

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

Date of Order : 24.05.2016

1. FAO No.2392 of 2001 (O&M)

State of Haryana and another

..... Appellants

versus

Sudesh Kumari and others

..... Respondents

2. FAO No.2393 of 2001 (O&M)

State of Haryana and another

..... Appellants

versus

Sushila and others

..... Respondents

3. FAO No.2394 of 2001 (O&M)

State of Haryana and another

..... Appellants

versus

Sunita and others

..... Respondents

4. FAO No.2395 of 2001 (O&M)

State of Haryana and another

..... Appellants

versus

Sheela Devi and others

..... Respondents

5. FAO No.2396 of 2001 (O&M)

State of Haryana

..... Appellant

versus

Smt.Ashvarya and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

**Present: Mr. Pawan Kumar Jhangra, Addl.AG,Haryana
for the appellants.**

Mr. Alankrit Bhardwaj, Advocate for
Mr. Kulvir Narwal, Advocate
for respondents No. 1 to 3 in FAO-2392-2001,
FAO-2394-2001, FAO-2395-2001 and FAO-2396-2001
for respondent No.1 in FAO-2393-2001

Mr. Rohit Goswami, Advocate for
Mr. D.P.Gupta, Advocate
for the insurance company.

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?

AJAY TEWARI, J. (Oral)

This order shall dispose of aforesaid five appeals by this common order since the issues involved are same.

On 06.08.2002 the issue which was before this Court was that at the time of admission of the appeal a ground had been raised that the driving license of the driver was genuine and had been wrongly disbelieved. On that date learned counsel for the Insurance Company had very fairly stated that even though the driving license was rightly disbelieved yet the insurance company would get the same verified again and, in case it was a valid driving license it would not claim any recovery rights against the appellant.

Consequently, the following direction was given :-

“These are five First Appeals No. 2392 to 2396 of 2001 filed by the State of Haryana which arise out of the award dated 12.2.2001 passed by the Motor Accident Claims Tribunal, Rohtak awarding compensation to the claimants in the five claim applications arising out of the same accident.

The only grievance made before us by the learned Deputy Advocate General is that since the insurance company pleaded before the Tribunal that the driver of the offending vehicle did not possess a valid driving licence, it was for the insurance company to prove that issue. Ms.Bahri contended that since the company has led no evidence and has not discharged its onus, th issue should have been decided in favour of the driver of the vehicle and against the insurance company. The driver of the offending vehicle had placed on record a photostat copy of the duplicate driving licence which he had obtained from the

Licencing Authority, Gohana. The Tribunal did not accept the photostat copy and held that the driver was not in possession of a valid driving licence on the date of the accident. This finding is now being challenged before us.

Learned Deputy advocate General requests for time to enable her to place on record the original of the duplicate licence issued by the Licencing Authority, Gohana. She contends that if the photostat copy on the record is a true copy of the original issued by the Licencing Authority, there was no reason for the Tribunal not to accept the photostat copy when the same had been exhibited on the record. She also undertakes to produce the records from the Licencing Authority, Gohana to show that the driver held a valid driving licence to whom a duplicate licence had been issued. Let the original records be produced on the next date of hearing.

*Even if it were to be assumed that the driver was not in possession of a valid driving licence, the insurance company would still be liable to pay compensation to the claimants and thereafter it would have a right to recover the same from the owner and driver of the offending vehicle. This has been so held by the Apex Court in **New India Assurance Company v. Kamla** 2001(1) PLR 830. In view of the law laid down in Kamla's case(supra), we direct the insurance company to deposit the awarded amount before the Tribunal within one month from today. It will be open to the claimants to withdraw the same in terms of the impugned award.*

Adjourned to December 4, 2002.

Copy of the order be supplied dasti to the counsel for the parties on payment of requisite fee."

Today the report of the Motor Accident Claims Tribunal, Rohtak has been received, as per which the Tribunal has concluded that infact the driving license was fake.

In the circumstances, the appeals are liable to be dismissed.

It may be mentioned here that by order dated 06.08.2002 the respondent-Insurance company was directed to make the payment to the claimants subject to right of recovery in case the appeal was dismissed. In view of the fact that appeals have to be dismissed recovery rights have to be granted to the respondent-insurance company.

Consequently, the appeals are dismissed and in terms of the orders dated 06.08.2002 recovery rights are granted to the respondent-Insurance company.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

May 24, 2016

Pooja sharma-I