'the Tribunal'] has been assailed by owner of Truck bearing registration No. HR-37B-2851 [hereinafter referred to as 'offending vehicle']. The grievance raised in the present appeal is that the Tribunal wrongly awarded recovery rights to the insurer of the offending vehicle in the concluding paragraph of the award.

The driver, insurer (i.e. The New India Assurance Company Ltd.) of the offending vehicle and claimants are the respondents.

The factum of accident is not disputed by the parties. A

motor vehicular accident took place on 15.12.2015, same proved fatal for Chaman Lal. The accident was result of the rash and negligent driving of the offending vehicle. The Tribunal awarded ₹27,00,760/- alongwith interest @ 7.5% per annum.

The Tribunal framed following issues:

1. *Whether deceased Chaman Lal died in a motor vehicle accident which took place on 15.12.2015 at about 7:30 AM due to rash and negligent driving by respondent No.3 while driving vehicle No. HR-37B-2851?OPP*
2. *Whether the claimants are entitled to compensation on account of death of Chaman Lal ? If yes, from whom and to which extent ? OPP*
3. *Whether the driver of the offending vehicle was not holding a valid driving licence at that time of accident ? OPR*
4. *Relief.*

The controversy involved in the present appeal is with regard to issue No.3. The Tribunal recorded the following findings on issue No.3 :

“18. The onus to prove these issues was on respondent No.2, which has not led any evidence. However, driving licence of respondent No.1 is placed on record Exhibit R7, which shows that the respondent No.1 was authorised to drive LLMV, LMVCAB, MCWG and TRANS, which was valid till 14.04.2018. It is, therefore, held that the respondent No.1 was authorised to drive the offending vehicle. It is, therefore, held that respondent No.2 has failed to prove this issue, which is decided against it and in favour of respondent No.3.”

The disputed portion of concluding paragraph is reproduced as under:-

“The respondents shall be jointly and severally liable to pay the Award amount. The respondent No.2 shall have the right to recover the amount of compensation awarded by this Tribunal from respondent No.1.”

Learned counsel for the appellant argues that there is error in the award passed by the Tribunal as the above quoted conclusion is not in accordance with the findings recorded by the Tribunal.

There is no challenge by either of the parties with regard to findings of issue No.3 quoted above, in such circumstances, conclusion recorded cannot be sustained. The award is modified to the extent that respondents shall be jointly and severally liable to pay the compensation.

The appeal is allowed.

The appellant shall take appropriate steps for refund of the statutory amount.

May 22, 2019

pankaj baweja

[AVNEESH JHINGAN]

JUDGE

1. Whether speaking/ reasoned

:

Yes
2. Whether reportable

:

No