

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

**259**

**FAO No. 3394 of 2019 (O&M) &  
XOBJC-101-2022 (O&M)  
Date of Decision : 05.02.2024**

Oriental Insurance Co. Ltd.

....Appellant

**VERSUS**

Sangeeta and Others

....Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Lalit Garg, Advocate for the appellant-Insurance Company.

Mr. Ashwani Arora, Advocate  
for the cross-objectors/respondent Nos.1 to 6.

Mr. Neeraj Khanna, Advocate with  
Mr. Vipul Sharma, Advocate for respondent Nos.7 and 8

**ALKA SARIN, J. (Oral)**

1. This common order will dispose off the appeal being FAO-3394-2019 filed by the Insurance Company and cross-objections being XOBJC-101-2022 filed by the claimants.

**FAO-3394-2019 (O&M)**

3. The present appeal has been preferred by the Insurance Company challenging the award dated 02.02.2019 passed by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as the 'Tribunal'). The two challenges laid by the Insurance Company in the present appeal are that Chandresh @ Chandresh Kumar (hereinafter referred to as the 'deceased') himself was negligent inasmuch as he did not possess a driving licence and was driving the motorcycle without a driving licence.

The second ground for challenge is that the recovery rights ought to have

been granted to the Insurance Company in the absence of a permit to ply the offending vehicle and in the absence of fitness certificate of the offending vehicle.

4. Learned counsel for the Insurance Company would contend that the deceased in the present case admittedly did not have a driving licence and hence it ought to have been held to be at least a case of contributory negligence. It is further the contention that there was no route permit with the offending vehicle to ply the vehicle, which was a mini bus, and there was also no fitness certificate. In support of his arguments learned counsel for the Insurance Company has relied upon the judgments of the Hon'ble Supreme Court in the cases of **Amrit Paul Singh & Anr. vs. TATA AIG General Insurance Co. Ltd. & Ors. [2018(3) RCR (Civil) 131]** and **Rani & Ors. vs. National Insurance Company Ltd. & Ors. [2018(3) RCR (Civil) 979]** and those of this Court in the cases of **Jamil Khan & Anr. vs. Bajaj Allianz General Insurance Co. Ltd. & Ors. [2013 ACJ 1640]** and **M/s Salson Steels Pvt. Ltd. vs. Jaswinder Kaur alias Sukhwinder Kaur & Ors. [FAO-5140-2016 decided on 21.03.2018]**.

5. *Per contra* learned counsel appearing on behalf of respondent Nos.7 and 8 i.e. driver and owner of the offending vehicle would contend that under Section 149(2) of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act of 1988') certain defenses were made available to the Insurance Company and the absence of route permit or the fitness certificate are not the defenses as enumerated in Section 149(2) of the Act of 1988. It is further the contention that the Hon'ble Supreme Court in the case of **Kamala Mangalal Vayani & Ors. vs. United India Insurance Co. Ltd. & Ors. [2010 ACJ 1441]** has held that it is for the insurer, who denies its

liability under the policy, to prove that inspite of the comprehensive insurance policy issued by it, it is not liable on account of the requirements of the policy not being fulfilled. Similar is the view taken by a Division Bench of this Court in the case of **National Insurance Company Ltd. vs. Kamlesh Kaur & Ors. [2008 ACJ 927]**. Learned counsel for respondent Nos.7 and 8 has further relied upon judgments in the cases **National Insurance Company Ltd. vs. Rekha Rani & Ors. [FAO-8428-2014 decided on 07.10.2014]**; **M/s Sapna Transporter and Contractor vs. National Insurance Company Ltd. & Ors. [2018(4) Law Herald 3444]**; **Charanjit Singh & Ors. vs. Harish Kumar Sachdeva & Ors. [2018(4) RCR (Civil) 993]** and **The Oriental Insurance Company Ltd. vs. Smt. Baljinder Kaur & Ors. [2019(3) PLR 589]** in support of the argument that the defense that the Insurance Company was not liable to pay the amount in the absence of fitness certificate or route permit, was not available with the Insurance Company under Section 149(2) of the Act of 1988.

