IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2508 of 1994 (O&M)
Date of Decision: February 21, 2015

The Oriental Insurance Company Ltd.

..Appellant(s)

Versus

Bachni Devi and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the digest? Yes

Present: Mr. D.P. Gupta, Advocate
for the appellant.

Mr. Madan Sandhu, Advocate
for respondents no.1 to 6.

Mr. R.S. Sihota, Senior Advocate with
Mr. B.R. Rana, Advocate
for respondent no.7.

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ANITA CHAUDHRY, J.

1. This appeal is at the instance of the insurance company seeking discharge of its liability of payment of compensation in a claim filed under the Motor Vehicles Act on the plea that the driving license was fake.

2. Referring to the facts first; the claimants filed a petition seeking compensation for the death of Piara Singh in

a motor accident which occurred on 13.08.1991. The insurance company took the plea that the driver was not possessing a valid driving license. A specific issue was framed in this regard. The Motor Accident Claims Tribunal, Rupnagar (here-in-after referred to as 'the Tribunal') recorded a finding that the owner, before engaging the driver had taken all the precautions before employing the driver and the license had been renewed. Relying upon ***Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravendan & Ors. 1987 (2) CLJ 400***, the Tribunal did not accept the submissions of the insurance company and decided the issue in favour of the claimants.

3. In this appeal, an application for additional evidence was filed by the insurance company which was allowed. The appellants examined the official from the Registring & Licensing Authority, (M.V.), Kalpa at Reckong Peo, District Kinnaur (H.P.). The witness deposed that no driving license bearing no.77254 dated 14.10.1988 had been issued to Amarjit Singh. It was reported that only 35 licenses had been issued by the insurance company in a span of about 14 months. There was no cross-examination by the owner/driver.

4. The submission made on behalf of the appellant-insurance company was that a person cannot hold two licenses and the license which was handed over by the driver to the police was placed in the criminal file which had been summoned by them and in the cross-examination, the counsel appearing for respondents no.1 & 2 had referred to that

driving license Ex.PW4/B and it was got verified and there is a report that no such license had been issued. It was urged that subsequently the owner introduced another license Ex.RW/1 in evidence and the insurance company was made liable. It was urged that there was violation of the policy and the insurance company was entitled to recover the amount paid to the claimants. Reliance was placed upon ***New India Assurance Company, Shimla Vs. Kamla & others (2001) 4 SCC 342***.

5. The submission on behalf of the respondents was that the driver was holding a license to drive a heavy motor vehicle and there is a report that the license was renewed and the record produced by the Licensing Authority, Kalpa pertained only to licenses issued for Motorcycles/LMV and there is not a single renewal or any license issued for heavy motor vehicles and the entire record had not been produced. It was urged that the requirement of law is that where the owner deposes that the driver had a valid driving license and he had satisfied himself regarding his competence, that itself, is sufficient and the insurance company cannot avoid its liability and here the owner had stepped into the witness box and had satisfied himself that the driver had a license and was driving competently and the insurance company could not have been absolved. It was urged that the issue had been examined by the Hon'ble Apex Court in the later judgments reported as ***Pepsu Road Transport Corporation Vs.***

National Insurance Company, Civil Appeal No.8276 of 2009 (S.C.), decided on 26.08.2013, Lal Chand Vs. Oriental Insurance Co. Ltd. 2006(4) RCR (Civil) 204, National Insurance Co. Ltd. Vs. Geeta Bhat & Ors. 2008(3) RCR (Civil) 44 and United India Insurance Co. Ltd. Vs. Lehru and others, Vol CXXXIV-(2003-2) PLR 124.

6. Responding to the arguments, the submission on behalf of the appellant was that in *Pepsu Road Transport Corporation's* case (supra) the facts were entirely different and when a Corporation engages its drivers, a test is taken and a special training is given and nowhere the owner has said that he had tested the competency of driver and the cross examination would show that the owner knew that the earlier license was fake and in that situation, the owner should have got the driving license verified. It was urged that the owner and driver were represented by the same counsel and they had produced the first license on record.

