IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5212 of 2013 (O&M)
Date of Decision.19.09.2015

M/s S.K. Gaur & Company and another ....Appellants

Versus

M/s Bajaj Allianz General Insurance Co. Ltd. ......Respondent

Present: None the appellants.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J.

1. The appeal is at the instance of the owner of the vehicle against whom right of recovery has been granted to the insurance company. The driving license produced by the driver was stated to be fake and the the insurance company attempted to elicit under RTI a response that the driving license produced by the driver was not genuine. Yet another person brought from the licensing authority's office at Aligarh said that it was not genuine. The witness, however, admitted in the cross examination that the register brought by him did not correspond to the particular license number shown in the copy of driving license produced in court.

2. Before the Motor Accident Claims Tribunal, the owner of the vehicle was examined who gave evidence to the effect that he saw the driving license, put the driver to driving test and appointed him. The

Tribunal still found that the license produced by the driver had not been shown to be genuine and relying upon the judgment of the Supreme Court in ***National Insurance Company Limited Vs. Swaran Singh (2004) 3 SCC 297*** held that the insurance company is bound to satisfy the claim of a third-party, even if the driving license was fake but allowed for right of recovery.

3. After finding the insurer to be liable for the claim by a 3rd party, it ought to have also seen that in order that an insurer succeeds in its defence under section 149 of the Motor Vehicles Act, it has to show that the owner had been guilty of breach of terms of policy. In this case, if the owner had given evidence that he had seen the driving licence which was produced by the driver, believed it to be true and after giving him a driving test, appointed him, it must be taken that the owner had done every act that was necessary. It was held in ***Pepsu Road Transport Corporation Vs. National Insurance Company Ltd. (2013) 10 SCC 217*** that it is not expected of the owner that he must cross verify with the licensing authority before giving the driver employment. His own bona fide belief must be taken to be the relevant criterion to decide on whether the owner is entitled to a right of indemnity or not.

4. I do not think that the insurer was able to prove that there had been any deliberate breach on the part of the owner. The Tribunal had not properly considered the effect of evidence of the owner and the bona fide of his belief. The award insofar as it provides for a right of recovery to the insurer after satisfying the award is not correct and it is accordingly set aside.

5. The appeal appeal filed by the owner is allowed and the

owner is entitled to a full right of indemnity.

(K. KANNAN)
JUDGE

September 19, 2015
Pankaj*