

**(2006) 01 P&H CK 0080**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Revision No"s. 3931 to 3946 of 2004

United India Insurance Company Ltd.

APPELLANT

Vs

Gulzar Singh and Another

RESPONDENT

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**Date of Decision :** 24-01-2006

**Acts Referred:**

Constitution of India, 1950 — Article 227

**Citation :** (2006) 3 ACC 887 : (2007) ACJ 1265 : (2006) 143 PLR 38 : (2006) 2 RCR(Civil) 718

**Hon'ble Judges :** Satish Kumar Mittal, J

**Bench :** Single Bench

**Advocate :** Ravinder Arora, for the Appellant; S.S. Grewal, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Satish Kumar Mittal, J.—The aforesaid 16 petitions have been filed by the United India Insurance Company Limited, Rajpura, under Article 227 of the Constitution of India for setting aside the orders dated 24.1.2004, passed by the Motor Accident Claims Tribunal, Patiala (hereinafter referred to as "the Tribunal), dismissing its execution applications, which were filed on the strength of the order dated 7.5.2002 passed by this Court in F.A.O. No. 422 of 2000 filed by the petitioner Company.

2. In these cases, an accident took place on 6.4.1994 between two buses bearing registration No. PAB-8655 owned by M/s Gian Bus Service and PB-12-2258 owned by M/s Akal Bus Service. In the accident, some persons died at the spot and some were injured. In that appeal, 25 claim petitions were filed in the Court of the Tribunal. The bus bearing registration No. PAB-8655 was insured with the petitioner Company and bus bearing registration No. PB-12-2258 was insured with the Oriental Assurance Company Limited, Rajpura. Both the Insurance Companies contested the petitions on the ground that the drivers of both the vehicles were not holding valid driving license on the day of accident. An objection was also raised that both the vehicles were not having

valid RCs and route permits. In that regard, the Tribunal framed the following two issues:-

27. Whether drivers of both the vehicles were not having valid driving licences? If not, its effect? OPR

28. Whether both the vehicles were not having valid RCs and route permits at the time of accident? If so, its effect? OPR

3. All the claim petitions were decided in favour of the claimants vide a common Award dated 12.10.1999. On both the aforesaid issues, the following findings were recorded :-

#### ISSUE NO. 27

123. Onus was upon the respondents to prove this issue, but this issue was not pressed by the learned Counsel for the respondents during the course of arguments. This issue is accordingly, held against the respondents and in favour of the claimants.

#### ISSUE NO. 28

124. Onus was upon the respondents to prove this issue also, but this issue was not pressed by the learned Counsel for the respondents during the course of arguments. This issue also stands adjudicated against the respondents and in favour of the claimants.

4. Against the aforesaid Award, both the Insurance Companies filed F.A. Os. No. 422 and 789 of 2000, which were disposed of by this Court by passing the following order: -

By this order, we dispose of F.A.O. No. 789 of 2000 titled Oriental Insurance Co. Ltd. v. Gurmit Kaur and Ors., and F.A.O. No. 422 of 2000 United India Insurance Co. Ltd. v. Gurmit Kaur and Ors.

After hearing the learned Counsel for the parties we are of the opinion that a declaration should be given that 50% of the compensation amount shall be paid by the appellant i.e. Oriental Insurance Company Ltd. and 50% shall be shared by United India Insurance Company Ltd. which is the appellant in F.A.O. No. 422 of 2000. Ordered accordingly.

We further make observation that it will be open to United India Insurance Company Ltd., which is appellant in F.A.O. No. 422 of 2000 to recover the amount from the owner/driver, according to law.

The decision of these appeals shall have no bearing on the merits of F.A.O. No. 747 of 2000 which has been separately adjourned to 24.7.2002 for consideration.

5. In the aforesaid appeals, findings on issues No. 27 and 28 were not challenged and those findings were affirmed. Only, the point regarding liability to pay compensation was contested and it was held that both the Insurance Companies

will share compensation 50% each. However, while disposing of the aforesaid appeals, it was observed that it will be open to the petitioner Company to recover the amount from the owner/driver, according to law.

6. On the basis of aforesaid observation, the petitioner Company filed the execution applications before the Tribunal for recovering the aforesaid amount from the driver of the offending vehicle bearing registration No. PAB-855 and its owner M/s Gian Bus Service Limited, Rajpura. A contention was raised that the original license of the driver was fake, therefore, as per the observations of the Hon'ble Supreme Court made in *New India Assurance Co Ltd. v. Kamla* (2001) 127 P.L.R. 830, the petitioner Company is entitled to recover the amount of compensation paid to the claimants from the driver/owner of the vehicle. The said contention was rejected and the execution applications filed by the petitioner Company were dismissed by the Tribunal, while observing as under:-

8. After giving a careful thought to submission of the learned counsel for the applicant, I found that there is no finding of any Court that the driving license of the driver of bus No. PAB-8655 was fake. The learned Motor Accident Claims Tribunal has not held so. Even the Honorable High Court has not held the driving license to be fake. The only observations made by the Honorable High Court is that it will be open to the insurance company to recover the amount of compensation paid to the claimants from the owner/driver according to law. This observation simply gives an opportunity to the insurance company to adopt due to process of law to prove its case that there was breach of terms of the policy, to get an order from the court to recover the amount of compensation from the owner/driver of the offending vehicle and then file the execution. This execution filed by the Insurance Company on the basis of observations made by the Honorable High Court does not vest any right in the applicant to file the execution, as no right has been given to the insurance company to recover any amount from owner or driver of vehicle involved in accident. It has only been allowed to pursue its case in accordance with law in this regard. This application as such, is not maintainable and the same is ordered to be dismissed.

7. I have heard the arguments of learned Counsel for the parties.

8. Counsel for the petitioner has not disputed the findings recorded by the Tribunal on issues No. 27 and 28. There is no finding on these issues that license of the driver of the offending vehicle was invalid. Both the Insurance Companies did not press the issue of validity of the license of the driver of the offending vehicles. In these circumstances, in the execution proceedings, it cannot be taken that license of the driver of the vehicle was invalid at the time of the alleged accident. The finding given by the Tribunal in this regard, which has not been challenged, has become final between the parties and the same cannot be challenged in the execution application. Merely because at the time of disposal of the appeal filed by the petitioner Company, it was observed that it will be open to it to recover the amount from the owner/driver, according to law, the petitioner Company cannot maintain the execution applications for recovery of the amount

of compensation, paid by it, from the driver and owner of the vehicles. I do not find any illegality or perversity in the impugned orders passed by the Tribunal.

Dismissed.