IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.2736 of 2014 (O&M).
Date of Decision: 29.03.2016.

Ashok Kumar Vij ....Appellant.

VERSUS

Amar Singh and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Sidharth Batra, Advocate for the appellant.

Mr. Vipul Sharma, Advocate for
Mr. Ravinder Arora, Advocate for respondent No.3.

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SNEH PRASHAR, J.

A petition under Sections 166 & 140 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") for grant of compensation was filed by claimant-Amar Singh (respondent No.1 herein) claiming compensation on account of injuries suffered by him in a motor vehicular accident that took place on 07.09.2010 near Hanuman Mandir, Gurgaon-Faridabad Road, Faridabad. The petition was partly allowed by learned Motor Accident Claims Tribunal, Faridabad (for short, "the Tribunal") vide award dated 06.11.2013 and an amount of Rs.10,55,000/- was awarded as compensation to the claimant. It was held that the accident had taken place due to rash and negligent driving of Tanker No.HR-46-1645 (hereinafter referred to as the "offending Tanker") by Sukhram Pal (respondent No.2 herein). As regards liability interse of the respondents regarding payment of compensation, learned Tribunal finding that the driving licence of Sukhram Pal, driver of the offending Tanker was originally a fake document and subsequent renewals would not make it a genuine licence, held that the insurance company at the first instance shall pay the compensation to the claimant and thereafter shall be at liberty to recover the amount so paid from the driver and owner of the offending Tanker.

Feeling aggrieved, the appellant being the owner-insured of the offending Tanker filed the instant appeal.

The submissions made by Mr. Sidharth Batra, learned counsel for the appellant and Mr. Vipul Sharma, learned counsel for respondent No.3 have been heard and record perused.

The short but vital contentious issue that needs determination is whether on the facts of the present case the insurance company is absolved of its liability to indemnify the insured on account of violation of terms and conditions of the insurance policy on part of the insured and is entitled to recover the amount of compensation to be paid to the claimant from the insured. What is required to be ascertained is that there was utter negligence on part of the insured in observing and complying with the terms and conditions of the insurance policy i.e. that the offending vehicle could only be allowed to be driven by a duly authorized driver.

The driving licence Ex.R5 of respondent-Sukhram Pal, who was driving the vehicle at the time of accident was tendered in evidence by appellant Ashok Kumar Vij when he stepped into the witness box and made deposition through a duly sworn affidavit Ex.RW1/A. He testified that he had got verified the driving licence of Sukhram Pal from Licensing Authority, Rohtak and had found the same to be correct and genuine. He had also taken trial of his driving and found him to be a skilled driver. On the other hand, respondent-insurance company tendered in evidence Ex.R8 i.e. photocopy of the verification report alongwith fee receipt dated 02.06.2012 issued by Licensing Authority, Indore in respect of the driving licence of Sukhram Pal, according to which driving licence No.S-876/ INDORE/1971 could not be traced out in accordance with the series, serial number, year and date of issuance. Another verification report issued by Regional Transport Authority, Rohtak is Ex.R9 according to which the driving licence of Sukhram Pal was valid for driving 'HMV' (Heavy Motor Vehicle). It was renewed w.e.f. 11.08.1994 to 12.07.1997, 25.07.2000 to 12.07.2003, 13.08.2003 to 12.07.2006, 17.07.2006 to 16.07.2009 and 31.07.2009 to 16.07.2012. Meaning thereby that driving licence of Sukhram Pal was renewed five times by Regional Transport Authority, Rohtak. The old number of the licence was mentioned in the report of the Regional Transport Authority.

On verification of the original licence issued by Licensing Authority, Indore, the report dated 03.05.2003 addressed to Motor Accident Claims Tribunal, Faridabad is Ex.R10. It is mentioned in the said report that as per the record/ computer record of the office, the licence Ex.R5 bearing No.S/876/71 dated 16.08.1971 in the name of respondent-Sukhram Pal son of Nafe Singh had not been issued by that office. Although the respondent-insurance company did not examine any official of the office of Licensing Authority, Indore to prove the report Ex.R10, but learned Tribunal accepted the same in evidence as according to order dated 07.05.2013 the report was directly received by the Tribunal.

