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

FAO-7540-2016 (O&M)

Vijay Kumar ......Appellant

vs.

Chola Mandlam MS General Insurance Co. Ltd. and ors. ......Respondents

Date of Reserve: 27.02.2026
Date of Pronouncement:16.03.2026
Uploaded on:- 20.03.2026

Whether only the operative part of the judgment is pronounced? No
Whether full judgment is pronounced? Yes

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Vikram Singh, Mr. Sukhdev Singh and
Ms. Devika Kamboj, Advocates,
for the appellant.

Mr. Punit Jain, Advocate
for respondent No. 1-Insurance Co.

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SUDEEPTI SHARMA J.

1. The present appeal is preferred by the appellant-Vijay Kumar (owner cum driver of the offending vehicle bearing registration No. HR-45-A-4140 against the award dated 03.08.2016 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Karnal (for short, 'the Tribunal’), on the ground that liability to pay the compensation to the claimants/respondent Nos. 2 to 8 has been wrongly fastened upon the appellant.

FACTS NOT IN DISPUTE

2. Brief facts of the case are that the injured alongwith one Sadhu Ram and Ombir sons of Telu Ram on the intervening night of 22/23.12.2013 while sitting in the cabin of canter bearing No.HR-45A-4140, were coming from Delhi after selling vegetables and Dhania. The said canter was being driven by its driver in a rash and negligent manner and he was requested by Sadhu Ram, Ombir and Jagbir alias Billu to mend his way of driving and at about 4:30 a.m. on 23.12.2013 when they reached on G.T.Road near Paliwal Factory, Pasina Turning on G.T.Road, Truck No.HR-69-6978 was found parked on G.T.Road and respondent No.1 i.e. the driver of Canter No.HR-45A-4140 struck against the said Truck. The accident took place due to rash and negligent driving of respondent No.1 and wrong parking of truck No.HR-69-6978, in which claimant Jagbir alias Billu received injuries, whereas Ombir succumbed to the injuries. The status of claimant Jagbir@ Billu as well as deceased Ombir was occupants of the canter bearing No.HR-45A-4140. FIR No.457 dated 23.12.2013 under Sections 279, 283, 337, 338 and 304-A IPC, Police Station Sadar, Panipat was registered in this regard.

3. Upon notice of the claim petition, respondents appeared and filed their separate written replies denying the factum of the accident/compensation.

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

> *"1. Whether the injured Jagbir alias Billu received injuries and deceased Ombir died in a roadside accident, which took place on 23.12.2013 at about 4:30 am. in the area of Police Station Sadar Panipat due to rash and negligent driving of respondent No.1 being*

driver of the offending vehicle bearing No.HR-45A-4140 or vehicle No. HR-69-6978?OPP.

2. If issue No.1 is proved in affirmative, whether the claimants are entitled for compensation, on account of injuries suffered by Jagbir alias Billu and death of Ombir. If so to what amount, from whom and on what terms and conditions? OPP

3. Whether the respondent No.1 was having valid and effective driving licence at the time of accident and the offending vehicle was being plied in violation of the terms and conditions of the policy, if so to what affect? OPR

4. Whether the petition of the claimants are bad for mis-joinder or non-joinder of necessary parties? OPR

5. Whether the claimants have no locus standi to file and maintain the present petition? OPR

6. Relief."

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal while awarding compensation to the claimant/respondent No. 2 to 8, fastened the liability upon the appellant-owner cum driver of the offending vehicle to pay the compensation. Hence the present appeal.

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

6. Learned counsel for the appellant-owner cum driver of the offending vehicle contends that the learned Tribunal has wrongly held that he was not holding valid and effective driving licence at the time of the accident. He further contends that driving licence was placed on record as Mark A but the same was

not considered while deciding the issue of liability, therefore, he prays that the present appeal be allowed and respondent No. 1-Insurance Company be held liable to pay compensation.

7. Per contra, learned counsel for the Insurance Company/ respondent No. 1 contends that the learned Tribunal has rightly made the appellant liable to pay the compensation to the claimants/respondent Nos. 2 to 8. Therefore, he prays that the present appeal be dismissed.

