

(1985) 02 P&H CK 0006

High Court Of Punjab And Haryana At Chandigarh**Case No:** First Appeal From Order No. 242 of 1979

Joginder Singh and another

APPELLANT

Vs

The Oriental Fire and General
Insurance Company Ltd, and
anotherRESPONDENT

Date of Decision: Feb. 6, 1985**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27

Citation: (1987) ACJ 695**Hon'ble Judges:** S.S. Sodhi, J**Bench:** Single Bench**Advocate:** N.C. Jain and Sh. S.S. Jain, for the Appellant; V.P. Gandhi for Respondent No. 1 and Sh. Azad Singh for Sh. Bhoop Singh, for the Respondent**Final Decision:** Allowed

Judgement

S.S. Sodhi, J.

The controversy in appeal here is with regard to the liability of the Insurance Company for the compensation awarded to the claimants, they being the widow, and children of Rameshwar Dass, deceased, who was killed when the motor cycle he was traveling on was involved in an accident with the truck HHJ 230. This happened on June 28, 1975, on the Jind-Bhiwani road

2. It was the finding of the Tribunal that the accident had been caused entirely due to the rash and negligent driving of the truck driver. The compensation awarded was Rs. 33,000/- with interest at the rate of six per cent per annum from the date of the application till the date of payment of the amount awarded.

3. The liability for compensation awarded was fastened upon the truck driver Joginder Singh and Piara Singh, the owner thereof. The Insurance Company was, however, absolved from liability on the ground that the truck driver had failed to

show that he held a valid driving licence when the accident occurred

4. In appeal now, the Appellants, namely, the truck driver and its owner, filed an application under Order 41, Rule 27 of the CPC to place on record a duplicate driving licence of the truck driver with a view to show that he did indeed hold a valid driving licence at the time of the accident. The genuineness of this driving licence was doubted by the counsel for the Insurance Company and consequently a report was called for from the Tribunal with regard to this aspect of the matter. According to report now received from the Tribunal, Joginder Singh, the truck driver did indeed hold a valid driving licence on the date of the accident. This licence being Exhibit P.A. No. objection has been raised to this report. This being so, there can be no escape from the conclusion that liability for the amount awarded must also rest upon the Respondent-Insurance Company.

5. A strong plea was, however, raised by Mr. V. P Gandhi counsel for the Respondent - Insurance Company for shifting the burden of the interest payable on the compensation awarded on to the truck driver and owner on the plea that had the driving licence been produced at the proper stage, the Insurance Company could have avoided this liability by settling the claim with the claimants without having to incur this additional burden.

6. There is indeed substance in the contention raised as a reference to the record of this case would show that it was as far back as August 1976 that the Insurance Company took a specific objection in their return to the effect that the truck driver did not hold a valid driving licence. There is no explanation forthcoming from the side of the truck driver or its owner for the late production of the driving licence of the truck driver. As has been mentioned earlier, it was only by means of an application for additional evidence that this driving licence was produced on record. The delay has, thus undoubtedly to be imputed to the truck driver and owner and it would clearly be inequitable to fasten liability for payment of interest upon the Insurance Company.

7. These being the circumstances, the truck driver, owner as also the Insurance Company must be held to be jointly and severally liable to the claimants for the compensation awarded as also the interest payable thereon, but as regards the liability for payment of interest interest amongst the truck driver and owner on the one hand and the Insurance Company on the other, the liability shall be wholly that of the truck driver and owner. In other words, if the Insurance Company is compelled to pay interest to the claimants, it shall be entitled to recover the amount from the truck driver and owner.

8. This appeal is consequently allowed in terms as set out above. The claimants shall, however, be entitled to their costs in this appeal. Counsel's fee Rs 500/- .