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

FAO No.219 of 2004 (O&M)
Date of Decision: December 17, 2015.

Bhupinder Singh and another

..........APPELLANT(s).

VERSUS

Palwinder Kaur Chhina and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Prateek Mahajan, Advocate
for the appellant (s).

Mr. J.S. Chatrath, Advocate
for respondent No.9.

Mr. Naveen Kapoor, Advocate
for respondent No.8.

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SURINDER GUPTA, J.

A short point involved in this appeal is as to whether on the basis of the evidence on record, insurance company(now respondent No.9) could be allowed the recovery rights against the appellants i.e. driver and owner of tipper truck bearing registration No.CH-01N-9543(later referred to as the 'offending truck') involved in the accident.

2. Motor Accident Claims Tribunal, Amritsar (later referred to as 'the Tribunal') allowed a compensation of ₹3,65,000/- with interest @ 9% per annum from the date of filing of the petition till payment, for the death of Daljit Kaur in a motor accident. The Tribunal directed the insurance

company i.e. New India Assurance Company (respondent No.9) to pay the compensation at the first instance and allowed the recovery rights against the appellants (driver and owner of the offending truck). The Tribunal observed that the driving licence of appellant No.1 Bhupinder Singh was not valid in view of the observations of Hon'ble Apex Court in case of ***New India Assurance Company Shimla Vs. Kamla and others AIR 2001 Supreme Court 1419.*** The Tribunal, while recording findings on issue No.5, observed as follows:-

> "35. Onus of this issue was on respondent No.6. First respondent Bhupinder Singh while appearing as RW1 has placed on record copy of driving licence held by him as Ex.RX. This driving licence was sent for verification to the Licensing Authorities of Ropar and Hyderabad from where it purported to have been renewed and issued. Report of Licensing Authority, Ropar is Ex.RW1/1 and that of Licensing Authority, Hyderabad is Ex.R.4. According to report Ex.RW1/1 of Licensing Authority, Ropar the licence in question was renewed from 23.10.1997 to 22.10.2008 but as per report of Licensing Authority, Hyderabad Ex.R4, no such licence was issued by the said Authority. That being so, renewal of the said licence by Licensing Authority, Ropar is rendered of no consequence in terms of the judgment of Hon'ble Supreme Court of India in the case of New India Assurance Company, Shimla Versus Kamla and others A.I.R. 2001 S.C. 1419.
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> 36. Therefore, this issue is decided in favour of respondent No.6."

3. Learned counsel for the appellants has argued that onus was

heavily on the insurance company to prove that the driving licence of driver of the offending truck was not valid. The Tribunal relied on the report Ex.R4 by the Licensing Authority i.e. R.T.A. Hyderabad (Central Zone), which stated that the record of issuance of licence of appellant No.1 Bhupinder Singh was not available in their computer record. There was no evidence that in the year 1991, computerization of the record in the office of Licensing Authority i.e. R.T.A. Hyderabad (Central Zone) had started and secondly, Hyderabad being a big city is divided in Zones for the purpose of issuance of driving licence and no report was taken from the other Zones of Hyderabad.

4. Learned counsel for insurance company-respondent No.9 has argued that as per the report of Licensing Authority, Hyderabad, the licence of appellant No.1 was not issued by R.T.A. (Central Zone) Hyderabad, as such, licence produced by appellant No.1 was invalid and consequently, its renewal by the office of Licensing Authority, Ropar carries no value. The insurance company has obtained the report from the R.T.A. (Central Zone) Office, Hyderabad after obtaining the orders from the Tribunal in this regard and the report called under Order of the Tribunal is admissible in evidence.

5. Report Ex.R4 by Licensing Authority, Hyderabad (Central Zone) reads as follows:-

> *"The said licence of Bhupinder Singh was not (sic) issued by this office of DLW014967/91 by this office as per our computer records."*

6. The question, as to whether the above report is per se admissible, is not a point in issue, required to be answered in this appeal. The question which arises for consideration is as to whether the above report

proves that the driving licence of appellant No.1 Bhupinder Singh placed on record as Ex.RX was fake one.

7. Admittedly, onus to prove the breach of terms and conditions of the insurance policy was on the insurance company and it had to prove that the driving licence of appellant No.1 was fake. The report of Licensing Authority R.T.A. Hyderabad (Central Zone) do not serve the purpose of the insurance company in proving that the licence of appellant No.1 was false due to following reasons:-

(i) The report was made by Licensing Authority R.T.A. Hyderabad (Central Zone) and the insurance company took no pain in proving that the licence No. DLW014967/91 was not issued to appellant No.1 by the Central Zone or the other Zone of Hyderabad.

(ii) As per report Ex.R4, the Licensing Authority had no computer record of the issuance of the licence Ex.RX, but it is nowhere mentioned in the report that physical record was also checked before making the report.

(iii) No evidence has been produced that the record of Licensing Authority R.T.A. Hyderabad (Central Zone) was computerized before the year 1991. The statement of concerned official from that office to this effect was very relevant and the insurance company has not taken any step to examine any witness on this score.

8. In view of the above discussion, report Ex.R4, even if, taken into consideration, do not prove that the driving licence of appellant no.1 (Ex.RX) was fake. The Tribunal has accepted the report without looking into the above aspect. The findings of the Tribunal on issue No.5 are not based on evidence on record and are perverse.

9. In view of my above discussion, the findings of the Tribunal on issue No.5 are reversed. Consequently, this appeal has merits and the same is accepted. The award passed by the Tribunal is modified to the extent that the respondent No.9-New India Assurance Company Limited shall pay the awarded amount of compensation with no right to recover the same from appellants. Keeping in view the facts and circumstances of the case, the parties are left to bear their own costs.

(SURINDER GUPTA)
December 17, 2015. **JUDGE**
Sachin M.