

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 1159 of 2000 (O&M)
Date of decision 27 .05. 2015.

United India Assurance Co. Ltd. Appellant.

versus

Surinder Singh and others
..... Respondents.

Present : Shri Ravinder Arora, Advocate for the appellant.
Shri P.S.Bawa, Advocate for respondent No.8.

FAO No. 1160 of 2000

United India Assurance Co. Ltd. Appellant.

versus

Banto Devi and others
..... Respondents.

Present : Shri Ravinder Arora, Advocate for the appellant.
Shri P.S.Bawa, Advocate for respondent No.8.

C.R. No. 2173 of 2000

United India Assurance Co. Ltd. Petitioner.

versus

Devinder Singh and others
..... Respondents.

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

1. Whether Reporters of Local Newspapers may be allowed to
see the judgment? yes

2. To be referred to the Reporters or not? yes

3. Whether the judgment should be reported in the Digest? yes

Present : Shri Ravinder Arora, Advocate for the petitioner.

K.C.PURI, J.

By this common judgment I intend to dispose of FAO No. 1159 of 2000 titled as United India Assurance Co. Ltd. versus Surinder Singh and others and FAO No. 1160 of 2000 titled as United India Assurance Co. Ltd. versus Banto Devi and others and C.R No. 2173 of 2000 titled as United India Assurance Co. Ltd. versus Devinder Singh and others preferred by appellant - United India Assurance Co. Ltd. against the impugned award dated 4.1.2000 vide which the three claim petitions were partly accepted. For convenience facts are being taken from FAO No. 1159 of 2000 titled as United India Assurance Co. Ltd. versus Surinder Singh and others.

2. Briefly stated Banto Devi and others filed MACT case No.12 of 16.03.1995 claiming compensation on account of death of Hans Raj alias Kansi Ram whereas Devinder Singh filed MACT No.13 of 16.03.1995 claiming compensation on account of injuries sustained by him ; Surinder Singh filed MACT No.14 of 16.03.1995 claiming compensation on account of injuries sustained by him. All these three claim petitions were partly accepted holding owner, driver and insurance company liable to pay the amount of compensation jointly and severally vide award dated 4.1.2000 passed by Shri H.S.Bhalla, the then Motor Accident Claims Tribunal, Bathinda.

3. Feeling dissatisfied with the said Award dated 4.1.2000, the

United India Assurance Co. Ltd. has filed FAO No. 1160 of 2000 titled as United India Assurance Co. Ltd. versus Banto Devi and others and FAO No. 1159 of 2000 titled as United India Assurance Co. Ltd. versus Devinder Singh and others. Against the said award, United India Assurance Co. Ltd. has also filed Civil Revision No.2173 of 2000 titled as United India Assurance Co. Ltd. versus Devinder Singh and others as the compensation awarded to Devinder Singh was less than Rs.10,000/-.

4. All these claim petitions have arisen out of one Award and as such are being disposed of with the common judgment.

5. The insurance Company has taken the objection that the driver Jagmail Singh alias Jasmail Singh respondent No.1 before the Tribunal was not holding a valid driving licence and issue No.2 in this regard was framed., which is as under :-

Whether Jagmail Singh respondent was not holding a valid driving licence at the time of accident ? OPR-3

6. The learned Tribunal after appreciating the evidence returned the finding on this issue against the Insurance Company and consequently the owner, driver and Insurance Company were jointly and severally held liable to pay the amount of compensation.

6-A The only contest raised by the Insurance Company is regarding issue issue No.2 mentioned above. The Insurance Company is stated to have paid the amount of compensation and prayer in the present case is for giving recovery right to the Insurance Company in respect of amount of compensation paid by the Insurance Company to the three set of claimants mentioned above.

7. Counsel for the appellant has submitted that in the present case,

the Local Commissioner was appointed to verify the validity of the licence in favour of Jagmail Singh. Shri Jagtar Singh, Advocate was appointed as Local Commissioner, who had visited the office of District Transport Officer, Ajmer and recorded the statement of Satish Gupta, Junior Assistant, DTO, Office, Ajmer. It is submitted that said witness has categorically stated that as per record of the office of DTO, Ajmer, driving licence No.34301/AJ/80 has not been issued in the name of Jagmail Singh son of Bhag Singh but the licence No.34201 has been issued in the name of Dinesh Chander and that is valid for motor cycle only.

9. On the strength of the said statement, counsel for the appellant has submitted that since driver of the offending vehicle was not holding a valid driving licence and as such the insurance company is not liable to pay the amount of compensation.

10. It is further submitted that Tribunal has observed that since the said driving licence has been renewed by licencing authority, Bathinda and as such the Insurance Company is liable. The reliance has been placed on authority **National Insurance Company Ltd vs. Sucha Singh reported in 1994 ACJ page 374.** It is is submitted that said authority has been overruled and it is settled law that once the licence is found to be fake, in that case subsequent renewal of said licence cannot make it a valid driving licence. It is further submitted that in this case, the driver of offending vehicle appeared as his own witness and has produced the copy of licence Ex.R-4, which bears No.34201 of 1980 in the name of Jasmail Singh

11. In reply to the above noted submissions counsel for the owner has supported the judgment of the Tribunal.

12. I have given my thoughtful consideration to the rival submissions made by both the sides and have gone through the records of the case.

