

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

FAO No. 1904 of 2014(O&M)

Date of Decision: February 01 , 2019.

Abdulla APPELLANT (s)

Versus

Anjum and others RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Surinder Dagar, Advocate
for the appellant.

None for respondents No.1 to 7.

Mr. D.K.Prajapati, Advocate
for respondent No.8 – Insurance Company.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This appeal has been filed by the owner of the offending vehicle challenging award dated 04.05.2013 passed by the learned Motor Accident Claims Tribunal, Nuh, Mewat (hereinafter referred to as, the 'Tribunal') to the extent, respondent No.8-Insurance company has been afforded the right to recover the amount of compensation awarded to the claimants/respondents No.1 to 6.

Brief facts necessary for the adjudication of the case are that, the

claimants/respondents No.1 to 6 filed a petition under Section 166 of the Act seeking compensation on account of death of Naseem Ahmed, who lost his life in a motor vehicle accident which took place on 21.06.2011. In the claim petition, it is mentioned that Naseem Ahmad (deceased) and respondent No.7-Aarif were working as drivers on Dumper No.HR-74-7432. It was stated that a minor accident had taken place on 21.06.2011 at about 5.00 a.m., due to which rear tyre of said dumper had burst and Naseem Ahmed (deceased) was putting a jack in order to change the tyre. Respondent No.7-Aarif was sitting on the driver seat. Respondent No.7-Aarif was to lift the dumper trolley through a gear, however, he negligently applied the moving gear, due to which Naseem Ahmed (deceased) came under the dumper. Naseem Ahmed received serious injuries and died at the spot. FIR No.137 dated 21.06.2011, under Sections 279/304A IPC (Ex.P1) was registered at Police Station Nagina against the driver of the offending vehicle.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the rash and negligent driving of dumper bearing registration No.HR-74-7432 by respondent No.7-Aarif i.e., application of incorrect gear of the offending vehicle due to which Naseem Ahmed lost his life. Learned Tribunal assessed income of the deceased-Naseem Ahmed aged 28 years, as ₹4,000/- per month and awarded a sum of ₹6,37,000/-. Deduction was effected to the extent of 1/4th towards personal expenses and multiplier of 17 was applied. ₹5,000/- was awarded on account of transportation and a sum of ₹10,000/- towards funeral expenses was awarded, besides, another sum of ₹10,000/- to the widow towards loss of consortium.

It was further held by the learned Tribunal that driving licence of

respondent No.7-driver was not proved to be a valid and genuine one. Accordingly, the Insurance company was directed to pay the compensation amount to the claimants with a right to recover the same from the appellant and respondent No.7-driver of the offending vehicle. Aggrieved therefrom, the present appeal has been filed by the owner of the offending vehicle.

Learned counsel for the appellant/owner vehemently argues that the appellant had taken due care and caution while employing the driver/respondent No.7. The appellant as the owner of the offending vehicle could not be accepted to cross-check and verify the original driving licence purportedly issued in 2003, which on the basis of evidence on record was found to be a fake driving licence. The said licence was validly renewed thereafter. The accident took place in the year 2011, therefore, the appellant being the owner of the offending vehicle has duly discharged his responsibility. It is argued that in terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company Ltd. v. Swaran Singh and others, 2004(2) RCR (Civil) 114**, right to recover the amount from the appellant has been wrongly afforded to the Insurance company.

It is further submitted that learned Tribunal has wrongly referred to the written statement filed on behalf of the appellant to observe that the owner/appellant has taken a stand that respondent No.7/driver was never employed by him. It is urged that even if it is mentioned in written statement that the respondent/driver was not employed by the appellant, once it is proved on record that the accident in question had taken place and the said driver was involved, the appellant is entitled to raise a plea of having taken all steps and exercised due diligence at the time of the engaging services of the said driver. It

is thus prayed that this appeal be allowed and recovery right afforded to the respondent-Insurance company be set aside.

No argument has been raised regarding quantum of compensation awarded to the claimants/respondents No.1 to 6.

Learned counsel for respondent No.8-Insurance company however prays that no interference is called for in the well reasoned finding returned by the learned Tribunal whereby recovery rights have been afforded to the Insurance company. Dismissal of the appeal is prayed for.

I have heard learned counsel for the parties and have gone through the record of this case.

Insofar as the Driving Licence held by the respondent/driver is concerned, it is proved on record that the same was not a valid and genuine license. RW1 Vivek Bhatnagar, Junior Assistant, Regional Transport Office, Agra specifically deposed that the driving licence in question was not issued by the Licensing Authority, Agra. It is specifically and rightly observed by the learned Tribunal that there is no other evidence on record to indicate that the respondent/driver was holding a valid driving licence at the time of the accident.

I have perused the written statement dated 09.03.2012 filed on behalf of the appellant (respondent No.2 before the learned Tribunal). Though it is mentioned in the preliminary objections that respondent/driver was having a valid driving licence and respondent No.2 an owner of a fully insured vehicle, is not liable to pay any compensation to the claimants, it is clearly mentioned in the reply to para 17 that respondent/driver was never employed by the present appellant. The exact relevant averment therein reads as under:-

warrant interference by this Court at the instance of the owner of the offending vehicle.

Appeal is accordingly dismissed, with no order as to cost.

(LISA GILL)
JUDGE

February 01 , 2019.
'om'

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No