6. Heard.

7. In the present case on 13.11.2017 the deceased was going on the road leading from Derabassi to Bhareli Poultry Farm Chowk while on his motorcycle. He was riding the motorcycle at a slow speed and on the left side of the road. He was being followed by his brother Balvir Singh on a separate motorcycle. After crossing Kurhan Wala petrol pump, when they went little ahead, a mini bus bearing registration No.PB-65-K-2711 (offending vehicle) came at a fast speed from behind and after overtaking the motorcycle of Balvir Singh struck against the motorcycle of the deceased from the back as a result of which the deceased fell on the road and received serious head injury resulting in his death at the spot.

8. The argument of learned counsel for the Insurance Company that this was a case of contributory negligence as the deceased was riding the motorcycle without any driving licence deserves to be rejected. The present is not a case where it was a head on collision or the deceased was driving on the wrong side of the road or not following the traffic rules. It is a clear case of negligence on the part of the driver of the offending vehicle inasmuch as the motorcycle of the deceased was struck from behind. The deceased cannot be held to have been negligent in any manner. In view thereof, the argument of learned counsel for the Insurance Company that the deceased himself was negligent stands rejected.

9. The second argument of learned counsel for the Insurance Company that the recovery right ought to have been given to the Insurance Company in the absence of a fitness certificate also deserves to be rejected. Section 149(2) of the Act of 1988 reads as under :

*“149.Duty of insurers to satisfy judgments and awards  
against persons insured in respect of third party risks -*

*(1) XX XX XX XX  
XX*

*(2) No sum shall be payable by an insurer under sub-  
section (1) in respect of any judgment or award unless,  
before the commencement of the proceedings in which  
the judgment or award is given the insurer had notice  
through the Court or, as the case may be, the Claims  
Tribunal of the bringing of the proceedings, or in  
respect of such judgment or award so long as execution  
is stayed thereon pending an appeal; and an insurer to*

*whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely :*

*(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely :*

*(i) a condition excluding the use of the vehicle-*

*(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or*

*(b) for organised racing and speed testing, or*

*(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or*

*(d) without side-car being attached where the vehicle is a motor cycle; or*

*(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or*

*(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or*

*(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.”*

10. A perusal of the Act of 1988 reveals that there were certain defenses, which were available to the Insurance Company. The absence of a route permit or fitness certificate is not a defense which is available under Section 149(2) of the Act of 1988. That apart, the said view has also been taken by this Court in the cases of **Rekha Rani** (supra), **M/s Sapna Transporter and Contractor** (supra), **Charanjit Singh** (supra), and **Smt. Baljinder Kaur** (supra). In the present case a specific issue was framed by the Tribunal i.e. issue No.3, which reads as under :

*“3. Whether the driver of the offending vehicle was not holding a valid and effective driving licence, fitness certificate and route permit at the time of accident ?  
OPR”*

11. The onus to prove that the Insurance Company was not liable to pay the compensation despite a comprehensive insurance policy lies upon the Insurance Company in view of the judgment of the Hon’ble Supreme Court in the case of **Kamala Mangalal Vayani** (supra) and that of this Court in case of **Kamlesh Kaur** (supra).

12. Learned counsel for the Insurance Company has argued that there was no permit and fitness certificate, however, strangely though a person was called from the Office of STC, SAS Nagar (Mohali), no record qua the permit was summoned. Further, no question qua the permit was even put to the said witness. Qua the fitness certificate though it has come in the

evidence that the fitness certificate was valid from 24.06.2016 to 28.06.2017, however, the said witness stated that he has not brought the record pertaining to the period beyond 30.06.2016. The judgments of the Hon'ble Supreme Court in the cases of **Amrit Paul Singh** (supra), **Rani** (supra) and that of this Court in cases **Jamil Khan** (supra) and **M/s Salson Steels Pvt. Ltd.** (supra) would not come to the aid of the Insurance Company for the reason that in case of **Rani** (supra) it had come on the record that the route permit was for Karnataka and the vehicle was being plied in Maharashtra. In the case of **Amrit Paul Singh** (supra) the driver and owner of the vehicle had been proceeded against *ex parte* and in those circumstances it was held that the Insurance Company would have the recovery right. The Hon'ble Supreme Court in the case of **Kamala Mangalal Vayani** (supra) has held as under :

