



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

FAO-279-1994

Date of decision : 18.03.2025

Oriental Insurance Company Limited

....Appellant

Versus

Dhamno

.....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sanjiv Pabbi, Advocate for the appellant.

PANKAJ JAIN, J. (ORAL)

Present appeal is directed against award passed by MACT, Jind.

2. Appeal was filed by the insurer disputing his liability on the issue of driving licence claiming that the driving licence possessed by the Ram Phal driver of the offending vehicle, was fake.

3. Before Tribunal, no evidence could be produced.

4. Application under Order XLI Rule 27 CPC was filed along with the present appeal.

5. Keeping in view the following observations made by Supreme Court in the case of **'National Insurance Company Limited vs. Swaran Singh', (2004) 3 SCC 297**, the onus was upon the insurer to prove that the licence was fake :

“(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a) (ii) of the said Act.

- (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 licensed driver or one who was not disqualified to drive at the relevant time.
- (iv) Insurance companies, 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."

- 6. Admittedly, no evidence was led before the Tribunal.
- 7. In view thereof, this Court does not find any merit in the instant appeal. Resultantly, the same is ordered to be dismissed.

March 18, 2025					(Pankaj Jain)
Dpr					Judge
	Whether speaking/reasoned	:		Yes/No	
	Whether reportable	:		Yes/No	