

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

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FAO No.6870 of 2018 (O&M)

Date of decision: 03.02.2020

GIAN DASS @ ASHOK AND ANR.

... Appellants

Versus

NATIONAL INSURANCE COMPANY LTD AND ORS. ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sunil Saharan, Advocate for the appellants.
Mr. Pardeep Kumar, Advocate for insurance company.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against award dated 28.04.2015 passed by the Motor Accidents Claims Tribunal, Hisar to the limited extent that insurance company has been given right of recovery against the appellants after payment of compensation to claimants on the question of driving licence.

Counsel for the appellants would argue that appellants have filed an application under Order 41 Rule 27 read with Section 151 CPC seeking permission to place on record driving licence of appellant No.1, renewed/issued by the RTO office Nagaland. It is argued that Gian Dass respondent No.1 therein is also known as Ashok Dhaniya, therefore, driving licence sought to be produced by way of additional evidence is in the name of Ashok Dhaniya son of Tara Chand.

Counsel representing the insurance company, on the contrary, would argue that driver and owner of offending vehicle were ex parte before the Tribunal and as such, no such plea was raised by them that Gian Dass respondent therein is also known by the name of Ashok Dhaniya, therefore, the appellants cannot derive any advantage to their contention from driving licence in the name of Ashok Dhaniya, sought to be produced by way of additional evidence. It is further argued that as the insured failed to discharge his primary obligation to prove that he had given the vehicle for driving to a person who was duly licensed, recovery right in favour of the insurance company cannot be faulted with. For this purpose, reliance has been placed upon judgment of Hon'ble the Supreme Court **National**

Insurance Company Ltd. Vs. Swaran Singh and others, 2004 ACJ 1.

Apart from the fact that appeal has been filed after delay of 1123 days, the same is devoid of merit and deserves to be dismissed.

Be that as it may, in claim application, one filed by Darshana and another for grant of compensation on account of death of Birbal and another by injured Ram Kumar, driver of offending Santro car bearing No.HR-20-X-2874 is named as Gian Dass son of Tara Chand and the said vehicle is owned by Rajesh Kumar son of Tara Chand and both of them are stated to be residents of Village Mirzapur, Tehsil and District Hisar. No such plea was raised by the claimants describing name of the driver as Gian Dass @ Ashok. The appellants cannot be allowed to raise a factual dispute/issue for the first time in appeal, therefore, they cannot be heard to say that Gian Dass was also known as Ashok Dhaniya and driving licence issued in the name of Ashok Dhaniya can be taken into consideration for deciding, if driver of offending vehicle was duly licensed or otherwise. In the given circumstances, the appellants cannot derive any advantage to their contention from the application seeking adduce additional evidence. As the insured failed to discharge his primary obligation to establish that he had given the vehicle for driving to a person who was duly licensed, recovery right given in favour of the insurance company cannot be faulted with.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed.

03.02.2020

ashok

(REKHA MITTAL)**JUDGE**

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No