IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2958 of 2012 (O&M)
Date of decision: 17.05.2016

New India Assurance Co. Ltd.

...Appellant

Versus

Kamaljit Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. R. K. Bashamboo, Advocate,
for the appellant.

Mr. M. S. Dhami, Advocate,
for respondent No.5.

Mr. Ashok Giri, Advocate,
for respondent No.6.

JITENDRA CHAUHAN, J. (ORAL)

The present appeal has been filed against the impugned award dated 01.12.2012, passed by learned Motor Accidents Claims Tribunal, Kapurthala, (for short, 'the Tribunal').

The learned counsel for the appellant has argued that from the statement of RW-3, it has been established that the driving licence possessed by respondent No.5, driver was a fake document, therefore, the finding recorded by the learned Tribunal that the said driver was holding a valid and effective driving licence at the time of the accident, is erroneous. The learned counsel cites **'National Insurance Company**

Limited Vs. Jarnail Singh and others', (2007) 15 SCC 28.

On the other hand, the learned counsel for respondent No.6 states that the appellant cannot be absolved from indemnifying the insured. The learned counsel cites **'New India Assurance Co. Ltd. Vs. Ranbir Singh Shastri and others'**, 2012 ACJ 2510 (Delhi).

I have heard learned counsel for the parties and perused the record.

The ratio of the authority cites by learned counsel respondent No.6 does not apply to the facts of the instant case.

From the testimony of RW-3, Pawan Kumar, Steno, DTO, Amritsar, it is made out that the driving licence bearing No.2962-R/92-93 dated 26.02.92, purported to be issued to respondent No.5-driver, was in fact, not issued in favour of respondent No.5. Further, the date of issuance of the original licence is 26.02.92, therefore, the record produced by RW-3, was not relevant to determine whether the licence in question is valid or not. In these circumstances, the learned Tribunal has wrongly held that the said licence is valid and effective. In fact the same is a fake document as discussed above, which is clear violation of the insurance policy.

Hon'ble the Supreme Court held in '**New India Assurance Co. Vs. Kamla'**, (2001) 4 SCC 342 that the insurance company is nonetheless liable to pay the compensation to the third party on the strength of the valid insurance policy issued in respect of a vehicle, but the remedy of the insurer when there was breach or violation of the policy condition was to recover the amount from the insured. Para 22 of the said judgment clarifies the position and hence, it is extracted below: (SCC p.349)

> *"22. To repeat, the effect of the above provisions is this when a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to the third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured."*

To the same effect is National Insurance Co. Ltd. Vs. Jarnail Singh and others (supra) cited by learned counsel for the appellant.

In view of above discussion, the present appeal is partly allowed with the liberty to the appellant to realise the amount of compensation from insured-respondent No.6. It is open to the insurance company to apply to the authorities concerned for execution of the direction as per law.

17.05.2016 **(JITENDRA CHAUHAN)**
ashok **JUDGE**

ASHOK KUMAR
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I attest to the authenticity and
accuracy of this document