

(1993) 05 P&H CK 0007

High Court Of Punjab And Haryana At Chandigarh**Case No:** None

Hukam Singh and Others

APPELLANT

Vs

Bimla Rani and Others

RESPONDENT

Date of Decision: May 3, 1993**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - 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 Licensing 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 Chat, 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 at this 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.