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

**FAO-2714-1999(O&M)**
**Reserved on: 29.08.2025**
**Date of decision: 02.09.2025**

National Insurance Company Limited

..Appellant

Versus

Sunita and others

..Respondents

**CORAM: HON'BLE MS. JUSTICE MANDEEP PANNU**

Present: Mr. Rajbir Wasu, Advocate
for the appellant-Insurance Company

Mr. Munish Jolly, Advocate
for the respondents

**MANDEEP PANNU, J.**

1. This appeal has been filed by the National Insurance Company Limited against the award dated 22.05.1999 passed by the Motor Accident Claims Tribunal, Mansa (hereinafter referred to as 'Tribunal'), whereby a sum of ₹2,35,000 along with interest at the rate of 12% per annum was awarded in favour of the claimants, the widow, minor children and mother of deceased Suresh Kumar.

2. The case of the claimants was that Suresh Kumar, aged 40 years, was driving a Canter vehicle bearing registration No. PB-11D-5198 near village Hamirgarh on 08.06.1995, when suddenly a flock of blue bulls appeared on the road. In order to save them, he swerved the vehicle to the left side, as a result of which the Canter

overturned. The windscreen broke and Suresh Kumar, along with the conductor, fell out of the vehicle. Suresh Kumar was crushed under it and died on the spot. It was pleaded that he was hale and hearty, earning about ₹3000/- per month as a driver, and that his dependents were entitled to compensation.

3. The claim petition was contested by the Insurance Company. It was contended that the petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as ‘Act’) was not maintainable in the absence of proof of rash and negligent driving. It was further argued that Suresh Kumar himself was driving the vehicle at the time of the accident and could not be treated as a third party vis-a-vis the owner and insurer. It was also pleaded that the deceased did not possess a valid driving licence at the time of the accident, and to prove this fact, record from the Licensing Authority at Patna was summoned to show that no such licence had been issued in his name.

4. The learned Tribunal brushed aside these objections and held that the death of Suresh Kumar in the accident entitled his dependents to compensation. The Tribunal observed that strict proof of negligence was not required and also rejected the plea of invalid licence. Taking the monthly income of the deceased at ₹2,000 and applying deduction of ₹600/- on account of personal expenses, the Tribunal applied a multiplier of 14 and awarded a sum of ₹2,35,000 with interest, fastening liability jointly and severally upon the owner and the Insurance Company.

5. Having considered the matter, this Court is of the view that the Tribunal has fallen in error. Section 166 of the Motor Vehicles Act provides for filing of an application for compensation where the accident arises out of the use of a motor vehicle and has been caused by the rash and negligent driving of that vehicle. Proof of negligence is, thus, the very foundation for a claim under Section 166. The Hon'ble Supreme Court in **Oriental Insurance Co. Ltd. v. Premlata Shukla and others 2007(13) SCC 476** has reiterated that proof of rash and negligent driving is a *sine qua non* for the maintainability of a petition under Section 166. In the present case, there is no evidence to show that Suresh Kumar was driving rashly or negligently. The accident occurred when he swerved the vehicle to avoid animals on the road. This circumstance, though unfortunate, does not amount to negligence in the legal sense. The Tribunal misdirected itself in presuming negligence without there being any such proof.

6. It is further to be noted that the liability of the insurer under Section 147 of the Act is to indemnify the insured owner against claims brought by third parties. A driver, who dies while driving the insured vehicle, cannot be regarded as a third party vis-à-vis the owner. If the owner himself is driving, he cannot be a third party against his own policy. Where a person is employed as a driver, qua the owner, he is only an employee, not a third party. In such a case, the remedy of the legal heirs, if any, lies under the Employees' Compensation Act, 1923. In the present case, Suresh Kumar was himself the driver of the Canter belonging to respondent No. 1. Qua

the owner, he was not a third party and therefore, his dependents could not have maintained a petition under Section 166 by treating him as such. Moreover, by taking an "Act policy", the owner of a vehicle fulfils his statutory obligation as contained in Section 147 of the Act and if additional risks are sought to be covered, additional premium has to be paid.

7. The objection regarding absence of a valid driving licence has also been substantiated. The Insurance Company led evidence from the Licensing Authority at Patna, which established that no licence had been issued in favour of Suresh Kumar. This evidence has remained unrebutted and thus, it stands proved that he did not hold a valid licence at the time of the accident.

8. The reliance placed by learned counsel for the respondents on **Nirmala Kothari v. United India Insurance Co. Ltd. (2020) 4 SCC 49** is misplaced. That case dealt with a situation where an employer had engaged a driver, who held a fake licence, and the Supreme Court held that unless the employer was negligent in verifying the licence, the insurer could not avoid liability. The ratio has no application here. In the present case, the deceased himself was the driver and the accident occurred while he was driving. The principle of vicarious liability of the employer does not arise, nor can the insurer be made liable on the basis of a third-party claim.

9. In light of the above discussion, this Court finds that the claim petition filed under Section 166 was misconceived and not maintainable. The Tribunal erred in presuming negligence, in treating

the deceased as a third party, and in fastening liability upon the insurer despite the clear evidence of absence of a valid licence. The award passed by the Tribunal cannot, therefore, be sustained. Accordingly, the appeal filed by the Insurance Company is allowed. The award dated 22.05.1999 passed by the Tribunal is set aside and the claim petition filed by the respondents is dismissed.

10. All the pending miscellaneous applications, if any, are also disposed of.

**(MANDEEP PANNU)**
**JUDGE**

**02.09.2025**
rekha

| | |
|---|---|
| Whether speaking/reasoned | Yes/No |
| Whether reportable | Yes/No |