

# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 26 of 2000.

Date of decision: 29.11.2006.

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New India Assurance Company

..... Appellant.

Vs.

Sanjay Kumar & ors.

..... Respondents.

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***Coram***

The Hon'ble Mr. Justice Surjit Singh, Judge.

***Whether approved for reporting?***

For the Appellant : Mr. K.D.Sood, Advocate with Ms. Sunita Sharma, Advocate.

For the Respondents : Mr. Rama Kant Sharma, Advocate, for respondents No. 1 & 2.

Mr. Ramakant Sharma, Advocate, for respondent No.3.

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**Surjit Singh, Judge (Oral).**

Heard and gone through the record.

2. This appeal by the insurance company is directed against the award of the Motor Accident Claims Tribunal, whereby compensation awarded for the death of a third party, in a vehicular accident, has been ordered to be paid by it.

3. Relevant facts, may be summed up thus. One Urmila Devi, died in an accident of jeep, owned by respondent Shyam Sunder, on 26.1.1996. The jeep was insured with the appellant for third party risk. First Information Report regarding the accident was lodged, in which it was stated that the inquiries made after the accident revealed that the jeep was being driven by respondent

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***Whether the reporters of the local papers may be allowed to see the Judgment?***

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No. 4, Rajesh when the accident occurred. Petition was filed for award of compensation for the death of said Urmila, in which besides the owner of the jeep and the present appellant being the insurer, Rajesh was impleaded as respondent. Respondent, Shyam Sunder, the owner, in his reply pleaded that the vehicle was being driven not by Rajesh, but by respondent Gurdhian Singh, who had been engaged by him as driver for driving the vehicle, in question. Insurance company took the plea that the vehicle was being driven by respondent Rajesh, who did not possess a valid and effective driving licence and thus there was breach of condition of the policy as to the persons entitled to drive the vehicle. The Tribunal after making the inquiry, held that vehicle was being driven by respondent Gurdhian Singh, whom the owner of the vehicle had employed as driver and not by respondent Rajesh. Consequently, the contention of the present appellant that there was breach of condition of policy on account of the vehicle being driven by Rajesh, who did not possess a driving licence, was rejected.

**4.** Feeling aggrieved by the said finding, the insurer has filed this appeal. It is alleged that the evidence on record sufficiently proves that the vehicle was being driven by respondent Rajesh and not by respondent Gurdhian Singh, and since Rajesh, admittedly, did not possess a driving licence, there is breach of condition of the policy as to the persons entitled to drive the vehicle.

**5.** For two reasons, the appeal merits rejection. Firstly, the evidence on record does not conclusively prove that the vehicle was being driven by respondent Rajesh. Rajesh entered the witness box

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and testified that he was not driving the vehicle, when the accident took place. Secondly, even if it be assumed for argument sake that the vehicle was being driven by Rajesh and not by Gurdhian, proof of this fact alone will not make out a case of breach of condition of the policy so as to relieve the appellant-insurance company of its liability to indemnify the insured. The insured, while in the witness box, categorically stated that he had employed Gurdhian Singh, to drive the jeep, in question and had entrusted the vehicle to him. It is not the case of the appellant-insurer that vehicle at the time of the occurrence of the accident was being driven by Rajesh, to the knowledge of the insured or that the insured was in any way negligent or careless in ensuring that the vehicle was driven only by Gurdhain Singh, whom he had engaged as driver and by none else.

6. It has been held by the Hon'ble Supreme court in **National Insurance Co. Ltd.** vs. **Swaran Singh and others** [ 2004 (3) SCC 297] that in order to avoid its liability towards the insured, the insurer has to allege and prove that the insured was guilty of negligence or failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicle by a duly licensed driver or one who was not disqualified to drive at the relevant time.

6. As a result of the above stated position, the appeal is dismissed.

**November 29, 2006.**  
(Hem)

**( Surjit Singh )**  
**Judge.**