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

**FAO No.990 of 1995 (O&M)
Date of Decision: 20.09.2016**

National Insurance Company Limited ......Appellant

Vs.

Tek Chand and others ....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Neeraj Khanna, Advocate, for the appellant.

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AMOL RATTAN SINGH, J.

1. This appeal has been filed by the insurance company that had insured the truck bearing registered No.HRP-3617, involved in an accident that took place on 25.02.1994 , in which one Vinay Kumar unfortunately lost his life.

A claim petition was filed before the learned Motor Accident Claims Tribunal, Rewari, upon which the impugned Award dated 15.12.1994 was pronounced by the said Tribunal, awarding a compensation of Rs.70,000/- to the claimants, i.e. the parents of the deceased, holding the respondents in the claim petition, i.e. the owner, driver and the insurance company of the aforesaid truck, jointly and severally liable to pay the compensation.

Upon an issue with regard to the validity of the driving licence of respondent No.4 herein having been framed and that issue also having been decided against the appellant-insurance company, it was held liable to indemnify the owner, i.e. respondent No.3 herein.

2. This is one of those appeals, the records of which were burnt in a fire incident that took place in this Court in January, 2011 and consequently, the paper book had been re-constructed from the brief of the learned counsel for the appellant. However, the daily/'zimni' orders passed prior to the fire incident, are not available on file. Hence, it was not known whether respondents no.3 and 4 stood served of the notices issued to them in 1995-96. Consequently, notice was issued again to the said respondents, i.e. the owner and driver of the truck, on 07.02.2014, in this appeal of 1995 (it having been admitted to regular hearing sometimes in the 1990s).

Respondent No.4 having died, and the address of respondent No.3 no longer being the same, eventually, after seeking adjournments to try and obtain the address of respondent No.3 and the legal representatives of respondent No.4, finally an application was filed by the appellant-insurance company seeking permission to serve respondent No.3 (owner of the vehicle), by way of substituted service.

The application having been allowed, he was deemed to have been served by way of substituted service of publication of the notice issued in a newspaper in Hindi, published on 20.07.2016.

3. None having appeared for the said respondent, there is no choice but to proceed him against ex parte.

As regards respondent No.4, i.e. the driver of the vehicle, since the whereabouts of his legal representatives were not traced out and eventually the liability to pay the compensation, if the appeal is to be allowed, would be that of the owner of the vehicle, the service upon his legal representatives is not considered necessary and is dispensed with.

4. Mr. Neeraj Khanna, learned counsel for the appellant-insurance company, has submitted that the company is not otherwise challenging the Award on any other ground, except in respect of the issue on the validity of the driving licence of respondent No.4.

He pointed to the finding of the learned Tribunal itself on issue no.3, to the effect that the driving licence held by the said respondent, was valid for the period from 20.03.1990 to 19.03.1993.

The accident admittedly having taken place on 25.02.1994, however, the Tribunal held that since respondent No.4 had a regular driving licence and observed that "there was no evidence that he had been disqualified from holding a driving licence and so he would be held to be a person once duly licenced and not disqualified to be a driver and was not exclude from being a driver of the vehicle in terms of the policy."

Therefore, it was held that the insurance company would be liable to pay the compensation to the petitioners in this case.

5. Having considered the above, in my opinion, the learned Tribunal wholly erred in citing judgments of different High Courts, that respondent No.4 not having been disqualified from driving, after he held a licence for the period from 20.03.1990 to 19.03.1993, the insurance company would be liable to pay the compensation.

Obviously, the driving licence of the said respondent having expired on 19.03.1993, he was thereafter disqualified from driving a vehicle, with not even a renewal shown at any subsequent stage. Even if such renewal had been shown, he not holding a valid licence to drive on the date of the accident, the insurance company would still not be liable to indemnify the insured in respect of any compensation to be paid by him, as it would actually amount to a breach of the conditions of the insurance policy, in terms of Section 149 (2) (a) (ii) of the Motor Vehicles Act, 1988.

It is necessary to notice here that this is not a case of a fake driving licence but of no driving license; hence, the owner of the vehicle cannot be absolved of any liability.

6. Consequently, this appeal is allowed qua respondent No.3 and the appellant-insurance company having already paid the compensation amount awarded by the learned Tribunal to the claimants (respondents No.1 and 2 herein), it would now be entitled to recover the amount paid, from respondent No.3.

No order as to costs.

September 20, 2016 **(AMOL RATTAN SINGH)**
atul/vcgarg **JUDGE**

Whether speaking/reasoned	Yes
Whether Reportable	No