

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

**FAO-3350-2016 (O&M)
Pronounced on : 09.02.2023**

National Insurance Company Ltd. ...Appellant

Versus

Kirpal Kaur and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Sukhdarshan Singh, Advocate
for the appellant-Insurance Company.

Mr. Mohit Garg, Advocate, for
Mr. Suvir Sheokan, Advocate
for respondent Nos.1 to 3.

Respondent No.4 proceeded *ex parte*
Vide order dated 01.12.2016.

Service of respondents No.5 and 6 dispensed with
vide order dated 26.07.2017.

RITU TAGORE, J

1. Appellant-Insurance company has filed an appeal against the award dated 07.12.2015 passed by the learned Motor Accident Claims Tribunal, Ludhiana, seeking a grant of recovery rights.

2. On 09.01.2014 at 5.15 p.m, the deceased S. Jagir Singh and his brother S. Tarlok Singh (PW-3) were going towards Focal Point Markfed, Khanna on their respective bicycles, when they reached in front of Police Station Sadar, Khanna, respondent No.1 came from Khanna side driving his motor-cycle bearing registration No.PB-08-CL-5827 (the offending vehicle) rashly and negligently and crashed into the bicycle of S. Jagir Singh (since deceased), who received multiple injuries that resulted in his death at the spot.

3. On 11.01.2014, FIR No.09 under Sections 279, 337, 338 and 427

IPC was registered at Police Station City Khanna on the statement of S.

Tarlok Singh (PW-3), an eye-witness to the accident.

4. The widow and unmarried children of the deceased filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 before the Tribunal, praying for a compensation of Rs.15,00,000/- (Rs.Fifteen lakhs) along with interest from the date of accident till date of realization, on the ground that the deceased was working as a Supervisor with M/s Barson Cycle Spare Parts, Factory Sirhind Road, Khanna and was earning Rs.10,000/- per month. The claimants solely depended on the income of the deceased for their livelihood.

5. Respondent No.1 (driver-cum-owner) filed a written statement wherein he denied having caused the accident. He pleaded he was riding the motorcycle at a very low speed with his wife and two minor children on the pillion ride, just behind the cycle of the deceased and that no other person was accompanying the deceased. He submitted that, a car which was being driven rashly and negligently came from behind and collided with his motorcycle, leading to his motorcycle hitting the cycle of the deceased and making him, his wife and children fall down and sustain injuries. He asserted the accident happened because of negligent driving of the unknown car driver and he has been falsely implicated in the case. He further averred that respondent No.2, the insurer of the vehicle, is liable for paying the compensation and prayed for dismissal of petition.

6. Respondent No.2 filed a separate written statement and averred that the petition has been filed on false facts in collusion with the respondent No.1. Further, claimed that the vehicle was being driven by the owner in violation of the terms and conditions of the insurance policy and without a valid and effective driving licence. The insured committed wilful default upon breach of terms of the insurance policy. With the aforesaid averments, pleaded

for the dismissal of petition.

7. Based on pleadings of the parties, the Tribunal framed the following issues :-

1. Whether deceased Jagir Singh son of Mohinder Singh died in a Motor Vehicle accident caused by respondent No.1 while driving motor cycle bearing No. PB-08-CL-5827 on 9.1.2014 in rashly and negligently?OPP

2- Whether the claimant(s) are legal representative of the deceased entitled for compensation, if so to what extent?OPP

3- Whether the claim petition is maintainable?OPP

4- Whether the claim petition is bad for mis-joinder and non-joinder of necessary party?OPP

5- Whether the respondent No.1 was not holding a valid and effective driving licence at the time of alleged accident?OPR

6- Whether vehicle in question was being driven without any driving licence and RC? OPR

7. Relief.

8. After considering the evidence placed on record by the respective parties, the Tribunal held respondent No.1 (driver-cum-owner) responsible for causing the accident while driving the offending vehicle in a rash and negligent manner, where the deceased Jagir Singh suffered multiple grievous injuries and succumbed to his injuries, and passed the award for Rs. 8 lacs. Placing reliance on **National Insurance Company Limited vs Swaran Singh & Ors (2004) 3 SCC 297** further held that respondent No.1 had a valid and effective learner's driving licence at the time of accident and made the respondents (insured and the insurer) jointly and severally liable to give compensation and directed the insurance company to indemnify the insured, having issued a valid and effective insurance policy.

