

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

**Reserved on: 13.02.2025**

**Pronounced on: 27.02.2025**

**MA No. 204/2008**

1. Viniak Sharma, Age 60 years .....Appellant(s)/Petitioner(s)  
S/O Shri Moul Raj Sharma  
R/O House No. 212 Krishna  
Nagar, Jammu

Through: Mr. P. N. Raina, Sr. Advocate with  
Mr. J. A. Hamal, Advocate.

**vs**

1. United India Insurance Company ..... Respondent(s)  
Jammu.
2. Mst. Gulshan Afroz Widow of Abdul  
Hamir Sheikh
3. Nusrat Hamid Minor daughter
4. Imran Hamid Minor son and Laisar  
Hamid minor son of Late Abdul Hamid  
Sheikh
5. Residents of Pateh-Kadal, Srinagar  
(Minors Th. Their Mother Respondent  
No. 2)
6. Dharampal S/O Kala Ram R/o Dag  
Galotra Chak, Samba (Driver).
7. Mohd. Sadiq Dar S/O Nabir Dar R/O  
Baghanpora Srinagar.
8. Imitiaz Ahmad Dar S/O Mohd. Sadiq  
Dar R/O Baghanpora, Srinagar  
Kashmir.

Through: Mr. Vishnu Gupta, Advocate.

**Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

**JUDGMENT**

1. The appellant had earlier filed an appeal against the award dated 30.07.2008 passed by the learned Motor Accidents Claims Tribunal, Jammu (for short the 'Tribunal') in claim petition titled "*Mst. Gulshan Afroz vs. Dharam Pal and others and Mohd. Sadiq Dar vs. Dharampal*

*and others*” which was dismissed by the Court vide judgment dated 06.12.2016.

2. The appellant being aggrieved of the same preferred SLP before the Hon’ble Supreme Court of India and the Hon’ble Supreme Court of India set-aside the judgment dated 06.12.2016 vide order dated 10.05.2024 passed in SLP No. 1392-1393/2018 and remanded the matter back to the High Court. This is how this appeal has come up for consideration afresh before this Court.
3. In fact, this case has a chequered history, as earlier the learned Tribunal vide award dated 08.05.1995 directed the respondent No. 1 to satisfy the award. The respondent No. 1 preferred an appeal and the matter came to be remanded back to the learned Tribunal vide order dated 22.11.2002 to determine the liability of owner and driver, as it was contended by the respondent No.1 that the license of the driver was fake. The learned Tribunal vide its award dated 30.07.2008 came to the conclusion that the driving license of the driver driving the offending vehicle was fake and as the awarded amount was already deposited by the respondent No. 1, liberty was granted to the respondent No. 1 to recover the award amount from the owner of the offending vehicle i.e. the appellant herein.
4. The appellant has filed this appeal against the award dated 30.07.2008 on the ground that the learned Tribunal has not properly appreciated the evidence on record and has taken an erroneous view that the owner of the insured vehicle is liable to pay the awarded amount, particularly when the Insurance Company had not discharged the burden cast upon it for proving that the driving license of the driver was fake. It is also urged that the

matter was remanded to the Tribunal to go into the question afresh as to whether the license was fake and as also to determine as to whether the owner was having knowledge regarding license being fake at the time when he employed the driver for driving the vehicle. It is also pleaded that the appellant at the time of engaging the driver for driving the said vehicle had properly checked the license and satisfied himself that the driver was expert and was in a position to drive the vehicle and he believed in *bona fide* that the driving license of the driver was valid as it was discernable from the license that it was initially issued by the Una Licensing Authority and thereafter the same was renewed by the Solan Licensing Authority. It is further pleaded that the respondent No. 1-Insurance Company has miserably failed to prove that it was within the knowledge of the appellant that the driver was having a fake license. It is also contended that the Insurance Company has neither examined the driver of the vehicle nor has summoned any record from the licensing authority, as such, the award to the extent of granting liberty to the respondent No. 1 to recover the amount from the appellant is not sustainable in the eyes of law.

5. Mr. P. N. Raina, learned senior counsel appearing on behalf of the appellant has argued that the appellant had appeared in the witness box and had clearly stated that he had employed the driver after examining his license and believing the license to be genuine. He has further argued that the respondent No. 1-Insurance Company has not discharged its liability to prove that the license was fake, and the appellant was aware about the license being fake.

6. Mr. Vishnu Gupta, learned counsel for the respondent No. 1 has argued that the learned Tribunal has rightly granted liberty to the respondent No. 1 to recover the award amount from the appellant, as such, the present appeal is misconceived.
7. Heard learned counsel for the parties and perused the record.
8. This Court vide its order dated 22.11.2002 had remanded the matter by observing that the Motor Accidents Claim Tribunal would go into the question afresh and determine the inter se liability between the Insurance Company and the owner. The learned Tribunal while deciding the claim petition vide award dated 08.05.1993 besides deciding other issues, also decided the following issue:

“Whether at the time of accident, the offending vehicle was being used in contravention of any of the terms and conditions of the insurance policy, if so, what is its effect on the liability of the Insurance Company to satisfy the award under Section 149 of Motor Vehicle Act?”

