IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1877 of 2016(O&M)

Date of decision:10.11.2016

New India Assurance Co. Ltd. ….Appellant

VERSUS

Inderjit Kaur and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Ms. Vandana Malhotra, Advocate for the appellant.

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REKHA MITTAL, J.

The present appeal lays challenge to award dated 13.10.2015 passed by the Motor Accident Claims Tribunal, Ludhiana (in short 'the Tribunal') whereby compensation has been awarded in favour of Smt. Inderjit Kaur and others in regard to death of Gurdas Singh in a motor vehicular accident due to rash and negligent driving of truck bearing No.PB-23-E-0434 by Amrik Singh–respondent No.1.

The sole submission made by counsel for the appellant is that as driver of the offending vehicle did not possess a valid driving licence at the time of occurrence and the licence bearing No.3287 dated 23.10.2008 possessed by him is proved to be invalid in view of the facts elicited in the statement of Ashok Sharma, Senior Assistant Office of ARTO Farrukhabad RW1, the insurance company is not liable to pay compensation. In the alternative, the insurance company may be allowed recovery rights against the insured for committing breach of the terms and conditions of contract of insurance constituting a valid defence under

Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act'), after satisfying the award passed in favour of the claimants.

I have heard counsel for the appellant perused the paper-book and the statements of Ashok Verma RW-1, Amrik Singh RW-2, Inderjit Singh RW-3.

Ashok Verma RW-1 did not produce the relevant record containing entries qua issuance of driving licences in the year 2008 as the said record was stated to be stolen and in that regard FIR Ex.R3 having been registered with the police. However, the witness brought certain records to prove that there is no entry in the records with regard to deposit of licence fee by Amrik Singh. However, the registered owner of the vehicle namely Inderjit Singh appeared in the witness box and tendered into evidence his affidavit by way of examination in chief. He has deposed that at the time of employing a driver, the deponent verifies the driving licence of the driver. It is only after finding the driving licence as genuine, the deponent employs the driver. In his cross examination, the witness has deposed that he has not taken any verification report from the DTO office from where the licence was got verified.

The question that arises for consideration is whether the owner of a motor vehicle is under a statutory or legal obligation to verify the authenticity of a driving licence before engaging a driver on the vehicle insured with the insurance company. Hon'ble the Supreme Court in **United India Insurance Co. Ltd. Vs. Lehru and others, 2003(2) RCR (Civil) 278**, on a detailed consideration of the implications of Section 149(2) of the Motor Vehicles Act, 1988 has held that Section 149(4)(a) (ii) absolves the insurance company where there is a breach by the insured. In para 20 of the judgment, the Court has held as to what owner of the vehicle is required to check while hiring a driver. A relevant extract therefrom is reproduced hereinbelow for ready reference:-

> "20. 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. This is the law which has been laid down in Skandia 's Sohan Lal Passi 's and Kamla 's case. We are in full agreement with the views expressed therein and see no reason to take a different view."

The same view was reiterated in a recent judgment of the Apex Court **Pepsu Road Transport Corporation Vs. National Insurance Co. Ltd. , (2013) 10 SCC 217**. When the statement of Inderjit Singh is examined in the light of observations recorded in Lehru's case (supra) reproduced hereinabove, I find myself unable to subscribe to the submissions of the appellant that the insurance company can either be heard to say that the insured has committed breach of Section 149(2)(a)(ii) of the Act or can recover the compensation from the owner/insured of the offending vehicle after satisfying the award towards the claimants.

No other point has been raised.

In view of what has been discussed hereinabove, finding no merit, the appeal fails and is accordingly dismissed in *limine*.

NOVEMBER 10, 2016 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no