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

FAO-1303-2008 (O&M)

Date of Decision : 05.03.2025

New India Assurance Co. Ltd.

... Appellant(s)

Versus

Guddi Kaur & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.C. Kapoor, Advocate for the appellant.

Mr. Amarpreet Singh, Advocate for

Mr. Binderjit Singh, Advocate for respondent Nos.1 to 4.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the Insurance Company aggrieved by the impugned award dated 19.03.2008 passed by the Motor Accident Claims Tribunal, Bathinda (hereinafter referred to as 'Tribunal') whereby compensation to the tune of ₹6,25,500/- was awarded alongwith as interest @ 6% per annum.

2. The only argument raised by the learned counsel for the appellant-Insurance Company is that the Tribunal ought to have granted recovery rights to the appellant-Insurance Company inasmuch as the driver of the offending vehicle (respondent No.5 herein) was not holding a valid driving licence at the time of the accident. The learned counsel has further relied upon the testimony of Mahesh Kumar, Clerk, DTO Office, Faridkot who was examined as RW2 and proved on record the driving licence as Ex.RW2/D and testified that original thereof was not issued in the name of Nachhattar Singh (respondent No.5 herein) from their office.

3. Heard.

4. In the present case the owner of the offending vehicle, Kuldeep Singh (respondent No.6), stepped into the witness box as RW1 and in his affidavit (Ex.RW1/A) he has testified that respondent No.5 - Nachhattar Singh (driver of the offending vehicle) - was having a valid and effective driving licence in his name to drive the vehicle and that at the time of employing him he had seen his original driving licence No.A/04/033997/RDL No.689/FDK which was issued by M.K. Garg, District Transport Officer, Faridkot and was valid for a period from 10.02.2005 to 09.02.2008. A perusal of the cross-examination of this witness reveals that the appellant-Insurance Company could not elicit anything to prove that there was no due diligence on the part of the owner. No suggestion was put to this witness as regards the genuineness of the driving licence or that Nachhattar Singh - respondent No.5 (driver of the offending vehicle) - was not possessing a valid driving licence at the time of the accident.

5. Hon'ble Supreme Court in the case of **Rishi Pal Singh Vs. New India Assurance Co. Ltd. & Others [2022 ACJ 1868]** has held as under :

“9. Similar question again came up for consideration before a three-Judge Bench in a judgment reported as Pappu and Ors. v. Vinod Kumar Lamba and Anr., (2018) 3 SCC 208 wherein it was held that the onus would shift on the Insurance Company after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorized by him to drive the vehicle and was having a

valid driving license at the relevant time. The valid driving license is the license which is produced before the owner. This Court held as under :

“12. This Court in National Insurance Co. Ltd. [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] has noticed the defences available to the insurance company under Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988. The insurance company is entitled to take a defence that the offending vehicle was driven by an unauthorised person or the person driving the vehicle did not have a valid driving licence. The onus would shift on the insurance company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorised by him to drive the vehicle and was having a valid driving licence at the relevant time.

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17. This issue has been answered in National Insurance Co. Ltd. [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] In that case, it was contended by the insurance company that once the defence taken by the insurer is accepted by the Tribunal, it is bound to discharge the insurer and fix the liability only on the owner and/or the driver of the vehicle. However, this Court held that even if the insurer succeeds in establishing its defence, the Tribunal or the court can direct the insurance company to pay the award amount to the claimant(s) and, in turn, recover the same from the owner of the

vehicle. The three-Judge Bench, after analysing the earlier decisions on the point, held that there was no reason to deviate from the said well settled principle. In para 107, the Court then observed thus: (SCC p. 340)

“107. We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued, despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given an opportunity to defend at all. Such a course of action may also be resorted to when a fraud or collusion between the victim and the owner of the vehicle is detected

or comes to the knowledge of the insurer at a later stage.”

10. The owner of the vehicle is expected to verify the driving skills and not run to the licensing authority to verify the genuineness of the driving licence before appointing a driver. Therefore, once the owner is satisfied that the driver is competent to drive the vehicle, it is not expected from the owner thereafter to verify the genuineness of the driving licence issued to the driver.”

6. In view of the above, I do not find any merit in the present appeal. The same being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

05.03.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

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