

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

FAO No. 2023 of 1999 (O&M)

Decided on: 11.8.2015.

National Insurance Company Limited

... Appellant

Versus

Banwari Lal and others

... Respondents

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

Present : Mr. R.C. Kapoor, Advocate,
for the appellant.

Mr. Rupinder Khosla, Sr. Advocate with
Mr. K.S. Mamrat, Advocate,
for respondent No.5.

K.C.PURI.J.

This is an appeal directed by National Insurance Company Limited against the Award dated 5.4.1999 passed by Sh. H.P. Handa, Presiding Officer, Motor Accident Claims Tribunal, Faridkot (for short “the Tribunal”) vide which the claim petition was partly accepted on account of death of Laxmi @ Lachhmi Devi in a motor vehicular accident in the area of village Jaito.

Briefly stated Banwari Lal husband, Shakuntla Devi daughter, Jagseer Singh son and Chhaju Ram minor son of deceased Laxmi @ Lachhmi Devi filed claim application claiming an amount of Rs.5 lacs on account of death of Laxmi @ Lachhmi Devi in a motor vehicular accident. It was pleaded that on 15.8.1996 claimant Banwari

Lal along with his wife Laxmi @ Lachhmi Devi and one Madan Lal was coming in a bus belonging to M/s Manshahia Transport Company Mansa. When the bus reached at village Bajakhana Chowk, bus stand Jaitu, it stopped. Claimant No.1 Banwari Lal, Madan Lal and Laxmi were ready to come out from the bus. Claimant No.1 and Madan Lal were standing near exit door of the bus. When Laxmi was alighting from the bus but she was still in exit door, the bus driver suddenly and rashly and without any indication started the bus at a very high speed. Due to that, Laxmi fell down and the rear wheel of the bus hit and ran over her. Claimant No.1 and Madan Lal raised raula but the bus stopped after some distance. Injured Laxmi was taken to the hospital in the same bus but she succumbed to the injuries on the way. The bus was being driven by its driver Chhinder Singh respondent No.2.

The claim petition was contested and ultimately it was partly accepted and the claimants were held entitled to claim Rs.86,400/-.

Feeling dis-satisfied with the Award dated 5.4.1999 passed by the Tribunal, the National Insurance Company has directed this appeal.

Notice of motion was issued to owner and driver only as the issue raised by the appellant insurance company is that the driver of the offending vehicle was not holding a valid driving licence.

Learned counsel for the appellant has submitted that although, it is proved on the record that at the time of accident, there

was a valid renewal but once the original driving licence is fake the insurance company cannot be held liable to pay the amount and recovery rights should have been granted.

Learned counsel for the appellant has further submitted that Local Commissioner was appointed who visited Ajmer and has categorically stated that licence No.46910 is in the name of Paramjit Singh son of Madan Singh and not in the name of Chhinder Singh driver of bus No. PB-31-2909 (here-in-after mentioned as 'offending vehicle').

On the other hand, learned counsel for the owner and driver has submitted that insurance company has not only to prove that the driving licence was fake but has also to prove that owner was negligent in employing the driver. It is submitted that insurance company has failed to prove that the owner was negligent in employing the driver and he knew the fact that driving licence was fake.

I have considered the said submissions made by both the sides and have gone through the record of the case.

The only issue which has arisen in the present appeal is whether the insurance company has been able to prove the fact that owner of the offending vehicle was negligent in employing the driver. The answer to this question is in the negative. No doubt, in authority **Oriental Insurance Company Limited vs. Prithvi Raj 2008 ACJ 733** the Hon'ble Apex Court and this Court in **New India Assurance**

Co. Ltd. vs. Jagrup Singh and others 2013 ACJ 1688 have held that

once the original licence is fake, in that case, the subsequent valid renewal cannot make it a valid document. However, in view of authority National Insurance Company Limited vs. Swaran Singh and others 2004 ACJ 1 the insurance company has not only to prove that licence produced by the driver is fake but also to prove that by exercising due diligence, the owner could detect the fact that driving licence is fake.

In this case, the driving licence in favour of Chhinder Singh is stated to have been issued from Licensing Authority, Ajmer in the year 1984. The Hon'ble Apex Court in Swaran Singh's case (supra) has held that mere absence, fake or invalid licence or disqualification of the driver are not in themselves defences available to the insurance company but the insurance company has to prove that owner was guilty of negligence and has failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding driving of vehicle by a duly licensed driver or one who was not disqualified to drive at the relevant time. The insurance company in the present case has been able to prove that driving licence was fake but has failed to prove that by exercising due diligence, the owner could detect that driving licence was fake one. The said driving licence is stated to have been renewed by District Transport Authority, Mansa from 10.6.1996 to 2.6.1999. The licence was issued in the year 1984 and the owner could not visualize that such an old licence could be forged. More so, when the same has been validly renewed by DTO,

Mansa. Otherwise, as per rule, the Licensing Authority which renews the licence, in normal circumstances, gets no objection from the licence issuing authority but the insurance company has not been able to prove whether the DTO, Mansa has got no objection in the present case or not. So, in these circumstances, the insurance company has failed to prove the violation of terms and conditions of the policy regarding driving licence.

No other point has been urged.

In view of above discussion, the appeal is without any merit and the same stands dismissed with costs.

11.8.2015.
SN

(K.C.PURI)
JUDGE