

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No. 620 of 2014

Oriental Insurance Company Ltd.

.....Appellant

Versus

Anita Devi and others

.....Respondents

Present:-

Mr. M.K. Goyal, Advocate for the appellant.

Mr. Ravindra Singh Rawat, Advocate for the respondent nos. 1 to 3.

Mr. M.S. Bhandari, Advocate for the respondent no. 4.

Hon'ble Ravindra Maithani, J. (Oral)

Present appeal is preferred against the judgment and order dated 24.09.2014 passed in Motor Accident Claim Petition No. 37 of 2013, Anita Devi and others v. Ravindra Singh and others ("Claim Petition"), by Motor Accident Claims Tribunal/District Judge, Pauri Garhwal ("the Tribunal"), by which the claim petition filed by the claimants/respondent nos. 1, 2 & 3 herein has been allowed and they have been awarded compensation of Rs. 4,20,600.

2. Heard learned counsel for the parties and perused the record.

3. The claimants did file the claim petition on account of death of Pankaj Singh ("the deceased") in a motor accident on 16.06.2012. It has been the case of the claimants that on 16.06.2012, the deceased was travelling in a vehicle bearing Registration No. UK 07 TA/4467 ("the vehicle") and at about 05:00 in the morning, it met with an accident in village Dhanau. The deceased was 20 years of age at the time of accident and was getting Rs. 15,000/- per month as salary. The claimant/respondent no.1 Anita Devi is the mother of the deceased.

The claimant Deepak Singh/respondent no. 2 and the claimant Km. Neema/respondent no. 3 are his brother and sister, respectively.

4. The respondent no. 4 is the owner of the vehicle. He filed his objections to the claim petition denying the averments and has stated that the deceased was a gratuitous passenger. According to the respondent no. 4, the liability to pay the compensation is on the appellant.

5. The appellant also filed objections in the claim petition and denied the claim.

6. Based on the pleadings of the parties, following issues were framed in the Claim Petition:-

- “(1) Whether the accident took place on dated 16.6.2012 at 5 A.M., in between Pauri-Kaleshwar road near village Dhanau due to the rash and negligent driving by the driver of vehicle bearing No. UK 07TA/4467, in which deceased Pankaj died on account of injuries sustained in the said accident?
- (2) Whether all the documents relating to the offending vehicle including driving license of its driver were not valid and effective at the time of accident, if so, its effect?
- (3) To what amount of compensation, if any, the claimants are entitled and from whom?”

7. The claim petition proceed *ex parte* against the driver/respondent no. 5.

8. The parties led evidence in support of their claims.

9. On issue no. 1, the Tribunal held that the accident took place due to rash and negligent driving of the driver of the vehicle, due to which the deceased Pankaj Singh sustained grievous injuries and subsequently died.

10. On issue no. 2, the Tribunal held that the driver of the vehicle, who is the respondent no. 5, herein, had a fake driving license, but the owner of the vehicle even after due diligence had no knowledge that the driving license of the respondent no. 5, the driver, was fake. Thereafter, compensation has been awarded.

11. Learned counsel for the appellant submits that the driving license of the driver of the vehicle, who is respondent no. 5, was fake, therefore, liability cannot be fastened on the appellant. He would submit that, in fact, the deceased was a gratuitous passenger.

12. The Court wanted to know from the learned counsel for the appellant as to whether any plea had been taken by the appellant with regard to the deceased as gratuitous passenger? He would submit that as such specific plea has not been taken, but it is stated by the appellant that the vehicle was being plied against the terms of the insurance policy, permits, etc.

13. Admittedly, the vehicle was a passenger vehicle. The claim for compensation may not be denied merely on the saying that the passenger was a gratuitous passenger. For it, something more is required to be proved, which has not been proved in the instant case. In fact, as such no issue was framed in the claim petition. Therefore, on this ground, the impugned judgment and order may not be interfered with.

14. It is argued that the driving license of the driver of the vehicle was fake. It is true that the driving license of the driver of the vehicle was fake. But, the Tribunal has extensively discussed this aspect in para 23 of the impugned judgment and order.

15. DW 2 Ajay Nauriyal was an employee of the Assistant Regional Transport Officer. On being asked, in para 6 of his statement, he tells that he cannot say by a mere look that the driving license of the driver of the vehicle was fake. The Tribunal has quoted the statement of DW2 Ajay Nauriyal extensively.

16. Thereafter, the Tribunal quoted the judgment in the case of Pepsu Road Transport Corporation v. National Insurance Company, (2013) 10 SCC 217, wherein in paras 9 and 10, the Hon'ble Supreme Court observed as follows:-

“9.*Swaran Singh case [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733]* was subsequently considered by a two-Judge Bench of this Court in *National Insurance Co. Ltd. v. Laxmi Narain Dhut [(2007) 3 SCC 700 : (2007) 2 SCC (Cri) 142]* . It was explained that: (*Swaran Singh case [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733]* , SCC p. 341, para 110)

“110. (iii) ... 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 the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.”

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 case* [*National Insurance Co. Ltd. v. Swaran Singh*, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] . 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.”

17. In the instant case, the Tribunal has held that the owner of the vehicle has examined the driving license of the driver of the vehicle. He was competent to drive and beyond that the owner of the vehicle is not required to verify the driving license of the driver. In fact, this is what has been held by the Hon’ble Supreme Court in the case of *Pepsu Road Transport Corporation (supra)*.

18. Therefore, merely on this count that the driving license of the driver was fake, it cannot be said that appellant is not liable to pay the compensation. The owner of the vehicle had examined the driving license, which apparently was not looking fake by a mere look, as stated by DW 2 Ajay Nauriyal. The driver of the vehicle, who was driving the vehicle was competent. As held by the Hon'ble Supreme Court in the case of Pepsu Road Transport Corporation (*supra*), the owner of the vehicle was not required to get the driving license of the driver verified through the transport authorities.

19. It is also argued on behalf of the appellant that there was no evidence that the appellant was earning Rs. 4,000/- per month and the court has wrongly assessed the income of the deceased without any evidence.

20. This argument has no force. While deciding issue no. 3, the Tribunal has extensively discussed the law on the point. In cases of labourer, there cannot be any income with certainty. There is some guess work, which is always involved. But, to the optimum correct level, the assessment has to be done, which is done in the instant case and the Tribunal after examining every material on record, assessed the income of the deceased as Rs. 4,000/- per month.

21. There is no merit in the instant appeal. Accordingly, the appeal deserves to be dismissed.

22. The appeal is dismissed.

(Ravindra Maithani, J.)
30.05.2026