7. A perusal of the record shows that the claimants had summoned the Ahlmad with the record of the criminal case. The claimants had got placed on record the postmortem report. In the cross-examination conducted on behalf of respondents no.1 & 2, the driving license of Amarjit Singh was got placed on record. It is pertinent to mention here that respondents no.1 & 2 were represented by the same counsel before the Tribunal. The driving license which was handed

over to the police by the driver was found to be fake. It is the same license which the owner/driver had got it placed on record.

8. The insurance company got that license verified and according to report Ex.R1 it was fake. The driver did not step into the witness box but the owner came forward and produced another license Ex.RW/1. In the cross-examination he explained that when this license was handed over to him, he was told that the earlier license was fake. The owner did not make any effort to find out or get this license verified. There is an admission that the driver had brought to his notice that the first license was fake.

9. The insurance company did not get time for verification of the second license. In appeal, the prayer for additional evidence was allowed and the witness from concerned licensing authority reported that no such license had been issued. No cross-examination was conducted by the claimants.

10. The question is whether the insurance company could be given recovery rights in the present circumstances. It is settled that a fake driving license which is unwittingly renewed by the licensing authority, does not acquire legal validity and it remains counterfeit document. The owner driver had sought help of Pepsu Road Transport Corporation's case (supra) but it is of little help as the facts here are entirely different. In the present case, the owner knew that the license

was fake. The burden upon him was heavy. He still permitted that person to drive. As held in Skandia, Sohan Lal Basi and Kamla's cases (supra), the insurance company was to remain liable to third party but recovery rights had to be given to the insurance company. In *Swaran Singh's* case, the Hon'ble Supreme Court had made it clear that each case shall have to be examined on the basis of facts of that case. The relevant paragraphs 92, 99, 100 & 101 are extracted below:-

> "**92.** It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of the wilful breach of the conditions of the insurance policy or the contract of insurance. In Lehru case, the matter has been considered in some detail. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of the law in terms whereof the insurer is to establish wilful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or for the owners to be absolved from any liability whatsoever."
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> "**99.** So far as the purported conflict in the judgments of Kamla and Lehru is concerned, we may wish to point out that the defence to the effect that the licence held by the person driving the vehicle was a fake one, would be available to the insurance companies, but whether despite the same, the plea of default on the part of the owner has been established or not would be a question which will have to be determined in each case."

> "**100**. This Court, however, in Lehru must not be read to mean that an owner of a vehicle can under no circumstances have any duty to make any enquiry in this respect. The same, however, would again be a question which would arise for consideration in each individual case."
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> "**101**. The submission of Mr. Salve that in Lehru case, this Court has, for all intent and purport, taken away the right of insurer to raise a defence that the licence is fake does not appear to be correct. Such defence can certainly be raised but it will be for the insurer to prove that the insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver."

11. The owner had failed to exercise reasonable care in the matter of fulfilling the conditions of the policy and had ignored the fact that the first license possessed by the driver was fake, therefore, in that situation, the owner of the vehicle was expected to get the license duly verified from the licensing authority, specially as it had been brought to his attention by the driver. The owner was at fault and in such circumstances, the insurance company was not liable. It would be relevant to quote paragraph no.8 of Pepsu Road Transport Corporation's case:-

> **"8.** 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."***

(Emphasis is Mine)

12. In the present case, there is no evidence that in the process of employment, the owner had put the driver to a driving test or he had been imparted special training by the licensing authority. No attempt was made by the owner to verify the second driving license. Therefore, recovery rights ought to have been granted to the insurance company. The

fake license did not acquire legal validity by any process of sanctification whatsoever including renewal by the statutory authority. The appeal is allowed and the finding recorded on issue no.4 is modified and it is held that the compensation was to be firstly paid by the insurance company and they had the right to recover the same from the owner driver.

With this modification, the appeal is allowed.

(ANITA CHAUDHRY)
JUDGE

February 21, 2015
sunil