

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

FAO NO. 5971 of 2018

DATE OF DECISION: 11.01.2023

National Insurance Company Limited

...Appellant

Versus

Soma Devi and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Sandeep Suri, Advocate,
For the appellant.

ARUN MONGA, J. (ORAL)

Aggrieved with the Award dated 17.05.2018 rendered by learned Motor Accidents Claims Tribunal, Kurukshetra (for brevity, Tribunal), Insurance Company has preferred the instant appeal.

2. Succinct facts shorn of unnecessary details are that on 05.06.2016, claimant Soma Devi had gone to Radhaswami Satsang Bhawan at village Teokar. After attending Satsang, when she was returning, she boarded a three-wheeler bearing registration No. HR-45-9051. Some other passengers were also travelling in same vehicle, including Gurcharan Singh. Three-wheeler was being driven by its driver Sonu on the left side of the road and at a very normal speed. At about 10:30 a.m., when the three-wheeler reached near fields of Shingara Singh in between village Jurassi Kalan and Jurassi Khurd, one Swift car bearing registration No. HR-26-BT-3203 came from wrong side in a rash/negligent manner and at a high speed and hit the three-wheeler, which turned turtle. The occupants therein received multiple grievous injuries. The claimant was taken to Saraswati Mission Hospital, Pehowa

but was later referred to Amar Hospital, Patiala where she was operated upon. An FIR was registered and investigation was also carried out.

On these facts, injured preferred claim petition before the learned Tribunal.

3. Upon notice, respondents (driver and owner of offending vehicle) filed written statement denying the factum of any accident taken place at all with the car. It was further pleaded that driver/respondent Darshan Lal is a perfect driver and holds a valid driving license.

4. Insurance company/appellant preferred separate written statement stating that it is not liable to pay any compensation as the driver of the offending vehicle was not having a valid or genuine driving license. It was also denied that any such accident with the offending car had ever taken place.

5. From the pleadings of parties, learned Tribunal framed the following issues:

- 1. Whether the accident in question took place on 06.06.2016 at about 10:30 A.M in the area of village Jurassi Kalan, under jurisdiction of Police Station Pehowa, leading to injuries upon Soma Devi due to rash and negligent driving of the car bearing registration No. HR-26-BT-3203 by respondent No.1? OPP*
- 2. If issue No.1 is proved in affirmative, what is the amount of compensation to which the claimant is entitled? OPP*
- 3. Whether the terms and conditions of the insurance policy have been violated in any manner? OPR-3*
- 4. Relief.”*

6. Based on the respective evidence adduced by the parties, the learned Tribunal decided issue No.1 in favour of the claimant. Issue No.2 was partly decided in favour of the claimant and Issue No.3 was decided against the insurance company. Vide impugned Award, claimant Soma

Devi was held entitled to compensation of Rs.14,90,236/- with interest @ 9% per annum from the date of filing of the claim petition till realization. However, all the respondents i.e., driver, owner and insurer of the offending car, have been held jointly and severally liable to pay the compensation amount.

7. The Insurance Company (respondent No. 3 before the Tribunal) has come up in appeal.

8. I have heard learned counsel for the appellant and with his able assistance gone through the record.

9. Learned counsel for the appellant contends that driver and owner of the three-wheeler were not made party to the claim petition. Learned counsel contends that accident had taken place due to contributory negligence of driver of the three-wheeler as 5-6 persons were sitting in the three-wheeler at the time of accident. It is further contended that as per the statement of RW-1 Balwan Singh made before the Tribunal, the driver of offending car was not holding a valid license to drive LMV. Driving license was meant only for driving motorcycle with gear and tractor. Therefore, insurance company cannot be held liable to pay the compensation. He cites judgment of Apex Court, in support of his argument viz. **“Mukand Dewangan v. Oriental Insurance Company Limited” 2017 (4) RCR (Civil) 111** which has been referred to larger Bench in Civil Appeal No. 841/2018 titled **“M/s Bajaj Alliance General Insurance Company Limited v. Rambha Devi and others.**

10. Having perused the record and heard the learned counsel, I am of the opinion that the learned Tribunal has recorded sound and valid

reasons for its finding/conclusions on issues No. 1 to 3 and same do not call for any interference in appeal.

