

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

101

CWP-21011-2013 (O&M)
Date of decision: 07.02.2024

Prem Devi
...Petitioner

VERSUS

State of Haryana and others
...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Ram Darshan Yadav, Advocate for the petitioner.

VINOD S. BHARDWAJ, J. (Oral)

CM-21813-CWP-2023

The instant application has been filed for restoration of the writ petition which was dismissed for non-prosecution vide order dated 22.11.2023.

In view of the averments made in the application, the same is allowed. The writ petition is ordered to be restored to its original number and the main case is taken on Board of this Court for hearing today itself, since the matter relates to the year 2013 and had remained pending for nearly 10 years.

Main case:

1. The instant petition has been filed seeking quashing of order dated 30.10.2002 passed by respondent No.3-Assistant Registrar,

Cooperative Societies, Rewari and the subsequent orders dated 13.10.2003 and 06.08.2010 passed by respondent No.2-Deputy Registrar, Cooperative Societies, Gurgaon and respondent No.1-Special Secretary to Govt. of Haryana, Cooperative Department, Haryana, respectively.

2. Learned counsel for the petitioner contends that deceased-Bulla Ram (husband of the petitioner) was selected and appointed as Driver with the Rewari Cooperative Marketing Society Limited. He discharged his functions and duties diligently and with complete dedication. There was nothing adverse and no misconduct against her deceased-husband as per the service record. Bulla Ram expired on 02.03.2009 by leaving behind two minor sons and two minor daughters. However prior thereto, on 24.12.1994, when Bulla Ram was driving the Truck bearing registration No.HR-36-7833 of the Society, for the works of the Society, he met with an accident resulting in death of Tara Chand resident of village Jaitpur, Tehsil and District Rewari. A criminal case was accordingly registered against Bulla Ram. Consequent upon his conviction in the said case, Bulla Ram was released on probation in an appeal, by the Additional Sessions Judge, Rewari. At the same time, the dependants of deceased-Tara Chand had also filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 before the Motor Accident Claims Tribunal, Rewari on 03.02.1995 for claiming compensation. Vide its award dated 10.06.1999, an amount of Rs.1,88,000/- along with the interest @ 12% per annum was awarded as compensation to the dependants of deceased-Tara Chand. Respondents i.e. Driver (Bulla Ram) as well as owner the Rewari Cooperative Marketing

Society Limited were also held liable to pay the compensation, jointly and severally since the vehicle was not insured at the time of the accident.

3. The Society determined the liability and vide its Resolution No.4 dated 28.09.1999, decided that Manager-B.D. Saini and Driver-Bulla Ram are jointly responsible for paying the compensation on account of their respective negligence and omission. The matter was, thereafter, referred under Sections 102-103 of the Haryana Cooperative Societies Act, 1984 to respondent No.3-Assistant Registrar Cooperative Societies, Rewari for surcharge and recovery proceedings. Vide order dated 30.10.2002, respondent No.3 upheld the decision of Society resolving the former Manager-B.D. Saini and Driver-Bulla Ram liable to pay the compensation, to be apportioned equally amongst them.

4. Feeling aggrieved of the said order, Bulla Ram-the husband of the petitioner preferred an appeal before respondent No.2-Deputy Registrar, Cooperative Societies, Gurgaon. Vide order dated 13.10.2003, the said appeal was dismissed. A revision petition was thereafter filed before respondent No.1 which was also dismissed vide order dated 06.08.2010. Against the same, the present writ petition has been filed.

5. Written statement had been filed on behalf of the contesting respondents No.1 to 4 which defended the Resolution as well as the order passed by the authorities contending that the Criminal Court had already held Bulla Ram liable for rash & negligent driving and that the compensation deposited by the Society could be legally recovered from the persons who were in default. Since the responsibility of getting the vehicle

insured was that on the Manager and for driving the same safely and carefully was on the deceased-Bulla Ram (husband of the petitioner), hence, the Manager as well as the Driver have been rightly held responsible to indemnify the Society for the awarded amount deposited by it.

