IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

MACA.No. 197 of 2014 ()

AGAINST THE AWARD DATED 19.02.2013 IN OP(MV) NO. 59/2010 ON THE FILES OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, KALPETTA

APPELLANT(S):

JAMEELA, AGED 47 YEARS, W/O POCKER,
1/326, BEERAL HOUSE, EDAVAKA P.O.,
MANATHAVADY, WAYANDAD DISTRICT.

BY ADVS.SRI.M.SASINDRAN
SRI.P.K.SUBHASH

RESPONDENT(S):

1. SANEESH.K.S., S/O SAID, KALAYAKOOTTATHIL HOUSE, EDAVAKA P.O., KALLODI, MANANTHAVADY TALUK, MANATHAVADY, WAYANAD DISTRICT - 670 645.

2. MANAGER, UNITED INDIA INSURANCE COMPANY LIMITED, RAWTHER BUILDING, MAIN RAOD, KALPETTA P.O. - 673121, WAYANAD DISTRICT.

3. AFSATH, AGED 33 YEARS, W/O LATE HARIS, POYILAN HOUSE, EDAVAKA P.O., MANATHAVADY TALUK, WAYANAD DISTRICT 670645

4. FEMINA FERVIN, AGED 13 YEARS, D/O LATE HARIS, POYILAN HOUSE, EDAVAKA P.O., MANATHAVADY TALUK, REPRESENTED BY HER NEXT FRIEND AND GUARDIAN MOTHER AFSATH, W/O LATE HARIS, POYILAN HOUSE, EDAVAKA P.O, MANANTHAVADY TALUK, WAYANAD DISTRICT 670 645,

5. ASIF SAHIR, AGED 11 YEARS, S/O LATE HARIS, POYILAN HOUSE, EDAVAKA P.O., MANANTHAADY, REPRESENTED BY HIS NEXT FRIEND AND GUARDIAN MOTHER AFSATH, W/O LATE HARIS, POYILAN HOUSE, EDAVAKA P.O, MANATHAVADY TALUK, WAYANAD DISTRICT 670645.

6. MOITHU, S/O KUNHAMMED, AGED 73 YEARS, POYILAN HOUSE, EDAVAKA P.O., MANATHAVADY TALUK, WAYANAD DISTRICT 670645

8. NABEESA, W/O MOITHU, AGED 58 YEARS,
POYILAN HOUSE, EDAVAKA P.O.,
MANANTHAVADY TALUK,
WAYANAD DISTRICT 670645.

R2 BY ADV. SRI.T.V.AJAYAKUMAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 25-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON & ANIL K. NARENDRAN, JJ.

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M.A.C.A. No.197 of 2014

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Dated, this the 25th day of November, 2015

JUDGMENT

Anil K. Narendran, J.

The appellant is the second respondent in O.P.(MV) No.59 of 2010 on the file of the Motor Accidents Claims Tribunal, Wayanad, an application filed by respondents 3 to 7 herein, claiming compensation for the death of one Haris who died in a motor accident occurred on 27.11.2009. According to the claimants, on the date of the accident, the deceased was travelling in a motorcycle bearing registration No. KL-10/F-2562. When the motorcycle reached at the place of accident, a taxi jeep bearing registration No. KL-10/J-144 owned by the appellant and driven by the first respondent came in a rash and negligent manner and hit the motor cycle, resulting fatal injuries to the deceased, who succumbed to injuries on the date of accident itself. Respondents 3 to 7, the wife, children and parents of the deceased, filed claim petition before the Tribunal claiming a total compensation of Rs.8,00,000/- under different heads.

2. The first respondent, the driver of the taxi jeep, though entered appearance, did not file any written statement. The appellant, the owner of the jeep, filed written statement denying the negligence

attributed to the first respondent, driver and contended, inter alia, that the accident occurred due to the rashness and negligence on the part of the rider of the motorcycle. The second respondent, the insurer of the jeep, filed written statement admitting the insurance coverage of the taxi jeep and denying the rashness and negligence attributed to the first respondent driver. However, they contended that, since the first respondent was not holding a valid driving licence, there is violation of the policy conditions.

