342 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

FAO No.55 of 1997
Date of Decision: 28.04.2015

The United India Insurance Company

...Appellant

Versus

Smt. Bimla Devi and others

...Respondents.

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

Present: Mr. Sanjiv Pabbi, Advocate
for the appellant.

Mr. Hari Om Sharma, Advocate
for the respondent No.5.

K.C. PURI, J., (ORAL)

This is an appeal directed by Insurance Company against award dated 18.09.1996 by Motor Accidents Claims Tribunal, Jagadhri vide which the claim petition was party accepted.

Briefly, stated Smt. Bimla Devi-widow, Ritu Rani-daughter and Anil Kumar-son, filed claim petition under Section 166 of the Motor Vehicles Act, claiming compensation to the tune of Rs.6,00,000/- on account of death of Hans Raj in a motor vehicular accident. It is alleged that on 14.02.1994 at about 9.30 or 10.00 p.m., Hans Raj was going towards Damla on his foot. He was on his extreme left side on the Kacha brem of the road on Yamunanagar-Rabour-road. While he was near bus stand, Aurangabad, a truck bearing No.HRL-1915 driven by respondent No.1 in a rash and negligent manner came from the back side of Hans Raj in a zig-zag manner and hit Hans Raj crushing him under the tyres of the truck.

The respondent resisted the claim of the appellant. The respondent No.1 has denied the factum of accident, respondent No.2 also denied the accident whereas respondent No.3- Insurance Company has took a preliminary objection regarding the maintainability and cause of action. It is pleaded that the petition is time barred. It is further pleaded that respondent No.1 was not holding a valid driving licence and has violated the terms and conditions of the insurance policy.

From the pleadings of the parties following issues were framed:-

1. Whether Hans Raj died as a result of rash and negligent driving of the vehicle in question by respondent No.1 as alleged? OPP
2. Whether the petitioners are entitled to compensation, if so to what amount and from whom? OPP.
3. Whether the respondent No.1 was not duly licensed driver, if not to what effect? OPR.
4. Relief.

After appraisal of the evidence, the learned Tribunal returned the findings on issues No.1 and 2 in favour of the claimants/respondents No.1 to 3 and issue No.3 was decided against Insurance company and a sum of Rs.80,000/- was allowed.

The claimants also directed an appeal for enhancement vide FAO No.1853 of 1997 decided on 29.01.1998 and another sum of Rs.20,000/- was allowed to the claimant and respondents No.1 to 3 were held liable to pay the enhanced amount.

The Insurance Company has directed this appeal solely on the ground that the driver of the offending vehicle was not holding a valid driving licence. It is submitted that verification report Ex.R-4 has been placed on record. From the perusal of the same, it is revealed that Regional Transport Authority has stated that Driving Licence No.S-1741/86 has not been issued in the name of Sh. Salim Khan S/o Farjand Ali i.e. respondent No.1. It is submitted that renewal of the licence does not make it a valid document once the original licence is fake and its subsequent renewal cannot make it a valid and genuine document. To support this contention, learned counsel for the appellant has relied upon ***New India Insurance Company Limited Vs. Asha Rani and others*** reported in ***JT 2002 (10) SC 162***.

The learned counsel for the owner of the offending vehicle has submitted that in FAO No.1853 of 1997 Insurance Company has been held liable. He has further contended that onus to prove that the license was fake was upon the Insurance Company. The mere perusal of the verification is not sufficient.

I have considered the submissions made by learned counsel for both the parties and have gone through the case file and record carefully.

The sole question for determination in the present case is that whether the insurance company has been able to prove that Saleem Khan respondent No.1 driver of offending vehicle was not holding a valid driving licence. The learned Tribunal has returned the findings on issue No.3 against the insurance company, although on different grounds. Reliance has been made on Authority ***National Insurance Company Ltd. Vs. Sucha Singh and others*** reported in ***1994-2 S.L.J.1005.*** The Division Bench of this Court has held that once it is proved that licence was duly renewed in that case it is a valid document. However, the Hon'ble Apex Court in **Asha Rani's case** (supra) has clearly laid down the law that once the licence is found to be fake in that case its subsequent renewal does not make it a valid document.

The next question is whether the insurance company has been able to prove that licence Ex.R-1 is a fake document. No doubt the insurance company has produced Ex.R-4 verification but I am of the considered view that mere production of verification report is not sufficient. The Insurance Company should have examine the record of Regional Transport Authority to prove that licence Ex.R-1 is a fake document.

Other hurdle created in the path of insurance company is the judgment dated 29.1.1998 passed in FAO No.1853 of 1997 i.e. appeal preferred by the claimant for enhancement in that case insurance company was a party and it has been held that insurance company is held liable to pay the compensation. No other point has been raised.

In view of the above discussion, the appeal is devoid of any merit and the same is dismissed.

(K.C. PURI)
JUDGE

April 28, 2015
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