IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O No. 405 of 2000
Date of decision:- 26.08.2015

United India Insurance Co. Ltd ...Appellant

Versus

Ishar Kaur and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Neeraj Khanna, Advocate

Mr. Arun Jindal, Advocate with
Mr. Rishav Jain, Advocate
for respondent Nos. 1 to 4.

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

<u>RITU BAHRI J. (Oral)</u>

1. The present appeal has been preferred by the appellant (for short 'the appellant'), against award dated 05.10.1999 passed by the learned Motor Accident Claims Tribunal, Patiala (for short, 'the Tribunal') to the tune of Rs.2,52,000/-

FACTS NOT IN DISPUTE

2. On 26.10.1996, at about 12.30 P.M, Chattar Singh was coming on his scooter No PJM-4320. His brother Ajit Singh and cousin Harchand Singh were coming on another scooter. They were coming from Patiala City to their village Alipur. Chattar Singh was going ahead

of them, when they reached near Bazigar Basti, Ghamrauda on Patiala-Nabha Road. In the meantime, a truck bearing No. PB-11-F-8485 came from Nabha side, which was being driven in a rash and negligent manner, struck the scooter of Chhatar Singh and he received multiple injuries on his head, mouth, legs and other parts of the body. He was removed to Civil Hospital, Nabha where he succumbed to his injuries. F.I.R No. 86 dated 26.10.1996 Ex P2 was registered against the driver of the truck.

3. The learned counsel for the appellants contends that the driver of the offending vehicle was not carrying a valid driving licence and thus the appellant are not liable to pay the amount of compensation and further the Tribunal gave a finding that the accident took place due to contributory negligence of the deceased and driver of the truck. The license which was originally alleged to be issued from licensing Authority, Cuttak was a fake one and the Court has wrongly held that since it was renewed from DTO, Patiala, the same has become valid document. The fake document if duly renewed will not become a genuine document. The appellant had led sufficient evidence to prove that the license was a fake, as per report Ex r-2.

4. To give force to its contention, learned counsel for the appellant has made reference to a judgment of Hon'ble the Supreme

Court in a case of ***M/s United India Insurance Co. Ltd vs. Davinder Singh, 2008(1) Civil Court Cases 145*** to contend that if driver is possessing fake driving license, which was renewed by the Licensing Authority, it cannot cure fatality and the Insurance Company is not liable to indemnity the owner but in case of third party risks, the insurer has to indemnity the amount and if so advised, to recover the same from the insured. In para 13, it has been observed as under:-

> *"13. Laxmi Narain Dhut (supra) has since been followed by this Court in* ***The Oriental Insurance Company Limited v. Meena Variyal and Ors. [2007 (5) SCALE 269]*** *wherein this Court referring to Swarn Singh (supra) held:*
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> *"It is difficult to apply the ratio of this decision to a case not involving a third party. The whole protection provided by Chapter XI of the Act is against third party risk. Therefore, in a case where a person is not a third party within the meaning of the Act, the insurance company cannot be made automatically liable merely by resorting to the Swaran Singh (supra) ratio. This appears to be the position. This position was expounded recently by this Court in National Insurance Co. Ltd. v. Laxmi Narain Dhut 2007 (4) SCALE 36. This Court after referring to Swaran Singh (supra) and*

discussing the law summed up the position thus:

In view of the above analysis the following situations emerge:

1. The decision in Swaran Singh's case (supra) has no application to cases other than third party risks.

2. Where originally the licence was a fake one, renewal cannot cure the inherent fatality.

3. In case of third party risks the insurer has to indemnify the amount and if so advised, to recover the same from the insured.

4. The concept of purposive interpretation has no application to cases relatable to Section 149 of the Act."

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

6. Applying the ratio of the above said judgment of Hon'ble the Supreme Court to the facts of the present case, the present appeal stands disposed of and the appellant is at liberty to recover the amount of compensation from the insured on account of the fake driving license possessed by the driver, if so advised.

August 26, 2015 (***RITU BAHRI***)

G Arora ***JUDGE***