

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**FAO No. 339 of 2010**

**Decided on : 27.05.2016.**

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United India Insurance Company Limited . ....Appellant

Versus

Miss Beant Kaur & others

...Respondents

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*Coram:*

***The Hon'ble Mr. Justice Mansoor Ahmad Mir, Chief Justice***

***Whether approved for reporting? Yes.***

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For the Appellant :

Mr. Suneet Goel, Advocate.

For the respondents:

Ms. Ambika Kotwal, Advocate,  
for respondents No. 1 & 2.

Mr. Dinesh Bhanot, Advocate, for  
respondent No. 3.

Nemo for respondent No. 4.

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**Mansoor Ahmad Mir, Chief Justice (oral)**

Subject matter of this appeal is the award dated 11<sup>th</sup> May, 2010, passed by the Motor Accident Claims Tribunal Solan, Camp at Nalagarh (hereinafter referred to as 'the Tribunal'), in M.A.C. Petition No. 22-NL/2 of 2008/07, titled Miss Beant Kaur & another versus Shri Surinder Pal & others, whereby compensation to the tune of ₹ 2,12,000/- with interest @ 7.5% per annum from the date of filing of the

claim petition till its realization was awarded in favour of the claimants and the insurer came to be saddled with liability (hereinafter referred to as 'the impugned award').

2. The claimants, driver and owner have not questioned the impugned award, on any count. Thus, it has attained finality, so far it relates to them.

3. The insurer has questioned the impugned award on the grounds taken in the memo of appeal.

4. Learned Counsel for the appellant-insurer argued that the driver was driving the offending vehicle without any route permit.

5. The argument of the learned Counsel is turned down for the following reasons.

6. The Tribunal has rightly made discussion in para-9 of the impugned award.

7. The insurer has not led any evidence to prove that the driver has driven the offending vehicle i.e. Tanker bearing registration No. HR-37B-9097, without any route permit at the time of accident.

8. While going through the record, one comes to an inescapable conclusion that the registration certificate was issued after examining all the documents.

9. It was for the insurer to plead and prove that the offending vehicle was being driven without any route permit. It has neither led any evidence nor called any officer of the Registering Authority.

10. My this view is fortified by the Apex Court judgment in case titled as **Kamala Mangala Vayani & others versus M/s United India Insurance Co. Ltd. & others, reported in 2010 AIR SCW 6604**, has held that if the insurer denies liability on the ground that vehicle did not have valid permit on the date of accident, the burden of proof lies on the insurer and the claimants are not expected to prove it. It is apt to reproduce paras 4 & 5 of the judgment, *supra*, herein:

*[4] As noticed above, the owner-cum-driver had remained ex parte. Once it was established that the vehicle was comprehensively insured with the insurer to cover the passenger risk, the burden to prove that it was not liable in spite of such a policy, shifted to the insurer. The*

*claimants are not expected to prove that the vehicle had a valid permit, nor prove that the owner of the vehicle did not commit breach of any of the terms of the policy. It is for the insurer who denies its liability under the policy, to establish that in spite of the comprehensive insurance policy issued by it, it is not liable on account of the requirements of the policy not being fulfilled. In this case, the insurer produced a certified copy of the proceedings of the Registering Authority and Assistant Regional Transport Authority, Bangalore, dated 7.7.1990 to show that the application for registration of the vehicle filed by the third respondent, was rejected with an observation that it was open to the applicant to apply for registration in the appropriate class. But that only proved that on 7.7.1990, the vehicle did not have a permit. But that does not prove that the vehicle did not have a permit on 27.7.1990, when the accident occurred. It was open to the insurer to apply to the concerned transport authority for a certificate to show the date on which the permit was granted and that as on the date of the accident, the vehicle did not have a permit, and produce the same as evidence. It failed to do so. The High Court committed an error in expecting the claimants to prove that the vehicle possessed a valid permit. We are of the view that there was no justification for the High Court to interfere with the judgment and awards of the Tribunal in the absence of relevant evidence.*

*[5] We therefore allow the appeals, set aside the order of the High Court and restore the judgment and awards of the*

*Tribunal. The appellant-claimants will be entitled to interest on the compensation amount from the date of application for compensation to date of payment at the rate 5% per annum.*

11. Having said so, the Tribunal has rightly made the impugned award, is accordingly upheld and the appeal is dismissed.

12. The Registry is directed to release the entire amount in favour of the claimants, strictly in terms of conditions contained in the impugned award, through payees account cheque or by depositing the same in their accounts.

13. Send down the records after placing a copy of the judgment on the Tribunal's file.

**May 27, 2016**

(hemlata)

**(Mansoor Ahmad Mir),  
Chief Justice**