

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 7137 of 2015 (O&M)
DECIDED ON: MARCH 07, 2019

JAI PARKASH

.....APPELLANT

VERSUS

HANSRAJ AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Munish Behl, Advocate
for the appellant.

Mr. Ram Bilas Gupta, Advocate
for respondent No.1.

Mr. Sanjiv Pabbi, Advocate
for the respondent-Insurance Company

AVNEESH JHINGAN J. (ORAL)

The award dated 27.05.2015 passed by the Motor Accident Claims Tribunal, Faridabad (for brevity 'the Tribunal') has been assailed by the owner of truck bearing registration No. HR-38-Q-8841 (hereinafter referred to as the 'offending vehicle').

The brief facts necessary for adjudication of the present appeal are that on 12.08.2013, Rajiv was going on his motorcycle bearing registration No. HR-29-M-9559. When he reached near the Transport Nagar, Near Sector 58 in front of G.T.Road, village Jharsaintly, Ballabgarh, his motorcycle was hit by a offending vehicle. As a result of the impact, he sustained grievous injuries and died at the spot. FIR No. 508, dated 12.08.2013 was registered at Police Station Sector 55, Faridabad.

A claim petition under Section 166 of the Motor Vehicle Act, 1988 (For short 'the Act') was filed. The Tribunal after considering the facts and on appreciating the evidence adduced, held that the accident was caused due to rash and negligent driving of the offending vehicle. The driver and owner of the offending vehicle were held jointly and severally liable to pay the compensation. It was held that at the first instance respondent No.3 (insurer) shall pay the compensation and then recover the same from owner of the offending vehicle. Aggrieved of the recovery rights, the present appeal has been filed.

The Tribunal held that the licence held by the driver of the offending vehicle was fake, Tribunal relied upon the verification report Ex.R-10 issued by DTO, Godda, Jharkhand.

Learned counsel for the appellant contends that the owner had checked the driving skills of the driver at the time of appointment and satisfied himself with regard to the genuineness of the driving licence. He further submits that the Tribunal had relied upon the verification report issued by the DTO, Godda but neither any record nor official was summoned or produced by the insurer.

Learned counsel for the insurer contends that the original report was produced by the DTO, Godda stating that the driving licence produced was not issued in the name of the driver of the offending vehicle. He further contends that the said verification report was neither contested nor rebutted.

It would be pertinent to note here that the driver of the offending vehicle never appeared before the Tribunal. The appellant i.e. owner of the offending vehicle though filed a written statement but thereafter, never appeared

before the Tribunal to depose or to face cross-examination. Nothing was produced on record to show that the driving skills of the driver were checked by the appellant and he satisfied himself with regard to the genuineness of the driving licence. Apart from the bald statement made in the written statement no evidence was adduced. Even the appellant himself never deposed before the Tribunal to prove the said fact.

The first contention raised by the appellant that the owner checked the driving skills of driver cannot be accepted with regard to his second contention regarding non-examination of DTO, Godda is concerned, no such objection was ever taken before the Tribunal but insurer had not called for the record or official of the licensing authority concerned.

The onus is on the insurance company to show that the driving licence produced is fake, the matter is remitted back to the Tribunal to afford an opportunity to the insurer to produce the record or official of DTO, Godda in support of verification report. The Tribunal shall only consider the matter with regard to the genuineness of the driving licence. At this belated stage it would be against the interest of justice to permit the appellant to fill the lacunae by giving another opportunity.

(AVNEESH JHINGAN)
JUDGE

MARCH 07, 2019
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Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No