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

FAO No.5026 of 2015 (O&M)
Date of Decision : 30.10.2017

THE NEW INDIA ASSURANCE COMPANY LTD.

....PETITIONER

VERSUS

ALEX P. SUNIL AND ANOTHER

....RESPONDENTS

CORAM : <u>HON'BLE MR. JUSTICE B.S. WALIA</u>

Present: Mr. Neeraj Khanna, Advocate for the petitioner.

Mr. M.K. Chaudhary, Advocate for respondent No.1.

Respondent No.3 already proceeded *ex parte* vide order dated 18.01.2016.

<u>B.S. WALIA, JUDGE (ORAL)</u>

[1] Tribunal relied upon ***<u>'Pepsu Road Transport Corporation</u>*** *versus* ***<u>National Insurance Company</u>*'**, *2014 (1) SCC (L&S) 750* and held that Insurance Company could not be permitted to avoid its liability only on the ground that the person driving the vehicle at the time of accident was not having a valid licence and what was required to be established was breach of the conditions of the policy and further that it was not expected from the employer to verify the genuineness of a driving licence at the time of employment, the employer needed only to test the capacity of the driver and if after such test the driver had been appointed, there cannot be any liability of the employer.

2. Admittedly, the owner of the vehicle conducted the test of the

driver and on being satisfied engaged him. However, on verification by the Insurance Company from the Registering Authority, Mathura as per verification reports i.e. Ex. RB and RC the licence of the driver was found to be fake.

[2] Learned counsel fairly concedes that the exoneration of the owner of the vehicle by the Tribunal in view of the decision of the Hon'ble Supreme Court in Pepsu Road Transport Corporation Vs National Insurance Company (Supra) is beyond challenge but since the driver of the offending vehicle was proceeded *ex parte* before the Tribunal as well as before this Court, therefore, the Tribunal erred in not passing on liability on the driver particularly when the driving licence of the driver has been found to be fake.

[3] Learned counsel contends that having a fake driving licence was a breach of the terms and conditions and since the driver had failed to put in appearance before the Tribunal and did not step into the witness box, therefore adverse inference had to be drawn against him. Learned counsel relied upon ***'Seema versus Sat Pal and others'*****, 2013 (25) R.C.R. (Civil) 864** to contend that where the driver of the vehicle involved in accident was not shown to have a driving licence, the liability of the Insurance Company would be only to pay the amount claimed and recover the same from the driver.

[4] In view of the position as noted above, the Award in so far as it exonerates, the driver of the offending vehicle, i.e. respondent No.2, is modified and the Insurance Company is at liberty to recover the amount in accordance with law after making payment of the compensation to the

claimants in the light of decision of this Court in ***'Seema** versus **Sat Pal and others'***, **2013 (25) R.C.R. (Civil) 864**.

[6] Accordingly the appeal is allowed in the above terms.

(B.S. WALIA)
JUDGE

October 30, 2017
rajneesh

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No