IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No.1034-2000 (O&M)
Date of decision : 01.04.2016

National Insurance Company Limited ...... Appellant

versus

Surjit Kaur and others ...... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

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Present : Mr. Neeraj Khanna, Advocate
for the appellant.

Mr. Vikas Mohan Gupta, Advocate
for respondents No.2-A and 3.

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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 by the Insurance Company against the award whereby it has been foisted with the liability to pay the compensation. Since the dispute is between the Insurer and the insured reference to detailed facts is not necessary. Suffice it to say that the case of the Insurance Company was that the driving license of respondent No.3 was fake and the Tribunal had wrongly disbelieved this version. On 10.04.2015 the following order was passed :-

> *"The dispute in this case is regarding validity of Driving License No. 209 of 1985 issued in the name of Rajwant Singh @ Raju now respondent No.3. The insurance company has produced the record regarding verification that the said driving license is not valid.*

So, the ends of justice would be met in case the report of Tribunal is called as to whether the driving license is a valid document or not. So, the parties are directed to appear before the Tribunal on 01.05.2015. Both the parties, i.e the appellant as well as owner and driver of the offending vehicle can lead evidence in support of their case. However, it is made clear that the claimants are not to be called in those proceedings.

For awaiting the report of Tribunal, adjourned to 07.09.2015.

The order be conveyed to the Tribunal for strict compliance."

The report has been received as per which the tribunal has reported that the driving license of respondent No.3 was fake since as per the Clerk of the DTO office license No.209 was issued on 27.09.1989 in the name of Gobind Sharma and there was no license No.209 of 1985 and consequently the Tribunal concluded that the license was a fake license. The only other ground on which the Insurance Company could have been foisted with the liability was that the owner i.e. Respondent No.2-A had stepped into the witness box and stated that he had seen the license and had no reason to believe it to be fake and also taken driving test but none has appeared on behalf of the owner to testify these lines.

Learned counsel for respondents No.2-A and 3 has relied upon ***United India Insurance Company Limited Vs. Shanti Devi and others, 2008 (3) RCR (Civil) 541.*** Paras 16 and 17 of the judgment is as follows :-

"*16. The learned counsel for the Insurance Company has submitted that the vehicle which was insured with the appellant was not driven by a duly licensed driver and as such the Insurance Company cannot be held liable to pay the amount. In para No.17 of the award, the learned Tribunal has held that driving licence of driver Ranbir Singh was not issued by the Licensing Authority, Cuttuck . So, once the licence is found to be fake, the observation made by the learned Tribunal to the effect that in the absence of mens rea or knowledge or intention to violate the terms of the policy, the Insurance Company would not be discharged of its liability, is not applicable to the facts of the present case. The learned counsel* *for the appellant has relied upon the following authorities:-*

1. National Insurance Co.Ltd. Versus Swaran Singh and others, (2004) 3 Supreme Court Cases 297.
2. United India Insurance Co. Ltd. Versus Davinder Singh, (2007) 8 Supreme Court Cases 698.
3. National Insurance Co. Ltd. Versus Laxmi Narain Dhut, (2007) 3 Supreme Court Cases 700.

17. I have considered the said submissions but do not find any force in the same. The learned Tribunal has passed the order strictly in consonance with the authority reported in Swaran Singh's case (supra). The Insurance Company is not only to prove the fact that the licence was fake but has to prove the fact that the owner had the knowledge of the fact that the licence of the driver was fake. The extract of the said ruling is re-produced hereunder;-

"(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified at the relevant time."

However learned counsel for the appellant has argued that this judgment would be applicable only where the owner has appeared and given testimony to the effect that he had seen the license and did not find it to be suspicious and had taken a driving test and it is only thereafter that he has discharged the initial onus and then the onus shifts to the insurance company to disprove this fact. As per him, in the absence of the owner having stepped into the witness box his state of mind can never be proved by the insurance company. I am in agreement with this argument.

In the circumstances, it has to be held that since the driving license was fake it was the violation of the terms of the insurance policy and consequently, the insurance company could not have been held liable.

In the circumstances, the appeal is allowed. Recovery rights are granted to the appellant against the respondents No.2-A and 3.

Consequently, the appeal is allowed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

01.04. 2016
pooja sharma-I