

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 7104 of 2011 (O&M)
DECIDED ON: MAY 09, 2019

KAMAL JEET KAUR

.....APPELLANT

VERSUS

AMIT KUMAR AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Adarsh Jain, Advocate
for the appellant.

Mr. Kulbhushan Sharma, Advocate and
Mr. Abhishek Sharma, Advocate
for respondent No.1.

Mr. Sanjiv Pabbi, Advocate
for respondent No.3.

AVNEESH JHINGAN, J (Oral)

The award dated 15.12.2010 passed by the Motor Accident Claims Tribunal, Sonipat (for brevity 'the Tribunal') has been assailed by the owner of truck trola bearing registration No. HR-55-B-3924 (hereinafter referred to as the 'offending vehicle').

The claimant, driver and insurer (i.e. Oriental Insurance Company Ltd.) of the offending vehicle have been arrayed as respondents No.1 to 3.

The facts necessary for adjudication of the present appeal are that on the ill-fated day i.e. 09.11.2007 Dharambir alongwith his

minor son Amit was returning home. When he reached near T-point, Police Nakabandi, Octroi Post, the offending vehicle dashed against Amit from behind. As a result of the impact Amit fell down and his foot got crushed under the wheels of the offending vehicle. He was taken to Civil Hospital, Sonipat from where he was referred to PGIMS, Rohtak. FIR No. 324, dated 10.11.2007 was registered at Police Station City, Sonipat.

A claim petition under Section 166 of the Motor Accident Claims Tribunal, 1988 (for short 'the Act') was filed. In the claim proceedings, it was pleaded that the right leg of the claimant was amputated and he suffered permanent disability. The Tribunal came into the conclusion that the accident was result of rash and negligent driving of the offending vehicle. The Tribunal awarded compensation of ₹2,81,400/- alongwith interest @ 7.5% per annum.

No driving licence was produced before the Tribunal by the driver and owner of the offending vehicle. The Tribunal relied upon the fact that the driver of the offending vehicle made a statement in a criminal case that he was not possessing any driving licence and hence exonerated the insurer. The owner and driver were held jointly and severally liable to pay compensation. Aggrieved of the exoneration of the insurer, the present appeal has been filed.

During the pendency of the appeal, an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 was moved for placing on record the driving licence and verification report. Learned counsel for the insurer took time to verify the same but as the

licence was procured from Nagaland, this Court on 28.07.2017, passed the following order:

“ The appeal is by the owner and he had placed on record a driving licence said to be that of the driver. The Tribunal had placed the liability of payment of compensation upon the owner and driver, since the driver did not have a driving licence. Prabhajeet driver had made a statement before the authorities that he did not have any driving licence.

On 28.03.2014, directions were given to the insurance company to get the driving licence verified. Some more time was given subsequently and the counsel for respondent No.3 states that since the driving licence has been issued from Nagaland, it is very difficult to get it verified.

In the above circumstances, it becomes necessary to seek a report from the Court below as the onus is on the owner and driver to prove that the driver possessed a driving licence.

Parties are directed to appear before the District Judge, Sonapat, on 16.08.2017 who will assign the matter to any other Court or keep the file with himself. No notice will be issued by the Court. The owner will summon the relevant record and prove that the driving licence was issued in favour of the driver prior to the accident.

The report is awaited for 30.11.2017.

Registry to send the copy of this order and copy of driving licence given here and the LCR, to District Judge, Sonapat.”

In pursuance of the afore-said order, learned Additional

District Judge, Sonipat has submitted a report dated 11.10.2017. The

relevant portion of the report is reproduced as under:-

“ After the file was received in this Tribunal on 16.08.2017, case was called several times, but none appeared on behalf of the owner Kamal Jeet. None had appeared before the ld. District Judge, Sonapat also. The case was thereafter adjourned to 22.8.2017, 1.9.2017, 11.9.2017, 29.9.2017 and 11.10.2017 for evidence of the owner. None appeared. No evidence has been produced or summoned by the owner to prove that the driving license was issued in favour of the driver prior to the accident.”

From the perusal of the report, it is evident that in spite of providing number of opportunities, the owner of the offending vehicle neither produced any witness nor any evidence, to prove the validity of the driving licence. It is worth noting that the Tribunal has recorded that in the criminal proceedings the driver made a statement that he was not possessing any licence. The driver is resident of the State of Punjab whereas the subsequent licence produced during the pendency of appeal is issued from Nagaland. Yet opportunity was provided to prove the validity of the driving licence but the same was not proved by the owner of the offending vehicle.

In view of above-said discussion the present appeal being without merits is dismissed.

(AVNEESH JHINGAN)
JUDGE

MAY 09, 2019
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Whether speaking/ reasoned : ***Yes***
Whether reportable : ***No***