9. Aggrieved by the directions of the Tribunal to satisfy the award, the insurance company filed the instant appeal.

10. In the present appeal, respondent No.4 (driver-cum-owner) did not put up an appearance and was proceeded *ex parte* vide order dated

01.12.16.

11. I have heard the learned counsel for the parties and have perused the paper-book and the record.

12. Counsel for the appellant contended it is an admitted position that respondent No.1 had learner's licence at the time of accident. The Tribunal erred in not taking into consideration the fact that respondent No.1 could not drive the offending vehicle without the assistance of an instructor holding a valid and effective driving licence. It stands established on record that at the relevant time, respondent No.1 was driving the motorcycle without the assistance of such instructor in clear violation of terms and conditions of the insurance policy Ex. RX. Reference was made to the terms of the insurance policy, wherein it has been specifically mentioned that a person holding effective learner's driving licence is authorised to drive the vehicle provided he satisfies the requirement of Rule 3 of Central Motor Vehicles Rules, 1989, which provides that holder of such learner's licence must be accompanied by an instructor holding an effective driving licence and the vehicle must contain a Sign of letter 'L' in red of particular specifications affixed on the front and rear portion of the vehicle. In the present case, respondent No.1, led no evidence to show he was driving the vehicle as per the aforesaid Rule and did not commit a breach of terms of the policy. In view thereof, the findings of the Tribunal are flawed to that extent and it is prayed that recovery rights may be granted to the appellant -insurer by allowing the appeal.

13. The counsel for the respondent-claimants defended the findings of the Tribunal and urged that, as per the observations made in case of Swaran Singh (supra), learner's licence is valid in the eyes of law. Respondent No.1 had an effective driving licence at material time. So, it is not the case of violation of terms and conditions of the policy. Accordingly, made a prayer to

dismiss the appeal.

14. The question that has arisen before this Court is whether insurance company may be given recovery rights?

15. Section 2 (19) of Motor Vehicles Act, 1988 defines learner's licence. It is extracted as under :-

“2. Definitions:-

(19) “learner's licence” means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive as a learner, a motor vehicle or a motor vehicle of any specified class or description;”

16. There is no dispute that learner's licence is as good as a regular licence. In case Swaran Singh (supra) it is held that learner's driving licence is a valid licence under the Motor Vehicles Act, 1988 and the Rules framed thereunder. From the statement of RW-1 (Sarabjit Kumar), junior assistant to DTO office, Jalandhar, it is made out that respondent No.1 is the registered owner of the motorcycle bearing number PB-08-CL-5827 and had an effective learner's licence valid from 15.10.13 to 14.04.14 authorising respondent No. 1 to drive motor-cycle with gear and light motor vehicle non- transport. Ex. RX insurance policy provides that person holding an effective learner's licence may also drive the vehicle provided such a person satisfies the requirements of Rule 3 of Central Motor Vehicles Rules, 1989.

17. Here, it would be relevant to go through the Rule 3 of Central Motor Vehicles Rules, 1989. Rule 3 is extracted here as under:

“General.—The provisions of sub-section (1) of section 3 shall not apply to a person while receiving instructions or gaining experience in driving with the object of presenting himself for a test of competence to drive, so long as—

(a) such person is the holder of an effective learner's licence issued to him in Form 3 to drive the vehicle;

(b) such person is accompanied by an instructor holding an effective driving Licence to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle; and

(c) there is painted, in the front and the rear of the vehicle or on a plate or card affixed to the front and the rear, the letter "L" in red on a white background as under:—



Note.—The painting on the vehicle or on the plate or card shall not be less than 18 centimeters square and the letter "L" shall not be less than 10 centimeters high, 2 centimeters thick and 9 centimeters wide at the bottom:

Provided that a person, while receiving instructions or gaining experience in driving a motor cycle (with or without a side-car attached), shall not carry any other person on the motor cycle except for the purpose and in the manner referred to in clause (b).”

