IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2035 of 2015 (O&M)
Date of Decision: May 06, 2015

United India Insurance Company Ltd.

...Appellant

Versus

Smt.Darshan Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.D.P.Gupta Advocate
for the appellant.

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INDERJIT SINGH, J.

Appellant United India Insurance Company Limited has filed this appeal against Smt. Darshan Kaur and other respondents, challenging the impugned Award dated 14.01.2015 passed by learned Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (hereinafter referred to as 'Tribunal'), vide which ₹4,47,000/- along with interest at the rate of 9% per annum has been awarded to the claimants from the date of filing of petition till realization of the awarded amount.

The brief facts of the case are that Smt.Darshan Kaur and other respondents-claimants filed claim petition against respondents Balwinder Singh, driver of Mini Bus bearing registration No.HR-58-1883 (offending vehicle), National Education Society, owner and United India Insurance Company Ltd., Insurer of offending vehicle, under Section 166/140 of the Motor Vehicles Act, 1988. It is stated in the claim petition that on 07.04.2011 at about 7.15 A.M, Kehar Singh along with his son Charanjit Singh was coming back on foot after having darshan in village Gurudwara Singh Sabha. Charanjit Singh was going ahead of his father and both were on correct side of the road. All of a sudden, Charanjit Singh heard a loud voice of his father and when he saw back, he found that a school bus bearing registration No.HR-58-1883 had struck his father from its back while its driver Balwinder Singh was reversing the bus in a very rash and negligent manner and at a very high speed, without blowing any horn. As a result of which, Kehar Singh was run over by the back tyre of the bus and expired. FIR was registered on the same day against respondent-driver. Claimants claimed ₹10 lacs as compensation.

Upon notice, respondents driver and owner filed joint written statement and denied the accident.

Respondent Insurance Company (present appellant) filed its separate written statement and took the plea that Balwinder Singh driver was not holding a valid and effective driving licence at the time of alleged accident in violation of terms and conditions of the insurance policy.

At the time of arguments, learned counsel for the appellant argued that negligence of respondent-driver has not been proved by leading cogent evidence. He further argued that the driver was not possessing effective valid licence and contended that the recovery rights should be given to the Insurance Company.

After hearing learned counsel for the appellant and after going through the record, first of all, I find that Charanjit Singh, eye witness appeared in the witness box and has deposed that accident took place due to rash and negligent driving of offending mini bus by respondent-driver Balwinder Singh. His statement has been duly supported and corroborated by FIR Ex.P2. PW-2 Jai Bhagwan, Criminal Ahlmad produced the summoned record of criminal case relating to FIR No.48 dated 07.04.2011, according to which charges were framed against respondent-driver and case was fixed for prosecution evidence. Further, the copy of post-mortem examination report also supports and corroborates the claimants' version. Respondent-driver Balwinder Singh appeared into witness box and stated that no accident took place but respondents-driver and owner have not led any evidence that they have filed any complaint or representation to the higher officers for their false implication. There is also nothing that any revision has been filed against the charges. Otherwise also, causing the death while reversing the vehicle without taking any precautions itself shows rash and negligent driving. Therefore, from the above, I do not find any merit in this argument.

As regarding the driving licence, the Insurance Company has examined RW-1 Parmod Vashisht, LDC, who deposed that he has brought the summoned record pertaining to driving licences and as per the record, DL No.17678/90 dated 17.07.1990 was never issued by their department. He has brought the record. No licence was issued in the name of Balwinder Singh. The licence No.17678 was issued on 15.10.1993 in the name of Smt.Surekha. Balwinder Singh, driver himself appeared as RW-2 and has deposed that he was appointed by National Public School, Yamuna Nagar as driver on their school bus on 01.04.2010. Before appointing him as driver, his driving licence was duly checked and his driving test to drive the bus was also taken. Earlier he was living at Alwar from where he got issued his driving licence in the year 1990, after completing all the necessary formalities. He further deposed that he also got renewed the driving licence in the year 1993 from Karnal, in the year 1996 from Ambala Cantt and in the year 1999, 2002, 2005 and 2008 from Licensing Authority-cum-RTA, Yamuna Nagar. Balwinder Singh also examined RW-3 Smt.Nirmala, Manager, National Education Society, who stated in the affidavit that before appointing Balwinder Singh, his driving licence was duly checked, which was renewed from LA-cum-RTA, Yamuna Nagar w.e.f 14.11.1999 to 17.11.2011. His driving test to drive the bus was also taken. He was competent to drive the bus then he was appointed as a driver on school bus. RW-4 Harpal Singh brought the summoned record to prove the renewals.

From the evidence on record, it is clear that original driving licence was fake, however, the endorsement from 1999 to 2011 are correct. It is settled law that if the original driving licence is fake, then its renewals cannot be held as legal. The licence will remain forged. The only question arises in the present case is whether the employer/owner has taken proper precautions before employing respondent-driver to drive school mini bus. It is in the statement of RW-2 Balwinder Singh himself and RW-3 Nirmala that before appointment, driving licence of Balwinder Singh was checked and also the driving test was taken. If the employer has taken the reasonable precautions, then, in no way, it can be held that owner has violated the terms and conditions of the policy. The owner is not supporsed to get the verification from DTO/RTO office regarding the original driving licence.

The Hon'ble Supreme Court in ***National Insurance Co. Ltd. vs. Swaran Singh and others, 2004(2) RCR (Civil) 114***, has held that mere absence, fake or invalid at the relevant time are not the defences available to insurer against the insured or third parties. To avoid its liability towards the insured also, the insurer has to prove the insured to be guilty of negligence and failure to exercise reasonable care in compliance of conditions of policy. The burden is on the insurer to establish breach of policy by leading cogent evidence.

Further, the Hon'ble Supreme Court in ***National Insurance Co. Ltd. vs. Geeta Bhat and others, 2008(3) RCR (Civil) 44***, held that the owner of the vehicle, despite taking reasonable care, might have not been able to find out as to whether the licence was a fake one or not. He is not expected to verify the genuineness thereof from the Transport Officer.

Keeping in view the law laid down by the Hon'ble Supreme Court, I find that the owner has taken reasonable precautions and care before employing Balwinder Singh as driver on the mini bus. There is no violation of terms and conditions of the policy.

In view of the above discussion, I find that findings in the Award dated 14.01.2015 given by the Tribunal are correct, as per evidence and law and do not require any interference from this Court.

Therefore, finding no merit in the present appeal, the same is dismissed.

May 06, 2015 **(INDERJIT SINGH)**
Vgulati **JUDGE**