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

**FAO No.4517 of 2013 &
XOBJC No.207-CII-2014
Date of decision: 17.02.2016**

Universal Sompo General Insurance Company Limited

... Appellant

versus

Devi Charan and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Jaskaran Singh, Advocate for the appellant.

Mr. Gaurav Singla, Advocate for respondent No.1.

Mr. Vikram Chaudhary, Advocate for
Mr. Ashok Kaushik, Advocate for respondent No.2.

Mr. R.S. Hooda, Advocate
for respondent No.3/cross objector.

K.Kannan, J. (ORAL)

The appeal is at the instance of the Insurance company that brought a plea that the original issue of licence said to have been made to the driver at Mathura was fake and the renewal obtained subsequently by the driver to include the period when the accident had taken place cannot validate the licence.

At the trial, the insurer examined RW-2 a Clerk from the

DTO's office to state that the particular serial No. given in the licence said to have been issued was not being issued subsequently to 11.11.1999 and consequently the licence details as provided in the copy could not be genuine. The owner of the vehicle which was the Society spoke through its President and gave evidence to the fact that he saw the licence, put him to driving test and appointed him as a driver believing the licence to be true. He was cross-examined whether he had verified at the DTO office and he stated in the affirmative that he had made such a verification through a middleman. The driver himself was examined and he also spoke about the fact of possession of driving licence which according to him was genuine. The Tribunal held that if the owner had satisfied himself that the driving licence was genuine and acted on such belief the Insurance Company cannot be exonerated. It if this finding which is put to challenge in appeal.

Learned counsel for the Insurance Company states that there was no proof that the owner had actually carried out the verification and no proof was given that he had paid any fee for carrying out such inspection. Indeed it is asking for a little too much for an insurer that the owner must go to the DTO office and make verification by payment of fees. In the defence under Section 149 for an Insurance Company it must establish a violation of terms of policy. That will place the burden fully on the insurer as held in PEPSU Road Transport Corporation Vs. National Insurance Company 2013 (4) RCR (Civil) 273. The Supreme Court was holding that it is the belief of the owner that is material and stated expressly that it is unnecessary for the owner to make any verification at the DTO Office. This judgment is a complete answer to the argument which is presented before me by the insurer unless the owner had personal knowledge that the licence was fake or he had actively participated in procuring a fake licence the Insurer cannot be exonerated. In every other situation, the *bonafides* of the owner will protect him to secure an indemnity. I, therefore, affirm the finding rendered by the Tribunal that there was no conscious breach of terms of policy.

There is also an argument that the vehicle strayed away from the road for which a permit have been issued. This is not a ground which is available under Section 149 of the Motor Vehicles Act. The provision contemplated that the vehicle shall not be permitted to be put to use for any purpose other than the purpose for which the permit was issued. User of a vehicle against a purpose is different from plying a vehicle outside the permit area. This has been considered by this court in several decisions and just for the sake of emphasis, I may also cite the Court's holdings in this regard in the decision in Hans Raj Chaudhary Vs. Smt. Nanhi Devi and others, 2012 (4) PLR 694.

There is no merit in the appeal, appeal by the Insurance Company is dismissed making it liable for the amount as assessed.

The owner of the tractor has filed a cross objection against the assessment of the 25% liability on the owner of the tractor and the insurer on the ground that the liability must be apportioned to 25% to the owner for the initial impact on the deceased was by the tractor and the bus which was coming behind the tractor ran over the boy after he was initially hit by the tractor. Admittedly, a criminal case has been registered against the driver of the bus only but the Tribunal still apportioned the liability to the tune of 25% because it was the initial impact on the deceased that ultimately resulted in the fatality when the bus ran over him. The counsel for the insurer for the bus would contend that if at all there was a larger slice of negligence to be apportioned to the driver of the tractor who had dashed against the boy, I will not take this to be of any relevance for a careful driving by the bus following a tractor could have surely avoided the fatal accident. The owner of the tractor could not escape liability, for, what the driver did by causing the accident in the first place. In the manner of apportionment, the Tribunal was justified in casting a larger slice of liability to the owner of the bus and casting the 25% liability on the owner of the tractor. I affirm the finding and dismiss the cross-objection.

(K.KANNAN)
JUDGE

17.02.2016
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