

## IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**FAO No.:** 462 of 2004

Date of decision : 29.09.2009

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National Insurance Company Ltd. ...Appellant

Versus

Deepak and others ...Respondents

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### ***Coram***

**The Hon'ble Mr. Justice Deepak Gupta, Judge.**

*Whether approved for reporting?*<sup>1</sup> No.

For the Appellant: Mr. Ashwani Kumar Sharma, Advocate.

For the respondent No.1 : None.

For the respondents No. 2 to 4: Mr. Ajay Sharma, Advocate.

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### **Deepak Gupta, J.**

This appeal by the Insurance Company is directed against the award dated 11.5.2004 passed by the learned Motor Accident Claims Tribunal, Kangra at Dharamshala, whereby he awarded a sum of Rs.92,839/- alongwith interest @ 9% per annum in favour of the petitioner-claimant.

The Insurance Company obviously cannot challenge the award on the ground of negligence of quantum since it has not taken permission of the Court under Section 173 of the Motor Vehicles Act.

The main ground raised by Shri Ashwani Sharma, learned counsel for the appellant-Insurance Company that the Insurance Company was not given reasonable opportunity to lead evidence in

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<sup>1</sup> ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes.***

respect of Issue No. 5 and the evidence of the Insurance Company was closed vide order dated 27.4.2004.

The undisputed facts are that the claimant- respondent No.1, Deepak filed a petition under Section 166 of the Motor Vehicles Act claiming that he was travelling as a pillion rider on a scooter which was hit by a Jeep bearing No. HP-02-8379 being driven by Ashwani Kumar and owned by deceased Ran Singh, who is now being represented by his legal representative Bhupinder Singh and Sashi Pal Singh. According to the claimant, the accident occurred due to rash and negligent driving of the driver of the Jeep in which he suffered injuries. The defence raised by the Insurance Company is that the driver did not have a legal and valid driving license to drive the vehicle and accordingly issue No.5 was cast in the following terms:-

“5. Whether the respondent No.2 was not possessing valid and effective driving licence at the time of accident to drive the vehicle? If so, its effect? OPR-3.”

A perusal of the record of the learned Tribunal shows that the evidence of the petitioner was closed on 6.5.2003. Thereafter, the respondents were directed to produce their evidence on 16.6.2003. For the said date the Insurance Company took no steps to produce evidence and the matter was adjourned to 16.7.2003 for production of the evidence of the respondents including the Insurance Company. Again no steps were taken. However, on this date it transpired that respondent No.1 had expired and thereafter the matter was adjourned to bring on record his legal representatives who were ultimately brought on record on 12.9.2003. The case was then listed for evidence of respondents

on 14.10.2003. Steps for service were again not taken. In the meantime, the case was transferred to MACT(1) Kangra at Dharmala who gave another opportunity to the Insurance Company to produce its evidence on 28.11.2003. On the said date the owner and driver closed their evidence but no evidence of respondent No.3 was present. The case was then adjourned for 17.3.2004 and Dasti summons were given to the Insurance Company. The witness of the Insurance Company was not served and on 17.3.2004 the case was listed for 27.4.2004, on which date the evidence of the Insurance Company was closed. It is urged on behalf of the Insurance Company that in fact the witness had been served for 27.4.2004 but since summons had not been received back after service the same could not be produced before the Tribunal.

From the record of the case, I find that the Insurance Company was given as many as five opportunities to produce its evidence. The witness to be summoned was from Nagaland. The Court could not compel this witness to appear in Court unless his air fare had been deposited. This air fare had not been deposited. The service of a witness without paying him proper travelling expenses is virtually no service in the eyes of law. The learned Tribunal rightly held that the Insurance Company despite repeated opportunities had not been able to produce its evidence.

In view of the above discussion, I find that there is no merit in the contention of the Insurance Company that it was not given reasonable opportunity to put-forth his case. Consequently, there is no error in the award of the learned Tribunal holding that the

Insurance Company has failed to discharge the burden which lay upon it to prove that the driver did not have a valid driving license.

It would be pertinent to mention that the accident in question took place on 15.4.2000 and the driving license i.e. Ext.RW-1/A produced on record was issued in favour of the driver on 10.2.1998 entitling him to drive a light motor vehicle. This license was renewed by the Motor Licensing Authority, Jawali and it can be presumed that before renewal details must have been called for from the District Transport Officer, Wokha, Nagaland. In **National Insurance Company vs. Annappa Irappa Nesria and others, (2008) 3 SCC 464**, the Apex Court held that the endorsement to drive a transport vehicle is necessary only after 28.3.2001 and prior to that such endorsement was not necessary since the light motor vehicle in its definition as it existed prior to the said date included a light transport vehicle. Therefore, also there is no merit in the contention of the Insurance Company that the license was not a valid driving license.

In view of the above discussion, I am of the considered opinion that there is no merit in the appeal of the Insurance Company, which is accordingly dismissed.

**29<sup>th</sup> September, 2009**  
TM

**( Deepak Gupta )**  
**Judge.**