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

(1) FAO-912-2017 (O&M)

NATIONAL INSURANCE CO. LTD. ......Appellant

Vs.

GURDEEP KAUR AND ORS. ......Respondents

(2) FAO-913-2017 (O&M)

NATIONAL INSURANCE CO. LTD. ......Appellant

vs.

JASPAL SINGH AND ANR. ......Respondents

(3) FAO-914-2017 (O&M)

NATIONAL INSURANCE CO. LTD. ......Appellant

Vs.

SANNO BIBI AND ANR. ......Respondents

(4) FAO-915-2017 (O&M)

NATIONAL INSURANCE CO. LTD. ......Appellant

Vs.

AMARJIT KAUR AND ORS. ......Respondents

(5) FAO-916-2017 (O&M)

NATIONAL INSURANCE CO. LTD. ......Appellant

Vs.

SANTOSH KUMARI AND ORS. ......Respondents

(6) FAO-917-2017 (O&M)

NATIONAL INSURANCE CO. LTD. ......Appellant

Vs.

KASHMIR SINGH AND ORS. ......Respondents

(7) FAO-918-2017 (O&M)

NATIONAL INSURANCE CO. LTD. ......Appellant

vs.

SMT. SUKHWANT KAUR AND ANR. ......Respondents

(8) FAO-919-2017 (O&M)

NATIONAL INSURANCE CO. LTD. ......Appellant

Vs.

JANGIR SINGH (DECEASED) THROUGH HIS LRS. AND ORS.

......Respondents

(9) FAO-920-2017 (O&M)

NATIONAL INSURANCE CO. LTD. ......Appellant

Vs.

BIMLA RANI AND ORS. .....Respondents

(10) FAO-921-2017 (O&M)

NATIONAL INSURANCE CO. LTD. ......Appellant

vs.

HARNEK SINGH AND ANR. ......Respondents

(11) FAO-922-2017 (O&M)

NATIONAL INSURANCE CO. LTD. ......Appellant

Vs.

DES SINGH AND ORS. ......Respondents

(12) FAO-923-2017 (O&M)

NATIONAL INSURANCE CO. LTD. ......Appellant

vs.

SONA SINGH AND ANR. ......Respondents

(13) FAO-4918-2017 (O&M)

SUKHWANT KAUR ......Appellant

vs.

GURMEET SINGH AND ANR. ......Respondents

Reserved on: 06.03.2026
Pronounced on : 09.03.2026
Uploaded on: 16.03.2026

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. Deepak Suri, Advocate
for the appellant-Insurance Company
(in FAO-912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 923-2017)
for respondent No.2-Insurance Company (in FAO-4918-2017).

Mr. Brijesh Khosla, Advocate
for cross-objectors/respondent Nos.1 to 4
(in FAO-912, 917, 920-2017)
for cross-objector/respondent No.1 (in FAO-914-2017)
for cross-objectors/respondent Nos.1 to 3 (in FAO-915, 919-2017)
for cross-objectors/respondent Nos.1 to 5 (in FAO-916-2017)
for cross-objectors/respondent Nos.1 & 2 (in FAO-922-2017).

Mr. G.S. Bhinder, Advocate for
Ms. S.S. Choudhary, Advocate
for respondent Nos.1 to 5 (in FAO-921-2017)
for the appellant in FAO-4918-2017.

Respondent No.5 (proceeded against ex parte)
(in FAO-912, 917, 920-2017).

Respondent No.2 (proceeded against ex parte) (in FAO-914-2017).

None for respondent No.1 (in FAO-913, 918, 923-2017).

Respondent No.2 (proceeded against ex parte)
(in FAO-913, 918, 923-2017).

Respondent No.4 (proceeded against ex parte)
(in FAO-915, 919-2017).

Respondent No.6 (proceeded against ex parte) (in FAO-916-2017).

None for respondent Nos.6 & 7 (in FAO-921-2017).

Respondent No.8 (proceeded against ex parte) (in FAO-921-2017).

Respondent No.3 (proceeded against ex parte) (in FAO-922-2017).

Respondent No.1 (proceeded against ex parte) (in FAO-4918-2017).

