

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

**FAO No.3112 of 2013 (O&M)
Date of decision : 09.02.2016**

Mewa Singh and another

.....Appellants

Versus

Jhonti Devi and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. Naresh Kaushal, Advocate for appellants.

Mr. R.C. Kapoor, Advocate for respondent No.3.

DARSHAN SINGH, J.

CM-13539-CII-2013

There is delay of 22 days in re-filing the present appeal. The appellant has filed an application under Section 151 CPC for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed.

FAO No.3112 of 2013 (O&M)

2. The present appeal has been preferred by the owners of truck bearing registration No.HP-12/A-9161 against the award dated 05.12.2012 passed by the learned Motor Accidents Claims Tribunal, S.B.S. Nagar, (hereinafter called the 'Tribunal') vide which the claim petition filed by Jhonti Devi and Chhota Singh for grant of compensation on account of death of their son Sunder Singh in the motor vehicular accident, which took place on 02.04.4009 has been allowed and a total compensation to the tune of Rs.2,20,000/- along with interest @ 7.5% per annum from the date of the institution of the claim petition till realisation has been awarded. The amount of compensation was to be paid by the Insurance Company to the claimants but the Insurance Company has been given right to recover the said amount from respondents No.1 to 3 on the ground that the driving licence of Dilbag Singh the driver of the truck was fake.

3. The present appeal has been preferred by the owners of the vehicle to assail the recovery rights given by the learned Tribunal to the Insurance Company.

4. Learned counsel for the appellants contended that appellant Mewa Singh has stepped into the witness box as RW1. He has categorically deposed that he has seen the driving licence of Dilbag Singh and has taken driving test before employing him as driver on his truck. So, there was no violation of the terms and conditions of the insurance policy on the part of the insured. The respondent Insurance Company shall be liable and no recovery right could have been given to the

Insurance Company. To support his contentions, he relied upon cases ***Sant Baba Labh Singh Vs. Santto 2008(2) Law Herald (P&H) 1134*** and ***United India Insurance Co. Ltd. Vs. Rajvinder Kaur & Ors. II(2012) ACC 174.***

5. On the other hand learned counsel for the respondent-Insurance Company contended that appellant Mewa Singh has stated that he has verified the licence. If he would have done so, he must have come to know that driving licence of Dilbag Singh was fake. It shows that his statement was not truthful. In fact he had neither seen the driving licence of Dilbag Singh nor took any driving test at the time of employing him. He contended that as the licence of Dilbag Singh has been found fake, so respondent-Insurance Company has been rightly given the recovery rights by the learned Tribunal.

6. I have duly considered the aforesaid contentions.

7. From the statement of RW2 Parmodh Kumar Verma, Senior Assistant, R.T.O. Office Agra, it comes out that the driving licence produced by respondent No.2 Dilbag Singh the driver of the vehicle was never issued from their office rather the said driving licence number was issued in the name of some other person. So, there is no escape from the conclusion that the driving licence of Dilbag Singh relied upon by the appellants was fake.

8. But at the same time, mere this fact that the driving licence of Dilbag Singh, the driver of the vehicle, was found fake is no ground to absolve of respondent-Insurance Company from liability to pay the compensation in view of the statement made by appellant Mewa

Singh when he stepped into witness box as RW1 and filed his affidavit Ex.RW1/A. Appellant Mewa Singh has deposed that he is owner of truck bearing registration No.HR-12A-9161. He has employed Dilbag Singh son of Puran Singh as driver to drive the truck in November 2008. He took the driving test of Dilbag Singh before employing him as a driver. The driver also showed his driving licence which was valid from 06.11.2007 to 05.12.2010 and then he was employed as a driver. From the aforesaid statement of appellant Mewa Singh it comes out that appellants have taken reasonable care and caution while employing Dilbag Singh as driver of their truck. They have taken driving test of Dilbag Singh to test his competency to drive the vehicle and has also seen his driving licence which was valid from 06.11.2007 to 05.12.2010. The learned Tribunal has returned the findings in favour of the Insurance Company simply on this ground that Mewa Singh has stated that he has verified the driving licence before employing Dilbag Singh as driver. The word 'verify' mentioned in the cross-examination does not convey that Mewa Singh has obtained the report from the concerned Licencing Authority. He has just seen the licence shown to him by Dilbag Singh at the time of his employment. In case ***New India Assurance Company Ltd. Vs. Harnek Singh and others 2006 ACJ 2280*** it has been laid down by this Court that the owner can only verify a licence by verifying the stamp of the Regional Transport Authority. He has no other means to verify the genuineness of the driving licence. Thus, from the statement of Mewa Singh, it is established that he has taken reasonable care at the time of employment of Dilbag Singh as a driver of his truck by seeing his

driving licence, which was valid at the relevant time. The driving test of Dilbag Singh was also taken. If later on the said driving licence has been found fake it cannot be stated that the insured has violated the terms and conditions of the insurance policy.

9. The Hon'ble Supreme Court in case ***United India Insurance Co. Ltd. Vs. Lehu and others (2003)3 SCC 338*** has laid down as under:-

When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that Insurance Companies expect owners to make enquiries with RTO's, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The Insurance Company would not then be absolved of liability. If it ultimately turns out that the licence was fake the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured.

10. In ***Lal Chand Vs. Oriental Insurance Co. Ltd. (2006)7 SCC 318***, it was laid down as under:-

“In the instant case, the owner has not only seen and examined the driving licence produced by the driver but also took the test of the driving of the driver and found that the driver was competent to drive the

vehicle and thereafter appointed him as driver of the vehicle in question. Thus, the owner has satisfied himself that the driver has a licence and is driving competently, there would be no breach of Section 149(2)(a)(ii) and the Insurance Company would not then be absolved of its liability.”

11. The same ratio of law has also been laid down by Hon'ble Apex Court in cases ***National Insurance Co. Ltd. Vs. Geeta Bhat & Ors. 2008(3) RCR (Civil) 44*** and ***Pepsu Road Transport Corporation Vs. National Insurance Company 2013(4) RCR (Civil) 273.***

12. In view of the consistent rule of law laid down by the Hon'ble Apex Court in the cases referred above as the appellants have satisfied themselves that driver Dilbag Singh had a licence and he had also undergone the driving test so there could be no breach of terms and conditions of insurance policy on the part of the insured/appellants and the respondent Insurance Company could not have been absolved of liability to indemnify the insured.

13. Consequently, the Tribunal has wrongly granted the recovery rights to the respondent-Insurance company, which is not legally sustainable.

14. Thus, keeping in view my aforesaid discussion, the present appeal is hereby allowed. The respondent-Insurance Company shall not be entitled to recover the amount of compensation from the appellants and respondent No.2.

09.02.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**