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

(217)

**FAO No. 3307 of 2001
Reserved on: 22.09.2025
Pronounced on :23.09.2025**

The Oriental Insurance Company Limited … Appellant

Versus

Sukhwant Kaur and Others … Respondent

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present: Mr. Deepak Goyat, Advocate for
Mr. Ashwani Talwar, Advocate
for the appellants.

None for the Respondents.

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VIRINDER AGGARWAL, J.

1. This appeal has been filed by the appellant-Insurance Company against the award dated 19.07.2001 passed by the learned Motor Accident Claims Tribunal, Gurdaspur, whereby compensation has been awarded in favour of the claimants on account of the death of Gurwinder Singh in a motor accident.

FACTUAL BACKGROUND

2. On 18.07.1999, Gurwinder Singh, aged about 21 years, was travelling with Kulwinder Kaur on scooter No. PB-18A-3236 from Dera Baba Nanak to village Kotha. When they reached near village Jorian Khurd, a Tata 407 truck No. PB-06-3000, driven rashly and negligently by respondent No. 5 namely Jasbir Singh, came from the opposite side and struck against the scooter. As a result, Gurwinder Singh died on the spot and Kulwinder Kaur sustained injuries. The offending

vehicle was owned by respondents No. 6 and 7 and was insured with present appellant i.e. Oriental Insurance Company Limited. The claimants of deceased Gurwinder Singh, filed a petition under Motor Vehicles Act, 1988, seeking compensation to the tune of Rs. 20 lakhs on account of his death in a motor accident.

3. The learned Tribunal, on appreciation of the evidence, held that Gurwinder Singh died in the accident due to rash and negligent driving of Tata 407 truck No. PB-06-3000 by respondent No. 5 and the compensation was assessed at Rs. 2,88,000/- with interest at rate of 9% per annum. On Issue No. 3, the learned Tribunal, on the basis of verification report produced by the Insurance Company, accepted that the driving licence produced by driver/respondent no.1 was not genuine and that the driver was not holding a valid and effective driving licence at the time of accident. However, despite this finding, the learned Tribunal held the Insurance Company liable to satisfy the award in favour of the claimants without granting recovery rights.

CONTENTIONS

4. Learned counsel for the appellant-Insurance Company assailed the award on the sole ground that the learned Tribunal gravely erred in fastening absolute liability upon the insurer despite recording a clear finding that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of the accident. It was argued that the appellant had led cogent evidence through its investigator as well as verification report from the Licensing Authority, Jhansi, which categorically proved that the licence produced by respondent no.1 was not genuine. In such circumstances, the learned Tribunal ought to have either absolved the Insurance Company of its liability or, at the very least, granted recovery rights

enabling it to realize the compensation from the owner and driver after satisfying the award. Reliance was placed on the judgments of the Hon'ble Supreme Court in ***New India Assurance Co. Ltd. v. Kamla Devi and others*, 2001 (4) SCC 342**, and ***National Insurance Co. Ltd. v. Swaran Singh*, 2004 (3) SCC 297**, to submit that once breach of policy condition regarding driving licence is proved, the insurer cannot be saddled with unqualified liability.

OBSERVATIONS AND FINDINGS

5. I have heard learned counsel for the parties and perused the whole record of this case.

6. A perusal of the award shows that the learned Tribunal while adjudicating Issue No. 3, categorically held that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of the accident. This finding was recorded on the basis of cogent evidence led by the appellant-Insurance Company, including the testimony of its investigator namely Parkash Mohan Upadhya (RW-1), the verification report (Exhibit R/4) and from the certificate(Exhibit R/3) issued by the Licensing Authority, Jhansi, which clearly established that the driving licence (Exhibit R/1) was not issued by the Licensing Authority, Jhansi, which means that driving licence relied upon by respondent No. 5 was not genuine. Having so held, the learned Tribunal, however, proceeded to saddle the appellant with liability to pay compensation to the claimants without granting it the right to recover the amount from the owner and driver of the offending vehicle. This approach, in my considered view, is not sustainable in law. In the present case, once the learned Tribunal accepted that the driver was not holding a valid licence, the appellant was entitled to recovery rights. The omission

of the learned Tribunal to grant such rights, despite recording a clear finding on absence of licence, amounts to an error apparent on the face of the record.

7. It is well settled by a catena of judgments of the Hon'ble Supreme Court, including ***New India Assurance Co. Ltd. v. Kamla Devi and others*, 2001 (4) SCC 342, *National Insurance Co. Ltd. v. Swaran Singh*, (2004) 3 SCC 297 and *Shamanna v. Divisional Manager the Oriental Insurance Co. Ltd.* 2018 (9) SCC 650**, that where the insurer establishes a fundamental breach of policy conditions, and the insurance company is able to prove that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of accident, the insurer cannot be absolved of its liability to satisfy the award qua the third-party claimants. The principle of "pay and recover" has been consistently applied, whereby the insurer is directed to first indemnify the claimants and thereafter recover the awarded amount from the insured/owner of the vehicle. The object behind such directions is to ensure that innocent victims of road accidents are not left without remedy due to inter se disputes between the insurer and the insured.

8. Consequently, The award of the learned Tribunal dated 19.07.2001 is upheld insofar as it relates to the entitlement of the claimants to compensation. However, it is directed that the appellant-Insurance Company, after satisfying the award amount in favour of the claimants, shall be entitled to recover the same from respondent no.5 and 6, i.e., the driver and owner of the offending vehicle, in accordance with law.

9. The appeal is accordingly allowed to the aforesaid extent.

(VIRINDER AGGARWAL)
JUDGE

23.09.2025

Saurav Pathania

(i)	*Whether speaking/reasoned*	:	*Yes/No*
(ii)	*Whether reportable*	:	*Yes/No*