*“4. As noticed above, the owner-cum-driver had remained ex parte. Once it was established that the vehicle was comprehensively insured with the insurer to cover the passenger risk, the burden to prove that it was not liable in spite of such a policy, shifted to the insurer. The claimants are not expected to prove that the vehicle had a valid permit, nor prove that the owner of the vehicle did not commit breach of any of the terms of the policy. It is for the insurer who denies its liability under the policy, to establish that in spite of the comprehensive insurance policy issued by it, it is not liable on account of the requirements of the policy not being fulfilled. In this case, the insurer produced a certified copy of the proceedings of the Registering Authority and Assistant Regional Transport Authority, Bangalore, dated 7.7.1990 to show that the application for registration of the vehicle filed by the third respondent, was rejected*

*with an observation that it was open to the applicant to apply for registration in the appropriate class. But that only proved that on 7.7.1990, the vehicle did not have a permit. But that does not prove that the vehicle did not have a permit on 27.7.1990, when the accident occurred. It was open to the insurer to apply to the concerned transport authority for a certificate to show the date on which the permit was granted and that as on the date of the accident, the vehicle did not have a permit, and produce the same as evidence. It failed to do so. The High Court committed an error in expecting the claimants to prove that the vehicle possessed a valid permit. We are of the view that there was no justification for the High Court to interfere with the judgment and awards of the Tribunal in the absence of relevant evidence.”*

13. A Division Bench of this Court in the case of **Kamlesh Kaur** (supra) has held as under :

*“5. The argument that a route permit was required within the State of Haryana, raised by the learned Counsel for the Insurance Company is devoid of merit because it was not the pleaded case of the Insurance Company-appellant before the M.A.C.T. No witness or document has been produced on record by the Insurance Company-appellant to show that no 'permit' was obtained by the owner of the vehicle or any 'route permit' for a goods vehicle within the State of Haryana was required. The Insurance Company-appellant even failed to cross examine the Criminal Ahlmad, who had appeared as PW-2 alongwith the Registration Certificate of the offending vehicle to show as to whether the vehicle was registered as a 'goods vehicle' or the vehicle was granted any permit. It may be true*

*that a permit for goods carrier may be required Under Section 66 of the Act but there is no requirement of acquiring a route permit for such a vehicle within the State as projected by the Insurance Company-appellant. In any case it has to be proved on record that the vehicle was not granted any permit. The defences of the Insurance Company-appellant are confined to those which have been referred to in Sub-section (2) of Section 149 of the Act, particularly with regard to liability towards third party. In that regard reliance may be placed on a judgment of the Hon'ble Supreme Court in the case of National Insurance Company v. Swaran Singh 2004 ACJ 1 (SC). It has been laid down by the Hon'ble Supreme Court that breach of condition of a policy committed by the insured, like non-issuance of licence, has to be proved by the Insurance Company if it wishes to avoid liability. In the summery of finding in para 110 of the judgment, their Lordships have observed in sub-paras (iii) and (iv) as under:*

*“(102) (iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, has 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 the 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 a duly licenced driver or one who was not disqualified to drive at the relevant time.*

*(iv) 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 wherefore would be no them."*

*6. In the present case, the Insurance Company-appellant has miserably failed to discharge the aforementioned onus. Neither any witness has been produced nor any document has been tendered in support of the aforementioned contention. The Insurance Company-appellant has even failed to cross examine the witnesses of the claimant-respondents like PW-2 Shri Suman Jit Singh, Criminal Ahlmad, on the aforementioned issue, who had appeared alongwith the Registration Certificate of the offending vehicle. Therefore, the argument raised is completely devoid of merit and is hereby rejected."*

