IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 1204 of 2001 (O&M)
Date of decision: 09.02.2016

The National Insurance Co. Ltd. ... Appellant

versus

Ajay Mittal and others .... Respondents

2. FAO No. 1205 of 2001 (O&M)

The National Insurance Co. Ltd. ... Appellant

versus

Ashok Mittal and others .... Respondents

3. FAO No. 1206 of 2001 (O&M)

The National Insurance Co. Ltd. ... Appellant

versus

Poonam Mittal and others .... Respondents

4. FAO No. 1207 of 2001 (O&M)

The National Insurance Co. Ltd. ... Appellant

versus

Parkash Wati and others .... Respondents

5. FAO No. 1208 of 2001 (O&M)

The National Insurance Co. Ltd. ... Appellant

versus

Avinash Mittal and others .... Respondents

6. FAO No. 1209 of 2001 (O&M)

The National Insurance Co. Ltd. ... Appellant

versus

Ajay Mittal and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Upesh Dogra, Advocate for the appellant.

<u>K.Kannan, J. (ORAL)</u>

The owner of the vehicle which was involved in the accident has remained ex-parte even before the trial Court. I dispense with the notice to the owner in the appeal. 2nd respondent is reported to have died and his legal representatives were impleaded in the year 2007 but there is no proof of service on the driver.

The driver of the insured vehicle was admitted to be a minor at the time of accident. There was also evidence of the father that his son would have been around 15 or 16 at that time. The birth certificate produced showed that he was born on 12.01.1978. The accident took place in the year 1995. Since the father had given evidence that he had been married, the Court inferred that he cannot be a minor. It was in evidence that driver did not even have the driving licence and Investigating Officer gave evidence to the effect that when asked to produce driving licence, the driver did not produce the driving licence also.

In the face of all the evidences above, it is strange that the Tribunal could have held that the insurer had not proved that there was breach of terms of policy, namely that the driver did not have an effective driving licence. I set aside the finding and hold the insurer ought to have been provided with the right of recovery against the owner of the vehicle for breach of violation of terms of policy. The statutory condition makes the requirement of majority for a person to have a driving licence to drive a four-wheeler. While maintaining the awards against the claims of the insurer, I provide for right of recovery of the insurer against the owner of the vehicle namely Ramesh Kumar who is arrayed as a 3rd respondent in the appeal. All the appeals by the Insurance Company are allowed to the above extent.

(K.KANNAN)
JUDGE

09.02.2016
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