

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

(1)

**CM No. 21511-CII-2016 in/and
FAO No.1472 of 1996 (O&M)
Date of Decision: October 22, 2016.**

New India Assurance Company Limited

.....APPELLANT(s).

VERSUS

Mukat Singh and another

.....RESPONDENT(s).

(2)

**CM No. 21508-CII-2016 in/and
FAO No.2544 of 1998 (O&M)**

New India Assurance Company Limited

.....APPELLANT(s).

VERSUS

Rajinder Prashad and others

.....RESPONDENT(s).

(3)

**CM No. 21507-CII-2016 in/and
FAO No.2545 of 1998 (O&M)**

New India Assurance Company Limited

.....APPELLANT(s).

VERSUS

Shikha and others

.....RESPONDENT(s).

(4)

**CM No. 21510-CII-2016 in/and
FAO No.2546 of 1998 (O&M)**

New India Assurance Company Limited

.....APPELLANT(s).

VERSUS

Kamla Devi and others

.....RESPONDENT(s).

(5)

**CM No. 21513-CII-2016 in/and
FAO No.2547 of 1998 (O&M)**

New India Assurance Company Limited

.....APPELLANT(s).

VERSUS

Rajinder Prashad and others

.....RESPONDENT(s).

(6)

**CM No. 21512-CII-2016 in/and
FAO No.2548 of 1998 (O&M)**

New India Assurance Company Limited

.....APPELLANT(s).

VERSUS

Kamla Devi and others

.....RESPONDENT(s).

(7)

**CM No. 21506-CII-2016 in/and
FAO No.2550 of 1998 (O&M)**

New India Assurance Company Limited

.....APPELLANT(s).

VERSUS

Rajinder Prashad Aggarwal and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashwani Talwar, Advocate
for the applicant-appellant (s).

SURINDER GUPTA, J.

CM Nos.21506, 21507, 21508, 21510, 21511, 21512, 21513-CII of 2016

These applications have been filed by the applicants-appellants

seeking restoration of the appeals mentioned in the head note which were

dismissed on 22.09.2016 due to non-appearance of counsel for the appellant.

Learned counsel for the appellant submits that due to his hip replacement, he had instructed his colleague to appear who got struck up before some other Bench and could not appear when the appeal was taken up.

The application, which is supported by affidavit, is allowed and the appeals are ordered to be restored at their original numbers,.

FAO Nos.1472 of 1996, 2544 to 2548 and 2550 of 1998.

Heard.

New India Assurance Company filed the above captioned appeals against the awards passed by Motor Accident Claims Tribunal, Faridabad (later referred to as 'the Tribunal') relating to the injuries suffered by the claimants in accident dated 11.07.1992 with truck bearing registration No.CPQ-7511 (later referred to as 'the offending vehicle'). Seven separate claim petitions were preferred by the claimants out of which six were disposed of vide common award passed in case bearing MVA No.119 of 1993 while separate award was passed in MVA No.232 of 1993. The challenge to the award is on the sole ground that the driver of the offending vehicle was not possessing a valid driving licence at the time of accident. This point was also agitated before the Tribunal and while deciding the bunch of six claim petitions, the Tribunal has observed in para 19 and 20 as follows:-

“19. However, respondent No.3 has not been able to establish this plea that the said driving licence is not valid. Respondent No.3 has simply relied upon an investigation report dated 14-09-1994 submitted by one Ravinder Dey, a surveyor and assessor. In this report, it is stated that the said

driving licence was not issued by the DTO Kamrup (West Zone) Gauhati. This report, however, cannot be given any credence as a Division Bench of the High Court of Punjab and Haryana in a case reported as M/s Oriental Insurance Co. Versus Dalbir Singh and others 1997 PLR 755 has observed that mere absence of entry regarding the issuance of driving licence in the register of the concerned authority was not enough to establish that the licence was forged one unless the said register was produced in the Court.

20. Moreover, vide award dated 09.08.1995 in MVA No.232 of 1992 entitled Mukat Singh Vs. Sagar Goods Carrier, my learned predecessor Shri N.S. Ahlawat has held the said driving licence was not pressed by the insurance company. This finding will, therefore, operate as res judicata qua respondent No.3.”

Admittedly, the insurer has not produced any evidence to prove that the driving licence of driver of the offending vehicle was not valid. Merely production of a report to this effect, could not be read as evidence as the owner and driver as well as the claimant(s) had no opportunity to test the veracity of the same by conducting cross-examine the person who prepared this report. I find no fault with the observation made by the Tribunal declining the plea of insurance company.

No other point has been argued.

All the above captioned appeals have no merits.

Dismissed.

(SURINDER GUPTA)
JUDGE

October 22, 2016.
Sachin M.

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No