

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

**FAO No.2505 of 1997 (O&M)
Date of Decision: February 16, 2015**

National Insurance Co. Ltd

...Appellant

Versus

Fateh Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Suvir Dewan, Advocate
for the appellant.

Mr. Shiv Kumar, Advocate
for respondents No.2 and 3.

FATEH DEEP SINGH, J.

The Insurer have challenged the award of learned Motor Accident Claims Tribunal, Faridabad dated 4.10.1997 allowing compensation to the claimants to the tune of ₹82,200/- along with interest.

Learned counsel for the appellant at the very onset has not challenged the findings on issue No.1 as to the involvement of the offending three wheeler No.DL-I-C-8533 and a truck but has sought to assail the identity of the driver of this vehicle and consequently the effect of the driving licence so claimed on behalf of the driver. The own joint stand of respondents No.1 and 2 in the joint written reply is that the three wheeler on the date of the alleged accident was being driven by Satbir as an employee of respondent-Daya Ram the owner of the three wheeler.

As has been argued on behalf of the respondents neither the driver nor the owner has challenged the findings on issue No.1 which has held that accident took place due to the rash and negligent driving of respondent No.1-Satbir and, therefore, have attained finality. More so, neither the driver nor the owner has stepped into the witness box to testify and set up their defence and, therefore, being contestants of the claim petition an adverse presumption needs to be drawn against them in which the evidence of the claimants have remained totally unrebutted.

The onus to prove issue No.4 as to the legality and validity of the driving licence was upon the Insurer and as per the impugned award no evidence has been led by the Insurer qua this aspect when Insurance policy Ex.R4 establishes that the vehicle in question was insured with the appellant at the time of the alleged accident. The mere premise that has sought to be raised by learned counsel for the appellant that FIR Ex.PA does not carries the name of the driver and that PW2 Fateh Ram states his name Kalu @ Beer Singh and that the mere admission by the respondents owner and driver in their joint written reply binds them and they cannot wriggle out of it and nothing adverse can be considered against the claimants for anything that has come in the subsequent testimony of either owner or the driver belatedly. Driver Satbir as RW1 has proved his driving licence as Ex.R1. Learned counsel for the respondents could not show any evidence to the contrary to prove that the same was fake or not legal and valid at the time of the accident. The Insurer by virtue of insurance contract Ex.R4 is bound to indemnify 3rd party claim and there is nothing tangible proved on the records that there was

violation of the terms of the insurance contract and, therefore, the findings of the learned Tribunal as has been assailed by the appellant do not call for showing any indulgence. There being no illegality or perversity in the findings of the Court below the same needs to be upheld. The appeal being without any merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

February 16, 2015
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