14. In the present case both the driver and the owner filed a written statement. On the stand taken by the Insurance Company, a specific issue was framed. As per the law discussed above, the onus lay upon the Insurance Company to prove that it was not liable to pay under the policy. The Insurance Company though called a person from the Office of STC, SAS Nagar (Mohali), however, it did not so much as put a suggestion that there was no permit to ply the vehicle. Infact the only record summoned was regarding the fitness certificate and that too, the concerned official candidly admitted, was only upto the period 30.06.2016 and that he had not brought the record beyond that period. Though it has been argued by learned counsel for the Insurance Company that the said witness has also stated that there

was no other record and that if it is held that there was no fitness certificate even in those circumstances in view of the provisions of Section 149(2) of the Act of 1988, the said defense is not available to the Insurance Company and, therefore, the argument stands rejected.

15. In view of the above, the appeal (FAO-3394-2019) filed by the Insurance Company is dismissed being devoid of any merits.

**XOBJC-101-2022 (O&M)**

16. The present cross-objections have been filed by the claimants i.e. respondent Nos.1 to 6 herein. Learned counsel for the cross-objectors/claimants has contended that the only challenge to the award passed by the Tribunal is to the extent that the amount awarded under the conventional heads is on the lower side.

17. Learned counsel for the Insurance Company has contended that a sufficient amount of compensation already stands paid.

18. The Tribunal awarded the following compensation under the conventional heads as well as under the head of loss of consortium:

| Sr. No. | Heads                     | Compensation Awarded |
|---------|---------------------------|----------------------|
| 1       | Loss of estate            | Rs.15,000/-          |
| 2       | Funeral expenses          | Rs.15,000/-          |
| 3       | Loss of Consortium        | Rs.40,000/-          |
|         | <b>Total Compensation</b> | <b>Rs.70,000/-</b>   |

19. A perusal of the award reveals that an amount of Rs.70,000/- has been awarded under the conventional heads including the head of loss of consortium.

20. In view of the law laid down in the cases of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**,

**Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130] and N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]**, under the conventional heads the cross-objectors/claimants would be entitled to Rs.18,000/- (Rs.15,000+20% increase) towards loss of estate and Rs.18,000/- (Rs.15,000+20% increase) towards funeral expenses and further they would also be entitled to Rs.48,000/- each (Rs.40,000+20% increase) towards loss of consortium.

21. Accordingly, the reworked compensation under the head conventional heads as well as under the head loss of consortium is as under :

| Sr. No. | Heads                                                                  | Compensation Awarded                                                                                    |
|---------|------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| 1       | Loss of estate                                                         | Rs.18,000/-                                                                                             |
| 2       | Funeral expenses                                                       | Rs.18,000/-                                                                                             |
| 3       | Loss of Consortium :<br>(i) Parental<br>(ii) Spousal's<br>(iii) Filial | [Rs.48000 x 3] = Rs.1,44,000/-<br>Rs.48,000/-<br>[Rs.48,000 x 2] = Rs.96,000/-<br>(Total Rs.2,88,000/-) |
|         | <b>Total Compensation</b>                                              | <b>Rs.3,24,000/-</b>                                                                                    |

22. The amount in excess of and over and above the amount awarded by the Tribunal under the conventional heads as well as under the head of loss of consortium shall also attract interest @ 7.5% per annum from the date of filing of the claim petition till the realization of the entire amount. The enhanced amount of compensation shall be apportioned amongst the claimants as directed by the Tribunal.

23. In view of the above discussion, the appeal being FAO-3394-2019) filed by the Insurance Company is dismissed and the cross-objections being XOBJC-101-2022 filed by the cross-objectors/claimants are allowed.

The award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

05.02.2024  
jk

( ALKA SARIN )  
JUDGE

NOTE: Whether speaking/non-speaking: Speaking  
Whether reportable: YES/NO