



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

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**FAO-6801-2019 (O&M)  
Date of decision : 22.09.2025**

**Phool Chand Aggarwal**

**..... Appellant**

**versus**

**New India Assurance Company Ltd. and others ..... Respondents**

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

Present: Mr. Shreenath A. Khemka, Advocate  
for the appellant.

Mr. Vinod Chaudhri, Advocate  
for respondent No.1.

None for respondent No.2.

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

1. Owner is in appeal aggrieved of the recovery rights granted against him by Motor Accidents Claims Tribunal, Panchkula in an award dated 24.7.2019 arising out of claim petition filed under Section 166 of the Motor Vehicles Act, 1988.

2. Counsel for the appellant has drawn attention of this Court to the findings recorded on issue No.2, wherein the owner has been held ultimately liable for the compensation awarded. The insurer has been granted rights to pay and thereafter recover the same from the owner. He refers to the testimony of RW3 Anil Kumar, who appeared as GPA of the owner Phool Chand, who was 80 years old at the time of proceedings. He submits that Anil Kumar, who was employed as Manager and was acting as a GPA, categorically deposed before the



Tribunal on oath that at the time of employing Gurmeet-the driver, his license was perused. His driving test was conducted. It was only after he was satisfied, Gurmeet was employed, he submits that no evidence has come on record to rebut the same. Thus, in view 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*, the Tribunal erred in granting right to the insurer to recover the amount from the insured.

3. *Per contra*, Mr. Chaudhri submits that the GPA was not competent to depose on behalf of the owner with respect to personal satisfaction of the owner and it is for this reason that the Tribunal rightly relied upon ratio of law laid down in *Janki Vashdeo Bhojwani vs. Indusind Bank Ltd., 2005(2) SCC 217*.

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

5. The issue with respect to liability of the owner in the light of the license of the driver having been proved to be fake, has been elaborately dealt by a larger bench of the Supreme Court in *Swaran Singh's case (supra)* observing 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.

(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."

6. The issue with respect to right of GPA to appear and depose on behalf of witness has been elaborately explained by Supreme Court in the case of *Man Kaur (Dead) By Lrs vs. Hartar Singh Sangha 2010(10) SCC 512*, after considering the entire thread of precedents, including *Janki Vashdeo Bhojwani* observing as under:-

"11. To succeed in a suit for specific performance, the plaintiff has to prove: (a) that a valid agreement of sale was entered by the defendant in his favour and the terms thereof; (b) that the defendant committed breach of the contract; and (c) that he was always ready and willing to perform his part of the obligations in terms of the contract. If a plaintiff has to prove that he was always ready and willing to perform his part of the contract, that is, to perform his obligations in terms of the contract, necessarily he should step into the witness box and give evidence that he has all along been ready and willing to perform his part of the contract and subject himself to cross examination on that issue. A plaintiff cannot obviously examine in his place, his attorney holder who did not have personal knowledge either of the transaction or of his readiness and willingness. Readiness and willingness refer to the state of mind and conduct of the purchaser, as also his capacity and preparedness on the other. One without the other is not sufficient. Therefore a third party who has no personal knowledge cannot give evidence about such readiness and willingness, even if he is an attorney holder of the person concerned.



12. We may now summarise for convenience, the position 11as to who should give evidence in regard to matters involving personal knowledge:

(a) An attorney holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

**(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney holder, necessarily the attorney holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorized managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.**

(e) Where the entire transaction has been conducted through a particular attorney holder, the principal has to examine that attorney holder to prove the transaction, and not a different or subsequent attorney holder.

(f) Where different attorney holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney holders will have to be examined.

**(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to**



give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the ground of his 'bona fide' need and a purchaser seeking specific performance who has to show his 'readiness and willingness' fall under this category. There is however a recognized exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or 'readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad.”

7. In the present case, it has come on record that the GPA Anil Kumar was employed as Manager by the owner. Thus, it is the GPA who was managing all the affairs as agent of the principal owner of the vehicle. As per his testimony, he employed the driver acting as Manager. Thus, the present case will be covered by the ratio of law laid down by Supreme Court in the case of *Man Kaur (supra)*. The Tribunal erred in ignoring the testimony of Anil Kumar, who appeared as RW3.

8. In view of above, this Court finds that finding on issue No.2 recorded by Tribunal granting right to recover to the insurer cannot be sustained. The same is hereby set aside. The impugned order is modified to the extend that the insurance company along with the insured and the driver are held jointly and severally liable.

9. Disposed off, accordingly.



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

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

**22.09.2025**

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Whether speaking/reasoned : Yes

Whether Reportable : No