9. In order to prove the issue, the Insurance Company had examined Mr. H. K. Dhar, Assistant Administrative Officer, who produced the Insurance Policy of vehicle No. 6270-JKP and stated that in case the driver does not possess the valid driving license, the Insurance Company is not liable as per terms and conditions of the policy. He also stated that the license of the driver was issued by the licensing authority and on verification from the Office at Una by their surveyor, it was certified that the license had not been issued by the licensing authority. During cross-examination he stated that he did not get the license verified from the Solan Licensing Authority and the certificate obtained from the licensing authority Una does not bear any seal of the authority and that he obtained this certificate from his

office at Sangal. After the matter was remanded by this Court vide order dated 22.11.2002, the appellant appeared in the witness box and his statement was recorded on 08.02.2006. It would be appropriate to extract his statement as under:

“He stated that he is owner of the Jonga and he had employed Dharampal as driver for this Jonga. This Jonga was purchased by him in the year 1990-91. The driver was having license and he had seen the same. License was issued from Himachal. License of the driver was genuine. During cross-examination he stated that the driver was resident of Jammu. He did not get the license verified. He does not know that the license was not issued from Jammu. He did not find any necessity to get the license verified as the driver was earlier driving the vehicle. He did not enquire from the driver as to why he obtained the license from Himachal. He did not find any necessity to retain one copy of the license with him. He has no knowledge that the license was fake. He cannot produce the original insurance policy.”

10. It needs to be mentioned here that after the matter was remanded, the respondent No. 1 did not choose to lead any evidence and even after the statement of the appellant was recorded, the respondent No. 1-Insurance Company did not opt to lead any evidence in rebuttal. A perusal of the award impugned in this appeal reveals that the learned Tribunal has not at all adverted to the statement made by the appellant wherein he had categorically stated that he had examined the license of the driver and he believed the same to be genuine. The learned Tribunal vide order dated 27.02.2004 had framed following two issues for its determination:

- “1. Whether the driver of the offending vehicle was in possession of fake license to the knowledge of the owner of the vehicle, when he caused accident on 31.12.1992 near Tali Morh, Janipur, Jammu.
2. Relief.”

11. The onus to prove the above mentioned issue No. 1 was placed upon the Insurance Company. It is quite strange that the learned Tribunal while deciding the issue for which the matter was remanded, has not at all taken

into consideration the issue framed by the learned Tribunal itself vide order mentioned above. The onus was on the respondent No. 1-Insurance Company to prove that the owner was aware that the license was fake.

12. In this context, it would be appropriate to observe that once the Insurance Company did not lead any evidence to prove that the license was fake to the knowledge of the owner and even while cross-examining the appellant could not establish that he was aware that the license was fake, no liberty could have been granted to the respondent No. 1 to recover the awarded amount from the appellant.

13. In this context, it would be appropriate to take note of the judgment of the Hon'ble Apex Court in **Rishi Pal Singh vs. New India Assurance Co. Ltd and others** reported in **2022 SCC Online SC 2119**, relevant para whereof is extracted as under:

**“11. The owner of the vehicle is expected to verify the driving skills and not run to the licensing authority to verify the genuineness of the driving license before appointing a driver. Therefore, once the owner is satisfied that the driver is competent to drive the vehicle, it is not expected from the owner thereafter to verify the genuineness of the driving license issued to the driver.”**

**(emphasis added)**

14. A reference to the judgment of the Hon'ble Apex Court in case titled **Nirmala Kothari vs. United India Insurance Co. Ltd.** reported in **(2020) 4 SCC 49** would also be relevant, wherein at para 12 following has been held:

**“12. While hiring a driver the employer is expected to verify if the driver has a driving licence. If the driver produces a licence which on the face of it looks genuine, the employer is not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise. If the employer finds the driver to be competent to drive the vehicle**

and has satisfied himself that the driver has a driving licence there would be no breach of Section 149(2)(a)(ii) and the insurance company would be liable under the policy. It would be unreasonable to place such a high onus on the insured to make enquiries with RTOs all over the country to ascertain the veracity of the driving licence. However, if the insurance company is able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive, the insurance company would no longer continue to be liable.”

(emphasis added)

15. Further reference to the judgment of the Hon’ble Apex Court in case titled **Pepsu Road Transport Corporation vs. National Insurance Co.** reported in (2013) 10 SCC 217 would also be relevant, wherein at para 10 following has been held:

“10. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh cases if despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will

be at fault and, in such circumstances, the Insurance Company is not liable for the compensation.

**(emphasis added)**

16. This Court after examining the judgment finds that the learned Tribunal has not decided the controversy in a proper manner. The respondent No. 1-Insurance Company had not even proved the verification report from the licence issuing authority and also the surveyor, who got the license verified. On the contrary, after the matter was remanded, the appellant appeared before the learned Tribunal and notwithstanding the fact that the onus to prove the issue No. 1 as extracted above, was on respondent No. 1, the appellant demonstrated before the learned Tribunal that he had examined the license of the driver before engaging him and he did not find any necessity to verify the same from the licensing authority.
17. Viewed thus, the instant appeal is allowed and the award dated 30.07.2008 to the extent of granting liberty to the respondent No. 1 to recover the awarded amount from the appellant is accordingly set aside.
18. **Disposed of.**

**(RAJNESH OSWAL)**  
**JUDGE**

**Jammu**  
**27.02.2025**  
***Sakil Padha***

|                                  |         |
|----------------------------------|---------|
| Whether the order is speaking:   | Yes/No. |
| Whether the order is reportable: | Yes/No. |