

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

**CM-18011-CII-2019 in/and
FAO-126-2013 (O&M)**

Date of Decision: September 10, 2019

Mahender Kumar Aggarwal and another

Appellants

Versus

Narender alias Kala and others

Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Parveen Kumar Garg, Advocate
for the appellants.

Mr. S. K. Verma, Advocate
for respondent Nos. 1 to 4.

Mr. Rajnish Malhotra, Advocate
for respondent No. 5.

JAISHREE THAKUR, J. (Oral)

This is an appeal that has been preferred by the owner and the driver of a truck/trailer No. RJ-32-GA-1294 seeking to challenge the award dated 23.12.2011 of the MACT, Jind fastening liability upon them to pay the compensation.

The brief facts of the case are that an accident took place on 24.08.2010 at about 04.45 PM between a cruiser bearing registration No.HR-69T-8531 driven by Narender s/o Satyawar in which deceased-

Kamlesh w/o Narender, respondent No.1 herein, along with others was travelling in and truck/trailer bearing No.RJ-32GA-1294 driven by appellant No.2 herein which was driven in rash and negligent manner. Due to this accident other occupants of the cruiser namely Ramesh, Manisha, Savita, Darshna sustained injuries and Kamlesh w/o Narender, respondent No.1 herein had succumbed to her injuries. Thereafter a criminal case FIR No.233 dated 25.8.2010 under Sections 279/304-A of IPC was registered at Police Station Beri on statement of Rohtash. The husband of the deceased-Kamlesh along with his minor children filed claim before the MACT, Jind for Rs.20,00,000/- for the untimely death of his wife-Kamlesh (deceased). The MACT, Jind after appreciating the evidence led awarded a sum of Rs.6,40,000/- as compensation along with 7% interest per annum from the date of filing of the petition till realization, to be paid by the appellants herein jointly and severally.

Learned counsel for the appellants would contend that the compensation has wrongly been fastened since the vehicle was insured as on the date of the accident took place and the owner had the necessary permit to ply the vehicle in question. It is also stated that the driver had the necessary licence. Learned counsel for the appellants further submits that the original driving licence of appellant No.2/driver was taken into custody by the police authorities on 28.08.2010 during investigating proceedings and appellant No. 2 got it issued in duplicate from the concerned authorities after depositing requisite fee. An application for placing on record copy of driving licence as well as details of extract of the licence has been preferred by learned counsel for the appellants.

The Insurance Company has vehemently contested the application by filing a detailed reply that the MACT, Jind has rightly fastened the liability upon the owner and the driver since they neither put in an appearance nor led any evidence before the MACT, Jind. The documents which are being sought to be produced in Court is an attempt to fill up the lacunae at this stage.

I have heard learned counsel for the parties and perused the material available on record. The appellants by way of instant application intend to produce copy of driving licence as well as details of the extract of the licence. By rejecting the application which is to be considered under Order 41 Rule 27 CPC, this Court would be doing great dis-service to the appellants who are the driver and the owner of the offending vehicle and therefore, it would be in the fitness of things if the said application is allowed and the appellants are given opportunity to lead evidence relating to driving licence of the driver.

Consequently, the application in hand is allowed. The appeal is disposed of setting aside the finding under Issue No.3 and the matter is remanded back to the Tribunal to decide the matter on merits preferably within a period of nine months. On appearance of the parties before the Tribunal, the Tribunal shall give two effective opportunities to the appellants to lead additional evidence in support of their averments and two equal opportunities to the Insurance Company to counter thereto. The Insurance Company will also have an opportunity to rebutt any such evidence proposed to be adduced and liability to pay compensation be re-assessed in terms of the evidence adduced.

The parties are directed to appear before the Tribunal on 16.10.2019. The summoned record be also sent back.

September 10, 2019
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No