

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

212

FAO-3859-2012 (O&M)

Date of Decision : 24.01.2024

NEW INDIA ASSURANCE CO. LTD.

.... Petitioner

VERSUS

MAHEL SINGH @ MAHILA SINGH & ORS

..... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.C. Gupta, Advocate for the appellant.

Mr. Vikas Gupta, Advocate for respondent No.1.

Mr. Anish Verma, Advocate for

Mr. Karamjit Verma, Advocate for respondent No.2.

Respondent No.4 proceeded against *ex parte*
vide order dated 07.01.2016.

Mr. Paul S. Saini, Advocate and

Mr. Vipul, Advocate for respondent No.5.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred against the Award dated 17.04.2012 passed by the Motor Accident Claims Tribunal, Amritsar (hereinafter referred to as 'the Tribunal').

2. Learned counsel appearing on behalf of the appellant-Insurance Company has contended that the petition qua the driver and owners was dismissed in default and since they have been absolved, the question of the Insurance Company being held liable would not arise. It is further the contention of the learned counsel for the appellant-Insurance Company that the claimant would have been entitled for compensation under the

Workmen's Compensation Act, 1923. However, there is nothing on the record to indicate as to whether the said amount was given to the claimant.

3. Learned counsel for respondent No.1 is not in a position to deny the fact that the claim petition qua respondents No.1, 2 and 4 therein i.e. driver of truck bearing registration No.HR-37-4113; owner of truck bearing registration No.HR-37-4113 and driver of truck bearing registration No.HR-37-7909, respectively, was dismissed in default vide order dated 26.02.2009.

4. Heard.

5. In the present case, strangely, the Tribunal while deciding the matter has stated in the award dated 17.04.2012 that petition qua respondents No.1, 2 and 4 therein stood dismissed in default vide order dated 26.02.2009. Since the driver and owners of the trucks were the respondents, the petition possibly could not have been dismissed in default qua them. There is no mention as to the service of respondent No.5 therein. The argument of the learned counsel for the appellant-Insurance Company that once the driver and the owners have been absolved the question of the liability of the Insurance Company would not arise is to be accepted inasmuch as the Insurance Company is only the insurer of the vehicle and unless negligence is proved on the part of the driver of the vehicle, the liability of the Insurance Company would not arise. However, in the present case it appears that the claim petition qua respondents No.1, 2 and 4 therein i.e. driver of truck bearing registration No.HR-37-4113; owner of truck bearing registration No.HR-37-4113 and driver of truck bearing registration No.HR-37-7909, respectively, was dismissed in default, which possibly could not have been

done and there is no report as to the service of respondent No.5 i.e. owner of truck bearing registration No.HR-37-7909. Accordingly, this Court deem it proper to set aside the impugned award and remand the matter back to the Tribunal concerned for decision afresh in accordance with law.

6. In view of the above, the present appeal is allowed. Award dated 17.04.2012 passed by the Motor Accident Claims Tribunal, Amritsar is set aside and the matter is remanded back to the Tribunal concerned for decision afresh after giving proper notice to the parties. The parties are directed to appear before the Tribunal concerned on **15.02.2024** at 10.00 a.m. Pending applications, if any, also stand disposed off.

24.01.2024
Aman Jain

(ALKA SARIN)
JUDGE

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