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**(2005) 03 CHH CK 0019**  
**In the Chhattisgarh High Court**  
**Case No : M.A. No. 1191 of 2004**

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|------------------------------------------|------------|
| Bajaj Allianz General Insurance Co. Ltd. | APPELLANT  |
| Vs                                       |            |
| Sadhu Sharan and Others                  | RESPONDENT |

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**Date of Decision :** 15-03-2005

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 166

**Citation :** (2007) 1 ACC 826 : (2006) ACJ 2439 : (2005) 1 CGLJ 297

**Hon'ble Judges :** A.K. Patnaik, C.J.;Fakhruddin, J

**Bench :** Full Bench

**Advocate :** Prashant Jaiswal, for the Appellant; J.A. Lohani, for the Respondent

**Final Decision :** Dismissed

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## Judgement

A.K. Patnaik, C.J. and Fakhruddin, J.—The facts of the case briefly are that a scooter bearing registration No. CG-16 5870 was owned by Devchandra Ram, respondent No. 3. On 10.3.2003, the said scooter was being driven by Jaimangal Pratap Singh, respondent No. 4, who is said to be having learner's licence. While respondent No. 4 was driving the scooter on 10.3.2003 Chain Prakash along with his sister came in a cycle near the Cherhani Nala and the scooter hit the cycle and the injured Chain Prakash. Chain Prakash was admitted in the hospital. He finally succumbed to injuries and died on 14.3.2003. Respondent- claimant Nos. 1 and 2, i.e., Sadhu Sharan and Bilasi respectively who are parents of Chain Prakash then filed Claim Case No. 37 of 2003 u/s 166 of the Motor Vehicles Act, 1988 and Third Additional Motor Accidents Claims Tribunal (F.T.C.), Surajpur, Sarguja by award dated 14.9.2004 awarded a compensation of Rs. 2,07,840 against the appellant insurance company. Aggrieved by the said award, the appellant insurance company has filed the instant appeal.

2. Mr. Prashant Jaiswal, Senior Advocate for the appellant insurance company submitted that case of appellant insurance company in the written statement filed before the Tribunal was that respondent No. 4 was driving the scooter at the time of accident with a learner's licence and hence there was breach of the

insurance policy by respondent No. 3 and for this breach of insurance policy the appellant insurance company was not liable for compensation.

3. Mr. J.A. Lohani, the learned Counsel appearing for respondent Nos. 3 and 4, on the other hand, submitted that in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, , the Supreme Court has already held that if the vehicle at the time of accident was driven by a person having learner's licence, the insurance company would be liable to satisfy the decree. He submitted that in view of the decision of the Supreme Court in National Insurance Co. Ltd. (supra), this appeal has no merit and should not be entertained at all.

4. Confronted with the said decision of the Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, , Mr. Jaiswal submits that in the said decision the Apex Court has made it clear that the insurance company can raise a defence of breach of policy by the owner of the vehicle and in case insurance company is able to prove before Motor Accidents Claims Tribunal that there has been a breach of insurance policy then the insurance company would be entitled to reimbursement of the amount paid by it in satisfaction of the decree for compensation from the owner of vehicle.

5. But we find from the pleadings of the insurance company before the Tribunal that only defence taken by the insurance company with regard to breach of the policy was that respondent No. 4 was driving the scooter with a learner's licence and this was a breach of insurance policy by respondent No. 3. Besides this breach of policy, Mr. Jaiswal fairly submits that there was no other breach of policy pleaded in the written statement of the appellants filed before the Tribunal. In paras 86, 87 and 102 (viii) of the judgment of the Supreme Court in Swaran Singh's case (supra), the Supreme Court has clearly held that if a vehicle at the time of accident was driven by a person having a learner's licence, the insurance company would be liable to satisfy the decree.

For the aforesaid reasons we find no merit in this appeal and accordingly, the same is dismissed.