IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

X-Obj. No. 183-CII of 2014 AND
FAO NO. 3000 OF 2002 (O&M)
DECIDED ON : 09.07.2015

Surinder Kaur and others
...Appellants

versus

Amar Singh and others
...Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. S. K. Gupta, Advocate for
Mr. L. M. Gulati, Advocate,
for the appellants.

Mr. Nitin Goyal, Advocate,
for the cross-objectors.

Mr. R. C. Kapoor, Advocate,
for respondent-Insurance Company.

K. C. PURI, J.

Vide this common judgment, ***FAO No. 3000 of 2002*** titled as, ***"Surinder Kaur and others vs. Amar Singh and others"*** and ***Cross-objections No. 183-CII of 2014,*** are being disposed of as the same have arisen out of the common Award.

The appellants/claimants have directed this appeal against the Award dated 04.08.2001 passed by Shri B. S. Mangat, Motor Accident Claims Tribunal, Patiala, vide which the claim petition preferred by the claimants on account of death of Jarnail Singh in a motor vehicular accident, was accepted and a sum of ₹2,93,000/- was awarded to the claimants. Whereas the owner of the offending vehicle filed cross-objections for setting aside the above said Award vide which recovery rights were given to the Insurance Company. The Tribunal directed the Insurance Company to pay the amount of compensation. However, it was observed that since the driver of the offending vehicle was not holding the valid driving license, as such, the recovery rights were given to the Insurance Company.

CR0SS-OBJECTIONS NO. 183-CII OF 2014

First of all the cross-objections have to be entertained.

The owner of offending vehicle namely Satwant Kaur filed cross-objections in the year 2014 alleging therein that notice of the appeal has been issued and as such, the cross-objections are within limitation.

The file of this court seems to have been burnt in the fire incidence and as such, it is not clear whether the owner/cross-objector was served or not. Therefore, the objection that the cross-objections are time barred, cannot be accepted and the cross-objections are being decided on merits.

Learned counsel for the cross-objector has submitted that owner/cross-objector has placed on record the verification made by Mr. N. S. Jolly, Surveyor and Loss Assessor of the company who in his report Annexure A-1 has stated that Driving license No. 3117/UNA/90 is valid and it has been renewed twice from DTO, Faridkot. It is further submitted that in view of above said factual position, the recovery rights cannot be given to the Insurance Company.

Learned counsel for the cross-objector has further submitted that even if for the sake of argument, it is presumed that original driving license is not valid, in that case also, the Insurance Company cannot absolve its liability to pay the amount of compensation. The Insurance Company is not only required to prove the fact that the driving license was fake but also to prove that the owner has the knowledge of the fact that driving license is fake. It is further submitted that the driving license, as per record, was issued in the year 1990 and the accident had taken place in the year 1996. It is further submitted that the driving license was renewed twice from DTO, Faridkot. So, the cross-objector has no idea that the said driving license was fake. It is further submitted that in authority ***"New India Assurance Company Limited vs Shanti Devi and others" 2006 (1) RCR (Civil) 664***, the Insurance Company was held liable even when the driving license was found fake as the Insurance Company has failed to prove that the insured was guilty of any negligence and failed to exercise reasonable care in the matter of fulfilling the conditions of policy regarding use of vehicles by a duly licensed driver.

He has further relied upon authorities, ***"Pepsu Road Transport Corporation vs. National Insurance Company" 2013 (4) RCR (Civil) 273; "Punam Devi and another vs.***

Divisional Manager, New India Assurance Company Limited" 2004 (2) RCR (Civil) 236; "National Insurance Company Limited vs. Swaran Singh and others" 2004 (2) RCR (Civil) 114 (SC).

Learned counsel for the claimants/appellants have supported the arguments advanced by learned counsel for the cross-objector.

However, learned counsel for the Insurance Company has supported the Award passed by the Tribunal and has contended that in case the driving license is found to be fake, in that case the Insurance Company has a right to recover the amount. Once the driving license is found to be fake, the recovery rights have to be given to the Insurance Company. To support this contention, he has relied upon authority ***"Oriental Insurance Company Limited vs. Prithvi Raj" 2008 ACJ 733***.

Learned counsel for the cross-objector has submitted that Oriental Insurance Company Limited's case (supra) is not applicable to the facts of present case. It is further submitted that the said case relates to repudiation of owner in respect of no damage where the driving license was found to be fake. It is further submitted that there is distinction between repudiating the claim of owner on the basis of fake driving license and the case where third party files claim petition against the owner and Insurance company. In the latter case, the Insurance Company has also to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the conditions of policy regarding use of vehicle by duly licensed driver or one who was not disqualified to drive at the relevant time.

I have considered the submissions made by both the sides and have gone through the records of case.

So far as proposition of law that once the original driving license is fake and its subsequent renewal does not make it a valid document is concerned, that proposition of law has not been disputed in this case. However, the controversy in the present lis is whether Insurance Company has been able to make out a case to absolve itself from the liability to pay the amount. It is proved on record that the original driving license No.3117/UNA/90 was not issued in the name of driver of offending vehicle and was issued in some other name as proved by RW-3 Sanjay Kumar, Clerk of Licensing Authority, Una. The learned Tribunal relying upon the testimony of RW-3 Sanjay Kumar reached to the conclusion that the driving license No. 3117/UNA/90 issued in the name of Amar Singh-respondent No.1 is a fake document. The subsequent renewal of driving license does not make it a valid document.

