

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

202

FAO-2351-2001(O&M)

Date of Decision : October 23, 2019

NEW INDIA ASSURANCE COMPANY LTD.

.....Appellant

VERSUS

SUNITA DEVI AND ORS

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present : Mr. Deepak Suri, Advocate for the appellant.
None for the respondents.

NIRMALJIT KAUR, J. (Oral)

As per the report, publication notice issued to respondent No.5 has been received back.

This appeal is filed against the award dated 5.10.2000 by the Insurance Company only on the extent that the recovery rights should have been given to it.

A perusal of the award shows that the appellant herein were made liable to pay the compensation which was held to be jointly and severally alongwith the driver and owner.

Learned counsel for the appellant while praying for granting of recovery rights submitted that the driving licence was found to be forged but the Tribunal while relying on the judgment rendered in the case of **National Insurance Company Ltd. Vs. Smt. Santro Devi and others**, 1996(2) LJR 429 proceeded to grant the compensation and without granting any liberty for recovery of the amount from driver and

owner. It is further stated that the very judgment dated 28.10.1996 has since been set-aside by the Hon'ble Apex Court vide order dated 18.11.1997 to the extent where observations were made that the insure is duty bound and liable, statutorily as well as contractually to reimburse third party claim for the tortuous act and that the plea of fake licence will not be available. The appellant-Insurance Company may have had no case in case the owner had stepped into the witness box or proved on record that he had taken due care and exercised due diligence for verification of the said driving licence. Thus, the liability could have been fastened upon the Insurance Company alone but in the present case as is evident, the driver and the owner did not come forward even to file the written statement. They have been duly served in the appeal. Still, no one has come forward. Respondent No.4 has been duly served through his wife but did not turn up whereas respondent No.5 has been duly served through publication and was proceeded against exparte both before the Tribunal as well as before this Court. It is obvious that they do not have anything to say whereas the Insurance Company has proved on record that licence was forged.

Accordingly, in view of the fact that the licence having been found to be forged, the appellant is at liberty to recover the amount from the driver and the owner.

Disposed of in the above terms.

October 23, 2019

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Whether speaking/reasoned.

Whether Reportable.

(NIRMALJIT KAUR)

JUDGE

: Yes/No

: Yes/No