Learned counsel for the appellant argued that from the deposition of RW1 Ashok Kumar Vij (appellant) it is proved that he had taken due care and caution while employing respondent-Sukhram Pal as driver on the offending Tanker. He got the licence verified and also took his driving test. When it is established that the renewal of the driving licence of respondent-Sukhram Pal by the competent authority was genuine there was no reason for the appellant to doubt the document. The said facts were not incorporated in his pleadings because at that stage it was not known that the original licence of respondent-Sukhram Pal issued in 1971 was not genuine. The onus was on the insurance company to prove that the appellant knew that the original licence of Sukhram Pal was fake and that the appellant had failed to take reasonable care in employing a qualified and competent driver having valid licence. When the licence of Sukhram Pal had been repeatedly renewed by the Regional Transport Authority, Rohtak, there was no reason for the appellant to doubt that he was not qualified and competent to drive the vehicle. In such circumstances, it cannot be said that there was breach of terms and conditions of insurance policy on part of the appellant and that the insurance company was absolved of its liability to pay the compensation. To support his arguments, learned counsel relied upon ***Pepsu Road Transport Corporation vs. National Insurance Company,***

(2013) 10 Supreme Court Cases 217 and ***National Insurance Co. Ltd. vs. Jagat Narain Goel and others, 2015(3) PLR 186.***

Controverting the arguments of learned counsel for the appellant, learned counsel for respondent-insurance company submitted that renewal of an originally fake licence cannot transform the same into a genuine licence. Renewal even by competent Licensing Authority will not cure the inherent fatality. To support his arguments, learned counsel relied upon ***M/s. United India Insurance Co. Ltd. vs. Davinder Singh, 2007(4) R.C.R. (Civil) 790*** and ***Oriental Insurance Co. Ltd. vs. Prithvi Raj, 2008(1) R.C.R. (Civil) 851.***

Having considered the arguments by learned counsel for the parties, I find that there is force in the arguments of learned counsel for the appellant. There are no two thoughts on the proposition of law that once the original driving licence is fake, its subsequent renewal does not make it a valid document, but that is not the contentious issue arising out of the facts in hand. The controversy is that whether there has been intentional breach of terms and conditions of the insurance policy on part of appellant-insured to the effect that he allowed the offending Tanker to be driven by a person who was not holding a valid and effective driving licence on the date of accident. Admittedly, the original driving licence No.S-876/INDORE/1971 was issued by Licensing Authority, Indore. As per the verification report Ex.R10 issued by the said authority, the driving licence had not been issued by its office.

However, that is not the end of the matter. It is an admitted that as proved from the verification report Ex.R9 obtained by the insurance company itself the driving licence had been renewed five times during the period 11.08.1994 to 16.07.2012 by a competent licensing authority. In view of the said report, there is no reason to disbelieve the appellant that he had got the licence verified from the Licensing Authority before employing Sukhram Pal as a driver. The date on which the licence had been issued by Licensing Authority, Indore was mentioned in the report, which shows that particulars i.e. number and date etc. of the original licence were available with Regional Transport Authority, Rohtak. It appears strange that without getting the original verified the Regional Licensing Authority, Rohtak had renewed the licence five times. If the licensing authority could not visualize that the original licence was fake, it could not be so expected from the insured also. It was held by Hon'ble Apex Court in ***National Insurance Company Limited vs. Swaran Singh, 2004(2) R.C.R. (Civil) 114 (SC)*** as under:-

> *"The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have 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 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 duly licensed driver or one who was not disqualified to drive at the relevant time."

Reverting to the instant case, what to say of leading some substantive evidence to prove that the owner/insured was guilty of negligence and had failed to exercise reasonable care in the matter of fulfilling the conditions of the policy, no evidence was led by the insurance company to prove commission of any intentional act by the appellant amouting to violation of terms and conditions of the policy. There is a note in the verification report Ex.R9 obtained by the insurance company itself during investigation at its own level that the 'driving licence is genuine'. The circumstances of the case, thus, support the deposition of the appellant that having verified the driving licence from the licensing authority and having taken the driving test of Sukhram Pal he had found him to be a skilled driver and had employed him as a driver on the offending vehicle.

In Pepsu Road Transport Corporation's case (supra) Hon'ble Apex Court held as under:-

"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 instant case, it is not the plea of the insurance company that at any point of time it had required the appellant to get the original licence duly verified from the licensing authority or had ever drawn the attention of the appellant that the licence issued by the driver employed by him is fake. Since the owner-appellant had employed the driver after verification of the driving licence, which was being genuinely renewed by a competent licensing authority for the last about 18 years, no fault can be attributed to the owner-appellant. The insurance company is liable to pay the compensation and has no right to recover the compensation so paid from the insured-appellant. The findings of learned Tribunal to that extent are set aside.

Though the appellant had taken a contention that the compensation awarded is on the higher side, but no serious attempt has been made to challenge the same.

The appeal is allowed only to the above extent.

(SNEH PRASHAR)
JUDGE

29.03.2016.
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