

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

FAO No. 7310 of 2011 (O&M)

Date of decision: 04.10.2017

**National Insurance Co. Ltd
versus**

...Appellant

Shamsher Kaur and others

...Respondents

CORAM : HON'BLE MR. JUSTICE RAJIV NARAIN RAINA.

Present : Mr. Paul S. Saini, Advocate
for the appellant.

Mr. Sumeet Sheokhand, Advocate
for respondent No.5.

RAJIV NARAIN RAINA, J. (ORAL)

This is an appeal against the order passed in remand to the Motor Accident Claims Tribunal, Patiala where the original award was passed on 29.08.2011 and appealed against by the insurer and the injured. The liability had been fastened on the insured and the insurer company has been absolved from the liability. Two appeals were filed, the insured appealed to this Court in FAO No. 681 of 1998 (Shamsher Kaur and others Vs. Lachchmman Dass and others) which was decided on 15.10.2010 and the other by the owner in FAO No. 1464 of 1998 titled as Krishan Lal and others Vs. Shamsher Kaur and others.

2. The Tribunal reasoned that since the driving licence produced by the owner was issued to the driver on 07.03.1996 valid upto 26.12.1996 and the accident having happened on 03.10.1995, the insurance company was not liable to indemnify the insured.

3. In the owner's appeal the grievance was that the Tribunal had non-suited the insured for the reason that the licence produced before the Court was a duplicate one issued on 07.01.1996 certified to be valid till 26.12.1996.

4. The learned single Judge of this Court considered the matter and was of the view that the Tribunal was in error in assuming that merely because duplicate issue of the licence had been secured on 07.03.1996, the driver could not have a valid driving licence on the date of accident. Such an inference did not appear to be proper, for, if the issue of the licence had been raked up for the first time after the accident, then it could be said that the driver did not possess a valid driving licence. It would have been a plausible defence by the insured to remain under policy cover, the Court observed further it was most unlikely that the licence was issued for the first time only on 07.03.1996 since there is no provision in the Motor Vehicles Act or the rules framed thereunder to provide for validity of driving licence only for a period of nine months. The Court concluded that there was no proper evidence available on record about the time the licence was issued. The presence of the claimants was no longer necessary to participate in the enquiry for the issue remanded for adjudication to the validity or otherwise of the D/L of the driver of the truck bearing No. HR-12-4385 involved in the accident in which victim died. The appeal was disposed of.

5. Evidence has come in remand against the Insurance

Company. The insured had made no effort to check the antecedents of the truck driver and his driving licence since the burden of proof was on the Insurance Company to discharge and having failed to do so in the original proceedings and in the remand proceedings I do not think that interference in the remand award would be justified especially taking into consideration that the total amount of compensation awarded in the year 1995 in a death case was only in a sum of Rs. 1, 15,000/- with compensation further enhanced by this Court to Rs. 1, 85,000/- with interest etc.

6. In the result, no interference is warranted for the amount awarded. Refusing to grant recovery rights to the Insurance Company against the owner and driver of the offending truck, I dismiss the appeal.

(RAJIV NARAIN RAINA)
JUDGE

October 04, 2017

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Whether speaking/reasoned : Yes
Whether reportable : No