****

SUDEEPTI SHARMA J.

1. Since in all the above mentioned appeals, Insurance Company has challenged award dated 19.07.2016 on the ground that no fitness certificate was produced by respondent-Gurmeet Singh (owner/driver of the offending vehicle) to prove that offending vehicle was fit to drive on the road, therefore, all the appeals are decided vide this common judgment.

BRIEF FACTS OF THE CASE

2. Brief facts of the case are that on 13.03.2015, at about 7.30 AM, deceased Diyal Singh was going from village Chhanga Rai Uttar to village Kahna Dhesian along with some other persons namely Bhagwanti, Durga Bibi, Santo Bibi, Desh Singh, Harmesh Singh, Sona Singh, Joginder Singh, Bishamber Singh, Jarnail Singh, Jaspal Singh, Santosh Kumari and Amarjeet Kaur in a Land Cruiser, which was being driven by Sonu at slow speed and on the left side of the road. After crossing village Alfuke, when they had gone little ahead towards Ferozepur, the offending truck came at fast speed from the opposite direction and while coming on the wrong side of the road, it struck against the Land Cruiser. As a result of this accident, all the occupants of the Land Cruiser received serious injuries. They all were shifted to the hospital. Bhagwanti, Kartaro Bibi, Durga Bibi, Santo Bibi, Desh Singh, Dayal Singh, Bishamber Singh, Harmesh Singh and Surjit Singh @ Babbu died in this accident. It is specifically pleaded that the accident took place due to rash and negligent driving of respondent No.1, who was driving the offending truck at that time.

3. Upon notice of the claim petition, respondents therein appeared and contested the claim petition by filing separate written statement denying the factum of accident/compensation.

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

> *"1.Whether Diyal Singh son of Khan Singh had died on account of injuries sustained by him in a motor vehicular accident which took place on 13.03.2015 at about 7.30 AM in the area of village Alfuke District Ferozepur, due to rash and negligent driving of Truck bearing registration No. RJ 07 G 5736 by respondent No.1 ?OPP*
> *2.Whether the claimants are entitled to the compensation, if so, to what extent and from whom?OPP*
> *3.Whether the petition is not maintainable ?OPR*
> *4.Whether the respondent No.1 was not having valid and effective driving licence at the time of accident ?OPR2.*
> *5.Relief. "*

5. Thereafter, both the parties led their evidence in support of their respective pleadings.

6. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the claimants/respondents. However, the appellant/Insurance Company was held liable to pay compensation. Hence, the present appeals.

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

7. Learned counsel appearing for the insurance company submits that the respondent–owner of the offending vehicle failed to place on record any valid fitness certificate to establish that the vehicle was fit to be driven on the road. It is contended that the absence of fitness certificate amounts to a breach of the terms

and conditions of the insurance policy. Learned counsel further submits that while adjudicating the claim petition, learned Tribunal has completely overlooked this material aspect in the impugned award and has nevertheless held insurance company liable to pay the compensation. On this basis, he prays that the present appeal be allowed.

8. Per contra, learned counsel appearing for the respondent–claimant argues that the insurance company has failed to lead any cogent evidence to establish the alleged breach of the terms of the insurance policy. He further contends that no evidence has been adduced by the appellant-insurance company to prove that the offending vehicle did not possess valid fitness certificate at the relevant time. Learned counsel further submits that there is no specific condition in the insurance policy (Ex. R-4) requiring the existence of a fitness certificate, and this aspect has duly been taken note of by the learned Claims Tribunal in the impugned award. It is further argued that it is a settled position of law that the mere absence of fitness certificate, by itself, does not absolve the insurance company of its liability to indemnify the insured and pay compensation to the claimant. On these grounds, he prays that the present appeal be dismissed.

