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**(1996) 09 P&H CK 0148**

**In the Punjab And Haryana At Chandigarh**

**Case No : C.M. No. 5236-CII/96 in FAO No. 1406/96**

The New India Assurance Co. Ltd.

APPELLANT

Vs

Randhir Singh and Another

RESPONDENT

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**Date of Decision : 23-09-1996**

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 96(2)

**Citation :** (1998) ACJ 58 : (1997) 115 PLR 532 : (1997) 2 RCR(Civil) 535

**Hon'ble Judges :** R.L. Anand, J

**Bench :** Single Bench

**Advocate :** L.M. Suri and Deepak Suri, for the Appellant; B.R. Mahajan, for Respondent Nos. 1 and 2 and R.S. Longia, for the Respondent

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## **Judgement**

R.L. Anand, J.—By this order I dispose of C.M. No. 5236-CII of 1996 filed by the appellant-Insurance Company seeking permission of this Court to allow it to file and prosecute the present appeal in the name of the insured and also in its own name, as well as on merits, which request of the applicant has been opposed by Shri B.R. Mahajan, Advocate, learned counsel appearing on behalf of respondents Nos. 1 and 2, who has placed reliance on *Oriental Insurance Co. Ltd. v. Ram Parkash and Ors.* 1996 ACJ 777; *Vanguard Co. Ltd. Vs. Rabinder Kaur and Others*, , and submitted that the Insurance Company could not be allowed to contest the award on merits because it did not object before the Tribunal that the insured had colluded with the claimant or was not contesting the claim of the claimant on merits.

2. Learned counsel Shri L.M. Suri, appearing for the appellant, has reliance on 1959 S.C. 1331 and *Unique Motor and General Insurance Co. Ltd. v. Kartar Singh and Anr.* (1964) 66 P.L.R. 1083, where it was held that the Insurance Company can defend the claim application in the name of the insured and take up all defences that can be open to the insured provided it has so provided by a clause in the policy of insurance.

3. It has been specifically shown vide condition No. 2 of the policy of insurance,

that such right had been reserved by the Insurance Company. In view of the citation of the Hon"ble Supreme Court as well as the Division Bench of this Court CM. No. 5236-CII of 1996 is hereby allowed and the Insurance Company is permitted to prosecute the present appeal.

4. Now the main appeal will be taken up on its own turn.