IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. FAO No. 68 of 1994

Oriental Insurance Co. Ltd. ...Appellant

Versus

Bhagwanti and others ...Respondents

2. FAO No. 69 of 1994

Oriental Insurance Co. Ltd. ...Appellant

Versus

Shankri and others ...Respondents

Date of decision:- 25.08.2015

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Bhupesh Dogra, Advocate
for the appellants in FAO No. 68 and 69 of 1994.

Mr. Sunil Dixit, Advocate
for respondent Nos. 1 and 2 in FAO No. 68 of 1994 &
for respondent Nos. 1 to 6 in FAO No. 69 of 1994

Ms. Nidhi Ayer, Advocate
for respondent No. 3 in FAO No. 68 of 1994 &
for respondent No. 7 in FAO No. 69 of 1994

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J. (Oral)

1. Two appeals, as noticed above, are being disposed of by this single judgment, having arisen out of the impugned Award dated 15.10.1993 passed by the learned Motor Accident Claims Tribunal,

Ropar.

Facts not in dispute

2. On 04.02.1991, Sher Singh was going on a cycle following the road leading from Kharar to Ropar and when he reached near village Sahauran, a truck coming from behind hit his cycle and he died on the spot and this truck further crushed Babaljit Singh, who was going on his bicycle to his village Sahauran, who also succumbed to the injuries at the spot.

Arguments Advanced

3. The learned counsel for the appellant-Insurance Company contends that the driver of the vehicle was not holding a valid and proper driving licence at the time of accident, thus, Insurance Company is not liable to pay the compensation along. Learned counsel for the appellant is against recovery rights.

4. Further, learned counsel for the appellant contends that Balbir Singh-Driver did not enter into the witness box and the driving licence (Mark A) held by him was not admissible in evidence for want of proof. Further, Vinod Kumar, License Clerk, S.D.M Office, Una while appearing as R.W deposed that an application Ex R3 was the submitted to the Licensing Authority, Una for verification of the License and Ex R3/A is the report. He further stated that License No. 28782 of 1987

was neither issued nor renewed by the Licensing Authority Una. Thus, the license held by the driver Balbir Singh was fake and not a valid driving license.

5. On the other hand, Mr. Sunil Dixit, Advocate has contended that the insurance company cannot be absolved of its liability as the vehicle was insured with the Insurance Company, vide Ex R-2.

6. I have heard learned counsel for the parties and perused the record. The present appeals are liable to be dismissed

Conclusion

7. The facts which are not in dispute are that the two persons have lost their lives and F.I.R has been registered in this regard (Ex A1) on the statement of Sarup Singh. The offending vehicle was fully insured from the appellant-company. The only question which requires determination is as to whether the appellant-Insurance Company can take a plea that the learned Tribunal has fell in holding that the appellant-Insurance Company is liable to satisfy the award even though the vehicle was being driven at the time of the accident in contravention of the terms and conditions agreed between the parties, as contained in the policy of the Insurance.

8. Once Sarup Singh eye witness has stated in his examination that the accident has occurred due to the negligence of the driver of

the offending truck bearing No. CHW4812, thereafter, only on the ground that the driver has not appeared in the witness box, this statement is not to be discarded. Des Raj-owner of the truck has admitted the factum of accident and further stated that Balbir Singh was his driver and was driving the truck on the fateful day.

9. Further, the Insurance Company cannot be absolved of its liability as Des Raj-owener of the truck in his statement has clearly stated that he had employed Balbir Singh as his truck driver in August, 1990 and he had left the job about six months prior to his statement. Earlier he was working with Bharat Motor Transport and he had checked his license before he was employed. He never suspected that Balbir Singh was holding a fabricated driving license

10. Reference at this stage can be made to a judgment of Hon'ble the Supreme Court in a case of ***Pepsu Road Transport Corporation vs. National Insurance Company, 2013 (1) SCC 217*** wherein in para 7 and 8 of the judgment, it has been observed as under:-

> *"7. Swaran Singh's case (supra) was subsequently considered by a two-Judge Bench of this Court in National Insurance Company Limited vs. Laxmi Narain Dhut, 2007(3) SCC 700 . It was explained that:*
>
> *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 duly licensed driver or one who was not disqualified to drive at the relevant time..."*

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 thevehicle 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."*

11. Applying the ratio of the above judgment of Hon'ble the Supreme Court to the facts of the present case wherein the Insurance Company has not taken a stand before the Tribunal that after the

policy has been issued by the Insurance Company to the owner of the vehicle, they had informed him to verify the license of the driver. Thus, the learned Tribunal has rightly awarded the compensation to the claimants and directed the Insurance company to pay the compensation to the claimants.

12. The appeals are dismissed, being devoid of any merits.

August 25, 2015 (***RITU BAHRI***)
G Arora ***JUDGE***