

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

**FAO No.7133 of 2011
Date of Decision: 31.05.2016**

Bajaj Allianz General Insurance Company Ltd.

... Appellant

Versus

Satbir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

1. Whether reporters of local newspapers may be allowed to see the judgment ? Yes/No
2. To be referred to the Reporters or not ? Yes/No
3. Whether the judgment should be reported in the digest ? Yes/No

Present: Mr. Ashwani Talwar, Advocate,
for the appellant.

None for the respondents.

SUDIP AHLUWALIA, J. (ORAL)

This appeal is directed against the award dated 09.06.2011 passed by the Motor Accident Claims Tribunal, Rohtak (for short 'the Tribunal') vide which a claim petition under Section 166 of the Motor Vehicles Act, 1988, was allowed in favour of respondent No.1, who was the injured victim in the accident.

It has transpired that the composite amount awarded in his favour has already been paid to him by the appellant-Insurance Company.

The appellant-Insurance Company has nevertheless filed this appeal on the ground that while paying the compensation to the claimant, it is entitled to recover the concerned amount from the insured party as well as the driver of the offending vehicle, who are respondent Nos.3 and 2 respectively. It is the case of the appellant that the driver of offending vehicle did not have any valid driving licence. The appellant in its capacity

as respondent in the original proceedings tried to secure attendance of a competent officer from the establishment of the Licensing Authority, Jalpaiguri, West Bengal from where the licence was purportedly issued. However, none appeared to depose from the said establishment. Instead an official letter was sent to the Tribunal stating that no particulars regarding the licence relied upon by driver-respondent No.2 were available in the records. The learned Tribunal in the given circumstances virtually came to a conclusion that the Insurance Company has failed to discharge its burden of proving that there was no existence of any valid driving licence. The appellant is specifically aggrieved with this approach of the Tribunal, and has, therefore, filed a separate application bearing CM No.30027-CII of 2011. In this application, the applicant/appellant has prayed for an opportunity to lead additional evidence in order to enable it to prove that there was no existence of any valid driving licence.

The respondents have not appeared to contest the appeal in spite of service by publication .

This Court does find merit in the contention of the appellant that the learned Tribunal ought to have granted some more opportunity to the appellant-Insurance Company to substantiate its contention, since it was a matter of practical difficulty to secure the attendance of any official witness from the far away State of West Bengal in the ordinary course.

This Court is, however, not inclined to take additional evidence in this regard during the course of the appeal itself. On the other hand, it would be appropriate to direct the learned Tribunal to do the needful in the given facts and circumstances.

The appeal is, therefore, allowed and the matter is remanded

back to the learned Tribunal with a direction to give appropriate opportunities to the appellant-Insurance Company to lead additional evidence from its side, the aim of which would essentially be to enable it to recover the compensation amount, which, in any case, has already been paid to the claimant.

The appellant would be at liberty to file an appropriate application in that regard before the learned Tribunal. The records be accordingly, returned to the learned Tribunal, before which the requisite application shall be filed within 15 days after delivery of the case records. The learned Tribunal shall, thereafter, make an endeavor to dispose of the matter afresh specifically in relation to Issue No.4 in the light of the appellant's prayer as expeditiously as possible and preferably within a period of six months from the date of communication.

31.05.2016

Bhumika

**(SUDIP AHLUWALIA)
JUDGE**