



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

124

**Date of decision : 16.01.2025**

1. FAO-788-2017 (O&M)

NATIONAL INSURANCE COMPANY LTD. .... APPELLANT

v/s

BIRMATI AND OTHERS ..... RESPONDENTS

2. FAO-1001-2017 (O&M)

NATIONAL INSURANCE COMPANY LTD. .... APPELLANT

v/s

KAPIL AND OTHERS ..... RESPONDENTS

3. FAO-29-2017 (O&M)

NATIONAL INSURANCE COMPANY LTD. .... APPELLANT

v/s

SACHIN AND OTHERS ..... RESPONDENTS

4. FAO-3538-2017 (O&M)

SACHIN ..... APPELLANT

v/s

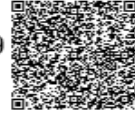
SONU AND OTHERS ..... RESPONDENTS

5. FAO-6960-2017 (O&M)

SULTAN SINGH & ANR ..... APPELLANTS

v/s

SONU AND OTHERS ..... RESPONDENTS



6. FAO-789-2017 (O&M)

NATIONAL INSURANCE COMPANY LTD. .... APPELLANT

v/s

SULTAN SINGH AND OTHERS ..... RESPONDENTS

7. FAO-790-2017 (O&M)

NATIONAL INSURANCE COMPANY LTD. .... APPELLANT

v/s

SHEELA DEVI AND OTHERS ..... RESPONDENTS

8. XOBJC-96-CII-2017 (O&M)

NATIONAL INSURANCE COMPANY LTD. .... APPELLANT

v/s

BIRMATI AND OTHERS ..... RESPONDENTS

9. XOBJC-97-CII-2017 (O&M)

NATIONAL INSURANCE COMPANY LTD. .... APPELLANT

v/s

SHEELA DEVI AND OTHERS ..... RESPONDENTS

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

Present: Mr. R.C. Gupta, Advocate for the appellant  
in FAO-788-2017, FAO-29-2017, FAO-1001-2017,  
FAO-789-2017 & FAO-790-2017 and respondent No.3 in  
FAO-3538-2017 & FAO-6960-2017.

Mr. J.P. Dhull, Advocate for the appellant  
in FAO-3538-2017 and for respondent No.1  
in FAO-29-2017.

Mr. Balraj Gujjar, Advocate and  
Mr. Ramesh Chand, Advocate  
for the appellant in FAO-6960-2017 and  
for the respondent in FAO-788-2017.



Mr. Anurag Jain, Advocate for respondent Nos.2 & 3 in FAO-1001-2017, FAO-29-2017 & respondent Nos.3 & 4 in FAO-789-2017.

Mr. K.S. Dhanora, Advocate for respondent Nos.1 & 2 in FAO-788-2017 and FAO-790-2017.

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

1. The bunch of seven appeals arising out of four different claim petitions relating to the same motor vehicular accident filed by different set of claimants.

2. Five appeals have been preferred by insurance company. One appeal is by claimant-Sachin seeking enhancement of compensation. Claimants have filed cross objections No.96-C-II of 2017 in FAO No.788 of 2017. Another set of cross objections have been filed by claimants bearing cross objections No.97-C-II of 2017 in FAO No.790 of 2017.

3. Insurance company has challenged their liability primarily on two grounds. It has been claimed that three wheeler ought not have been held to be negligent merely for the reason that the same was overloaded with 8-9 persons. Further challenge is on the ground that the vehicle was being driven by a person not holding valid licence. It has been claimed that Sonu-respondent No.3, driver of the offending canter was not holding a valid licence as the same was issued by Nagaland. Bare perusal of licence Ex.R-A would reveal that Sonu is resident of District Hisar. Thus, licence issued to him by licencing authority Nagaland, cannot be held to be a valid licence. Thus, the insured vehicle was being driven by a person not holding valid licence. It being in the breach of contract of insurance. Insurance company ought not have been saddled with the compensation.



Claimants have sought enhancement of compensation.

4. I have heard counsel for the parties and have carefully gone through the records of the case.

5. The brief facts that need to be culled out for adjudication of the present case are that on 19.06.2015, young students from ITI, Kaithal were travelling in a three wheeler when the same was struck by offending canter bearing registration No.HR-39A-1946 after coming on the wrong side of the road. FIR was registered. Three passengers boarding three wheeler, namely, Sukhdev Singh, Bittu and Vikram died in the accident. The other suffered multiple injuries.

6. Four different sets of claim petitions were preferred. MACT 46 of 2015 was filed on account of death of Bittu Singh aged 22 years who was pursuing diploma in the Welder trade in ITI, Kaithal. Claim petition No.47 of 2015 has been preferred seeking compensation on account of death of Sukhdev Singh who died at the age of 20 years and was also student of ITI, Kaithal. Claim petition No.61 of 2015 was filed by insured Kapil. Claim petition bearing No.66 of 2015 was filed on account of death of Vikram Singh who died at the age of 18 years.

7. So far as the issue raised by Mr. Gupta with respect to negligence of driver of auto rickshaw is concerned, the same sans merit and cannot be accepted. It has come on record that cause of accident was not overloading of auto rickshaw. Rather offending vehicle i.e. canter struck the three wheeler on the left side of the road adjacent to Kaccha brim. In view of above, this Court does not find any reason to interfere with the findings recorded by the Tribunal on issue No.1. Thus, findings recorded by the Tribunal are affirmed.



