

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

FAO No. 6208 of 2010 (O&M)

Date of decision: 03.03.2016

Gurninder Singh and another

... Appellants.

versus

Rani and others

.... Respondents

2. FAO No. 6210 of 2010 (O&M)

Gurninder Singh and another

... Appellants.

versus

Manpreet Kaur and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Gautam Dutt, Advocate, for the appellants.

Mr. Suvir Dewan, Advocate for respondent No.3.

K.Kannan, J. (ORAL)

The appeals by the insurer and driver are on the denial of the indemnity for alleged fake licence said to have been issued by the office in Kattak. It was in evidence that the licence had been renewed subsequently by the DTO office at Hoshiarpur. The owner RW.2 gave evidence that before giving employment to this driver, he inquired from the DTO office at Hoshiarpur and confirmed to himself that the licence have been renewed by them. In PEPSU Road Transport Corporation

Vs. National Insurance Company 2013 (4) RCR (Civil) 273, the Hon'ble Supreme Court has held in order that the Insurance Company is absolved on the ground of breach of terms, there should be positive evidence that the owner was aware of the forged character of the driving licence. It cannot be a matter of assumption. It has to be proved by the insurer. There is no compulsion for an owner on seeing the driving licence to cross verify with the DTO office. It is his own bonafide belief that shall govern the issue of liability. The evidence of RW2 is sufficient to give him the benefit of indemnity in the light of the law laid down by the Hon'ble Supreme Court.

The right given to the insurer through the impugned judgments for effecting the recoveries is erroneous and set aside. Both the appeals are allowed.

The liability shall be on the insured. Any amount deposited by the owners are ordered to be refunded to the owners. If such amount had been remitted to the Tribunal or recovered by the claimants, the appellants will exercise the recoveries against the insurer and not against the claimants.

(K.KANNAN)
JUDGE

03.03.2016

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