**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**FAO No. 1779 of 1995 (O&M)**
**Date of decision : 05.01.2016**

**National Insurance Company Ltd. ....... Appellant**

**versus**

**Smt.Sunaji and others ....... Respondents**

**CORAM : HON'BLE MR. JUSTICE AJAY TEWARI**

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

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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?

**AJAY TEWARI, J. (Oral)**

This appeal has been filed against the award dated 16.05.1995 passed by the Motor Accident Claims Tribunal, Hisar in favour of the claimant-respondents on account of the injuries suffered by claimant-respondent No.1 in a motor vehicle accident on 05.12.1991 while she was going on a cycle being paddled by her brother Chandgi and was hit by a Canter bearing registration No. DL/II-3014 being driven by Thandu Ram. Chandgi died in that accident whereas respondent No.1 received injuries and the Tribunal awarded a sum of Rs. 25,000/- to her along with interest at the rate of 12% p.a. holding respondents No.1, 2 and 4 jointly and severally liable to pay the same.

This appeal hinges on the issue of the liability of the insurance company when the licence of the driver was invalid.

Learned counsel has argued that in this case notice having been issued service was effected but none has appeared on behalf of the owner and the driver. In the circumstances the appeal is being decided in their absence. He has argued that had it been a situation where the owner i.e. respondent No.2 in the original claim petition, had come into the witness box and deposed that he had employed the driver after seeing his licence and after having observed his driving skills he would have been exonerated from incurring any liability even if if subsequently transpired that the driving licence was fake but in the present case the owner has not appeared in the witness box to state this fact and in these circumstances there would be no escape from the grant of recovery right to the appellant. In ***P.R.T.C. v. National Insurance Company, 2013(4) RCR(Civil) 273*** the Hon'ble Supreme Court had held as follows:-

> "*In **United India Insurance Company Limited** vs. **Lehru and Others1**, a two-Judge Bench of this Court has taken the view that the insurance company cannot be permitted to avoid its liability only on the ground that the person driving the vehicle at the time of accident was not duly licensed. It was further held that the wilful breach of the conditions of the policy should be established. Still further it was held that it was not expected of the employer to verify the genuineness of a driving licence from the issuing authority at the time of employment. The employer needs to only test the capacity of the driver and if after such test, he has been appointed, there cannot be any liability on the employer. The situation would be different when the employer was told that the driving licence of its employee is fake or false and yet the employer not taking appropriate action to get the same duly verified from the issuing authority.*
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> *In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in* ***Swaran Singh's*** *case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation."*

In the present case the owner i.e. respondent No. 4 has not discharged the burden laid by the judgment of the Hon'ble Supreme Court in the case of **PRTC v. National Insurance Co. Ltd**.(supra).

In the circumstances this appeal is allowed and recovery right are granted to the appellant.

Since the main case has been decided, the Civil Misc.

Application, if any, also stands disposed of.

**(AJAY TEWARI)**
**JUDGE**

**January 05, 2016**
**sunita**