6. A separate reply on behalf of respondent No.5-Manager was also filed wherein plea has been taken that deceased Driver should be should be held liable for the payment. The award passed by the Motor Accident Claims Tribunal was also appended by him with the reply as Annexure R-5/1, which holds the Society and the Driver jointly and severally liable.

7. Counsel for the petitioner contends that the Driver (Bulla Ram) was not responsible for ensuring that the vehicle in question is insured. It is further submitted that the authorities have specifically returned a finding that the responsibility for renewal of the insurance was upon the Manager and that the husband of the petitioner had duly informed the Manager about the expiry of the insurance, however, no action was taken by him. He thus contends that the lapse being entirely on the part of the respondent No.5-B.D. Saini, who was the erstwhile Manager of the Society, the deceased could not have been held liable to indemnify the Society by apportionment of the claim awarded by the Motor Accident Claims Tribunal. He, however, could not dispute the fact that Bulla Ram was convicted in the criminal proceedings that had been initiated against him for rash and negligent driving, although, he was released on probation.

8. No other argument has been raised by the learned counsel for the petitioner.

9. I have heard the learned counsel for the petitioner. The following undisputed facts emerge from a consideration of the pleadings and arguments:

- (i) That deceased-Bulla Ram was engaged as a Driver on the offending Truck bearing registration No.HR-36-7833 of the Society.
- (ii) That an accident had taken place on 24.12.1994, when Bulla Ram was driving the offending vehicle which resulted into the death of Tara Chand resident of village Jaitpur, Tehsil and District Rewari.
- (iii) That in the proceedings initiated before the Motor Accident Claims Tribunal for seeking compensation, an award was passed on 10.06.1999, holding the owner and the Driver of the offending vehicle jointly and severally liable to compensate the dependants of deceased-Tara Chand.
- (iv) That the Society held that the Manager as well as the Driver of the offending vehicle were responsible for having caused the loss and initiated surcharge proceedings for indemnification.
- (v) That the authorities have even though noticed that the laps of non-renewal of the Insurance Policy was on the part of B.D. Saini-Manager, however, a specific finding was also recorded against Bulla Ram-Driver for having

been careless and negligent while driving the offending vehicle resulting into the death of Tara Chand. Hence, the compensation awarded by the Motor Accident Claims Tribunal was apportioned equally amongst the Manger as well as the deceased-Bulla Ram (Driver of the offending vehicle) for indemnifying the Society.

10. Under these circumstances, when the act of rash and negligent driving on the part of the husband of the petitioner stands established in the judgment of conviction, which has attained finality, a mere release of deceased-Bulla Ram on probation would not exonerate him of the civil liability in terms of the conditions of his employment under the Haryana Cooperative Societies Act and the Regulations framed thereunder. Merely because the Manager was negligent in not getting the vehicle insured does not mean that the Driver is exonerated of his obligation to drive his vehicle carefully. The conviction of Bulla Ram-husband of the petitioner in the matter of rash and negligent driving thus cannot be disregarded in its entirety and he would none-the-less remain liable.

11. I do not find that there is any illegality, impropriety or harshness exercised by respondent No.4-The Rewari Cooperative Marketing Society Limited and in the subsequent orders passed by respondent No.3-Assistant Registrar Cooperative Societies in upholding the apportionment of the compensation awarded by the Motor Accident Claims Tribunal deposited by the Society equally amongst the Manager as well as Bulla Ram (Driver)-deceased husband of the petitioner. There is also no illegality in the

dismissal of the subsequent appeal or revision. High Court, in exercise of its powers of judicial review, would not substitute the decision of the authorities below by its own merely because any other view is also possible.

12. **The present petition is accordingly dismissed.**

07.02.2024
Mangal Singh

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No