

Hukam Singh and Others Vs Bimla Rani and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 3, 1993

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 151

Citation: (1993) 2 ACC 421

Hon'ble Judges: R.S. Mongia, J

Bench: Single Bench

Judgement

R.S. Mongia, J.

C.M. 7933-CII/92 is an application on behalf of the appellant for staying the execution of the award of the Motor

Accidents Claims Tribunal, Ambala. With the consent of the parties, I have heard the learned Counsel at length and am disposing of the main case

itself, as also the application (C.M. 502-CII/93; Under Order 41, Rule 27 read with Section 151 of the Code of Civil Procedure.

2. Appellant Hukam Singh is the owner of Tractor Swaraj 735, Model 1989, Chasis No. 89342096, Engine No. 39.1038.893976, which was

involved in an accident on 28th March, 1990, when the tractor was being driven by the appellant himself. Shri Shadi Lal, husband of Bimla Rani

claimant, unfortunately died in the accident. The Motor Accident Claims Tribunal, Ambala, vide its award dated 27th August, 1992, awarded Rs.

2,88,000/- to the claimants. The tractor was insured with the respondent-Company. However, the learned Tribunal found that the Insurance

Company was not liable inasmuch as the driving license which was hold by the appellant did not have the entry for driving a tractor. In the

application Under Order 41, Rule 27 of the Code of Civil Procedure, it has been averred that in fact the petitioner was authorised to drive a

tractor by the Lisensing Authority and it was by a Clerical error that the entry for driving a tractor was not made in the licence by the Licensing

Authority, Karnal. The appellant applied to the Licensing Authority regarding the clarification of his license bearing No. 52000 dated 21.4.1986

and according to the averments made in the application, the Licensing Authority, Karnal has intimated the appellant as Under:

Returned in original Applicant's licence No. is 52000, which is in the name of Hukam Singh S/o Randhir Singh F-425, Meeran Chati, Licence is

made for Motor cycle, Scooter and Tractor and fee is Rs. 40/- as per record and has been made from 21.4.1986 to 20.4.1991.

The learned Counsel for the appellant submitted that if a chance is given to him to prove that in fact he held a valid driving license for driving a

tractor and it was because of some clerical error that entry was not made in the license issued to him, then the entire liability would fall on the

Insurance Company, for which purpose in fact the insurance was got done.

The learned Counsel for the respondents, however, submitted that fullest opportunity was given to the appellant and it was for him at the earlier

stage to produce the evidence which he now seeks to produce.

3. After hearing the learned Counsel for the parties, I am of the view that the interest of justice requires that an opportunity should be granted to the

appellant to prove that in fact he held a valid license for driving a tractor on the day the accident took place. It goes without saying that if he is able

to prove that in fact there was some clerical error in making endorsement in the license that the appellant can drive a tractor, then the liability arising

out of the accident would fall on the Insurance Company. The owner of a vehicle gets his vehicle insured so as to meet such eventualities that if

unfortunately an accident takes place, the liability is not fastened on him. There is no denying the fact that the tractor was insured with Insurance

Company.

4. For the foregoing reasons, the application Under Order 41, Rule 27 of the CPC is allowed. The award of the Motor Accidents Claims Tribunal

is set aside to the extent it holds that the appellant did not hold a valid license for driving a tractor. As far as the quantum of compensation awarded

is concerned, the same is not being touched at least is stage.

5. The appellant has already deposited Rs. 25,000/- with this Court, which the respondents--Claimants can withdraw by making an application to

the Registrar of this Court. The appellant would further deposit another sum of Rs. 25,000/- with the Registrar of this Court within one month from

today, which the Claimants can also withdraw after making suitable application in that behalf before the Registrar of this Court.

6. The case is remanded back to the Motor Accident Claims Tribunal, Ambala with the direction to give opportunity to the parties to lead

evidence on the point whether the appellant held a valid driving license for driving a tractor on the date of accident. The, Ambala, would take

expeditious steps to dispose of the matter, preferably within six months. In case it is held by the Motor Accident Claims Tribunal that the appellant

did hold a valid license on the date of accident, then needless to mention that the amount paid by the appellant to the claimants would be

recoverable by him from the Insurance Company. The parties through their Counsel are directed to appear before the Motor Accidents Claims

Tribunal, Ambala, on 14th June, 1993. The appellant will show a receipt to the Motor Accidents Claims Tribunal of having deposited another sum

of Rs. 25,000/- with the Registrar of this Court.

There will be no order as to costs.