IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. FAO-3295-2007 (O&M)

National Insurance Company ......Appellant

Vs.

Swaran Singh and others ......Respondents

AND

2. FAO-3296-2007 (O&M)

National Insurance Company ......Appellant

Vs.

Balbir Kaur and others ......Respondents

Decided on : 23.01.2025

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Paul S. Saini, Advocate,
for the appellant-Insurance Company.

Mr. Vijay Lath, Advocate and
Mr. Ajay Dhiman, Advocate,
for respondents No. 4 and 5 (in FAO-3296-2007) and
for respondents No.2 and 3 (in FAO-3295-2007).

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<u>SUDEEPTI SHARMA J.</u>

1. Vide this common judgment, the aforesaid two appeals are being decided as the same have arisen out of the common award dated 15.05.2007 passed by the learned Motor Accident Claims Tribunal, Kapurthala (for short, 'the Tribunal'). Further the common question of law is involved in both the appeals. For brevity, facts have been taken from **FAO-3295-2007.**

2. The present appeals have been preferred by the appellant-Insurance Company against the award dated 15.05.2007 passed in the claim petitions filed under Section 166 of the Motor Vehicles Act, 1988, by the learned Tribunal, whereby, the appellant-Insurance Company was held liable to pay the amount of compensation awarded by the learned Tribunal.

FACTS NOT IN DISPUTE

3. The brief facts of the case are that on 01.07.2003, respondent/claimant Swaran Singh, along with Surjit Singh, Gurmeet Kaur, Santokh Kaur, Ajit Singh, Randhir Singh, Khushal Singh etc., was travelling in tempo bearing registration No.PB-10-AE-9969, being driven by Gurdev Singh son of Mohinder Singh, as passengers for going to Doraha. The said tempo was stopped on the berm of the road at Katcha Place near village Chindra, G.T. Road, Ludhiana. In the meanwhile, all of a sudden, a truck bearing registration No.HP-11-2519, being driven by respondent-Sukhwinder Kumar, came from behind side in a rash and negligent manner and struck against the stationed tempo. As a result of this collusion, tempo was overturned and all the occupants of the said tempo, including the claimant, received injuries. Thereafter, all the injured were rushed to the hospital, while claimant was shifted to DMC, Ludhiana, where he was operated upon.

4. Upon notice of the claim petitions, the appellant-Insurance Company appeared and filed their separate replies denying the factum of accident/compensation.

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

> *"1) Whether claimant received injuries in motor vehicular accident, which occurred on 01.07.2003 at 11:45 a.m. in the area of village Chindra, P.S. Sahnewal, District Ludhiana, due to rash and negligent driving of truck bearing registration No.HP-11-2519 by respondent No.1.? OPP*
>
> *2) If issue No.1 is proved, to what amount of compensation, the claimant is entitled for and from which of the respondent? OPP*
>
> *3) Whether respondent No.1 not holding a valid and effective driving licence at the time of accident, if so, its effect? OPR-3.*
>
> *4) Relief."*

6. After taking into consideration the pleadings and the evidence on record, the learned Tribunal has awarded compensation to the tune of Rs.1,92,000/- in favour of the respondent/claimant Swaran Singh and Rs.3,73,000/- in favour of the respondents/claimants Balbir Kaur, Harpreet Kaur and Ujjal Singh, along with interest at the rate of 6% per annum. Hence, the present appeals have been filed by the appellant-Insurance Company to challenge the imposition of liability to pay the awarded amount of compensation.

<u>SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES</u>

7. Learned counsel for the appellant-Insurance Company contends that driving license of the driver expired on 29.11.1999 and thereafter renewed on 24.07.2003, whereas, the accident occurred on 01.07.2003 and

since, on the date of accident, the driver was not holding valid driving license and it was not renewed, therefore, the liability on the respondent-Insurance Company has wrongly been fixed by the learned Tribunal.

8. *Per contra*, learned counsel for respondents/claimants vehemently argues on the lines of the award dated 15.05.2007 and submits that the award has rightly been passed by the learned Tribunal. Therefore, he prays for dismissal of the present appeals.

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

10. The relevant portion of the award reads as under:-

> *39. It is the case of respondent No. 3 that respondent No.1 was not holding valid and effective driving licence at the time of accident. Original driving licence was issued to respondent No.1 on 30.11.1996 which was valid upto 29.11.1999, as can bee seen from photo copy of the driving licence of respondent No.1 Ex. R1. As per report Ex.R3 of licencing Authority, respondent No.1 got this driving licence renewed from 24.7.2003 to 23.7.2006. In this manner, it was contended that respondent No.1 was not holding effective and valid driving licence from the period from 30.11.1999 to 23.7.2003 The accident occurred on 1.7.2003. So, it is the case of respondent No. 3 that on 1.7.2003, respondent No. 3 was not holding valid and effective driving licence.*
>
> *40. It was contended that respondent No.3 may be accorded permission to recover the amount of compensation from respondent No.2 being owner of the offending vehicle, if the amount of compensation is paid by it to the claimants.*
>
> *41. The contention of the learned counsel for respondent No.3 is devoid of merits in view of* ***Oriental Insurance Co. Ltd Vs. Paulose, 2004(1) Civil Court Cases-315****, rendered by Hon'ble Kerala High Court, wherein, it was held that driving licence is defined in Section 2(10) of the Motor Vehicle Act and it does not make any reference to the period of its validity. Section 14 mentions about the period during which a driving licence can be said to be effective. On expiry of the said period,*

