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

FAO No.2286 of 1994
Date of Decision.10.03.2016

Oriental Insurance Company ....Appellant

Vs.

Smt. Bhani Devi and others ....Respondents

2. **FAO No.2287 of 1994**

Oriental Insurance Company ....Appellant

Vs.

Satish Kumar and others ....Respondents

Present: Mr. Vinod Chaudhari, Advocate
for the appellant.

Mr. K.S. Dhanora, Advocate
for respondent -owner.

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)

C.M. No.2757-CII of 2016 in FAO No.2287 of 1994

The application for impleading the legal representatives of deceased-respondent No.3 is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record.

Registry is directed to carry out amendment to the memo of parties.

Main cases

1. Both the appeals arising out of the same cause of action are

at the instance of insurance company on two grounds namely that the driver did not have a valid driving licence and the interest granted @15% is excessive.

2. The Tribunal has relied on the judgment of this Court in ***National Insurance Co. Ltd. Vs. Sucha Singh and others (1994-1) PLR 140*** that held that a valid renewal that was found to be genuine of a fake licence will cure the defect of even a fake licence, to hold that the licence produced by the driver ought to be taken as genuine and a report obtained that the original issue was fake cannot secure any benefit to the insurer.

3. No doubt the law has changed with the decision in ***National Insurance Company Limited Vs. Swaran Singh (2004) 3 SCC 297*** but the Tribunal was taking a particular view in the light of the law laid down by this Court and which was prevalent at that time. I thought for a while whether it will be worthwhile to refer the matter to Tribunal for fresh consideration and allow for only to give evidence of the state of affairs at the time when the owner employed the driver. It is learnt through the application filed in FAO No.2287 of 1994 that the owner is not alive. It may not be possible to secure the benefit of evidence of the owner to elicit the bona fides or otherwise of the owner at the time of giving employment. This assumes significance in the light of the law laid down by the Supreme Court in ***Pepsu Road Transport Corpn. v. National Insurance Co., (2013) 10 SCC 217*** which holds that for the exoneration of liability for an insurer, it is most crucial that the insurer proves that the owner was not bona fide in giving employment to a person without satisfying himself about the genuineness of the driving

licence. In the nature of a negative evidence, all that is necessary for the owner is to affirm that he had not known that the licence was fake. The law has gone as far as to state that it is not even necessary for the owner to make a verification with the RTO office to cross check whether the driving licence produced by the driver was actually issued by the particular transport office.

4. In the circumstances, I am of the view that no purpose will be served in directing a fresh enquiry to be made and I confirm the decision already taken by the Tribunal making the insurer liable and providing right of indemnity to the owner.

5. The interest granted @15% is far in excess of what was generally awarded during that time and I restrict the interest @9% instead of 15% as granted by the Tribunal. The award of the Tribunal is modified only to the above extent and both the appeals are allowed as regards interest only.

(K. KANNAN)
JUDGE

March 10, 2016
Pankaj*