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

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**FAO-7540-2017 (O&M)**
**Date of decision : 28.08.2025**

**M/s. Autoriders International Ltd. ...... Appellant**

**versus**

**Hemant and others ...... Respondents**

**CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: None for the appellant.

Mr. Subhash Goyal, Advocate and
Mr. Vipul Sharma, Advocate
for respondent No.2-Insurance Company.

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**PANKAJ JAIN, J. (Oral)**

1. Owner is in appeal aggrieved of the award passed by MACT, Rohtak, whereby recovery rights have been granted by the Tribunal observing as under:-

> "15. The respondent no.2-the owner after appointing/engaging the driver-the respondent no. 1 did not sought any information under RTI Act regarding the genuineness of the driving licence Ex. R5 of respondent no. 1. If the aforesaid information under RTI Act was sought by the owner-respondent no. 2 then respondent no. 2 would have come to know that driving licence Ex. R5 of the respondent no. 1 is fake. The respondent no. 2 has no excuse for not seeking any such information under RTI Act because when such information was sought by Insurance company-the respondent no.3 under RTI Act, the same was easily provided by the Licencing Authority, Bulandshahar as can be gathered from Ex. R8 in which it has been stated that driving licence Ex. R5 of respondent no. 1 has not been issued by the Licencing Authority, Bulandshahar. Since the respondent no. 2 has failed to comply with the above guideline of seeking

> information qua genuineness of driving licence of respondent no. 1 through RTI Act, therefore, it can be concluded that respondent no. 2 did not exercise due diligence in ascertaining the genuineness of driving licence Ex. R5 of respondent no. 1."

2. In the considered opinion of this Court, the observation made by the Tribunal is in teeth of ratio of law laid down by Supreme Court in the case of ***National Insurance Co. Ltd. v. Swaran Singh reported as (2004) 3 SCC 297,*** wherein Supreme Court observed as under:-

> "(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the said Act.
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> (iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the Insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.
>
> (iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle, the burden of proof wherefor would be on them."

3. Once employer/owner made statement that he employed driver after checking his license, onus shifted upon the insurer to prove that the employer/owner was negligent and employed the driver despite

knowing that the driver was not in possession of a valid license. The observation that the owner is required to turn into an RTI activist after employing driver, is in teeth of ratio of law laid down by Supreme Court in ***Swaran Singh's case (supra).***

4. In view thereof, finding on issue No.1 is ordered to be reversed. The recovery rights granted to insurance company are hereby ordered to be quashed.

5. Disposed off, accordingly.

**(PANKAJ JAIN)**
**JUDGE**

**28.08.2025**
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No