

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 368 of 1998

Date of Decision: 26.02.2019

National Insurance Company Limited

.....Appellant

Versus

Subhani and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

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

Mr. S.K. Bawa, Advocate
for respondent No.2.

Mr. Kulwinder Singh, Advocate for

Mr. S.S. Sarwara, Advocate
for respondent No.3.

AVNEESH JHINGAN, J.(oral)

The award dated 3.12.1997 passed by the Motor Accident Claims Tribunal, Gurgaon has been assailed by the Insurer of truck (i.e. National Insurance Company Limited) bearing registration No. RJ-14-G-4027 (for short 'the offending vehicle').

The grievance raised in the appeal is that the driving licence of the driver of the offending vehicle was fake and the Tribunal erred in not awarding the recovery rights.

The facts in brief are that a motor vehicular accident took place on 8.1.1996. The accident was caused due to rash and negligent driving of the offending vehicle. The accident proved fatal for Islami aged 9 years.

In the claim petition filed under Section 166 of the Motor Vehicles Act, 1988, (for short 'the Act'). The Tribunal awarded a sum of ₹ 55,000/- alongwith interest at the rate of 12% per annum. The Tribunal held the owner, driver and insurer of the offending vehicle liable to pay compensation.

Learned counsel for the appellant contends that the driving

licence Ex.PC was fake as the same was issued in the name of one Chotte Lal, whereas the offending vehicle was being driven by Chhittar Mal. He relies upon the deposition of RW-1 Rakesh Baweja, investigator of appellant. He further contends that the Tribunal relied upon decision of Full Bench of this Court in *National Insurance Company Limited Versus Santro Devi and others 1996(3) PLR 667*. He states that the said decision has been over ruled by the Supreme Court in *New India Assurance Company Versus Kamla, (2001) 4 SCC 342*.

Learned counsel for the respondents defends the award and contends that the appellant had not discharged the onus cast upon it to prove that the driving licence was fake.

The contention raised by learned counsel for the appellant lacks merit.

Even if the argument of appellant is accepted that the decision in **Santro Devi's case (supra)** has been over ruled, the position is still that the onus is on the insurer to prove that the driving licence produced before the Tribunal was fake. In the present case, neither any official nor any record of Licencing Authority, Gawalior was produced to establish that the licence was not validly issued to Chhittar Mal. The Investigator was of the Insurance Company and in absence of any record and official of the licencing authority, the report of the investigator is not reliable evidence to hold that the licence was not valid.

The appeal being without merit is dismissed.

(AVNEESH JHINGAN)
JUDGE

26.02.2019
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