

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

DATE OF DECISION:-30.01.2020

1. RA-CR-21-2020 in FAO-2514-2016

THE NEW INDIA ASSURANCE CO. LTD ...APPELLANT..

V.

SMT. BHATERI DEVI AND ORS. ...RESPONDENTS...

2. RA-CR-20-2020 IN FAO-2515-2016

THE NEW INDIA ASSURANCE CO. LTD ...APPELLANT..

VS.

RAM KISHAN AND ORS. ...RESPONDENTS.

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Umesh Kumar Kanwar, Advocate,
for applicant-respondent No.3 in FAO-2514-2016 and
for applicant-respondent No.4 in FAO-2515-2016.

RAMENDRA JAIN, J. (ORAL)

This order shall dispose of two applications filed by
respondent No.3 in FAO No.2514 of 2016 and respondent No.4 in FAO
No.2515 of 2016.

Through these, applications, applicant-owner of the offending

vehicle has sought setting aside of ex-parte judgment dated 06.11.2019 of this Court, whereby award passed by the Motor Accident Claim Tribunal, Rewari (for short, "Tribunal"), was modified, holding the licence of his driver fake.

Briefly, two claim petitions under Section 166 of the Motor Vehicle Act were filed against the applicant being owner of the offending canter bearing registration No.HR-55L-1265, his driver and insurance company from whom, the applicant got insured his aforesaid vehicle, on the allegations that on 26.11.2014, the said offending vehicle, being driven by driver Hakam, in a rash and negligent manner, struck against the motorcycle of Mohit and Yogesh. As a result thereof, both of them died.

The Tribunal after holding trial, accepted both the claim petitions vide award dated 21.11.2015 against the insurance company exonerating the liability of the applicant on the ground that at the time of accident, the driver of the applicant was having a valid and effective driving licence.

Being aggrieved, the insurance company approached this Court by FAO Nos. 2514 and 2515 of 2016 raising grouse that finding of the ld. Tribunal qua validity of driving licence of Hakam was illegal and incorrect. Pursuant thereto, notice was issued to the applicant. The applicant was served. He engaged Mr. Umesh Kumar Kanwar, Advocate as his counsel in the year 2016. However, on the date of

passing of ex-parte judgment, none represented the applicant. Thus, finding no option, this Court after hearing the appellant-insurance company and perusing the record, passed ex-parte judgment, holding the liability of the applicant, observing that on the date of accident, the offending vehicle was being driven by driver of the applicant in violation of the terms and condition of the insurance policy as he was not holding a valid and driving licence.

The plea of the applicant for setting aside ex-parte judgment against him is that ex-parte judgment is required to be reheard in the presence of the applicant, permitting his counsel to make submissions.

Learned counsel for the applicant submits that insurance company did not produce any documentary evidence to show that driving licence of Hakam on the date of accident was invalid. Due diligence was exercised by the applicant before appointing Hakam as his driver on the offending vehicle.

Having given thoughtful consideration, this Court finds both these applications merit dismissal for the reasons to follow:-

The plea of jotting down wrong date by the counsel is completely false, inasmuch as, now a days every order of this Court and even of the subordinate courts is uploaded promptly on internet. This plea was definitely available to the learned counsel before computerisation in courts. The applicant has specifically admitted receipts of summons of the appeals filed by the insurance company

prior to pronouncement of ex-parte judgment. On 05.03.2018, the applicant and his counsel was absent, which shows that applicant was not pursuing his case diligently.

It is a well settled proposition of law that every litigant should be vigilant in pursuing his case. He cannot blame his advocate for his own fault in not acting diligently and vigilantly in pursuing his case. In case, counsel for the applicant had noted down wrong date, the applicant could have pointed out his mistake to him.

Even otherwise, perusal of file shows that Hakam, driver of the applicant appearing as RW-1 before the Id. Tribunal below, categorically admitted that he never appeared before the Licensing Authority, Bishnupur (Manipur) for issuance of his driving license Ex.R2, which is mandatory for everyone to obtain a driving license. The applicant though contested the claim petitions, but did not choose to appear in the witness-box to depose that he had taken all care and caution before appointing Hakam as his driver on the offending vehicle. Thus, there is no evidence on the record that applicant exercised due diligence and that he ever took driving test of his driver before appointing Hakam as his driver on the offending vehicle or inspected/verified his driving license. Thus, in the absence of any such evidence, the plea of the applicant about exercising of due diligence in appointing Hakam as his driver has no legs to stand and is false.

Taking into consideration the above fact, the plea of the

applicant being false, is devoid of any merit. The judgment dated 06.11.2019 pronounced by this Court is perfectly legal. No interference therein is called for. Both these applications are dismissed.

30.01.2020
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(RAMENDRA JAIN)
JUDGE

whether speaking/reasoned:	Yes/No
whether reportable:	Yes/No