11. Paras 34, 35, 36 and 37 of the impugned Award, being apposite, for ready reference are extracted as under:

“Issue No.3

34. Onus to prove this issue was upon the respondent No.3. To substantiate his arguments, learned counsel for respondent No.3 has placed reliance upon the testimony of RW1 Balwan Singh, driving license Clerk, office of SDO (C), Pehowa, District Kurukshetra, who had deposed that the driving license of respondent No.1 (Ex.R3) was issued as per record brought by him and is not valid for LMV class of Car and Jeep etc. Learned counsel has placed reliance in case titled **National Insurance Corporation Limited vs. Kanti Devi and others 2005 (2) Civil Court Cases 764 (S.C)**, wherein it has been observed by Hon’ble Supreme Court that “driver possessing license for one type of vehicle but found driving another type of vehicle, Insurer can take a defence that driver did not have the requisite driving license to drive to a particular type of vehicle.”

35. On the other hand, learned counsel for respondents NO.1 and 2 have placed reliance in case titled **Mukand Dewangan vs. Oriental Insurance Company Limited 2017 (4) RCR (Civil) 111 (S.C) (Full Bench)** wherein the Hon’ble Supreme Court has observed that “Section 10 of (Motor Vehicle Act) requires a driver to hold a license with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle license can drive all the vehicles of the class including transport vehicles.”

36. Learned counsel for claimant further relied upon in case titled *The New India Assurance Company Limited vs. Mahender Singh and others 2010 (1) RCR (Civil) 934 (P&H)* wherein the Hon’ble Punjab and Haryana High Court observed that :

“if driving method and mechanism of vehicle which a person drives is same as that of vehicle for which he was holding a valid driving license-Validity of such license for driving former vehicle will not be challenged- Where a person was issued license to

drive motorcycle, scooter, jeep and car- Held, he is competent to drive tractor also which has some mechanism as that car or jeep.”

37. In view of the above, this Court is of the view that respondent No.1 was holding a valid driving license of LMV tractor and thus possibly, he could drive the car. Hence, this issue is decided against respondent No.3-Insurance Company.”

12. The impugned award shows that the owner and driver of the car were made party to the claim petition. I, therefore, reject the contention to the contrary raised by the learned counsel for appellant. Memo of appeal itself shows that the driving licence of respondent No.2 was valid for motor cycle with gear and tractor. It is not disputed that the method and mechanism for driving a tractor is the same as that of the offending car, which was being driven by respondent No. 2 at the time of accident. Learned Tribunal thus rightly held that the driving licence of respondent No.2 was also valid for driving the car relying upon the ratio of **Mahendar Singh** *ibid*. I see no ground to interfere with the then prevailing interest component allowed by the learned Tribunal on the compensation amount as it does not seem excessive or unreasonable.

13. Learned Tribunal gave cogent and sound reasons and rightly held that the accident was caused by rash/negligent driving of car No. HR-26-BT-3203 by its driver/respondent Darshan Lal. I am inclined to agree with the reasoned findings and conclusion drawn by the learned Tribunal.

14. Assuming that there was contributory negligence qua the validity of driving license, as is contended by learned counsel, the same would not in any manner adversely affect the rights of the claimant to seek compensation jointly and severally from the owner and insurer of

the offending vehicle. Whether or not there was contributory negligence, is an *inter se* dispute between the owner of offending vehicle and the insurer. The claimant cannot be non-suited on that ground.

15. In the premise, no grounds for interference by this Court are made out.

16. Dismissed.

17. Pending applications, if any, shall also stand disposed of.

JANUARY 11, 2023
Shalini

(ARUN MONGA)
JUDGE

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