IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1997 of 2013 (O&M)
Date of decision: 12.01.2016

Suma Fibers & Allied Limited

... Appellant

versus

Anurag Arora and others

.... Respondents

2. FAO No. 1998 of 2013 (O&M)

Suma Fibers & Allied Limited

... Appellant

versus

Devansh @ Himanshu and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. A.K. Gupta, Advocate for the appellant.

Ms. Vandana Malhotra,
Advocate for the Insurance Company-respondent No.3.

K.Kannan, J. (ORAL)

Both the appeals are at the instance of the owner who has been denied the benefit of indemnity on the ground that the driving licence was verified and found to be not genuine. The Court was relying on some judgments of the Division Bench and some matters which considered the fact of the licence as having been proved to be not genuine when the right of indemnity was denied to the insured.

In this case, there is evidence on this point by the owner of the vehicle himself who stated that the licence was tendered by the driver, he examined it and believed it to be true and gave the test to the driver to drive the vehicle and finding that he carefully drove the vehicle, gave him employment. The insurance company examined its own manager and in the cross-examination on behalf of the owner and driver, it was suggested to him that he had not secured the verification from the right person. I cannot infer any lack of bonafides on the part of the owner, for, from the nature of cross-examination, it was obvious that the owner and the insurer must only act on information from another and could have had no direct access to whether a licence was genuine or not. If the insurer had taken the verification after the accident that the licence issued was not genuine, it was fair enough that insurer engaged in such an activity but it cannot still deny the insured a right of indemnity, when the insured gave his statement about his belief about the genuineness of the licence and that satisfaction as having arrived at by putting the driver to test of his skills. In PEPSU Road Transport Corporation Vs. National Insurance Company 2013 (4) RCR (Civil) 273, the Supreme Court has held that it is the bona fide belief of the owner that will govern the issue and that it is not necessary for the owner to engage in any communication with the DTO office to verify whether the licence issued was genuine. The decision is squarely applicable and the judgment of the Courts below allowing for right of recovery against the owner is to be set aside and accordingly set aside.

The counsel for insurer argues that right of recovery ought to be given against the driver. The appeal is only by the owner and the owner's appeal is allowed. The insurer, if he so advised, be resort to action of recovery against the driver.

The appeals are allowed on the above terms.

(K.KANNAN)
JUDGE

12.01.2016
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