though it ceases to be effective, it does not cease to exit because, the holder of the licence has an option, in terms of section 15, to renew it even after the expiry of it effectiveness. Even after the period of its expiry, to get it renewed, one need not apply for a fresh licence. He need apply only for renewal. On such renewal, It regains its effectiveness. Section 3,14 and 15 taken together convey an idea that the licence continued to be duly licenced, subject to his obligation to get the licence, after the period of its effectiveness. This ruling is fully applicable to the facts of the case and it follows therefrom, that provision deserves to be construed liberty and, thus, even if the licence of respondent no.1 had expired on the date of accident or subsequently renewed on 23.7.2003, it would fulfill the mandate of the statute.

43. Hon'ble Punjab & Haryana High Court in ***United India Insurance Co. Ltd. Vs. Poonam Arora and others, 2007(1) RCR (Civil) -164****, held that onus to establish the breach of condition of policy on account of driver not holding valid driving licence, rests solely upon the Insurance Company. Since Insurance Company denied its liability on the ground of breach policy, the onus has to be discharged with great circumspection so as to conclusively establish the breach which is alleged, it cannot leave gaping holes and expect the Court to draw inference. This ruling is also fully helpful to respondents Nos.1 and 2 as in the case in hand, no evidence has been produced by respondent No.3 that prior to renewal, the licence of respondent No.1 was invalid. So, in this view of the matter, it must follow that respondent No.1 was holding valid driving licence at the time of accident. Issue is, held against respondents No.3 and in favour of respondents Nos.1 and 2."*

11. Upon a thorough examination of the record, it is evident that Respondent No. 1 was not in possession of a valid and effective driving licence on the date of the accident. The original licence issued to Respondent No. 1 had expired on 29.11.1999, as corroborated by Exhibit R1. Moreover, the report from the licensing authority (Exhibit R3) confirms that the licence was renewed only for the period beginning 24.07.2003 and valid until 23.07.2006. This unequivocally establishes that Respondent No. 1 did not possess a valid driving license at the time when the accident in question

occurred i.e. on 01.07.2003. It is, therefore, irrefutable that Respondent No. 1 was operating the vehicle without a valid and subsisting driving licence at the time of the accident.

12. The question of whether an insurance company can be held liable to compensate a third party when the driver of the offending vehicle did not possess a valid and effective driving license at the time of the accident has been conclusively adjudicated by the Hon'ble Supreme Court in **National Insurance Company Limited v. Jarnail Singh, 2007(15) SCC 28**. The Apex Court held that the absence of a valid driving license constitutes a breach of the insurance policy's conditions. However, such a breach does not absolve the insurer of its statutory obligation to indemnify third-party victims under the Motor Vehicles Act, 1988, Nevertheless, the Court provided a safeguard for insurers by recognizing their right to recover the compensation paid to the third party from the insured. The relevant extract of the same is reproduced as under:-

> *"7. There is no dispute that the policy stipulated a condition that the vehicle would not be driven by a person without a valid driving licence. It means that the policy condition had been violated.*
> *8. This Court held in **New India Assurance Co. v. Kamla, (2001) 4 SCC 342** that the insurance company is nonetheless liable to pay the compensation to the third party on the strength of the valid insurance policy issued in respect of a vehicle, but the remedy of the insurer when there was breach or violation of the policy condition was to recover the amount from the insured. Para 22 of the said judgment clarifies the position and hence, it is extracted below: (SCC p.349)*
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> > *"22. To repeat, the effect of the above provisions is this: when a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to the third parties, whether or not there has been any breach or violation of*

> *the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured."*

13. In view of the above, the learned Tribunal's finding qua holding the appellant-Insurance Company to pay the compensation vide award dated 15.05.2007, is set aside.

14. In sequel of the same, the appellant-Insurance Company is directed to deposit the compensation amount with the learned Tribunal in the first instance. The appellant-Insurance Company is granted liberty to recover the said amount from the insured i.e. owner of the offending vehicle.

15. Appellant-Insurance Company is hereby directed to disburse the current scheduled fees to Mr. Paul S. Saini, Advocate, within a period of 20 days from the date of receipt of the copy of this judgment.

16. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

23.01.2025
Virrendra

Whether speaking/non-speaking : Yes/No
Whether reportable : Yes/No