3. Before the Tribunal, Exts.A1 to A8 were marked on the side of the claimants. The second respondent insurer filed I.A.No.1992 of 2012 and obtained an order directing the appellant and the first respondent driver to produce the driving licence. The first respondent driver did not respond to the said direction. However, the second respondent owner produced an attested copy of the driving licence of the first respondent driver. Since the Tribunal doubted the genuineness of the document, the appellant was directed to produce the original driving licence. On 21.12.2012, appellant produced the original driving licence of the first respondent. On verification of the original licence, the Tribunal noticed a correction in the name of the licence holder. The Tribunal addressed the licensing authority to furnish the particulars of the driving licence. In response to the said direction, the licensing authority forwarded the particulars of the said driving licence, as per

which the holder of the said licence is one 'Somesh' and not 'Saneesh', the first respondent herein.

4. Therefore, the Tribunal in its Award dated 19.02.2013 concluded that the first respondent driver was not holding a valid driving licence at the time of accident and that, the conduct of the appellant in causing production of a forged document would show his culpable mental condition that he was fully aware that the first respondent had no driving licence to drive the jeep. After considering the pleadings and materials on record, the Tribunal held that the accident occurred due to the rash and negligent driving of the jeep by the first respondent. Since breach of policy conditions stands proved, the second respondent insurer of the jeep was exonerated from the liability. The Tribunal allowed the claim petition awarding a total compensation of Rs.5,13,500/- under different heads and the first and second respondents were found jointly and severally liable to pay the compensation amount awarded to the claimants. It is challenging the aforesaid Award passed by the Tribunal, the appellant/the owner of jeep is before this Court.

5. We heard the arguments of the learned counsel for the appellant and also the learned counsel appearing for the second respondent insurer.

6. The main contention raised by the learned counsel for the appellant is that the appellant was under the bona fide belief that

the first respondent was holding a valid driving licence to drive the vehicle in question. Therefore, even if it is found that Ext.B1 driving licence is a fabricated one, the second respondent insurer cannot be absolved from the liability in view of the judgment of the Apex Court in **Pepsu Road Transport Corporation v. National Insurance Company (2013 (10) SCC 217)**.

7. The finding of the Tribunal in Para.18 of the Award regarding breach of policy condition is extracted hereunder:

> "The insurance coverage of the offending vehicle with the third respondent is conceded. But the third respondent would contend that the first respondent was not having driving licence to drive the Jeep and hence the breach of policy conditions is established. To support this fact, the third respondent had obtained a direction as per I.A. 1992/2012 to the first and second respondents to cause production of the driving licence of the first respondent. But, the first respondent did not respond to the direction. However, the second respondent had caused production of the attested copy of a driving licence stated to be that of the first respondent. The Tribunal had doubted the genuineness of the copy of the document filed by the counsel for the second respondent. Therefore the second respondent was directed to cause production of the original of the driving licence. On 21.12.2012, the counsel for the second respondent had caused production of the original of the driving licence and submitted that the driving licence was collected from the first respondent and the same may be returned as required by the first respondent. On verification of the original driving licence, the Tribunal had noticed a correction in the name of the

licence holder. Therefore, the Tribunal had addressed the concerned licensing authority for the particulars of the driving licence. The original licence was then returned since the lawyer appearing for the second respondent had insisted so. The Tribunal had genuine doubt regarding the bonafides of the conduct on the part of the counsel for the second respondent. The copy of the driving licence produced by the second respondent is marked as Ext. B1. In response to the direction of the Tribunal, the licencing authority- Kodagu Madikkari had sent a letter with the copy of the licence and the extract of the licence particulars. The above communication and the enclosures would show that the licence was issued in the name of one Somesh and not in the name of Saneesh as seen in Ext. B1. The D.L. Particulars received as Ext.P1 would unveil the forgery committed in the case. In this regard, it is pertinent to note that the counsel appearing for the first respondent never appeared before this Tribunal though he was alerted through the notice to cause production of the driving licence of his client. The entire action in this regard was done by the counsel for the second respondent behind the back of the counsel for the first respondent. There was a calculated attempt to concoct a document by correcting the name in the original licence and by misleading a government servant in getting the same attested and thereafter caused production of Ext. B1 without the knowledge of the lawyer appearing for the first respondent. The cunningness in getting back original of the licence on the ground that the same was required by the licence holder also appeared to be a deliberate attempt to deprive the Tribunal from proceeding against the culprit for want of the original of the forged document. Though the conduct of the second respondent in procuring an attested

