

**(2001) 06 P&H CK 0015**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** F.A.O. No. 1773 of 1998

Mukhtiar Singh

APPELLANT

Vs

Kailasho Devi

RESPONDENT

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**Date of Decision:** June 1, 2001

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27
- Motor Vehicles Act, 1988 - Section 149(2), 166, 173, 49(2)

**Citation:** (2001) 3 RCR(Civil) 784

**Hon'ble Judges:** R.L. Anand, J

**Bench:** Single Bench

**Advocate:** Mr. S.S. Virk, for the Appellant; Mr. Sandeep Jasuja, Mr. S.K. Gularia, Mrs. Veena A. Talwar, Mr. G.N. Malik and Mr. Sanjay Jain, for the Respondent

**Final Decision:** Partly Allowed

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### **Judgement**

R.L. Anand, J.

Shri Mukhtiar Singh son of Shri In-der Singh. who is the registered owner of Truck No. HR-07-5325, has filed the present FAO No. 1773 of 1998 and it has been directed against the award dated 1.4.1998 passed by the Motor Accidents Claims Tribunal, Kurukshetra, who awarded the compensation to the tune of Rs. 2,49,600/- to the claimants Smt. Kailash Devi, Ravi Kumar, Vikash and Smt. Seoti.

2. The brief facts of the case are that Smt. Kailasho Devi, Ravi Kumar, Vikash and Ms. Seoti, filed a claim petition u/s 166 of the Motor Accidents Claims Tribunal against Shri Om Parkash, Mukhtiar Singh, Pritam Singh Gularia, i.e. driver, registered owner and Superdar and also against the New India Assurance Company and Shri Bhupinder Singh driver-cum-owner of vehicle tractor trolley make Ford 3600 Engine No. NAC 172274, chasis No. 170375 and they claimed compensation to the extent of Rs. 3,50,000/- on account of the death of Shri Krishan Lal who died in a vehicular accident on 18.9.1995 and they further claimed a sum of Rs. 1,000/- by way of

damages for the cycle on which the deceased was going.

3. Brief facts of the case are that on 18.9.1995 deceased Krishan Lal along with his brother Raj Kumar was coming to his village Mohri from Ambala on cycles. When they reached in the area of village Mohri, a tractor/trolley Make-Ford 13600, referred to above, came there. It was being driven by Shri Bhupinder Singh respondent No. 5. The tractor-trolley came from behind. Krishan Lal was ahead of his brother Raj Kumar. In the meantime, Shri Om Parkash respondent No. 1 came from the side of Shahbad. He was driving the truck bearing No. HR-07-5325 and as per the allegations he was driving this truck in a rash and negligent manner. He did not blow the horn. He violated the traffic rules. He dashed the truck against the tractor trolley and dragged it as a result of which the deceased who was on the bicycle was also struck with the tractor trolley. The deceased was also dragged into the pits and in this manner he met with an accident. After causing the accident, respondent No. 1 Shri Om Parkash ran away from the spot. According to the claimants, this accident was caused due to the rash and negligent driving of respondent No. 1. It was also pleaded by the claimants that if the Tribunal comes to the conclusion that both the drivers were negligent, then the claimants are entitled to compensation from all the respondents jointly and severally.

4. Notice of the claim petition was given to the respondents. Respondent No. 1 filed the written statement and took a preliminary objection that the claimants have no locus standi to file the claim petition: that the claim petition is bad for mis-joinder and non-joinder of necessary parties that the claimants are not entitled to any compensation from the answering respondent as the accident in question took place due to the rash and negligent driving of the driver of tractor-trolley Shri Bhupinder Singh. It was also asserted by this respondent that he did not caused the accident. He has been falsely implicated in conclusion with the driver of the tractor-trolley.

5. Respondent No. 2 Shri Mukhtiar Singh, owner of the truck, filed the written statement and he asserted that at the relevant time he was not the owner of the vehicle in question. Respondent No. 3 Shri Pritam Singh took the objection regarding the maintainability of the claim petition on the ground that the claim petition is bad for misjoinder and non-joinder of necessary Parties. On merits, he took the stand that no accident had taken place on account of negligence of respondent No, 1 who has been falsely implicated. The actual accident took place on account of the negligence of Shri Bhupinder Singh son of Piara Singh, resident of village Sarola, Tehsil and District Ambala who was driving the tractor trolley at the relevant time in a rash and negligent manner. Shri Bhupinder Singh, respondent No. 5 is the owner and driver of the tractor trolley and he is responsible to make the payment of the compensation.

6. Joint written statement was filed by the insurance Company because both the vehicles were insured with" this very Insurance Company. It was pleaded by the

Insurance Company that respondent No. 1 Shri Om Parkash and respondent No. 5 Shri Bhupinder Singh were not having valid driving licence at the relevant time and as such the Insurance Company is not liable to pay the compensation.

7. Respondent No. 5 filed the written statement and he took up the preliminary objection that the claim petition is bad for mis-joinder and non-joinder of necessary parties. The tractor in question was insured with the New India Assurance Company. If the liability of the tractor trailer is found then in that eventuality the New India Assurance Company would be liable to pay the compensation.