13. From the perusal of the records of the Tribunal, it is revealed that Shri Jagtar Singh Advocate was appointed as Local commissioner, and a report of the Local commissioner, is placed on the record. The Tribunal has observed that statement of Satish Gupta, Junior Assistant of DTO, Ajmer recorded by Local commissioner, Jagtar Singh, Advocate is of no help to Insurance Company since the Local Commissioner has not submitted his report and he has simply informed the Tribunal in writing that he recorded the statement of Clerk of the office of DTO, Ajmer in the presence of learned counsel for the parties. The other reason given by the Tribunal is that since the said licence has been renewed and as such Insurance Company is liable. The reliance has been placed on authority **National Insurance Company Ltd vs. Sucha Singh's case (supra).**

14. Counsel for the parties have not disputed to the proposition of law that once the driving licence was found to be fake, in that case, the subsequent renewal does not make it a valid document. This view is supported by the decision of Hon'ble Apex Court in authority **National Insurance Company vs. Swaran Singh and others 2004 (2) RCR (Civil) page 114** and therefore, the authority **National Insurance Company Ltd vs. Sucha Singh's case (supra)** is of no help to the case of owner.

15. The learned Tribunal has appointed the Local Commissioner and his report is on the file and the Tribunal should have taken into account the said report.

16. Now the question arises whether after taking into account the said report, the Insurance Company is able to prove the fact that respondent Jagmail Singh was not holding a valid driving licence. The proposition of law that onus to prove that driver of offending vehicle was not holding a valid driving licence, always lies on the Insurance Company.

17. The whole of the evidence produced by the parties regarding issue No.2 needs to be re-apprised.

18. RW-1 Devinder Kumar, Clerk of the office of DTO, Bathinda, has stated that licence bearing No.34301/Ajmer/80 was renewed from 05.02.1994 to 04.02.1996 and the said licence is valid for heavy transport vehicle. This witness has further stated that licence No.34201 was issued by Licencing Authority, Ajmer (Rajasthan) which was valid upto 22.12.1992. The evidence of this witness is simply regarding renewal of licence. However, since it is held that in a case of fake licence, the subsequent renewal does not make it a valid document and as such the testimony of RW-1 Devinder Kumar, is not helpful to the case of any of the parties.

19. The next important witness produced in this case is Jagmail Singh respondent, who appeared as RW-2. This witness has stated that he was holding a valid driving licence and has taken the copy of the documents from the criminal case, which is Ex.R-2 and pertained to period from 5.2.1994 to 4.2.1996. The licence was duly renewed from DTO office.

20. Another important evidence regarding driving licence is the

statement of Satish Gupta, Junior Assistant, DTO, Office Ajmer. This witness has stated that as per record of his office, driving licence No. 34301/Ajmer/80 was not issued in the name Jasmail Singh son of Bhag Singh but has been issued in the name of Dinesh Chander of Ajmer and that licence is valid for motor cycle only. He has also stated about renewal of said licence in the name of Dinesh Kumar from time to time. However, during cross-examination, this witness has stated that licence No.34301 related to the year 1983. He has further stated that he has made statement on that day on the basis of register for the year 1983. So, in case his statement is scrutinized with due care and caution, then it can be inferred that he has not seen the record for the year 1980. According to the statement of Jagmail Singh RW-2, copy of his licence is Ex.R-2 and from the perusal of Ex.R-2, it is revealed that driving licence number has been mentioned as 20878/RN/34301/A/80 in the name of Jasmail Singh son of Bhag Singh and i.e., valid for HTV from 5.2.1993 to 4.2.1996 and from 16.7.1996 to 15.7.1999.

21. So far as statement of Satish Gupta recorded by Local Commissioner Jagtar Singh, Advocate is concerned the said witness has simply stated that licence No.34301/Ajmer/80 belongs to one Dinesh Kumar but in the cross-examination, this witness has stated that the said licence has been issued in the year 1983 and he has made statement on the basis of register of the year 1983.

22. Since Satish Gupta, Junior Assistant made statement after going through the record of the year 1980, the original date which is mentioned on driving licence Ex.R-2, therefore, his statement does not render any help to

the Insurance Company.

23. At the costs of repetition, it is again stated that onus lies upon the Insurance Company to prove that driver of the offending vehicle was not holding a valid driving licence. So, the evidence produced by the Insurance Company fall short of proving the fact that licence in the name of driver of offending vehicle was fake one. Had Devinder Kumar made statement after consulting the record of the year 1980, in that case, the matter would have been different ?

24. So, in view of the above discussion, the findings of the Tribunal on issue No.2 in respect of award in question does not call for any interference and consequently the same stands affirmed.

25. In view of finding on issue No.2, FAO No.1160 of 2000 ; FAO No.1159 of 2000 and CR No.2173 of 2000 are without any merit and the same stand dismissed. In view of the peculiar circumstances of the case, the parties are left to bear their own costs so far as these two appeals and one civil revision petition are concerned.

26. A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

May 27 , 2015
sv