

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

FAO-3250-2015(O&M)

Date of decision:-7.2.2019

M/s Chatha Service Station through its Proprietor Amandeep Singh

...Appellant

Versus

Lalmati Devi and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.G.S. Punia, Sr.Advocate with
Mr.P.S. Punia, Advocate for the appellant.

Mr.Ashwani Talwar, Advocate with
Mr.Akash Sridhar, Advocate
for the respondent No.6.

H.S. MADAAN, J.

Petitioners – Mrs.Lalmati Devi – wife, Upinder Patel aged 22 years, Dharminder aged 18 years – sons and Ms.Mamta Kumari aged 18 years daughter of Rampreet Patel, an unfortunate victim of a road side accident had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against respondents i.e. Mohan Singh – driver, M/s Chatha Service Station village Lakhnour, District Mohali through its Proprietor Amandeep Singh – owner and The New India Assurance Company Ltd., Mohali - insurer of tanker No.PB-65-H-1524 (hereinafter referred to as the offending tanker), claiming compensation to the tune of Rs.17,20,000/- on account of death of

Rampreet Patel in the accident.

According to the claimants, on 22.6.2012 at about 7:00 a.m. in the area of bus stand Chunni Kalan, respondent No.1 – Mohan Singh by his rash and negligent driving of the offending tanker had hit Rampreet Patel, who was standing in front of a shop at bus stand Chunni Kalan, resultantly he had suffered multiple injuries; though Rampreet Patel was shifted to PGI, Chandigarh but he succumbed to the injuries on 23.6.2012; that an FIR No.64 dated 22.6.2012 under Sections 304-A, 337, 338, 427, 279 IPC was got registered by one Randhir Singh with Police Station Bassi Pathana with regard to the accident. According to the claimants, deceased was aged about 40 years, working as a mason earning Rs.17,000/- per month and the claimants were dependent upon his earnings to make their both ends meet.

The claim petition was contested by all the three respondents. Respondent No.1 – Mohan Singh denied that he had caused any accident by rash and negligent driving of the offending tanker resulting in causing death of the deceased. Respondent No.3 – the insurance company while resisting the claim petition raised legal objection that since respondent No.1 was not having a valid driving licence at the time of accident, therefore, it is absolved of any liability to pay compensation. It took up various legal pleas also.

Finally, all the respondents came up with a prayer for dismissal of the claim petition.

On the pleadings of the parties, following issues were framed:-

1. Whether Rampreet Patel son of Gurak Patel died in a vehicular accident, which took place on 22.6.2012 due to rash and negligent driving of respondent No.1 on tanker No.PB-65-H-1524? OPP.
2. Whether the claimants are entitled to compensation and what extent and from whom? OPP.
3. Whether the respondent No.1 was not having valid and effective driving licence as alleged? OPR3.
4. Relief.

Both the parties led evidence in support of their respective claims.

In support of his case, the claimants examined Dharminder as CW1 and Randhir Singh as CW2. The claimants also tendered in evidence FIR as Ex.P1, photocopy of post-mortem report of deceased as Ex.P2 and copy of death certificate as Ex.P3.

On the other hand, respondent No.1 Mohan Singh appeared as RW1.

After hearing arguments, the Tribunal decided issues No.1 and 2 in favour of the claimants, issue No.3 against respondents No.1 and 2. Resultantly, the claim petition was accepted by the Tribunal and compensation of Rs.8,55,000/- with interest and cost was granted in favour of the claimants payable by all the three respondents jointly and severally. However, the Insurance Company was found entitled to recover the amount paid by it to the claimants as compensation under the award from respondents No.1 and 2.

This award left the respondent No.2 – M/s Chatha Service

Station through its Proprietor Amandeep Singh aggrieved and he has approached this Court by filing the present appeal.

Notice of the appeal was given to the respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

An application bearing No.CM-9752-CII-2015 has been filed on behalf of the appellant under Order 41 Rule 27 read with Section 151 CPC for producing training certificate of Mohan Singh – driver and memo of recovery dated 22.6.2012 as additional evidence contending that the Tribunal has given a right to the insurance company to realize the amount of compensation paid by it to the claimants from the owners/driver for the reason that though the driver was holding a driving licence but it was not having endorsement of training as required under Section 14(2) of the Motor Vehicles Act; that as a matter of fact the driver had undergone training from National Engineering College from 13.1.2012 to 16.1.2012, which was valid up to 15.1.2013, however, the certificate could not be produced before the Tribunal since the counsel for the driver did not inform him regarding the production of the certificate and further the Court has misread the statement of driver to hold that at the relevant time, the tanker was carrying the oil; that during investigation of the case FIR No.64 dated 22.6.2012 under Sections 279, 337, 338, 304-A IPC, Police Station Bassi Bathana registered against the driver, the tanker was taken into possession and in memo of recovery, it is specifically mentioned that tanker was empty; that the appellant wants to prove it by summoning the

