IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1057 of 2000 (O&M)
Date of decision: January 6, 2016

National Insurance Company Ltd.

...Appellant

Versus

Muni Devi and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest?**

Present: Mr. LM Suri, Senior Advocate with
Mr. Neeraj Khanna, Advocate, for
for the appellant.

Mr. AP Bhandari, Advocate,
for respondents No. 3 to 5.

K. KANNAN, J. (Oral)

1. The appeal is by the insurance company on the issue of liability. At the trial, the insurance company contended that the driving licence produced by the driver was fake and relied on the report issued by the licencing authority that the particulars contained in the copy of the licence were not available on the original record and that the original of the documents Ex. RH was a forgery. The owner examined himself as RW.1 and he had given a statement to the effect that he had seen the licence and he was holding a valid driving licence. In the cross-examination, he

admitted that at the time of the accident Jarnail Singh was his driver but denied the suggestion that it was a fake licence.

2. In order that the insurer declines indemnity to the insured, it must be shown that the owner had committed a breach of terms of the policy. The burden of proof is on the insurer. The Tribunal had observed that the insurance company had not discharged the burden by examining any person from the licencing authority. The learned Senior Counsel appearing on behalf of the insurer states that the interrogatories had been delivered in the Tribunal for eliciting responses from the licencing authority but the Tribunal had not allowed the same. The insurer cannot be faulted for the opportunity that the Tribunal failed to extend to the insurer.

3. I am prepared to assume that the driver did not have a valid driving licence and one produced as a copy before the Tribunal was copy of a fake document. The issue of whether there has been a breach of terms of policy or not will be essentially tested on the belief of the owner acting on a licence produced by the driver. If the owner had seen a driving licence before giving the employment and he acted on the representation that it was a genuine one, that will surely conclude the issue unless an active participation of the forgery of the driving licence itself is made against the owner. This point has been concluded by the judgment of the Supreme Court in Pepsu Road Transport Corporation Versus National Insurance Company 2013 (10) SCC 217, wherein it was held that it is the bonafide belief of the owner that would govern the issue. If the Tribunal has allowed for the evidence to be brought of the owner, that statement given before the

tribunal ought to be supported for securing the indemnity. The decision of the tribunal cannot be faulted and I find no reasons for interference.

4. The appeal is dismissed.

January 6, 2016 **(K.KANNAN)**
prem **JUDGE**