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

10. Before proceeding further it is apposite to reproduce the relevant portion of the award. The relevant portion is reproduced as under:-

> *“**ISSUE NO.1***
>
> *"Whether Diyal Singh son of Khan Singh had died on account of injuries sustained by him in a motor vehicular accident which took place on 13.03.2015 at about 7.30 AM in the area of village Alfuke District Ferozepur, due*

to rash and negligent driving of Truck bearing registration No. RJ 07 G 5736 by respondent No.1 ? OPP"

10. Now, it is to be seen as to whether the claimants have succeeded to prove this issue or not. Claimant Amarjit Singh appeared as PW1 and tendered his affidavit Ex.PA, wherein he almost toed the lines of his pleadings. His statement has been supported by the testimony of Santosh Kumari PW2, the eye witness of the occurrence. Both these witnesses were cross examined at length, but nothing favourable could be elicited from their cross-examination. In such a scenario, the version as put forth by the claimants cannot be disbelieved. In claim petition, the evidence adduced by the claimants in the Court is evaluated. The claimant as well as Santosh Kumari have deposed with regard to the accident on all material particulars. Their statements find further corroboration from the copy of FIR Ex.P1, wherein the registration number of the offending truck is mentioned. There is nothing on the record to suggest that they were in any way inimical towards the respondent or that there was any reason for them to falsely implicate the respondent.

11. Gurmeet Singh respondent No.1, who was driving the offending truck, has stepped into the witness box as RW1. He has denied the accident in question. However, during the course of his cross examination, he has admitted that an FIR No. 20, dated 13.03.2015, Police Station Lakho Ke Behram, under Sections 304-A/337/338/427 IPC has been registered against him regarding the present occurrence. He has stated that he has submitted application to the higher officers with regard to his false implication in the criminal case, but he is not in possession of copy of said application.

12. The learned counsel for respondents have contended that the words "rash and negligent act" have not been mentioned in *the copy of FIR Ex.P1, rather it has been mentioned that the driver intentionally struck the offending truck with the Land Cruiser. In this regard, it may be mentioned that though words "rash and negligent" have not been mentioned in the FIR, but it is mentioned therein that the offending truck came at a fast speed from the opposite side and the driver intentionally struck the same with the Land Cruiser. In case, words "rash and negligent act" have not been mentioned in the FIR, it does not mean that the offending truck was not being driven in a rash and negligent manner, particularly when it was being driven at a fast speed and it intentionally struck with the Land Cruiser.*

13. The learned counsel for the respondents have further argued that the author of the FIR has not been examined and as such, the FIR cannot be said to be duly proved. In this regard, it may be mentioned that the FIR has duly been exhibited as P1. Amarjit Singh PW1 in his statement has proved the FIR. Moreover, it is not disputed by Gurmeet Singh respondent No.1 that no FIR was registered against him, rather, he has pleaded that false FIR was registered against him, as no accident had ever taken place with the offending truck. As such, in case, the author of the FIR has not been examined, it does not belie the version of the claimants.

14. It is contended on behalf of the insurance company that no fitness certificate has been produced by the respondent/driver to prove that the offending vehicle was fit to drive on the road. This contention does not extend any help to the insurance company, in as much as, it is not the case of any of the parties that accident had occurred due to nonfitness of the offending vehicle.

15. It has been further contended by the learned counsel for the respondents that Sona Singh, on whose statement the FIR was got registered, has also not been examined. In this regard, it may be mentioned that it is not required by the claimants to *examine each and every witness. Claimant Amarjit Singh, besides his own statement, has also examined Santosh Kumari as PW2, the eye witness of the occurrence, which inspires confidence and as such, non-examination of Sona Singh does not effect the case of the claimant in any manner. It is pertinent to mention here that minor discrepancies occurred in the statements of the witnesses do not strike at the root of the case. In MACT cases, strict principles of civil jurisprudence are not applicable. By and large, it is to be seen by the Tribunal that if the witnesses have succeeded in proving the accident, the benefit to the claimant cannot be denied merely on the ground of minor and immaterial discrepancies, if any. It is, thus, proved on record that Dayal Singh son of Khan Singh had died on account of injuries sustained by him in motor vehicular accident which took place on 13.03.2015 at about 7.30 AM in the area of village Alfuke, due to rash and negligent driving of the offending truck. The case law referred to by the learned counsel for the insurance company i.e. The Oriental Insurance Company Vs. Meena Variyal and Ors. Appeal (Civil) 5825 of 2006, decided on 2nd April, 2007 and Surender Kumar Arora Vs. Manoj Bisla (2012) 4 SCC 552 are not applicable to the facts of the present case. Accordingly, this issue is decided in favour of the claimants and against the respondents."*

11. A perusal of the impugned award reveals that appeal preferred by the insurance company rests essentially on solitary ground that learned Tribunal ought to have granted recovery rights to the appellant-insurance company on the premise that the offending vehicle did not possess a valid fitness certificate at the time of the accident. However, the aforesaid contention does not merit acceptance.

