

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

**Cross Objections No.4-CII of 2000 in/and
FAO No. 692 of 1999**

Date of Decision: January 09 , 2019.

National Insurance Company Ltd. APPELLANT (s)

Versus

Somti Devi @ Som Wanti and others RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sanjiv Pabbi, Advocate
for the appellant.

None for respondent No.1/cross-objector.

None for respondents No.2 and 3.

Ms. Gagandeep Kaur, AAG, Haryana
for respondents No.5 and 6.

LISA GILL, J.

National Insurance Company Limited has filed this appeal challenging its liability to pay compensation as awarded by the learned Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (hereinafter referred to as, the 'Tribunal') vide impugned award dated 03.12.1998.

In the claim petition filed by the claimant/respondent No.1, learned Tribunal while holding that the injuries to the claimant were caused due to the rash and negligent driving of the offending truck bearing registration HR-31/3627 by its driver/respondent No.2, awarded a sum of ₹41,000/- to the

claimant on account of the injuries suffered by her alongwith interest at the rate of 12 percent per annum.

Present is a case, file/record of which had been burnt in the fire which took place in this Court in January 2011. None has appeared on behalf of respondents No.2 and 3, despite service. Learned counsel for respondent No.1/cross objector had sought time on 09.09.2015 for supplying a copy of cross-objections No.4-CII of 2000 in order to reconstruct the file. However, the copy was not supplied and it is noticed that none has appeared on behalf of respondent No.1, despite learned counsel being notified of the date fixed.

Sole argument raised by learned counsel for the appellant is that the learned Tribunal has wrongly fixed liability upon the Insurance company to pay the compensation on the ground that driving license of the driver of the offending vehicle was validly renewed by the Licensing Authority at Karnal while ignoring that it is proved on record that Licensing Authority at Dehradun never issued the original Driving License. Reference is made to the statement of RW3 Krishan Kishor, Dealing Clerk of the Licensing Authority at Dehradoon. It is submitted that decision in National Insurance Company Ltd. v. Sucha Singh and others, 1994(1) PLR 140 has since been overruled, therefore, the Insurance company should be exonerated from its liability in this case and it be afforded the right to recover the amount from the owner/driver of the offending truck.

I have heard learned counsel for the appellant and respondents 5 & 6 and have gone through the available file.

Doubtlessly the judgment in Sucha Singh's case (supra) has since been overruled and does not hold the field any longer. At the same time, it cannot

be lost sight that the Hon'ble Supreme Court in National Insurance Company Ltd. v. Swaran Singh and others, 2004(2) RCR (Civil) 114 has held that the Insurer cannot escape its liability merely on account of the driving licence being fake etc. In case the Insured/owner had taken due care and caution while engaging the services of a driver, the insurer cannot escape from its liability.

In the present case as noticed in the foregoing paras, record of the case was burnt. Written statement of the owner or the testimonies of the witnesses are not available with either of the counsel. In this view of the matter and in the peculiar circumstances of this particular case, I do not deem it appropriate to interfere in the impugned award dated 03.12.1998 granting ₹41,000/- to the claimant. It can reasonably be presumed that the owner of the offending vehicle would necessarily had verified the renewed Driving License of respondent No.2 – Gulab Singh which is admitted to be validly renewed by the Licensing Authority at Karnal. Needless to say, the present decision is not to be treated as a precedent.

No other argument has been raised.

Therefore, in the peculiar facts and circumstances of the case, impugned award dated 03.12.1998 passed by the learned Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri is upheld.

Appeal is accordingly dismissed.

Cross-objections are dismissed in default.

January 09 , 2019.
'om'

(LISA GILL)
JUDGE

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