> copy of a document after concocting the original driving licence to mislead the Tribunal is a serious act, the Tribunal finds that, its valuable time need not be wasted for conducting a probe with regard to the perpetration of the fraud committed to the court since the time intended to utilize to redress the victims of the motor occurrence will be lost. On consideration of the above circumstance, the Tribunal is not inclined to pursue the matter further with regard to the forgery. On consideration of the evidence on record, it is clear that Ext. B1 is in respect of one Somesh and not the first respondent. The first respondent had no driving licence at the relevant time. The conduct of the second respondent in causing production of the forged document would show his culpable mental condition that he was fully aware that the first respondent had no driving licence to drive the jeep. Therefore, the breach of policy conditions is proved and no ultimate liability would be saddled on the third respondent. But, the third respondent should pay the compensation first to the petitioner since the deceased was a third party. The respondent Nos.1 and 2 being the driver and owner of the offending vehicle are found jointly and severally liable to pay the compensation to the claimant. Issue is found accordingly".

8. A reading of the Award of the Tribunal would show that the second respondent insurer, in order to substantiate its contention that the first respondent was not holding a valid driving licence at the time of accident, filed I.A.No.1992 of 2012 to cause production of his driving licence. Based on the order passed by the Tribunal in the aforesaid interlocutory application, the appellant, the owner of the vehicle, produced Ext.B1 copy of driving licence. The Tribunal

doubted the genuineness of that document and therefore, the appellant was directed to produce its original. On 21.12.2002, the learned counsel who was representing the appellant before the Tribunal produced the original driving licence. On verification of the same, the Tribunal noticed a correction in the name of the licence holder. Therefore, the Tribunal addressed the licensing authority for the particulars of Ext.B1 driving licence. In the meantime, the aforesaid counsel got back the original driving licence from the Tribunal. In response to the direction issued by the Tribunal, the licensing authority issued Ext.X1 licence particulars, as per which, the name of the licence holder of Ext.B1 licence is one 'Somesh' and not 'Saneesh', the 1st respondent herein. It was after considering the materials on record, the Tribunal came to the conclusion that there was a calculated attempt to concoct a document, correcting the name in the original driving licence and getting the copy of the same attested by misleading a Government servant and thereafter produced it before the Tribunal. The appellant being a party to the fraud played before the Tribunal, cannot now contend that he was under a bona fide belief that the first respondent was holding a valid driving licence to drive taxi jeep.

9. In **National Insurance Company v. Swaran Singh (2004 (3) SCC 297)**, the Apex Court held that the person who alleges breach must prove the same. The insurance Company is,

thus, required to establish the said breach by cogent evidence. In the event, the Insurance Company fails to prove that there has been breach of conditions of policy on the part of the insured, the Insurance Company cannot be absolved from its liability. The Apex Court held further 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 third parties. To avoid its liability towards 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 conditions of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

11. In Pepsu Road Transport Corporation's case (supra), a decision relied on by the learned counsel for the appellant, the Apex Court held that in order to avoid liability, the insurer's defence that the driver had fake driving licence at the time of accident in breach of conditions of policy, is insufficient and the onus is still on the insurer to prove that the owner of the vehicle failed to take reasonable care in employing a qualified and competent driver having valid licence. The Apex Court held further that, when the owner of the vehicle hires a driver, he has to check whether the driver has a valid driving licence. Thereafter, the owner 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. Para.10 of the judgment reads thus:

> "**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's case (supra). 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."

12. Therefore, in view of the principle laid down by the Apex Court in the decisions cited supra, 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. In the case on hand, the appellant had not taken such reasonable care while employing the first respondent as driver of his taxi jeep. If he had taken such a reasonable care, it could have been found that the first respondent is not holding a valid driving licence to drive the vehicle in question. Having failed to do so, the appellant cannot now contend that he was under the bona fide belief that the first respondent was holding a valid driving licence to drive the vehicle in question and as such the second respondent insurer cannot be absolved from the liability to pay the amount of compensation to respondents 3 to 7. The appellant, who had even gone to the extent of producing a fabricated driving licence before the Tribunal, should have been proceeded against for an offence punishable under Section 193 of the Indian Penal Code. In the

above circumstances, we find absolutely no grounds to interfere with the reasoning of the Tribunal in the impugned Award exonerating the second respondent insurer from the liability to pay compensation to respondents 3 to 7 herein.

14. The quantum of compensation awarded by the Tribunal under different heads is not under challenge in this appeal.

15. In the result, we find absolutely no grounds to interfere with the Award passed by the Tribunal.

The appeal fails and the same is dismissed. No order as to costs.

Sd/-
P. R. RAMACHANDRA MENON,
JUDGE

Sd/-
ANIL K. NARENDRAN,
JUDGE

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True copy

P.S.to Judge