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

9. Before proceeding further, it is relevant to reproduce the relevant portion of the impugned award, which reads as under:-

> *"LIABILITY*
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> *33. Now the question arises as to who would pay the amount of compensation. Admittedly, offending vehicle i.c. Canter No.HR-45A-4140 was being driven by respondent No.1, who was also owner of the same and the aforesaid offending canter No.HR-45A-4140 was insured with respondent No.2-Cholamandalam MS General Insurance Company Ltd. at the time of alleged accident. An objection was taken by respondent No.2 that the vehicle in question was being plied in contravention of the terms and conditions of the insurance policy and respondent No.1 was not holding a valid and effective driving licence on the alleged date of accident. Although, respondent No.1 has failed to produce on record his driving licence, yet respondent No.2-Insurance Company has also failed to bring on record any evidence showing that the respondent No.1 was not holding a valid driving licence on the alleged date of the accident Whereas, the claimants during the course of evidence, have placed on record report under Section 173 Cr.P.C. Ex. P7 and a minute perusal of the same unveil that respondent No.1-Vijay Kumar was charge-sheeted under Sections 279/337/338/304-A of the Indian Penal Code*

and during investigation of the aforesaid criminal case, it is nowhere proved that the driver i.e. respondent No.1 was not having a valid and effective driving licence. However, since the onus to prove that the respondent No.1 was holding a valid and effective driving licence was upon the respondents and respondent No.1 failed to produce on record his driving licence during the course of proceedings of this case, it is held that respondent No.1-Vijay Kumar, driver of the offending vehicle in question, was not holding a valid and effective driving licence on the date of accident and thus there was a breach of terms and conditions of the insurance policy. In the light of above discussion, this tribunal is of the considered view that respondent No.2-Insurance Company has succeeded to prove issue No.3. Accordingly, issue No. 2 is partly decided in favour of the claimants whereas issue No.3 against respondent No.1. Under issue No.3, respondent No.2 is absolved from its liability to pay the compensation and respondent No.1 i.e. driver and owner of the offending vehicle, is held solely liable to pay the same to the claimants. However, in view of the proposition of law laid down in Kamala Mangalal Vayani & Ors, Vs. M/S United India Insurance Co. Lid. & Ors.. 2010(3) Apex Court Judgments (Supreme Court) $33. the amount of compensation along with interest shall first pay by the respondent No.2-Insurance Company and thereafter it shall have a right to recover the said amount from the insured as per law.

34. In view of above discussion, issue No. 2 is partly decided in favour of claimants, whereas issue No.3 in favour of respondent no. 2."

ANALYSIS OF THE RECORD

10. A perusal of the impugned award shows that the learned Tribunal has erred in deciding the issue of liability as respondent No. 1–Insurance Company failed to discharge the burden of proving breach of the terms and conditions of the insurance policy. A perusal of the award further reveals that no

evidence was led to establish that the owner cum driver of the offending vehicle was not holding a valid and effective driving licence at the time of the accident. Significantly, no official from the concerned RTO was examined, nor was any authentic record produced to substantiate the plea that the driver was not holding a valid driving licence.

11. It is well settled that the defence of breach of policy conditions, including the plea that the driver was not holding valid driving licence, must not only be specifically pleaded but also proved by the Insurance Company through cogent and reliable evidence. The burden in this regard squarely lies upon the insurer. Mere assertion, without supporting evidence, cannot absolve the insurer of its statutory liability.

12. In the present case, respondent No. 1–Insurance Company has miserably failed to discharge this burden. In the absence of any convincing evidence demonstrating violation of the terms and conditions of the insurance policy, the finding recorded by the learned Tribunal fastening liability upon the appellant-owner cum driver suffers from patent illegality .

13. In view of the above discussion, respondent No. 1–Insurance Company is solely held liable to pay compensation to claimants/respondent Nos. 2 to 8.

14. Consequently, the present appeal is allowed to the above extent.

15. Further it is hereby directed that the amount of Rs.25,000/- deposited by the appellant at the time of filing of appeal, in the Registry of this Court be returned to him.

15. Pending application(s), if any, also stand disposed of.

16.03.2026 **(SUDEEPTI SHARMA)**
Gaurav Arora **JUDGE**

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