However, the moot question whether on the facts of present case, the Insurance Company has been able to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the conditions of policy regarding use of the vehicle by duly licensed driver. From the evidence available on file, it is revealed that the license was said to be issued in the year 1990 from Una. It was renewed two times thereafter. The basic authority in this regard was pronounced by the Hon'ble Apex Court in ***National Insurance Company Limited vs Swaran Singh's case (supra)*** in which it was observed as under :-

> " The breach of policy condition e.g disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149 have to be proved to have been committed by the insured for avoiding liability by the insurer. 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 conditions of the policy regarding use of vehicles by a duly licensed driver or one who was not qualified to drive at the relevant time."

Since the driving license was renewed twice i.e in the year 1993 and 1996 and as such, the owner could not visualize the fact that the said driving license could be fake. The Division Bench of this Court in authority ***"Oriental Insurance Company Limited vs Ashwinder Singh and others" 2006 (3) RCR (Civil) 120,*** while relying upon authority reported in ***National Insurance Company Limited vs Swaran Singh's case***

(supra) has held that insurance company cannot be absolved of this liability unless it is proved that owner/insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the conditions of the policy. Again the Hon'ble Apex Court in ***Punam Devi and anothers' case (supra)*** and ***Pepsu Road Transport Corporation's case (supra)***, the stand taken in ***National Insurance Company Limited vs Swaran Singh's case (supra)*** was relied upon and it was observed by the Hon'ble Apex Court that the Insurance Company is also required to prove that the insured was negligent in respect of the driving license. That evidence is missing in the present case.

The Single Bench of this Court in New India Assurance Company Limited's case (supra), also relied upon the ratio of the judgment passed in ***National Insurance Company Limited's case (supra).***

So far as authority ***Oriental Insurance Company Limited's case (supra)*** relied upon by Insurance Company is concerned, the same is distinguishable as in that case the driving license was found to be fake and the Insurance Company was repudiated the claim of owner in respect of damage caused to the vehicle. Under these circumstances, the claim was dismissed and the order of repudiating was held valid on account of fake driving license. However, the present case relates to Section 149 of the Motor Vehicles Act and the Hon'ble Apex Court in the authorities referred to above, has held that the Insurance Company has to prove that insured is negligent or failed to exercise reasonable care in the matter of fulfilling the conditions of policy regarding use of vehicles by duly licensed driver.

So, I have no hesitation in holding that the Insurance Company has failed to prove that the insured/cross-objector has failed to take due care while employing the driver of the offending vehicle.

In these circumstances, the cross-objections are accepted. The findings given by the Tribunal on Issue No.2 stands reversed and the same stands decided against the Insurance Company. The Insurance Company has no right to recover the amount from the insured and the Award passed by the Tribunal qua that part of judgment stands set-aside.

FAO NO. 3000 OF 2002

The claimants have preferred this appeal for enhancement of compensation.

Learned counsel for the claimants/appellants has submitted that the income of the deceased has been assessed on lower side. Jarnail Singh-deceased was having 05 acres of land and as such, the income of the deceased should not be less than Rs.7000-8000/- per month. It is further submitted that future prospects have not been taken into account while assessing the amount of compensation. The claimants are four in number and as such, deduction in respect of personal expenses should not be more than 1/4th. No amount in respect of consortium and loss of love and affection has been allowed to the claimants. The amount of ₹5000/- in respect of funeral expenses is also on lower side.

Learned counsel for the Insurance Company has submitted that the dependency of ₹1600/- per month has been taken and the same cannot be said to be on lower side. The agricultural land is still there and only loss in respect of managing the same has been caused to the claimants. The deceased was 45 years of age. So multiplier cannot be more than 14 in view of authority ***"Sarla Verma and others vs. Delhi Transport Corporation and anr." 2009 (3) RCR (Civil) 77.***

The Tribunal has taken the dependency as Rs.1600/- per month. The Tribunal has not taken into account the future prospects. So in view of authority ***"Rajesh and others v. Rajbir Singh and others" 2012 (2) Apex Court Judgments 245 (SC) and Civil Appeal No. 4497 of 2015 decided on 15.05.2015 titled as "Munna Lal Jain and another vs Vipan Kumar Sharma and others",*** future prospects to the extent of 30% has to be added at the age of 45 years. So, by adding that amount, the dependency comes to ₹2080/- per month. The yearly dependency comes to ₹24,960/-. The multiplier applicable at the age of 45, as per ***Sarla Verma and others' case (supra),*** is 14. So, by applying the multiplier of 14, the amount comes to ₹3,49,440/-. The claimants are further held entitle to claim ₹10,000/- in respect of expenses on last rites and transportation of dead body. The widow is further held entitle to claim ₹25,000/- in respect of consortium. The claimants are also held entitle to claim ₹25,000/- in respect of loss of love and affection. In this manner the claimants are held entitle to claim ₹4,09,440/- say ₹4,09,500/-. The enhanced amount shall carry interest @ 7.5% per annum. The liability to pay whole of the amount of compensation would be that of owner, driver and insurance company jointly and severally. The recovery rights given by the Tribunal to the Insurance Company shall not be available to it. The primary liability to pay the amount of compensation shall be that of Insurance Company.

In view of the above, the cross-objections as well as the appeal stand disposed of accordingly.

JULY 09, 2015 **(K. C. PURI)**
shalini **JUDGE+**