

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

MA No. 326/2014

United India Insurance Co. Ltd.

.....Petitioner(s)

Through: None

Vs

Abdul Gani and Ors.

..... Respondent(s)

Through: Mr. Sarfraz Shah, Advocate for R- 1 to 4
Mr. M Tariq Mughal, Advocate for R- 5

Coram: HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

ORDER
15.07.2025

1. There is no representation on behalf of the appellant-company. Same has been the case on the last so many consecutive hearings.
2. Impugned in the instant appeal filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act" for short) is the Award/judgment dated 27.01.2014 passed by the learned Presiding Officer Motor Accident Claims Tribunal, Poonch in Claim Petition No. 23/2011 titled, "*Abdul Ghani and Ors. Vs United India Insurance Company Ltd and Ors*", whereby a compensation of ₹6,41,800/- along with interest @ 7.5% per annum from the date of institution of petition till its realization, was passed and directed to be satisfied by the appellant-company.
3. The appeal has been filed on the grounds *inter alia* that the impugned Award has been passed in violation of the terms and conditions of the policy of insurance and as such no cause of action had accrued to the

respondents 1 to 4/claim petitioners to prefer the Claim Petition giving rise to the impugned award; that the driving licence of the respondent-driver had expired on 16.04.2010 and as such was not valid as on the date of accident i.e. 08.08.2011; that the deceased was traveling in the vehicle as a gratuitous passenger whose risk was not covered in the policy of insurance and the deceased who was reported as per the post-mortem of the age of fifteen years could not have been either cleaner or any employee of the owner.

4. I have heard the learned counsel for the respondents and considered their submissions. Perused the memo of the instant appeal and the copies of the documents enclosed with the same as **Annexures** thereto, especially the impugned award.
5. In the facts and circumstances of the case, this Court is of the opinion that impugned Award does not suffer from any illegality or perversity. The learned MACT on the pleadings of the parties framed the issues vide order dated 19.03.2013 for adjudication. Issues No. 3, 4 and 5 came to be framed on the basis of the pleadings of the appellant (respondent No.1 in the Claim Petition). The subject matter of the said issues covers the grounds of the present appeal.
6. Perusal of the award reveals that all the said issues came to be decided in favour of the petitioners and against the respondents as the later who were saddled with the onus to discharge the proof of the said issues choose to stay away from the proceedings after filing the reply/objections and as such failed to prove the said issues.

7. It was for the appellant-company to prove at the proceedings of the Claim Petition before the learned MACT that the respondent-owner of the offending knew that his driver was not having a valid driving licence. The mere fact that the driving licence is fake or invalid will not *ipso facto* disentitle the owner of the vehicle from being indemnified in respect of the amount of compensation and it is for the insurer to prove at the proceedings that the said fact was already in knowledge of the owner/insurer.
8. The learned counsel for the respondent No.5/owner of the offending vehicle in the course of his arguments placed reliance on the judgment of the Hon'ble Apex Court cited as "*IFFCO Tokio General Insurance Co. Ltd. vs Geeta Devi and Ors*" Special Leave Petition (C) No. 19992 of 2023, decided on October 30, 2023, in which it has been held that the burden is upon the insurance company to prove that there was a failure on the part of the vehicle owner in carrying out due diligence apropos the driving licence before employing the holder of the same as driver.
9. It is profitable to reproduce para 15 of the said judgment for the sake of convenience-

As already pointed out supra, once a seemingly valid driving licence is produced by a person employed to drive a vehicle, unless such licence is demonstrably fake on the face of it, warranting any sensible employer to make inquiries as to its genuineness, or when the period of the licence has already expired, or there is some other reason to entertain a genuine doubt as to its validity, the burden is upon the insurance company to prove that there was a failure on the part of the vehicle owner in carrying out due diligence apropos such driving licence before employing that person to drive the vehicle. Presently, no evidence has been placed on record whereby an inference could be drawn that the deceased vehicle

owner ought to have gotten verified Ujay Pal's driving licence. Therefore, it was for the petitioner-insurance company to prove willful breach on the part of the said vehicle owner. As no such exercise was undertaken, the petitioner-insurance company would have no right to recover the compensation amount from the present owners of the vehicle. The impugned order passed by the Delhi High Court holding to that effect, therefore, does not brook interference either on facts or in law.

10. Likewise, the appellant-company has failed to prove that the deceased was traveling in the offending vehicle as a gratuitous passenger.

11. For the foregoing discussion, there seems to be no merit in the appeal which is, accordingly, **dismissed**.

12. It is submitted by the learned counsel for the respondents/Award Holders that the appellant-company has deposited the entire award amount along with interest with the Registry of this Court as per the order dated 05.06.2014. Registry is directed to release the deposited award amount, if any, still to be released, in favour of the respondents 1 to 4/claim petitioners strictly as per the award, upon their proper identification and against proper acknowledgement.

13. **Disposed of.**

(Mohd. Yousuf Wani)
Judge

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15.07.2025
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