concerned person; that though the appellant had engaged Sh.V.K.Chopra, Advocate, but he had appeared for driver only and not for the appellant/owner, who was proceeded against ex parte; that the appellant came to know regarding passing of the award only in the last week of January, 2015 when the Process Server came for service of summons in execution; thereafter he contacted his counsel and came to know that impugned award had been passed on 11.7.2014; therefore due to the negligence of the counsel, the appellant could not produce the training certificate and the memo of recovery. Therefore, the application be accepted.

This application is being resisted on behalf of the insurance company by filing reply in the FAO-3252-2015 contending that in terms of Section 14(2) of the Motor Vehicles Act, an endorsement on the driving licence to drive the transport vehicle carrying goods of dangerous or hazardous nature is required to be made, which is valid only for one year and once there was no endorsement on the driving licence, driver Mohan Singh was not authorized to drive the oil tanker since he was not holding a valid driving licence on the date of accident. Therefore, no useful purpose would be served by merely placing on record the certificate of having obtained training since the requirement of obtaining an endorsement from the Licensing Authority has not been complied with by the appellant or driver Mohan Singh and further merely because the vehicle was empty at the time of accident as alleged by the appellant, the oil tanker vehicle of the appellant continues to be a vehicle meant for carrying dangerous or hazardous goods. Therefore, placing of memo of

recovery would not further the case of the appellant. The grounds mentioned in the application do not deserve to be accepted and the application should be dismissed.

After hearing the rival contentions, I find that there is no merit in the application. Order 41 Rule 27 CPC deals with production of additional evidence in the Appellate Court. For ready reference the provision is reproduced as under:

27. Production of additional evidence in Appellate Court.—(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if— (a)the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or
1 [(aa)the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]
(b)the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.
(2)Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

The case of the appellant does not fall in any of the three eventualities provided under the Section. It is not case of the appellant that the Tribunal had refused to admit the evidence, which ought to have been admitted. The claim petition had been contested vehemently by

respondent No.2, appellant here before the Tribunal. The second eventuality does not come to rescue of the appellant for the same reason. I do not find the proposed documents to be necessary to pronounce the judgments. Interestingly, the driver of the vehicle has not filed any appeal. The training is said to have been undergone by the said driver. It was for him to produce the alleged training certificate during his evidence and so also to place on record the recovery memo of the offending tanker with respect to seizure of the tanker during investigation of the case registered against him. But there is nothing on record to show as to why he did not do so. Even the present appellant did not do so. It needs to be mentioned here that now the appellant is stating that the driver had undergone one year training and certificate in that regard needs to be placed on file but as has been rightly pointed out by the insurance company in its reply that the requirement of Section 14(2) of Motor Vehicles Act is an endorsement on the driving licence of the vehicle effective for one year, which is admittedly not there on the driving licence of the driver of the offending vehicle. Therefore, the application under reference being without merit stands dismissed.

Furthermore, the appellant cannot take advantage of the fact that in the seizure memo, the tanker is mentioned to be empty when there is evidence to the contrary. The Tribunal in para No.14 of the Award while referring to statement of driver Mohan Singh, who appeared as RW1 has mentioned that he had stated therein that at the time of accident, he was carrying oil in the said tanker, as such he was driving a transport vehicle carrying goods of dangerous and hazardous nature, that falsifies

the contention that tanker was empty at the relevant time. The Tribunal has further noted that in order to enable the driver to drive the said vehicle he was to have a driving licence, whose validity was to be for a period of one year and subject to its subsequent renewal. However, the driving licence Ex.R9 placed on the file showed that it was issued to respondent No.1 for a period of three years indicating that he could drive the transport vehicle but not a transport vehicle carrying goods of hazardous nature, in that way, he was not holding a valid driving licence at the time of accident. For the said reason on account of violation of terms and conditions of the insurance policy, the insurance company was given a right to recover the amount from the driver/owner of the offending vehicle. No fault can be found with such verdict given by the Tribunal.

Thus, the appeal filed on behalf of appellant is found to be without any merit and is dismissed accordingly.

7.2.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No