(218) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.6487 of 2017 (O&M)
Date of decision: 01.03.2019

National Insurance Company Ltd. …. Appellant

Versus

Rani and others. …. Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Amit Jaiswal, Advocate for the appellant.
Mr. Munish Puri, Advocate for respondent No.1.
None for respondent No.2.

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B.S. WALIA, J. (ORAL)

[1] Learned counsel for the appellant states that he does not press the plea with regard to the applicability of multiplier as per the age of the mother of the deceased in view of the decision of Hon'ble the Supreme Court in '***National Insurance Company Limited*** *versus* ***Pranay Sethi and others***', ***2017(4) RCR (Civil) 1009.*** Learned counsel however contends that as per Section 39 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') no person shall drive any motor vehicle nor shall any owner of a motor vehicle cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered under Chapter IV of the Act and that as per the decision of Hon'ble the Supreme Court in **Narinder Singh vs New India Assurance Company Ltd. and others, 2014 (9) SCC 324** driving of a vehicle on a public road without any registration is not only

an offence punishable under Section 192 of the Act but is also a fundamental breach of the terms and conditions of the policy contract, therefore, the Insurance Company is not liable to indemnify the insured.

[2] Learned counsel, however, contends that although in view of it being undisputed that the offending vehicle was not registered in accordance with the provisions of Section 39 of the Act, therefore, the same constituted a fundamental breach of the terms and conditions of the policy contract, yet in view of the decision of the learned Motor Accidents Claims Tribunal, Pathankot, the appellant has been held jointly and severely to be liable along with the owner and that in the circumstances, in view of there being a fundamental breach of the policy contract on account of the offending vehicle not being registered in terms of Section 39 of the Act, the appellant be granted recovery rights in respect of payment ordered to be made by it to the respondent/claimant.

[3] Since the offending vehicle was admittedly not registered in terms of Section 39 of the Act, plying of the same would constitute a fundamental breach of the terms and conditions of the policy contract in accordance with the decision of Hon'ble the Supreme Court in Narinder Singh's case (Supra). In the circumstances, the appellant-Insurance Company is not liable to indemnify the owner of the offending vehicle. Therefore, in the facts and circumstances of the case, the appeal is allowed. However, the payment of compensation shall be made by the appellant-Insurance Company as per award to the respondent/claimant, but, the appellant-Insurance Company would be at liberty to recover the same from the owner of the offending vehicle after making payment of the awarded amount to the respondent/claimant.

[4] Appeal allowed in the manner as indicated above. Award dated 12.07.2017 passed by the learned Motor Accidents Claims Tribunal, Pathankot is modified to the extent as noted above.

(B.S. Walia)
Judge

01.03.2019
amit

1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.