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

FAO No. 4975 of 2012 (O&M)
Date of decision: 25.08.2015

New India Assurance Company Limited

... Petitioner

versus

Akram and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ashwani Talwar, Advocate with
Mr. Jagjeet Singh, Advocate for the appellants.

K.Kannan, J.

The Insurance Company is in appeal challenging the liability cast on it without making possible a right of recovery against the owner for involving the insured vehicle involved in the accident and rendering the insurance company liable for the claim arising from such accident.

The owner-cum-driver had been served with copy of the petition and had participated in the trial. On a petition filed by the insurance company for production of driving licence, the Tribunal passed on order on 13.08.2010 to produce the driving licence. The driving licence was still not produced. Even a Criminal Court, before which a case of prosecution was levied against the driver-cum-owner, the driving licence had not been seized. Evidently, it was a case of person driving the vehicle without a driving licence. The Court in its reasoning, while

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casting the liability on the insurance Company observed that notwithstanding non-compliance of the Tribunal's direction for production of licence, the Insurance Company had still not taken steps to summon the requisite records from the Transport Department to elicit whether any driving licence had been issued or not.

I must observe the reasoning of the Tribunal to be pathetically bad and it requires the judge to update his own knowledge on the law relating to the manner of how the onus of proof will have to be discharged. A case of non-possession of driving licence is in the very nature a negative proof and it cannot be done any more than by an Insurance Company demanding details of insurance. Even Section 133 of the Motor Vehicles Act, casts a duty on the owner of a motor vehicle to give information about the details of insurance and the driving licence. Section 134 casts a similar duty for driver. In this case, the owner and the driver were the same and the provisions of the Motor Vehicles Act themselves would make clear that the insured is bound to support the Insurance Company with all the requisite details, for determination of liability. If the Court gave a direction to produce the driving licence and it was still not produced, the Tribunal could not have held the Insurance Company must have summoned records from the Transport Officer to elicit that no driving licence was issued in his name. It is an absurd line of reasoning which I discard.

The liability of the Insurance Company is confirmed to the extent that the claimants would have a right of enforcement against the insured but in terms of the law as laid down by Supreme Court in

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National Insurance Company Limited Vs. Swaran Singh and others, 2004 3 SCC 297, the Insurance Company will have a right of recovery against owner-cum-driver. The award stands modified and the appeal by the Insurance Company is allowed to the above extent.

(K.KANNAN)
JUDGE

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