IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 4 of 2005 (O&M)
Date of Decision : 06.10.2015

Daljit Singh and another .....Appellants

Versus

Sandip Kaur and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. A.S. Gill, Advocate
for the appellants.

Mr. Ramandeep, Advocate
for Mr. R.S. Bajaj, Advocate
for respondents no. 1 and 2.

Mr. Suvir Dewan, Advocate
for respondent no. 3-Insurance Company.

SURINDER GUPTA, J.

While passing award dated 02.12.2003, Motor Accident Claims Tribunal, Jalandhar (later referred to as 'the Tribunal') allowed compensation of ₹ 4,42,000/- for the death of Charanjit Kaur in an accident with Scooter No. PCJ-3674 (later referred to as 'the offending vehicle') driven by Daljit Singh-appellant no. 1 and owned by Malkiat Kaur-appellant no. 2. Recovery rights were allowed to the National Insurance Company Ltd.-respondent no. 3 against owner on the ground that driver of the offending vehicle was not possessing a legal and valid driving licence to drive it.

2. A short question which arises for consideration in this appeal is as to whether owner of the offending vehicle can be exempted from payment of compensation despite proof of the fact that driver of the offending vehicle was not possessing a legal and valid driving licence.

3. In case of ***Pepsu Road Transport Corporation*** ***vs.***

<u>National Insurance Company</u>*, *2013 (10) SCC 217, the driver of the vehicle was found having a fake driving licence. Contention of the employer was that the driver was given proper training in its driving school and reasonable steps for verifying the driving licence were taken. In view of above facts and circumstances, the Apex Court observed as follows:-

> *"8. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter*

> *the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation."*

In the facts and circumstances, the Insurance Company was held liable to indemnify the insured.

4. Learned counsel for the appellant has argued that the scooter which caused the accident belong to Malkiat Kaur-appellant no. 2, the mother of Daljit Singh who had caused the accident. Daljit Singh was having a driving licence which was found to be fake. It was issued from Agra, got renewed at Mathura and then from Jalandhar. Mother of Daljit Singh on the basis of driving licence, which her son was possessing, had allowed him to drive her scooter. The Insurance Company had not discharged its burden by proving that insured was guilty of

negligence and failed to exercise reasonable care in the matter of fulfilling the condition of policy regarding use of the vehicle by duly licensed driver. Reliance was placed on the observations of the Apex Court in the case of ***National Insurance Corporation Ltd.*** ***vs.*** ***Kanti Devi and others*, 2005 (5) SCC 789** and ***Sant Baba Labh Singh*** ***vs.*** ***Santto*, 2008 (3) RCR (Civil) 210**.

5. In ***Kanti Devi's case (supra)***, the Apex Court has discussed the impact of observations in the case of ***United India Insurance Co. Ltd.*** ***vs.*** ***Lehru and others*, 2003 (3) SCC 338** and observed in paras 8 and 9, as follows:-

> *"8. In para 101 the effect of a driving licence being found fake was considered. It was noted as followed:*
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> > *"The submission of Mr. Salve that in Lehru case, this Court has, for all intent and purport, taken away the right of an insurer to raise a defence that the licence is fake does not appear to be correct. Such defence can certainly be raised but it will be for the insurer to prove that the insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver."*
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> *9. Obviously, defence can be raised by the insurer about the licence being fake. By analogy, the insurer can also take a defence that the driver did not have the requisite driving licence to drive a particular type of vehicle. Such defence can be*

raised and it will be for the insurer to prove that the insured did not take adequate care and caution to verify genuineness or otherwise of the licence held by the driver. The effect of the evidence in this regard has to be considered by the concerned Tribunal."

6. In the case of ***Sant Baba Labh Singh (supra),*** a coordinate Bench of this Court while exonerating the insured of its liability to pay the compensation amount, has observed in para 19, which reads as follows:-

"19. In the instant case, the appellant-owner did discharge his obligation under the insurance policy of satisfying himself regarding driving skill of the driver and the fact that he is holding a driving licence, which is enough. Nothing more was required on his part. He cannot be held to be guilty of breach of the policy. In any case, no evidence has been led by the Insurance Company to show that the owner was negligent or guilty of wilful breach of the Insurance Policy. The Tribunal has only drawn an inference from the evidence produced by the Insurance Company that the driver was not holding a valid driving licence. To establish breach, there has to be evidence in affirmative form and mere inference cannot be substitute for the positive evidence to establish breach."

7. In this case, the insured has not taken any such defence that it has taken adequate care and caution to verify the genuineness or otherwise of the licence held by the driver of the offending vehicle. The driver of offending vehicle is none other than her son. The insured and driver are residents of Jalandhar. It cannot be expected that the mother was not aware about the fake driving licence of her son. In the case of ***Pepsu Road Transport Corporation (supra)***, the driving licence of driver engaged by the Corporation was found to be fake but the Corporation proved on record that it has given training to the driver in its driving school and also taken reasonable steps to verify the genuineness of the driving licence. It was under these circumstances, the insurer was declined recovery rights against the insured.

8. In view of the above facts, the Tribunal has committed no error of law and fact while allowing recovery rights to the Insurance Company against appellant no. 2. No other point has been argued in this appeal, which has no merit.

Dismissed.

October 06, 2015 **(SURINDER GUPTA)**
jk **JUDGE**