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

FAO No.1711 of 1994
Date of Decision.15.02.2016

The Oriental Insurance Company Limited ....Appellant

Vs.

Parkash Chand and others ......Respondents

2. **FAO No.1724 of 1994**

The Oriental Insurance Company Limited ....Appellant

Vs.

Banto and others ......Respondents

3. **FAO No.1725 of 1994**

The Oriental Insurance Company Limited ....Appellant

Vs.

Maya and others ......Respondents

4. **FAO No.1726 of 1994**

The Oriental Insurance Company Limited ....Appellant

Vs.

Gurmit Kaur and others ......Respondents

Present: Mr. D.P. Gupta, Advocate
for the Appellant.

None for the respondents.

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. (ORAL)

1. All the appeals are at the instance of the insurance

company. At the trial before the Tribunal, the contention of the insurance company was that the issue of driving licence was fake. The driver was actually relying on renewed driving licence. In terms of the Full Bench decision of this Court prevailing at that time, a mere fake licence will not invalidate a licence and if there was a genuine renewal made, it will afford a full indemnity to the owner and driver. The Tribunal observed that the insurance company had not proved the subsequent renewal to be fake and therefore, declined to the insurer the benefit of plea that they will be exonerated.

2. The law has undergone a change with the decision of the Supreme Court in ***National Insurance Company Limited Vs. Swaran Singh (2004) 3 SCC 297*** that has held that even a genuine renewal of fake licence will continue to be treated as fake. The counsel for the appellant relies on this judgment to say that it was irrelevant that the insurance company did not adduce proof about the nature of renewal licence since the original issue was proved to be fake. The judgment of the Tribunal could be supported for the law that prevailed at that time but if the change in position of law must be taken note of, the position as regards the manner of how the breach of terms of policy will be considered in the light of the subsequent decisions of the Supreme Court and more particularly in ***Pepsu Road Transport Corpn. v. National Insurance Co. (2013) 10 SCC 217*** would obtain relevance. The Court has held that every fake licence will not exonerate the insurance company if there was a situation where the owner believed the licence to be genuine. The issue of the bona fides of the owner assumes significance in the light of the judgment and if the benefit of the

character of licence as fake by the proof of the original issue as not having been proved to be genuine, I will remit the matter to the Tribunal for affording an opportunity to the owner/driver to state their own versions as regards the alleged fake licence. This adjudication would not require presence of the claimants, for the insurance company will still have to take the responsibility for making the payment to the third party in the light of the judgment of the Supreme Court in ***New India Assurance Co., Shimla v. Kamla,(2001) 4 SCC 342*** while interpreting the provisions of Section 149(4) and (5) of the Motor Vehicles Act.

3. The notice shall be sent to the owner and driver and both the parties will be given opportunity to give evidence about the nature of licence and the issue regarding the provisions for recovery for the insurance company. The judgment passed by the Tribunal is modified and remitted only to the limited extent referred to above. All the appeals are disposed of in the light of the above observations.

(K. KANNAN)
JUDGE

February 15, 2016
Pankaj*