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

FAO No.2338 of 2013 (O&M)
Date of decision: 27.11.2019

The Oriental Insurance Company
.......Appellant

versus

Balvir Kaur and others
......Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Vinod Chaudhri, Advocate, for the appellant.
Mr. Deepak Aggarwal, Advocate,
and Mr. Nipun Gupta, Advocate, for respondents No.1 to 3.
Mr. Vivek Suri, Advocate, for respondent No.5.

RAMENDRA JAIN, J. (ORAL)

Through this appeal, appellant-Insurance Company has sought recovery rights against driver and owner of offending motorcycle bearing registration No.PB-11T-3553 (respondents No.4 to 6), modifying impugned award dated 01.02.2013 of the Motor Accident Claims Tribunal, Fast Track Court, Patiala (in short 'the Tribunal').

Heard.

Having given thoughtful consideration to the rival submissions, this Court finds the instant appeal merits acceptance for the reasons to follow.

Tribunal while dealing with issue No.2 observed as under: -

“..........If the driving licence of respondent no.1 has

not been proved on record, the claimants cannnot be made to suffer for the same because it was the responsibility of the insurance company to prove that there is a default of this conditions of insurance policy. In a case titled as "Punam Devi Vs. Divisional Manager, New India Assurance, 2004(2) R.C.R.(Civil) 236", the Hon'ble Supreme court of India has held that mere absence, fake or invalid licence or disqualification of the driver at the relevant time are not in themselves defence available to the insurer against insured or 3rd party and insurer has to prove that insured was guilty of negligence of fulfilling the condition of policy regarding use of vehicles. So in those circumstances the claimants cannot be made to suffer on account of that.

35. As far as the question that if the vehicle has been sold and the intimation has not been given to the insurance company still the claimants cannot be made to suffer on account of default of the owner. By holding so I take guidance from the case of "Pushpa Vs. Shakuntala, 2011, ACJ, 705", in which the Hon'ble Supreme Court of India has held that once the insurance policy was taken in the name of registered owner, the insurance company is directed to indemnify to make the payment. So in those circumstances it is held that all the respondents are jointly and severally liable to make the payment however at the first instance, it shall be made by the Insurance company to the claimants. Hence this issue is accordingly disposed off in favour of the petitioners and against the respondents."

Reading of above paras of the impugned judgment shows that respondents failed to produce any evidence on record that at the time of accident respondent No.4 was having any driving licence, what to talk of valid and genuine driving licence.

In view of above factual aspect of the case, Tribunal was required to give recovery rights to the appellant-Insurance Company for violation of terms and conditions of the insurance policy by respondents No.4 to 6. It seems that the Tribunal though was intending to give recovery rights to the appellant-Insurance Company, but mis-placed in not mentioning above relief in the impugned award.

In view of discussion made above, appeal is allowed. Impugned award dated 01.02.2013 is accordingly modified to the extent that appellant-Insurance Company shall have recovery rights to recover the awarded amount from respondents No.4 to 6 jointly and severally.

November 27, 2019 **(Ramendra Jain)**
R.S. **Judge**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No