8. Coming on to the second plea raised by Mr. Gupta regarding the licence possessed by Sonu-driver of the offending vehicle being not a valid licence being in violation of Section 9 of the Motor Vehicles Act, 1988, this Court finds that no evidence has been led by the insurance company to dislodge validity of licence. Mr. Gupta wants to rely upon public notice dated 01.08.2014 issued by Transport Commissioner, Nagaland which reads as under:-

“PUBLIC INFORMATION

Driving License is issued under the central Motor Vehicles Act and the Rules made there under authorizing the holder to drive particular class of vehicle. Of late Driving License has gained much more importance than to an authorization to drive a vehicle. It is now an officially accepted document for identity proof/address proof by government authorities and authorities such as airlines, banks, etc. With the multi functional importance that it has gained there is a need for the enforcing agencies to meticulously scrutinize the genuineness of Licenses so as to prevent its misuse that may compromise security.

Driving License is issued on Smart Card through the national software "SARATHI" from 30th October 2009 in the state. All Licenses issued on Sarathi can be viewed/verified through the national portal [www.sarathi.nic.in](http://www.sarathi.nic.in). Issue of Driving License on booklet has been discontinued in the state after Smart Card has been introduced. Thus any License purported to have been issued by any authority in Nagaland on booklet form after 30th October 2009 is not genuine. Enforcing agencies have detected large number of fake Driving Licenses being used in the state. This has caused serious concern not only to road safety but criminal activities.

With a view to authenticate the genuine Driving Licenses it is hereby notified that all Driving License holders having the Booklet or on any manual formats other than Smart Card must report to the office where they have been issued for the purpose of digitizing their data and subsequent issue in Smart Card format. This must be completed before 1<sup>st</sup>



December 2014 after which Driving Licenses other than Smart Card shall be treated as cancelled. This is issued in the interest of public safety and in exercise of the authority conferred under section 19 (1) (e) of the M.V. Act. 1988.”

9. In the considered opinion of this Court, the aforesaid public notice does not cut any ice. Licence Ex.RA on the file is not a booklet, but a smartcard. The plea raised by Mr. Gupta needs to be tested on the touchstone of Section 9 of the 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.

<sup>1</sup>[(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.

<sup>1</sup>[(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.

<sup>1</sup>[(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.]”

10. The same has been interpreted by this Court in *FAO No.2379 of 2013* titled as '*National Insurance Company Ltd. vs. Ravinder Kaur and others*' decided on 05.02.2025, observing as under:-

“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.”

11. Same is the view formulated by Coordinate Bench in *FAO-3596-2017* titled as ‘*New India Assurance Company Ltd. vs. Smt. Veena Devi and others*’ decided on 07.12.2022 and *FAO-3244-2016* titled as ‘*Ombir and another vs. SBI General Insurance Company Ltd. and others*’ decided on 22.02.2019. Apart therefrom, there is no evidence to prove that insured was negligent. Reference can be made to following observations made by Supreme Court in ***National Insurance Co. Ltd. v. Swaran Singh reported as (2004) 3 SCC 297:-***

“(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.

(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."

12. In view of above, this Court finds that in the absence of there being any evidence to prove that the licence possessed by Sonu was in violation of Section 9, this Court expresses its inability to accept the submission raised by the counsel representing insurance company. Resultantly, the finding recorded by the Tribunal holding appellant liable is ordered to be maintained.

### **Quantum**

13. The Tribunal has rightly assessed the income of deceased Bittu Singh notionally as a semi skilled labourer @ Rs.8100/- per month. 40% future prospects needs to be applied. Multiplier of 18 has been rightly applied. Deceased being unmarried, cut of 1/2 has been rightly applied. Rs.1,50,000/- have been wrongly awarded on account of loss of love and affection. Rather, both the claimants need to be awarded Rs.48,000/- each and the claimants are further entitled for Rs.18,000/- under each head of loss of estate and funeral expenses.

14. With the aforesaid modification, cross objections filed by the claimants in FAO No.788 of 2017 are disposed off.



15. In the claim petition filed by the Sheela Devi and others, future prospects of 40% need to be added. Claimants are held entitled to Rs.48,000/- each for loss of consortium. Multiplier of 18 has been rightly applied. Further amount of Rs.18,000/- is awarded under each head of loss of estate and funeral expenses. No cross objections have been preferred in claim petition filed by Kapil. In the claim petition filed by Sultan Singh and others regarding death of Vikram Singh, future prospects of 40% need to be awarded in addition to income of Rs.8100/- assessed by the Tribunal. The claimants will be entitled for Rs.48,000/- for loss of consortium instead of Rs.1,50,000/- granted on account of love and affection. The claimants will also be entitled for an amount of Rs.18,000/- under each head of loss of estate and funeral expenses.

16. FAO No.3538 of 2017 has been preferred by injured Sachin arising out of MACT case No.36 of 2016 relating to the same accident. Claimant who was a student is stated to have suffered multiple rib fractures which also led to mild contusion underlying left lung. His notional income was assessed @ Rs.6,000/- per month and was awarded Rs.12,000/- for loss of study. Claimant remained hospitalized from 19.06.2015 to 24.06.2015 and had to undergo surgery. He was awarded Rs.20,000/- under head of pain and suffering. Amount of Rs.1,00,375/- was awarded on actual basis qua medical bills, Rs.3,000/- on account of hospitalization and Rs.10,000/- on account of transportation.

17. In the considered opinion of this Court, the compensation needs to be modified. Amount of Rs.20,000/- under the pain and suffering needs to be enhanced to Rs.1 lac. Transport charges are enhanced from Rs.10,000/- to Rs.20,000/-. Loss of income also needs to



be enhanced to Rs.20,000/-. The claimant is further held entitled for Rs.10,000/- on account of Special diet and Rs.10,000/- on account of attendant charges. Rs.1,00,375/- has been rightly awarded on actual basis for medical expenses.

18. With the aforesaid modification in the awards, the present bunch of the appeals is disposed off.

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

**16.01.2025**

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : Yes