(2007) 1 ACC 755

High Court Of Punjab And Haryana At Chandigarh

Case No: None

New India Assurance Company Limited		APPELLANT
	Vs	
Raj Rani and Others		RESPONDENT

Date of Decision: Dec. 14, 2006

Citation: (2007) 1 ACC 755

Hon'ble Judges: Mahesh Grover, J; Adarsh Kumar Goel, J

Bench: Division Bench

Judgement

Adarsh Kumar Goel, J.
This appeal has been filed by the Insurance Company against the award of the Tribunal awarding a sum of Rs. 3

lakh to the claimants on account of death of Nand Kishore by rash and negligent driving.

2. Case of the claimants is that during night intervening 17/18.8.2001, the deceased was going from Rajpura towards Banur on his motor-cycle

and at about 11.00 p.m. when he reached the area of Ram Nagar on Rajpura-Chandigarh Road, he was hit by Tata Sumo, driven rashly and

negligently by Ram Kesar driver. The deceased received multiple simple and grievous injuries and died on the spot. He was aged 3 8 years and

was working as partner in commission against shop apart from working as accountant in the said shop. He was earning Rs. 5,000 per month.

3. The claim was contested by the Insurance Company as well as by the driver and the owner.

4. Following issues were framed:

1. Whether death of Nand Kishore has taken place in a motor accident with Tata Sumo No. HR-01L-3835 due to rash and negligent driving of

Tata Sumo by respondent No. 1?

--OPA

2. Whether the claimants are entitled to any compensation. If so to what extent?

--OPA

3. Whether driver of Tata Sumo No. HR-01L-3835 was not holding a valid driving licence at the time of accident?

--OPR

4. Whether the petition is not maintainable?

--OPR

5. Whether the petition is bad for misjoinder for necessary parties?

--OPR

6.Relief.

5. Additional issue No. 5-A was framed later to the following effect: 5-A. Whether claim petition is a result of collusion?--OPR

6. The Tribunal held that the deceased was proved to have died on account of rash and negligent driving by the driver of the vehicle and the

claimants were entitled to compensation. Reference was made to charge-sheet Ex. P.7 filed against the driver before the Court, FIR Ex. P.9, order

of the Magistrate Ex. P. 11 releasing the vehicle on Superdari, apart from other evidence.

7. PW 3 Jawahar Lal, eye-witness proved the accident. It was held that acquittal of the driver by the Criminal Court did not affect the claim that

the driver was negligent while driving the vehicle. Income of the deceased was assessed as Rs. 3,000 per month and dependency was worked out

as Rs. 2,000. Multiplier of 12 was applied and after taking into account compensation for consortium to the widow and cremation expenses, a sum

of Rs. 3 lakh was awarded.

8. Only contention raised by the learned Counsel for the Insurance Company is that the driver did not have a valid driving licence. The Tribunal has

found that the driver had driving licence Ex. R. 7 which had expired on the date of the accident. But the said invalidity did not absolve the

Insurance Company of complying with the award, though the Insurance Company could proceed against the driver and owner for recovering the

amount.

9. Learned Counsel for the appellant submits that in view of finding that driving licence was not in force on the relevant date, the Insurance

Company was not liable. This aspect is covered against the appellant by judgments of the Hon''ble Supreme Court in National Insurance Co. Ltd.

Vs. Swaran Singh and Others, and New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., . The course adopted by the Tribunal

permitting the Insurance Company to proceed against the owner and driver cannot be held to be erroneous.