

In the High Court of Punjab and Haryana at Chandigarh

F.A.O No. 1757 of 1995 (O&M)

Date of Decision: 07.3.2017

National Insurance Company Limited

.....Appellant

Versus

Joginder Kaur and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. L.M.Suri, Senior Advocate with
Mr. Neeraj Khanna, Advocate
for the appellant.

Mr. Arshdeep Bhullar, Advocate
for respondents No. 1 to 8.

Mr. Baldev Kapoor, Advocate
for respondent No. 9.

ANITA CHAUDHRY, J

This is an appeal by the insurance company seeking recovery rights from the owner and driver.

The record of this file had been burnt in the fire accident which had taken place in the year 2011. Only the copy of the award could be reconstructed. Counsel for the appellant has placed on record the pleadings, driving licence, the insurance policy etc. for reconstruction of the record.

The submission on behalf of the appellant is short. It was urged that the Tribunal had given a categorical finding that the driving licence of Parkash Chand was found to be fake but the insurance company was still made liable to pay the compensation and the law presently is entirely different. Counsel refers to *National Insurance Co. Ltd. versus Geeta*

Bhat and others 2008(3) R.C.R. (Civil) 44 and *ICICI Lombard General*

(Civil) 696.

The submission on the other hand is that the Tribunal had passed the award keeping in view the law that was existing at that point of time but after the decision of the case in ***National Insurance Company Limited versus Swaran Singh 2004(3) SCC 297***, the right of indemnity is granted where the owner had in spite of efforts made by him did not know that the licence was not fake and the matter should be remanded back to enable the owner to explain the circumstances under which he had provided appointment to the driver. The counsel refers to the judgment passed in ***National Insurance Co. Ltd. versus Joginder Kaur FAO-552-1996 decided on 10.1.2013.***

I am unable to agree with the submission made on behalf of the owner and driver. The owner and the driver were given an opportunity to lead evidence and only the driver had stepped into the witness box. The case cannot be remitted to enable the owner to fill up the lacuna. The Tribunal had noted that the driving licence of Parkash Chand was fake and it had given a finding that the driver was not holding a valid driving licence at the time of accident. Therefore, in view of the circumstances, the appeal has to be allowed, the award is modified to the extent that the insurance company shall take have the right to recover from the owner and the driver on the principle of pay and recover.

The appeal is allowed.

**(ANITA CHAUDHRY)
JUDGE**

March 07, 2017

Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No