

244.

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

FAO No.5872 of 2014 (O&M)

Date of decision:21.04.2016

New India Assurance Company Limited ... Appellant

versus

Balwinder Singh and others Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.Sukhdarshan Singh, Advocate,
 for the appellant.

None for the respondents.

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

K.Kannan, J. (Oral)

1. The Insurance Company is in appeal aggrieved by full indemnity granted to the owner for a claim answered in favour of the claimants for alleged negligent driving of a person who did not have an authority to drive. It was a case of the owner having entrusted the vehicle to an authorized driver but at the time when the accident had taken place, a Cleaner of the vehicle, who did not have the driving licence, had driven the vehicle. It would appear that the Cleaner had been prosecuted for a criminal case and convicted.

This, according to the Insurance Company, will afford to the insurer a right of recovery against the owner and driver.

2. The defence available under Section 149 of Motor Vehicles Act contemplates a breach of violation of terms of policy by the insured if the vehicle had been entrusted by the owner to an authorized driver but the authorized driver, in turn, had been indiscreet in allowing for an unauthorized person to drive the vehicle, unless there was evidence that it was done with the concurrence of the owner, no case of violation of terms of policy could be attributed to the insured. This point had been dealt with by the Supreme Court in **Skandia Insurance Company Limited Versus Kokilaben Chandravadan and others-AIR 1987 1184**. In **Sohan Lal Passi Versus P. Sesh Reddy-AIR 1996 (SC) 2627**, the Supreme Court was considering a case of the owner/insured of the vehicle who had appointed a duly licensed driver. The driver had allowed the cleaner/conductor to drive the vehicle. Accident took place when the act authorised was being performed in a mode which may not be proper but was duly connected with in the course of employment. The Insurance Company was directed to shoulder the liability. In **Guru Govekar Versus Filomena F.Lobo-1988(1) Scale 834**, the vehicle was in the custody of mechanic. A third party suffered injuries in public place on account of negligence of mechanic, who did not have a driving licence, engaged by repairer.

Insurer held liable to pay compensation to claimant.

3. In Salmond's Law of-Torts (Twentieth Edn.) at page 458, it held:-

“a servant who is authorised to drive a motor vehicle, and who permits an unauthorised person to drive it in his place, may yet be acting within the scope of his employment. The act of permitting another to drive may be a mode, albeit an improper one, of doing the authorised work. The master may even be responsible of the servant impliedly, and not expressly, permits an unauthorised person to drive the vehicle, as where he leaves it unattended in such a manner that it is reasonably foreseeable that the third party will attempt to drive it, at least if the driver retains notional control of the vehicle.”

4. It has been said in Halsbury's Laws of England, Fourth Edn., Vol. 16, paragraph 739:-

“Where the act which the employee is expressly authorised to do is lawful, the employee executes his authority. If, therefore, the employee does the act in such a manner as to occasion injury to a third person, the employer cannot escape liability on the ground that he did not actually authorise the particular manner in

which the act was done, or even on the, ground that the employee was acting on his own behalf and not on that of his employer.”

5. The liability cast on the insurer is perfectly justified and there is no scope for providing for right of recoveries against the owner or the driver.

6. The award already passed is confirmed and the appeal is dismissed.

(K.KANNAN)
JUDGE

21.04.2016
sanjeev