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

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**FAO-458-1997 (O&M)
Decided on : 14.07.2022**

National Insurance Company Limited

. . . Appellant(s)

Versus

Smt. Jasbir Kaur and others

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Ravinder Arora, Advocate
for the appellant-Insurance Company.

None for the respondent(s).

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MANJARI NEHRU KAUL, J. (Oral)

The instant appeal has been preferred by the Insurance Company against the award dated 07.10.1996, passed by the learned Motor Accident Claims Tribunal, Ambala (hereinafter referred to as 'the Tribunal'), in a petition filed under Section 166 of the Motor Vehicles Act, 1988, wherein, the following compensation was awarded to claimants/respondents No.1 to 4 i.e. wife, minor daughter and parents of the deceased Joga Singh, who died in a motor vehicular accident, which took place on 09.05.1995. The amount awarded by the Tribunal in the sum of Rs.3,00,000/- was assessed and granted as follows:-

Sr. No.	Head	Amount
1.	Income	Rs.5500/- p.m.
2.	Annual Income	5500 x 12 = Rs.66,000/-
3.	After deduction total dependency of the petitioners	1500 x 12 = Rs.18,000/- p.a.
4.	Multiplier	16
5.	Total Dependency/compensation	18000 x 16 = Rs.2,88,000/-
6.	Funeral expenses	Rs.5,000/-

7.	Loss of consortium	Rs.7,000/-
8.	Total Compensation	Rs.3,00,000/-

The claimants/respondents No.1 were held entitled to a total of Rs.3,00,000/- as compensation along with interest @ 12% per annum from the date of filing of petition till its actual realization to be paid by the respondents jointly and severally.

As per the pleaded case of the claimants/respondents No.1 to 4 before the Tribunal on 09.05.1995 at 12:00 noon, Joga Singh (deceased) was going towards his shop on the kacha portion of the G.T. Road. Respondent No. 5 - Harbhajan Singh (driver), came in a rash and negligent manner, while driving tempo bearing registration No. HR-01-A-6591) (hereinafter referred to as 'the offending vehicle') and after overtaking a truck, hit the deceased, as a result of which, he received multiple injuries all over his body. The driver of the offending vehicle i.e. respondent No. 5, fled away after leaving his vehicle at the spot. The deceased was immediately removed to the hospital, however, he succumbed to his injuries. FIR No. 104, dated 10.05.1995, was lodged soon after the accident in question. It was claimed that the deceased was 27 years of age and was a skilled mechanic. He was stated to be earning Rs.5000/- p.m.

Learned counsel for the appellant-Insurance Company has challenged the impugned award only on the ground that the driving licence of the driver of the offending vehicle was fake and hence, the appellant-Insurance Company could not be held liable to indemnify the insured.

I have heard learned counsel and perused the relevant material on record.

This Court does not find any merit in the submissions made by the appellant-Insurance Company that as the driving licence of the driver of the offending vehicle was fake at the time of accident in question, they could not be held liable to indemnify the insured. It would be apposite to reproduce the following relevant findings of the Hon'ble Supreme Court in ***National Insurance Company Ltd. Vs. Swaran Singh and Ors., Special Leave Petition (C) No. 9027 of 2003 and others***, Decided on ***05.01.2004***.:-

> *"(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.*
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> *(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.*
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> *(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case."*

In view of the above ratio of law, the burden was on the insurer to prove that the insured was guilty of negligence and had failed to exercise reasonable care particularly qua the compliance of the terms and conditions of the policy regarding use of vehicles by a duly licensed driver. Moreover, no cogent evidence has been brought regarding any such wilful breach or negligence on part of the insured. Hence, the insurance company cannot be exonerated of its liability to indemnify the insured.

As a sequel to the above, the impugned award passed by the learned Tribunal being well reasoned, does not warrant any interference by this Court. The appeal stands dismissed accordingly.

(MANJARI NEHRU KAUL)
JUDGE

July 14, 2022

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No