8. From the pleadings of the parties the trial Court framed the following issues :-

1. Whether the accident had taken place on account of rash and negligent driving of truck No. HR-07-5325 by its driver Om Parkash or of tractor-trolley being driven by respondent No. 5. Bhupinder Singh or by both of them, resulting into the death of Krishan Lal, as alleged ? OPP

2. If issue No. 1 is proved in affirmative, then what amount of compensation the claimants are entitled and from whom ? OPP

3. Whether the vehicles in question were being driven by the persons without holding valid driving licence as alleged, if so, to what effect ? OPP

4. Whether the petitioners have no locus-standi to file the claim petition ? OPR

5. Whether the claim petition is bad for non-joinder and mis-joinder of necessary parties ? OPR

6. Relief,

The parties were given the opportunities to lead their evidence and on the conclusion of the proceedings the Tribunal came to the conclusion while deciding issue No. 1 that the accident in question was caused due to rash and negligent driving of respondent No. 1 Shri Om Parkash who was driving the truck No. HR-07-5325 and he was responsible for causing the death of Shri Krishan Lal. Under issue No. 2, it was held that since respondent No. 1 Shri Om Parkash failed to produce the driving licence, as such New India Assurance Company cannot be held liable to make the payment of compensation to the claimants. During the pendency of the claim petition Shri Om Parkash has expired. In these circumstances, respondent No. 2 Shri Mukhtiar Singh who is now appellant was ordered to make the payment of compensation to the claimants. Under issue No. 3, it was held that Shri Om Parkash was under the employment of Shri Mukhtiar Singh at the time of the accident but he was not having any valid driving licence, therefore, the New India Assurance Company is not liable to pay the compensation. Issue No. 4 was decided in favour of the claimants by holding that they have the locus standi to file the claim petition. Similarly, issue No. 5 was decided in favour of the claimants. Resultantly, the claim petition was partly allowed and the Tribunal awarded a sum of

Rs. 2,49,600/- to the claimants.

9. Not satisfied with the award Shri Mukhtiar Singh has filed the present appeal.

10. During the pendency of this appeal Shri Pritam Singh de facto owner of the truck ana who also claims an attorney of Shri Mukhtiar Singh, the present appellant, filed an application under Order 41 Rule 27 C.P.C, and along with the application he placed on record the certified copy of the driving licence of Shri Om Parkash with a photograph which indicates that registering authority of Kulu had issued the driving licence earlier for the light vehicle up to 21.2.1999 and thereafter, Shri Om Parkash was authorised to drive the heavy vehicle with effect from 21.8.1995. Meaning thereby that Om Parkash was competent to drive the heavy vehicle as on 18.9.1995.

11. I have heard Shri A.S. Virk, learned counsel appearing on behalf of the appellant, Shri Sandeep Jasuja, appearing on behalf or respondents No. 1 to 4, Shri S.K. Guleria, Advocate appearing on behalf of respondent No. 7 and Mrs. Veena A. Talwar, Advocate, appearing on behalf of respondent No. 8 Shri G.N. Malik, Advocate, appearing on behalf of respondent No. 6 and Shri Sanjay Jain, appearing on behalf of respondent No. 9 and with their assistance have gone through the record of the case.

12. First of all, I dispose of the application under Order 41 Rule 27 C.P.C. The same is allowed in the interest of justice because the document in question will help me in the just decision of the case. This document indicates that Shri Om Parkash was having a valid driving licence on the date of the accident. Assuming for the sake of arguments, if it is established and held that the moment Shri Om Parkash was not having the valid driving licence on the date of the accident, still we have to see whether the New India Assurance Company which had insured the truck as well as the tractor trolley, is liable to pay the compensation to respondents No. 1 to 4, who were the claimants in the trial Court.

13. The defence taken up by the Insurance Company was that Shri Om Parkash was not having a valid driv-ing licence at the time of the accident and that the owner of the truck either Shri Mukhtiar Singh or Shri Pritam Singh had committed the breach of the agree-merit, therefore, it is not liable to pay the compensation. Firstly, I have just held above that Shri Om Parkash was having a valid driving licence. Moreover, this point has been settled by the Hon"ble Supreme Court in a case of reported as 2001(2) RCJ 1, New India Assurance Company v. Smt. Kamla and others in which the Hon"ble Supreme Court was pleased to hold that in a case of third party claim, the insurance company must pay the compensation to the claimants and if there is any breach on the part of the owner of the vehicle, the insurance company is entitled to recover the amount from the owner.

14. In this view of the matter, the appeal of Shri Mukhtiar Singh is partly allowed and the finding of the Tribunal on issue No. 2 is hereby set aside and it is declared that Shri Mukhtiar Singh owner of the truck and the Insurance Company are liable to pay

the amount of compensation, jointly and severally, to the respondents No. 1 to 4 (claimants). The amount of compensation shall be distributed as per the direction given by the Tribunal.

There shall be no order as to costs so far as the present appeal is concerned.

15. Appeal partly allowed