IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. FAO No. 1286 of 1993(O&M)
Date of Decision : 04.05.2016

Oriental Insurance Company Ltd. .....Appellant

Versus

Jagtar Singh .....Respondent

2. FAO No. 1287 of 1993(O&M)

Oriental Insurance Company Ltd. .....Appellant

Versus

Salochna Rani and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.K. Bashamboo, Advocate
for the appellant.

None for the respondents.

<u>Surinder Gupta, J.</u>

The above captioned appeals have been filed by Oriental Insurance Company Ltd. challenging the award passed by Motor Accident Claims Tribunal, Kurukshetra (later referred to as 'the Tribunal') granting compensation of ₹25,000/- to claimant-respondent (in FAO No. 1286 of 1993) and ₹2,10,000/- to claimant-respondent (in FAO No. 1287 of 1993). Challenge to the award is on the ground that driver of insured vehicle, which caused the accident was not holding a valid driving licence.

2. Matador bearing registration No. DDA-4086 (later referred to as 'the offending vehicle') insured with the appellant was involved in the accident which took place on 20.01.1992, resulting in death of Raj Kumar and injuries to Jagtar Singh.

While recording finding on issue no. 5 as to whether Ram Chander driver of the offending vehicle was holding a valid driving licence at the time of accident, the Tribunal observed in para 35 and 36 of award as follows:-

> *"35. I have very carefully considered this aspect for the matter. Though, it seems from the testimony of respondent no. 1-Ram Chander as RW-2 who has stated that he is also called Chander Parkash that he did not appear before the police officer for test at the time of issuance of driving licence which was got prepared issued by the driver of the truck on which he earlier used to work as cleaner, yet when this respondent no. (1 sic) possessed driving licence copy Ex. R-1 the owner of matador No. DDA-4082 respondent no. 2 Gurmeet Singh had not committed any willful infringement or violation of promise embodied in insurance policy Ex. R-4 and as envisaged under Section 96 (2) (b) (ii) and in such a situation as held in Zora Singh vs. Dalip Kaur and others, 1989 S.L.J. 105 by our own Hon'ble High Court unless the insured is at fault and in guilty of breach the insurer cannot escape from the obligation to indemnify the insured. It has categorically been held in the said authority that the insurer cannot successfully contend that he is exonerated from its liability having regard to the fact that the insured committed breach of promise when some mishap occurs by some mischance. The present seems to be a case of this nature where there may be defect in the validity of the driving licence but not the fault of the owner and for such mischance the owner cannot be penalized as he has not committed willful infringement or violation in this case and*

therefore, the insurance company cannot be absolved of its liability in these circumstances especially because it has neither examined any officer or official of the Licensing Authority nor it got issued L.C. for that purpose nor the certificate Ex. R-7 purported to have been issued by any Inspector of the office of the District Licencing Authority bears even the despatch number nor the signature of the concerned licencing authority and so in my opinion in the circumstances of the case though, Shri P.K. Gupta, Advocate as RW-3 is responsible person and is not expected to depose falsely yet his testimony falls short of the legal requirement of the proof needed for this purpose.

36. For the foregoing reasons I hold that respondent no. 3 has failed to establish that (i) respondent no. 1 was not holding a valid driving licence at the time of alleged accident and (ii) at any rate that it is absolved from its liability to pay the compensation. So the Insurance Company i.e. respondent no. 3 is liable jointly and severally alongwith respondent no. 1 who was admittedly driving the matador in question and Gurmeet Singh respondent no. 2 admittedly the owner of this vehicle, to pay the said amount of compensation to the claimants of the two claim petitions."

3. Learned counsel for the appellant has argued that driving licence of driver of the offending vehicle was proved to be fake. There was breach of terms and conditions of insurance policy and the insurer was authorized to recover amount of compensation payable to claimants from driver and owner of the offending vehicle. He has relied on observations in the cases ***Manjit Kaur*** ***vs.*** ***H.S. Atwal c/o Chandigarh Gas Co.,***

***Chandigarh and others*, 2013 (2) RCR (Civil)** and ***The New India Assurance Company Limited and others* vs. *Dayal Singh and others*, 2010 (4) PLR 300.**

4. Driving licence of respondent no. 2-Ram Chander driver of the offending vehicle was placed on file as Ex. R-1. This driving licence is in the name of Chander Parkash. While appearing as RW-2, Ram Chander has stated that he is also called by the name of Chander Parkash. This licence was got issued to him by driver of the truck with whom he was working as cleaner. **He was not aware as to from which place the licence was got issued to him. He never appeared for any test before any police official or driving inspector or paid any fee for obtaining the driving licence. He never enquired as to whether his driving licence got prepared by driver of the truck with whom he was working as cleaner, was fake or genuine.** The statement of this witness shows that driving licence produced by him was not got issued by him after following all formalities. As per report of District Transport Officer, Siri Ganga Nagar, from where this licence bearing no. 19312 is shown to have been issued, driving licence at serial no. 19312 was issued in the name of one Girdhari Lal son of Lal Chand. From 01.01.1989 serial no. 64937 was started while licence bearing no. 19312 (Ex. R-1) purported to have been issued on 27.12.1989, was fake. Similar report was also obtained by RW-3, Pawan Kumar Gupta, Advocate when he visited the office of District Transport Officer, Siri Ganga Nagar. What is evidentiary value of the testimony of RW-1 J.K.

Sabharwal, Assistant Manager, Oriental Insurance Company and RW-3 Advocate P.K. Gupta, who have proved that licence (Ex. R-1) is a fake, is not a question which could deter the Tribunal from reaching the conclusion that driving licence was fake. For this purpose, even the testimony of driver of the offending vehicle Ram Chander, who appeared as RW-2, is sufficient. He never appeared before the police or licencing authority to get his licence prepared. He was not even aware as to from where his licence was got issued. The testimony of this witness is sufficient to draw inference that driving licence was fake.

5. Learned Tribunal while relying on the observations in case ***Zora Singh* vs. *Dalip Kaur and others***, ***1989 S.L.J. 105,*** has observed that unless the insured is at fault and is guilty of breach, the insurer cannot escape from obligation to indemnify the insured. In this case, owner of the offending vehicle who filed joint written statement with respondent no. 2-driver has nowhere pleaded that respondent no. 2 was holding a legal and valid driving licence or that he had verified at the time of employing respondent no. 1 that his licence was valid. He has not even appeared as witness to state that driving licence of respondent no. 2 was valid and he had not committed any infringement or violation of insurance policy. In the absence of any pleading or evidence, the Tribunal has committed grave error while concluding that the insurance company has failed to prove that respondent no. 1 was not holding a valid driving licence at the time of accident and respondent no. 2 is absolved from its liability to pay the compensation.

6. As per law laid down in the case of ***National Insurance Company Ltd.*** ***vs.*** ***Swaran Singh and others*****, 2004 (3) SCC 297**, the Insurance Company has to pay the compensation amount at the first instance but at the same time it cannot be denied recovery rights against the insured for breach of terms and conditions of insurance policy.

7. In view of my above discussion, appeals filed by Insurance Company has merit to the extent that it has recovery rights against the insured of the offending vehicle for the compensation paid in this case for breach of terms and conditions of insurance policy. Both the appeals are accepted and award passed by the Tribunal is modified to the extent that Insurance Company on payment of compensation amount shall have the right to recover the same from insured.

May 04, 2016 **(SURINDER GUPTA)**
jk **JUDGE**