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

FAO-8841-2014 (O&M)
Date of decision: 25.10.2024

Rani Devi and others

...Appellants

Versus

Mohd. Iqbal and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Munish Puri, Advocate for the appellants.

Mr. S.S. Sidhu, Advocate
for respondent No.2-Insurance Company.

VIKAS BAHL, J. (ORAL)

1. Widow, four minor children and parents of Surjit Kumar, who as per the case of the appellants was also named as Ashwani Kumar, have filed the present appeal challenging the award dated 13.05.2014 passed by the Motor Accident Claims Tribunal, Pathankot (hereinafter to be referred as “the Tribunal”) vide which the claim petition filed by the claimants/appellants has been dismissed.

2. Learned counsel for the appellants has submitted that in the present case, under issue No.1, it was held that the deceased had died on account of rash and negligent driving of respondent No.1-Mohammad Iqbal but the claim petition was rejected solely on the ground that the person who had died was Ashwani Kumar whereas the appellants/claimants were



claiming themselves to be the widow, minor children and parents of Surjit Kumar. It is submitted that the said Surjit Kumar was also known as Ashwani Kumar and in spite of the death of said Surjit Kumar @ Ashwani Kumar in the accident which had taken place on 11.01.2012 due to rash and negligent driving of the truck bearing registration No.JK-02-J-7637, no compensation had been given to the present appellants. It is further submitted that the present appellants had filed an application under Order 41 Rule 27 read with Section 151 CPC, i.e., CM-16054-CII-2015 for leading additional evidence and a specific reference has been made to Annexure A-2 which is the Death Certificate issued by the Health and Family Welfare Department, Chief Registrar, Births & Deaths, Punjab, in which in the column of the name of the deceased his name has been mentioned as Ashwani Kumar @ Surjit Kumar. Reference has also been made to Annexure A-3 which is the resolution dated 13.08.2014 passed by the Gram Panchayat in the meeting held on 13.08.2014 in which it had been observed that Surjit Kumar was also known as Ashwani Kumar and he had died in the truck accident in Taragarh on 11.01.2012 and his name in the FIR was recorded as Ashwani Kumar on account of non presence of his family members at the time of the accident and reference has even been made to the Ration Card and other documents of the deceased.

3. Learned counsel for the appellants has submitted that the said additional evidence is very necessary for the proper and final adjudication of the case and in case, an opportunity is granted to the present appellants to lead the said additional evidence, then, the appellants would be able to establish that Surjit Kumar was also known as Ashwani Kumar and it was



the said person who had died in the accident and thus, they would be entitled to compensation. It is submitted that in view of the same, the impugned award be set aside and the matter be remanded for a fresh decision. In support of his arguments, he has relied upon the judgment passed by the Delhi High Court in case titled as **A. Rupin Manohar Through Sh. S. Anandha Kumar Vs. Mohd. Ansari & others**, reported as **2017(4) ACC 7**.

4. Learned counsel for the Insurance Company has submitted that even as per the findings under Issue No.5, it had been held that the driver was not holding a valid and effective driving licence to drive the truck and has submitted that in case, the matter is to be remanded then, due opportunity be given to the Insurance Company to agitate all the points, including the point of them not being responsible for payment of any compensation and also to lead their own evidence in rebuttal to the additional evidence produced by the claimants.

5. This Court has heard learned counsel for the parties and has perused the paper book.

6. A perusal of the paper book would show that in the present case, respondent No.1 who is the driver and owner of the vehicle in question was duly served as had been noticed in the order dated 13.11.2018 passed by the Coordinate Bench of this Court but no one had appeared on his behalf and subsequently, in the order dated 01.10.2019, the said respondent No.1 was proceeded against ex parte.

7. A perusal of the award would show that it had been specifically held in para 10 under Issue No.1 that the death of the deceased, whose name



was stated to be Ashwani Kumar, had taken place on account of rash and negligent driving of respondent No.1, who was the owner and driver of the offending truck bearing registration No.JK-02-J-7637. The sole ground on which the claim petition of the present appellants/claimants had been rejected was that the claimants/appellants had not been able to prove that Ashwani Kumar was also Surjit Kumar, as the present appellants/claimants were stated to be the widow, minor children and parents of the said Surjit Kumar. It was the affirmative case of the appellants/claimants that the said Surjit Kumar was also known as Ashwani Kumar and they are the one and the same person and the claimants had lost their husband/father/son in the said accident and that no person would falsely claim the death of one's husband/father/son. Through the application filed under Order 41 Rule 27 read with Section 151 CPC, in which notice was issued on 19.08.2015 and no reply was filed to the same, the present appellants have sought to produce on record three documents including the Death Certificate which had been issued on 08.01.2015 (Annexure A-2) by the Health and Family Welfare Department, Chief Registrar, Births & Deaths, Punjab, wherein the name of the deceased had been mentioned as Ashwani Kumar @ Surjit Kumar and the said documents if proved as per law would substantiate the case of the present appellants. The resolution dated 13.08.2014 passed by the Gram Panchayat also reiterates the fact that another name used by Surjit Kumar was Ashwani Kumar and that it was the said person who had died in the truck accident which had taken place on 11.01.2012; the said resolution is also sought to be produced as an additional evidence. The said two documents are very necessary for the proper and final adjudication of the



case.

8. The Delhi High Court in the case of **A. Rupin Manohar Through Sh. S. Anandha Kumar** (Supra) after considering the fact that the additional evidence which was sought to be produced before the Court was necessary to determine the fair and just compensation, had permitted the appellant therein to lead additional evidence before the Tribunal and had, set aside the impugned award and had remanded the matter to the Tribunal for recording of additional evidence and had further directed the Tribunal to pass a fresh award after recording the additional evidence. Relevant portion of the said judgment is reproduced as under:-

“28. This Court is satisfied that additional evidence is necessary to determine the fair and just compensation to the appellant and therefore, the appellant is permitted to lead the additional evidence before the Claims Tribunal.

29. The appeal is allowed, the impugned award is set aside and the matter is remanded back to the Claims Tribunal for recording the additional evidence. The Claims Tribunal shall pass a fresh award after recording of the additional evidence. The amount already awarded by the Claims Tribunal and paid by the respondent shall be adjusted in the fresh award to be passed.

30. The parties shall appear before the Claims Tribunal on 18th September, 2017. The record of the Claims Tribunal shall return back forthwith.

31. Copy of this judgment be given dasti to counsel for the parties under the signature of the Court Master.

Appeal Allowed.”

9. This Court is of the opinion that the additional evidence sought to be produced in the present case is also very necessary for the proper and



final adjudication of the case and thus, the present appellants should be permitted to lead the said additional evidence before the Tribunal.

10. Accordingly, the present appeal is partly allowed and the impugned award dated 13.05.2014 passed by the Tribunal is set aside and the case is remanded to the Tribunal, Pathankot to pass a fresh award after recording the additional evidence and after give due opportunity to the respondents to lead their evidence to rebut the additional evidence produced by the claimants.

11. It would be open to all the parties to raise all the pleas as are available to them, in accordance with law. Both the parties shall appear before the Tribunal on 18.11.2024 and would apprise the Tribunal about the order passed by this Court and the Tribunal would thereafter proceed with the matter, in accordance with law.

12. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

25.10.2024

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No