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**(2005) 12 P&H CK 0080**

**In the Punjab And Haryana At Chandigarh**

**Case No :** First Appeal from Order No. 532 of 1998

New India Assurance Company Ltd. APPELLANT

Vs

Gurvinder Kaur and Others RESPONDENT

**Date of Decision :** 14-12-2005

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 149(2), 149(2)(1)

**Citation :** (2006) 3 ACC 649 : (2006) ACJ 2535 : (2006) 143 PLR 374 : (2006) 2 RCR(Civil) 125

**Hon'ble Judges :** Ashutosh Mohunta, J

**Bench :** Single Bench

**Advocate :** Neeraj Khanna and Ravinder Arora, for the Appellant; Aseem Kataria, for the Respondent

**Final Decision :** Dismissed

## Judgement

Ashutosh Mohunta, J.—The Insurance Company has filed the present appeal against the judgment of the Motor Accident Claims Tribunal, Patiala, dated 10.12.1997 by which a compensation of Rs. 3 lacs along with interest was awarded to the respondents/claimants.

2. The only point raised by the counsel for the appellant is that the Insurance Company is not liable to indemnify the insured as the driver of the offending vehicle did not possess a valid driving licence. The question whether the Insurance Company can escape its liability from indemnifying the insured in case of a fake or invalid driving licence has been answered by the Hon''ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, , wherein it has been held as under:

(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 disqualifications of

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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.

3. Apart from the above, in United India Insurance Company Ltd. Vs. Lehru and Others, , the Hon''ble Apex Court has held as under:

The insurance company cannot avoid its liability towards third party on ground that the licence of the driver of the vehicle was a fake licence. In order to avoid liability u/s 149(2)(1)(ii) it must be shown that there is a "breach" on part of the insured. To hold otherwise would lead to absurd results.

It has also been that:

When an owner is hiring a driver he will, therefore, have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. It is rather strange that Insurance Companies expect owners to make enquiries with RTO''s which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii).

4. In the present case, the driving licence was issued in the name of Manjit Singh, son of Manohar Singh. However, Karam Singh while appearing as RW-1 has stated that the driving licence No. 8531/74 dated 29.8.1974 in the name of Manjit Singh was not issued by their Office and, hence, the driving licence is fake.

5. As the driving licence of Manjit Singh did bear the stamp of the Licensing Authority, hence, there was no way for the owner to find out whether the licence is genuine or not. The owner of the vehicle could not have made inquiries regarding the validity of the driving licence. It was incumbent for the Insurance Company to prove that the insured was guilty of negligence and had failed to exercise reasonable care in the matter of fulfilling the conditions of the policy regrading the use of vehicle by a duly licensed driver. In the absence of any evidence having been led by the Insurance Company, the Insurance Company is liable to indemnify the insured.

6. In view of the above, there is no merit in the present appeal and the same is dismissed.

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