

A PUNAM DEVI AND ANR.
v.
DIVISIONAL MANAGER, NEW INDIA ASSURANCE CO. LTD. AND
ORS.

B FEBRUARY 12, 2004

[V.N. KHARE, CJ., S.B. SINHA AND S.H. KAPADIA, JJ.]

Motor Vehicles Act, 1988

C *S.149(2)—Motor Accident claim—Before Tribunal Insurance company
neither pleaded nor led any evidence that driver of vehicle did not have any
licence—Claimants/heirs of deceased awarded compensation—Insurance
Company's appeal dismissed by Single Judge of High Court—Letters Patent
Bench remitted the matter back upon framing issues for determination by
D Single Judge—Held, the only ground open to insurer is contained in Section
149(2) of the Motor Vehicles Act—The burden of proof that driver did not
have a licence was upon insurer which it failed to discharge—Division Bench
erred in allowing letters patent appeal—Appeal of claimants allowed.*

E *National Insurance Co. Ltd. Chandigarh v. Nicolletta Rohagi and Ors.,
[2002] 7 SCC 456 and National Insurance Co. Ltd. v. Swaran Singh and Ors.,
(2004) 1 SCALE 180, relied on.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7191 of
2002.

F From the Judgment and Order dated 15.5.2001 of the Patna High Court
in L.P.A. No 1361 of 2000.

Ranjan Kumar Jha, Ejaz Maqbool and Braj K. Mishra for the Appellants.

J.R. Midha, Niraj Singh and Pranab Kumar Mullick for the Respondents.

G The following Order of the Court was delivered :

In a motor vehicle accident, one Sanjiv Kumar Jha died at the spot.
Consequently, the appellants filed their claims petition before the Motor
Accidents Claims Tribunal, Bhagalpur. Before the Tribunal, the respondent-

H 354

Insurance Company neither pleaded nor led any evidence that the driver of the truck did not have any licence. The Tribunal by an order dated 12.2.1999 gave an award for a sum of Rs. 3,91,500 - Aggrieved, the respondent-Insurance Company preferred an appeal before the High Court. A learned Single Judge of the High Court dismissed the appeal on the ground that the same was not maintainable. Aggrieved, the respondent-Insurance Company further filed a letters patent appeal before the High Court. The Letters Patent Bench set aside the order of the learned Single Judge and remitted the matter back upon framing issues for determination by the Single Judge. It is against the said judgment, the appellants are in appeal before us. A B

In *National Insurance Co. Ltd. Chandigarh v. Nicolletta Rohagi and Ors.*, [2002] 7 SCC 456, it was held that the insurance company cannot challenge the quantum of compensation awarded by the Tribunal. The only ground open to insurer is contained in Section 149 (2) of the Motor Vehicles Act. In *National Insurance Co. Ltd. v. Swaran Singh and Ors.*, (2004) 1 Scale 180, this Court has held that "mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to 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 vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time." In the present case, the insurer has not led any evidence that the driver of the vehicle had no licence. The burden of proof that the driver had no licence was open to the insurer which it failed to discharge. C D E

In that view of the matter, the Division Bench erred in allowing the letters patent appeal. F

We, therefore, set aside the order and judgment of the Division Bench. The appeal is allowed. There shall be no order as to costs.

R.P.

Appeal allowed.