12. At the outset, reference may be made to Section 149(2) of the Motor Vehicles Act, 1988, which enumerates limited statutory defences available to appellant-insurance company for avoiding its liability to indemnify the insured.

13. It would be apposite to reproduce Section 149(2) of the Motor Vehicles Act, 1988, which is reproduced as under:-

> *"**149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.***
>
> *(1.) xx xx xx xx*
>
> *(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—*
>
> *(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—*
>
> *(i) a condition excluding the use of the vehicle—*
>
> *(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or*
>
> *(b) for organised racing and speed testing, or*
>
> *(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or*
>
> *(d) without side-car being attached where the vehicle is a motor cycle; or*

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular. ”

14. A careful reading of the above provision indicates that the absence of fitness certificate does not fall within the category of defences expressly available to the insurance company under the statute.

15. It is equally well settled that in order to avoid its liability under the insurance policy, the appellant-insurance company must not only plead but also prove that there has been a willful breach of the terms and conditions of the policy on the part of the insured. The burden lies squarely upon the appellant-insurance company to establish that the insured was guilty of negligence and had failed to exercise reasonable care in complying with the conditions of the policy relating to the use of the vehicle. In other words, the insurance company must not merely raise a defence but must also substantiate the alleged breach on the part of the owner of the vehicle by leading cogent evidence.

16. In the present case, the insurance company–appellant has failed to discharge the aforesaid burden. Neither any witness has been examined nor any documentary evidence has been adduced to substantiate the plea that the offending vehicle did not have a valid fitness certificate at the relevant time or that the

owner had committed any willful breach of the terms of the insurance policy. In the absence of such proof, the contention raised on behalf of the appellant-insurance company cannot be sustained.

17. Even otherwise, assuming for the sake of argument that the offending vehicle did not have a valid fitness certificate, such a circumstance, by itself, would not constitute valid defence within the meaning of Section 149(2) of the Motor Vehicles Act, 1988 so as to absolve the appellant-insurance company of its liability to satisfy the award passed in favour of the claimant.

18. It is also pertinent to note that a Coordinate Bench of this Court in ***Oriental Insurance Co. Ltd. v. Sangeeta (Punjab and Haryana), Law Finder Doc Id No. 2559483***, has categorically held that the absence of fitness certificate is not a defence available to the appellant-insurance company under Section 149(2) of the Act of 1988 and that the insurance company cannot avoid its liability on that ground. The relevant extract of the said judgment reads as under:

> "*13. In the present case both the driver and the owner filed a written statement. On the stand taken by the Insurance Company, a specific issue was framed. As per the law discussed above, the onus lay upon the Insurance Company to prove that it was not liable to pay under the policy. The Insurance Company though called a person from the Office of STC, SAS Nagar (Mohali), however, it did not so much as put a suggestion that there was no permit to ply the vehicle. Infact the only record summoned was regarding the fitness certificate and that too, the concerned official candidly admitted, was only upto the period 30.06.2016 and that he had not brought the record beyond that period. Though it has been argued by learned counsel for the Insurance Company that the said witness has also stated that there was no other record and that*

> *if it is held that there was no fitness certificate even in those circumstances in view of the provisions of Section 149(2) of the Act of 1988, the said defense is not available to the Insurance Company and, therefore, the argument stands rejected. "*

19. In view of the above discussion, this Court finds no infirmity in the conclusion drawn by the learned Claims Tribunal holding appellant-insurance company liable to pay the awarded compensation. Consequently, the findings recorded by the Tribunal on this aspect do not call for any interference by this Court.

20. Consequently, present appeals stand ***dismissed*** being devoid of any merit.

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

09.03.2026 **(SUDEEPTI SHARMA)**
Saahil **JUDGE**

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