



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

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FAO-2379-2013 (O&M)
Date of decision : 05.02.2025

National Insurance Company Ltd.

..... Appellant

versus

Ravinder Kaur and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Gopal Mittal, Advocate
for the appellant.

Mr. Harjinder Singh, Advocate for
Mr. B.S. Bali, Advocate
for respondent No.2.

None for respondents No.3 and 4.

PANKAJ JAIN, J. (Oral)

1. Insurance company is in appeal aggrieved of the award passed by MACT, Bathinda dated 22.02.2013, whereby the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 seeking compensation on account of death of minor girl, namely, Arshpreet Kaur aged 15 years, has been allowed awarding them compensation of Rs.2,50,000/-.

2. Claimants filed petition claiming that on 01.08.2011, while deceased was going alongwith her father and was driving Activa scooter, she was struck from behind by a truck bearing No. PB-03D-7911. It was being driven in rash and negligent manner. Arshpreet sustained multiple injuries and later on scummed to death. FIR No.84 dated 01.08.2011 came into being for offence punishable under Section



304-A IPC against the driver of the offending vehicle. The claim petition was put to trial framing following issues:-

- “1. Whether Arshpreet Kaur died due to accident caused by respondent Makhan Singh on 1.8.2011, while driving Truck No.PB-03D-7911, rashly and negligently? OPP
2. Whether the petitioners are entitled to claim compensation. If so, to what extent and from whom? OPP
3. Relief.”

3. After analysing the evidence on record threadbare, Tribunal allowed the claim petition and awarded compensation to the claimants.

4. Mr. Gopal Mittal, counsel for the appellant while assailing the impugned award passed by MACT has raised two fold submissions. It has been contended by him that even as per claimants, a minor girl, aged 15 years was driving Activa. She being incapacitated from driving a vehicle was herself negligent. Tribunal still returned returning findings on issue No.1 against the driver of the truck. He further submits that the driving licence of the driver of the truck has come on record as Ex.R-2. The same was initially issued by Licencing Authority, Bathinda. Later, it was got renewed from Licencing Authority, Nagaland. The licence Ex.R-2 would show that the address of the driver has been mentioned to be of District Bathinda, yet the same has been renewed by Licencing Authority, Nagaland, thus renewal cannot be held to be valid. In the absence of validly renewed licence, insurer ought not have been saddled with the liability, as the insured is in breach of conditions of the contract of insurance. In order to hammer forth his contention, he relies upon ratio of law laid down by this Court in **FAO No.1749 of 2015** titled as ‘**Kuljeet Singh vs. Surinder Kaur and others**’ decided vide order dated 24.03.2015.



5. *Per contra*, counsel for the respondent submits that they have no instructions.

6. I have heard counsel for the appellant and have carefully gone through the records of the case.

7. The initial version with respect to accident stands recorded in FIR No.84 dated 01.08.2011. The same was proved before the Tribunal as Ex.C-1. Though, Mr. Mittal is right in contending that deceased minor ought not have been allowed to drive the vehicle, but at the same time from the contents of the FIR, there is nothing to suggest that any negligent act of the deceased Arshpreet Kaur led to accident. The offending vehicle hit her scooter from behind. Still further, the driver who was the best person to testify with respect to accident has not entered the witness box. No effort was ever made by the insurance company also to examine him. In view of admitted factual position, this Court does not find any reason to interfere in the pure finding of fact recorded by the Tribunal on issue No.1.

8. Coming on the second submission raised by Mr. Mittal, the renewal of the licence is governed by Section 9 of Motor Vehicles Act, which reads as under:-

“9. Grant of driving licence—(1) Any person who is not for the time being disqualified for holding or obtaining a driving licence may apply to the licensing authority having jurisdiction in the area—

(i) in which he ordinarily resides or carries on business, or

(ii) in which the school or establishment referred to in section 12 from where he is receiving or has received instruction in driving a motor vehicle is situated, for the issue to him of a driving licence.

(2) Every application under sub-section (1) shall be in such



form and shall be accompanied by such fee and such documents as may be prescribed by the Central Government.

