

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

FAO-8897-2014 (O&M)
Date of decision : 18.11.2022

Usha Thakur and Others

... Appellant(s)

Versus

Pardeep Kumar and Another

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashwani Arora, Advocate for the appellants.

Mr. Abhay Gupta, Advocate for
Mr. Amar Vivek, Advocate for respondent No.1.

Mr. Pradeep Kumar, Advocate for respondent No.2.

ALKA SARIN, J. (ORAL)

The present appeal has been preferred by the claimant-appellants against the award passed by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'Tribunal') on the limited ground that the Insurance Company, respondent No.2, has been exonerated.

Admittedly, the driver and owner had approached this Court by filing an appeal being FAO-9788-2014 challenging the award dated 24.03.2014 passed by the Tribunal. The said appeal was dismissed by this Court vide judgment dated 08.12.2014. The said judgment is stated to have attained finality inasmuch as the driver and owner chose not to challenge the judgment dated 08.12.2014. Further, in the present appeal preferred by the claimant-appellants, it is the contention of learned counsel for the appellants

that the same would be maintainable and that the judgment dated 08.12.2014 passed in FAO-9788-2014 would not operate as *res judicata*. In support of his contentions, learned counsel for the appellants has relied upon the following decisions :

1. *Tulna Devi & Ors. Vs. Girdhari Lal & Ors. [2004 (2) SimLJ 908]*
2. *Himakanth Vs. Afroz Pasha & Anr. [Miscellaneous First Appeal No.9533/2008]*
3. *Dheer Singh Vs. Ravi Kumar & Ors.*
4. *Palanisamy Gounder Vs. C. Sathiyamoorthy & Anr. [CMA No.1273 of 2009 decided on 16.10.2019]*
5. *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed & Ors. [1976 (1) SCC 671]*
6. *Banto Devi & Ors. Vs. Mahabir Parshad & Ors. [2003(1) RCR (Civil) 392]*
7. *Girdhari Lal & Ors. Vs. Suresh Kumar & Ors. [2015(8) RCR (Civil) 498]*
8. *Om Parkash Sekhri Vs. Pritam Singh & Ors. [1995(2) ACC 216].*

Per contra, learned counsel for the respondent has contended that once the appeal preferred by the driver and owner stood dismissed by this Court, the claimant-appellants would have no ground to challenge the same by way of a separate appeal.

Heard.

In the present appeal, admittedly, the owner and driver had approached this Court by way of FAO-9788-2014 which was dismissed vide judgment dated 08.12.2014. As per the counsel, the said judgment attained finality inasmuch as the same was not challenged by the owner and driver.

The present appeal has been filed by the claimant-appellants. On a pointed query put by this Court as to how the present appeal is maintainable at the behest of the claimants especially when the appeal filed by the owner and driver itself stood dismissed, learned counsel for the appellants has pressed the judgment in the case of Tulna Devi (supra). In the case of Tulna Devi (supra), no appeal challenging the award had been preferred by the owner and driver of the bus and holding the claimants falling within the definition of aggrieved person the appeal was held maintainable. The facts of the present case are totally distinguishable inasmuch as in the present case the owner and driver preferred an appeal which stands dismissed vide judgment dated 08.12.2014. The said judgment would therefore not come in the aid of learned counsel for the appellant.

In the cases of Himakant (supra), Dheer Singh (supra), Palanisamy (supra) also there was no appeal which was preferred by the driver and owner of the offending vehicle. In the present case an appeal was preferred by the driver and owner and the same stands dismissed. The facts being totally different, the ratio of the said judgment would not be applicable to the facts of the present case.

There can be no quarrel with the proposition of law laid down in the case of Jasbhai Motibhai Desai (supra), however, the same is also of no help to the counsel for the appellant keeping in view the fact that the award was challenged by the owner and driver and the appeal stands dismissed by this Court on merits.

The judgments relied upon by the learned counsel for the appellant in the cases of Banto Devi (supra), Girdhari lal (supra) and Om

Prakash Sekhri (supra) are also distinguishable on facts.

No judgment has been cited by the learned counsel for the appellant to show that despite the dismissal of FAO-9788-2014 vide judgment dated 08.12.2014, the present appeal would still be maintainable on the question of liability of the insurance company. The grounds of appeal in FAO-9788-2014, copy whereof has been handed over in Court by the counsel for the appellant, clearly reveals that in the said appeal the question of liability of the insurance company was specifically raised.

In view of the above I do not find any merit in the present appeal which is accordingly dismissed. Pending applications, if any, all stand disposed off.

18.11.2022

Yogesh Sharma

**(ALKA SARIN)
JUDGE**

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO