HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

1. S.B. Civil Miscellaneous Appeal No. 2830/2006

URN: CMA / 4034U / 2006

National Insurance Company Ltd., Branch Ajmer Through Regional Office, Ambedkar Circle, Jaipur

----Non-Claimant/Appellant

Versus

1. Parmeshwar S/o Sanwarmal, R/o Bidasar, P.S. Laxmangarh, District Sikar Raj.

----Claimant/Respondent

2. Mahavir S/o Phula Ram, R/o Jadli Khurd, P.s. Bhuna, District Fatehbad, Harayana

----Non-Claimant/Respondent

2. S.B. Civil Miscellaneous Appeal No. 2880/2006

URN: CMA / 4109U / 2006

National Insurance Company Ltd., Branch Sikar Through Regional Office, Ambedkar Circle, Jaipur

----Appellant

Versus

1. Sultan Singh S/o Shri Bheron Singh, aged 55 years,
2. Sher Singh, aged 15 years,
3. Hoshiyar Singh, aged 13 years,
4. Karan Singh, aged 11 years,
5. Kumari Manju aged 9 years,
6. Kumar Sanju aged 7 years

Respondent-Claimants No. 2 to 6 are minor through Natural Guardian Father Sultan Singh S/o Bheron Singh.

----Claimant/Respondents

7. Mahavir S/o Phula Ram, R/o Jadli Khurd, P.S. Bhuna, District Fatehbad, Harayana (Driver cum owner of Truck No. RJ-13-G 0410)

----Non-Claimant/Respondent

For Insurance Company	:	Ms. Sunita Choudhary, Adv.
For Respondent No.2-Mahavir in S.B. CMA No. 2830/2006	:	Mr. Sanjay Mehla, Adv. with Ms. Sunita Mehla, Adv.

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

Judgment

15/07/2026

1. Both these appeals have been filed by the appellant-Insurance Company against the impugned judgment and award dated 21.06.2006 passed by learned Additional District Judge (Fast Track) No.1 and Motor Accident Claims Tribunal, Sikar (Raj.) in two Claim Petition Nos. 397/2005 (titled as Sultan Singh & Ors. Vs. Mahavir & Anr.) and 398/2005 (titled as Parmeshwar Vs. Mahavir & Anr.), whereby, the learned Tribunal allowed both the claim petitions filed by the claimants and awarded compensation in their favour.

2. Though, the present appeals have been filed on various grounds; however, learned counsel appearing on behalf of the appellant-Insurance Company confines its arguments only on the ground of breach of policy condition contending that the driver of the offending vehicle i.e. respondent-Mahavir did not have a valid driving licence to drive the offending vehicle at that relevant time. The said fact was proved by the appellant-Insurance Company by producing the evidence of Investigator, who investigated the matter and found that the alleged driving licence of the driver of the offending vehicle was said to be issued by DTO Guwahati; however, during the inquiry, it was found that DTO Guwahati did not issue that licence. Learned counsel further submits that since the driver of the offending vehicle was not having a valid driving licence to drive the vehicle, therefore, there was a breach of condition of the policy qua the driver of the offending vehicle.

Hence, the Insurance Company cannot be held liable to satisfy the impugned judgment and award.

3. On the other hand, learned counsel appearing on behalf of the non-claimant/respondent-Mahavir has opposed the above contentions of learned counsel for the appellant-Insurance Company and submitted that it is a well settled law that the Insurance Company is duty bound to prove the fact that the driving licence possessed by the driver was not issued by the competent authority and the same was fake one. Learned counsel further submits that simply based on the statement of the Investigator of Insurance Company, it cannot be presumed that the driver of the offending vehicle was not having a valid driving licence.

4. Learned counsel for the non-claimant/respondent by applying the ratio of judgment passed by a Co-ordinate Bench of this Court in the case of **United India Insurance Company Ltd. Vs. Moda Ram & Ors.** (S.B. Civil Miscellaneous Appeal No. 516/1997), decided on 28.07.2004, contends that where no evidence was submitted to prove a fact, the very fact cannot be presumed, thus, learned Tribunal rightly decided the issue no.3 against the Insurance Company and, therefore, prays that the present appeals may be dismissed being devoid of merit.

5. Heard learned counsel for the parties and perused the material available on record.

6. In these matters, the appellant-Insurance Company has taken a plea that the driving licence of the driver of the offending vehicle was said to be issued by the licencing authority at Guwahati. It is an admitted position of this case that Insurance

Company did not try to call the licencing authority to prove or verify the fact that the driving licence attached as Exhibit-10 was not issued by it. Therefore, while relying upon the judgment passed by a Co-ordinate Bench of this Court in case of **Moda Ram & Ors.** (supra), in the present case, it cannot be presumed that the driving licence issued in favour of the respondent-driver was a fake one as the Insurance Company failed to call the licencing authority to prove or verify the fact that such authority did not issue that licence. Further, learned counsel appearing on behalf of the appellant-Insurance Company is not in a position to controvert the principle laid down in the case of **Moda Ram & Ors.** (supra), therefore, there is no merit in these appeals and the same are liable to be dismissed.

7. Accordingly, in the result, both the appeals are dismissed.

8. Pending application(s), if any, also stands dismissed.

(ASHUTOSH KUMAR),J

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