IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

FAO No. 1614 of 1999(O&M)

Date of Decision: September 16 , 2015.

United India Insurance Company Ltd.

...... APPELLANT (s)

Versus

Balwant Rai and others

...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Neeraj Khanna, Advocate for the appellant.

Mr. MPS Mann, Advocate for respondents No.3 and 4.

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

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LISA GILL, J.

United India Insurance Company Limited has preferred the present appeal impugning award dated 01.04.1999 passed by the Motor Accident Claims Tribunal, Ropar (hereinafter referred to as, the 'Tribunal') to the limited extent of recovery rights not having been granted to appellant – Insurance Company.

Factual matrix of the case is that, Nisha Chhabra (deceased) was riding her bicycle on Haveli road on 29.09.1996. She was riding the bicycle carefully on the left side of the road. When she reached near flour mill of Jai Singh, a truck No. PUT-4807 being driven in a rash and negligent manner by respondent No.4 – Vakil struck against her bicycle. Nisha Chhabra died at the spot. FIR No.111 dated 29.09.1996under Sections 279/337/338/304A IPC (Ex.P1) was registered at Police Station City Ropar against the driver of the offending vehicle. Copy of post-mortem report, Ex.P2 was produced on record.

Claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 by the claimants, who are parents of the deceased. Claim was contested by the respondents. Following issues were framed by the Tribunal:-

> "1. Whether deceased Nisha Chhabra died in an accident dated 29.9.96 caused by the rash and negligent driving of respondent No.2 driver of truck No. PUT-4807? OPP.
>
> 2. Whether claimants are entitled to compensation? If so to what amount and from whom? OPP.
>
> 3. Relief."

Learned Tribunal on appreciation of the evidence on record concluded that Nisha Chhabra sustained fatal injuries in an accident caused by rash and negligent driving of truck No. PUT-4807 by respondent No.4 – Vakil. Learned Tribunal while relying on the decision in <u>National Insurance Company Ltd. v. Sucha Singh and others</u>, *1994(1) PLR 140* held the appellant-Insurance Company liable to reimburse the insured on the ground that even if a licence is fake it would gain validity on a subsequent valid renewal.

Aggrieved from the said finding, while not challenging the quantum of compensation awarded, learned counsel for appellant-Insurance Company submits that decision in <u>Sucha Singh</u>'s case (supra) no longer holds the field. A fake driving licence cannot be treated to be valid on the basis of a subsequent renewal which may be in terms of the rules and regulations. Therefore, Insurance Company in such a situation is entitled to recover the compensation amount from the owner of the offending vehicle.

Learned counsel for the owner – respondent No.3 submits that even if the licence is fake, subsequent valid renewal has been proved on record. Therefore, the owner had discharged his responsibility of having made necessary verifications of the driving licence. Insurance Company is not entitled to recovery the said amount from him. He relies upon the decisions of Hon'ble Supreme Court in National Insurance Company Ltd. v. Swaran Singh and others, *2004(2) RCR (Civil) 114* as well as New India Assurance Company v. Kamla, *2001(3) RCR (Civil) 716.*

It is further submitted by learned counsel for respondents No.3 and 4 that as the owner had not stepped into the witness box or led any evidence to show that he had taken adequate care and caution to verify the genuineness of the driving licence especially in the absence of any such plea on the part of the Insurance Company, the matter be remanded to the learned Tribunal for this limited purpose.

I have heard learned counsel for the parties and gone through the record.

There is no challenge to the finding of learned Tribunal that the driving licence, in question, was not genuine. It has been specifically held by the Tribunal that the original driving licence produced by respondent No.4 – Vakil was fake though its renewal was valid.

It is not in dispute that decision in Sucha Singh's case (supra) does not hold the field any longer. It has been specifically held by Hon'ble Supreme Court in **United India Insurance Company Ltd. v. Davinder Singh**, ***2007(4) RCR (Civil) 790*** that subsequent renewals despite being genuine cannot confer validity or genuineness upon a fake driving licence. Therefore, this finding of the Tribunal is clearly erroneous.

The question now to be decided is whether the owner has discharged his liability to show that he took adequate care and caution to verify the genuineness of the driving licence.

There is no dispute regarding liability of the Insurance Company in cases where the owner has discharged his responsibility of having taken adequate care and caution to verify the genuineness of the licence of driver. It is also settled that an owner is not required to go to the extent of verifying the licence from the concerned authority. However in the present case, there are no pleading to this effect neither any evidence has been led by the owner to prove the said fact.

A perusal of the written statement on behalf of appellant – Insurance Company (respondent No.3 before the Tribunal) reveals a specific stand that driver of the offending truck was not holding a valid Driving Licence. Two of the preliminary objections taken by the Insurance Company read as under:-

> "1. That claim petition is not maintainable against the answering respondent as no accident took place due to rash and negligent driving of driver of Truck No. PUT-4807.
>
> 2. That the respondent No.2 driver of Truck No. PUT-4807 was not holding a valid driving licence issued by the competent authority and insured knowingly fully well that the driver of the

> Truck No. PUT-4807 at the time of alleged accident by breaching the terms and conditions of the Insurance Policy allowed to drive the Truck No. PUT-4807, hence no liability can be fixed against the answering respondent."

A joint written statement was filed on behalf of the owner and driver (respondents No.1 and 2 before the Tribunal). A perusal of the said written statement shows that there is complete denial of the accident in question. It is repeatedly stated that no such accident has taken place with truck No.PUT-4807. In the reply to para 24, it is stated that:-

> "............. The story put up by the claimants is false, concocted and fabricated and created in order to grab compensation from the respondents. In view of the facts that no accident had taken place as alleged, so the claim petition is being without any merits be dismissed with costs."

There is no averment to the effect that even if the accident is proved to have taken place due to rash and negligent driving of the offending vehicle, it is the Insurance Company which would be liable to pay the compensation. Owner of the offending vehicle has not even stepped into the witness box to prove due care and caution having been exercised by him while employing the driver.

In this view of the matter, it cannot be said that the owner has discharged his responsibility so as to absolve him of any liability. Insurance Company is indeed entitled to recover the said amount of compensation from the owner.

Contention of learned counsel for respondents No.3 and 4 that the matter should be remanded to the Tribunal for decision on this limited aspect is unacceptable. This is so for the reason that there is no pleading to this effect by the owner. As noted above, stand is of complete denial of the accident by the owner. In such a situation, remand of this case on this issue is not made out.

Consequently, this appeal is allowed.

Insurance Company is held entitled to recover the amount of compensation disbursed by it to the claimants from the owner of the offending vehicle.

(LISA GILL)
September 16 , 2015. **JUDGE**
'om'