18. The purpose of Rule 3 of 1989 Rules is that a person with their learner’s licence is expected to drive a vehicle only for the purpose of learning. While learning to drive a motor vehicle, a holder of learner’s licence must be accompanied by an instructor so as to make an effective driving licence to drive such a vehicle. It is also the mandate of rule 3 (ibid) that such an instructor must be sitting in a position to control or stop the vehicle in case of any necessity. The purpose of making this rule is to ensure the safety of not only the learner but also of other persons using the road. Thus, a person holding a learner’s licence, if not accompanied by an instructor as laid down in rule 3(b) of 1989 Rules would not be holding a valid licence in consonance with the judgment of the Apex Court in Swaran Singh case (supra), where it was laid down that vehicle must be driven by a learner subject to conditions mentioned in the licence and only then he can be treated as a person who is duly licenced.

19. Respondent No.1 is the registered owner of the offending vehicle.

Respondent No.1 does not deny the same. RW-1 Sarabjit Kumar also proved

that respondent No. 1 is the registered owner of the offending vehicle. Respondent No.1 while appearing as RW-2 admitted that at the time of the accident, his wife and two minor children were going with him. He also admitted that his wife was not holding any driving licence. However, he tried to save himself from the liability by posing that he had displayed the sign of a learner 'L' in front of and at the rear side of the vehicle at the relevant time. But he admitted he has no documentary proof to show that at the relevant time he had put the sign of 'L' on his motorcycle. He also admitted that he has not taken this aforesaid plea in his pleadings. His aforesaid explanation cannot be considered being beyond the pleaded version and appears to be an afterthought. Thus, no evidence has appeared on record nor has been led by respondent No.1 to show that at the time of accident he was driving the motorcycle by observing Rule 3 of Central Motor Vehicles Rules, 1989 which clearly mandates that such a learner must be accompanied by an instructor having a valid driving licence. The insurance policy Ex. RX also contains the aforesaid condition. Furthermore, perusal of the learner's driving licence Ex. R-4 would show that the compliance of aforesaid condition is necessary that such a driver would drive the vehicle only with the assistance of an authorised instructor. The evidence on record leaves no manner of doubt that respondent No. 1 owner cum driver was not accompanied by any instructor at the time of the road accident, thus, wilfully breached the terms of the policy and the conditions mentioned in the learner's licence Ex. R-4.

20. It is true that liability of the Insurance company (appellant) is a statutory liability vis-a-vis the third party. The statute itself in the shape of section 149(2) of the Act, entitles the insurance company to avoid the policy. The harmonious construction adopted by the Hon'ble Apex Court in Swaran Singh case (supra) is that the liability of insurer to satisfy the decree passed in

favour of the third party is statutory in nature and if there is a wilful breach of terms of policy, the insurer is entitled to recover the compensation paid to the third party.

21. Respondent No.1 does not deny taking place of the accident in question but disputes the manner of the accident. He denies having caused the accident. Rather, asserted some unknown driver of a car had caused the accident. However, his aforesaid plea has not been accepted by the Tribunal which held him responsible for causing the accident due to his rash and negligent driving of the offending vehicle. Respondent No.1 did not put an appearance to contest the instant appeal. Therefore, aforesaid findings have remained unchallenged.

22. In Swaran Singh case (supra), it was held 'even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid driving licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless such breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of accident. The Tribunals in interpreting the policy conditions would apply 'the rule of main purpose' and the concept of 'fundamental breach' to allow defence available to the insured under section 149(2) of the Act. The above facts as gleaned from the record would evince wilful breach of the condition of driving licence by respondent No.1 a driver cum owner of the offending vehicle that has been fundamental in taking place of an accident by him. The purpose as mandated by Rule 3 of the Central Motor Vehicles Rules, 1989 of safe driving was defied by the insured.

23. From the discussion made above, it is held that the Tribunal committed an illegality in ignoring the evidence of wilful breach of the terms

and conditions of policy by the insured and by not giving recovery rights to the appellant- insurance company. The prayer of the appellant- insurance company is allowed to the extent that appellant- Insurance company is given the recovery rights to recover the amount of the compensation, if paid by the company to the claimants, from the owner-insured. It is made clear that the primary liability shall remain on the appellant-insurance company to satisfy the award so passed in favor of the claimants at the first instance and thereafter may recover the award amount from the respondent No.1-owner - insured.

- 24. No other point was urged.
- 25. Accordingly, the appeal is allowed in above terms with no order as to cost.
- 26. Miscellaneous applications, if any, are disposed of.

(RITU TAGORE)
JUDGE

Pronounced on 9th February, 2023
Rimpal

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