¹[(3) If the applicant passes such test as may be prescribed by the Central Government, he shall be issued the driving licence:

Provided that no such test shall be necessary where the applicant produces proof to show that—

(a) (i) the applicant has previously held a driving licence to drive such class of vehicle and that the period between the date of expiry of that licence and the date of the application does not exceed five years, or

(ii) the applicant holds or has previously held a driving licence to drive such class of vehicle issued under section 18, or

(iii) the applicant holds a driving licence to drive such class of vehicle issued by a competent authority of any country outside India, subject to the condition that the applicant complies with the provisions of sub-section (3) of section 8,

b) the applicant is not suffering from any disability which is likely to cause the driving by him to be a source of danger to the public; and the licensing authority may, for that purpose, require the applicant to produce a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8:

Provided further that where the application is for a driving licence to drive a motor vehicle (not being a transport vehicle), the licensing authority may exempt the applicant from the test of competence to drive a vehicle prescribed under this sub-section, if the applicant possesses a driving certificate issued by any institution recognised in this behalf by the State Government.]

(4) Where the application is for a licence to drive a transport vehicle, no such authorisation shall be granted to any applicant unless he possesses such minimum educational qualification as may be prescribed by the Central Government and a driving certificate issued by a school or establishment referred to in section 12.



¹[(5) Where the applicant does not pass the test; he may be permitted to re-appear for the test after a period of seven days:

Provided that where the applicant does not pass the test even after three appearances, he shall not be qualified to re-appear for such test before the expiry of a period of sixty days from the date of last such test.]

(6) The test of competence to drive shall be carried out in a vehicle of the type to which the application refers:

Provided that a person who passed a test in driving a motor cycle with gear shall be deemed also to have passed a test in driving a motor cycle without gear.

(7) When any application has been duly made to the appropriate licensing authority and the applicant has satisfied such authority of his competence to drive, the licensing authority shall issue the applicant a driving licence unless the applicant is for the time being disqualified for holding or obtaining a driving licence:

Provided that a licensing authority may issue a driving licence to drive a motor cycle or a light motor vehicle notwithstanding that it is not the appropriate licensing authority, if the licensing authority is satisfied that there is good and sufficient reason for the applicant's inability to apply to the appropriate licensing authority:

Provided further that the licensing authority shall not issue a new driving licence to the applicant, if he had previously held a driving licence, unless it is satisfied that there is good and sufficient reason for his inability to obtain a duplicate copy of his former licence.

(8) If the licensing authority is satisfied, after giving the applicant an opportunity of being heard, that he—

(a) is a habitual criminal or a habitual drunkard;

or

(b) is a habitual addict to any narcotic drug or psychotropic substance within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(c) is a person whose licence to drive any motor vehicle has, at any time earlier, been revoked, it may, for reasons to be recorded in writing, make an order



refusing to issue a driving licence to such person and any person aggrieved by 586 an order made by a licensing authority under this sub-section may, within thirty days of the receipt of the order, appeal to the prescribed authority.

(9) Any driving licence for driving a motor cycle in force immediately before the commencement of this Act shall, after such commencement, be deemed to be effective for driving a motor cycle with or without gear.

¹[(10) Notwithstanding anything contained in this section, the driving licence to drive e-cart or e-rickshaw shall be issued in such manner and subject to such conditions, as may be prescribed.]”

9. The provision uses two different expressions i.e. ‘ordinarily resides’ and ‘carries on business’. From perusal of Ex.R-2, it is evident that the driver was ordinarily resident of Bathinda. However, there is no evidence to show that he was not carrying on business in Nagaland. It is the appellant-the insurer, who is claiming breach of the contract. Likewise, there is no evidence to show that case of licensee does not fall within Section 9(1)(ii). It is the appellant who avers and alleges breach of conditions of insurance.

10. Onus was upon the appellant-insurer to prove that the driving licence was unlawfully renewed. No evidence was led by the insurance company to discharge the said onus. Reliance upon observations made in the case of **Kuljeet Singh (supra)** is misplaced. In the said case, licence clerk from the licencing authority was examined. He produced the record and it is thereafter that the Court invoke Section 9 to hold that the licence was not lawfully renewed.

11. The plea raised is not based upon any evidence. The evidence led by the appellant remained discrepant before the Tribunal.



12. In view thereof, this Court does not find any reason to interfere in the well reasoned judgment passed by the Tribunal. Consequently, the present appeal is dismissed.

13. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

05.02.2025
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No