IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. **FAO No.1913 of 2016(O&M)**

National Insurance Company Ltd. ...Appellant

Versus

Gurnam Singh and others ...Respondents

2. **FAO No.1917 of 2016(O&M)**

National Insurance Company Ltd. ...Appellant

Versus

Sucha Singh and others ...Respondents

3. **FAO No.1921 of 2016(O&M)**

National Insurance Company Ltd. ...Appellant

Versus

Sushma and others ...Respondents

AND

4. **FAO No.1922 of 2016(O&M)**

National Insurance Company Ltd. ...Appellant

Versus

Hem Raj and others ...Respondents

Date of Decision: May 05, 2016

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Paul S. Saini, Advocate for
the appellant – Insurance Company.

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HARINDER SINGH SIDHU, J.

This judgment shall dispose of aforesaid four appeals, as the same have arisen out of the common order dated 6.11.2015 passed by Motor Accident Claims Tribunal, Ambala (for short `the Tribunal), whereby, the issue regarding liability to pay the compensation was decided against the appellant – National Insurance Company.

Factual background, which led to passing of the impugned order, is that on 6.4.1992, a vehicular accident took place involving truck No.HR-21-2563. This fateful vehicle was owned by Vijay Singh – respondent and at the time of accident, Banarsi Dass was on the steering wheel. Many lost their lives and many were rendered permanently disabled, which necessitated to filing of as many as 26 claim petitions, which were decided vide common Award dated 10.4.1997 and the entire liability of compensation was fastened upon the appellant Insurance Company.

Feeling aggrieved, the appellant filed FAO No.1307, 1308, 1309 and 1310 of 1997, which were dismissed by this Court. However, on appeal to Hon'ble Supreme Court, the matter was remanded to this Court for fresh decision, whereupon, vide order dated 5.5.2014, this Court set aside the liability against the appellant and remitted the matter to the Tribunal for deciding the issue of liability afresh after affording an opportunity to the owner. Operative part thereof reads:

> *"3. The issue of liability as determined already is set aside and the matter is remitted to the Tribunal for affording an opportunity to the owner to give evidence on his own version about the circumstance under which the services of the driver were engaged and whether he had any knowledge about the same. It was just as well likely that no evidence was offered by the owner on account of the law then prevailing. The issue would therefore be required to be considered afresh with an opportunity to the owner to give his*

> *version about the circumstances in the manner referred to above. Needless to state that the Insurance Company will have an opportunity to controvert any evidence given by the owner or by any person on behalf of the driver. This adjudication does not require the presence of the claimants."*

Consequently, evidence was led before the Tribunal on the issue of liability to pay the compensation. Vide the impugned order dated 6.11.2015, the Tribunal has returned the finding against the Insurance Company and it is held that it is liable to pay the compensation.

Hence, the present appeals by the Insurance Company.

While assailing the finding of the Tribunal, Ld. Counsel for the Insurance Company has contended that from the statement of RW1 Hari Singh, Licensing Clerk from the office of Licensing Authority, Solan (HP) that the driving licence held by the driver of the offending truck was fake, and hence, there was violation of the terms and conditions of the Insurance Policy. Accordingly, he has argued that the Insurance Company could not be held liable to indemnify the loss caused by the accident.

However I do not find force in the argument raised on behalf of the Insurance Company.

Hari Singh (RW1) deposed before the Tribunal that the licence in question in the name of Banarsi Dass was never issued on 14.10.1989. He also denied it having been renewed on 13.10.1992 validating it upto 12.10.1995. But, in cross-examination, he admitted that he had not brought the renewal record and without record, he could not say whether the licence was renewed from 13.10.1992 to 12.10.1995 or not.

As directed by this court in the order dated 5.5.2014, the owner

(Vijay Singh) of the offending truck was given opportunity to give his version. He examined himself as RW3 and also examined one Mehtab Singh as RW4, with whom the driver had been working before he employed him on the offending truck. Vijay Singh specifically deposed through affidavit that he took the test of driver Banarsi Dass and was satisfied that he was having a licence and was driving competently in proper manner. This witness also proved the driving licence as Ex.D2, which was issued by the Licensing Authority, Solan (HP). In cross-examination, he disclosed that he knew driver Banarsi Dass much prior to appointing him as driver, but he was employed by him (witness) in the year 1991, and he remained in service for about 3-4 years. RW3 also admitted that he had not got verified the driving licence of the driver from the Licensing Authority.

Mehtab Singh (RW4) stated that he was owner of truck bearing No.HRJ-1352 and he had seen the driving licence of Banarsi Dass and hired him as driver on his truck in the year 1990. This witness also stated that he took a test of Banarsi Dass and found that he was competent to drive the vehicle and was satisfied that he had a licence and was driving competently. Mehtab Singh further deposed that Banarsi Dass left the job in the year 1991 and Vijay Singh employed him. RW4 also admitted his acquittance with RW3 since 1990 and also stated that the driver was resident of his village Milakpur.

It is clear from the evidence on record that Vijay Singh, owner of the truck had seen the license of Banarsi Dass, driver, before he employed him on the offending truck. Vijay Singh also considered the fact that prior to joining him, the driver was working as driver on the truck of RW4 Mehtab Singh. In these circumstances, it can be unhesitatingly concluded that the owner of the offending truck had satisfied himself about the competence of the driver before employing him. It is a settled law that even if the driving license is found to be a fake one, the insurer cannot be absolved of its liability to pay the compensation without establishing that there was willful breach of the conditions of the Insurance Policy. To avoid its liability towards the 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 conditions of the policy regarding use of vehicle by a duly licensed driver.

In ***National Insurance Company Limited Versus Swaran Singh and others, (2004) 3 SCC 297*** the Hon'ble Supreme Court held that it is certainly open to the insurer under section 149 (2)(a)(ii) of the Motor Vehicle Act, 1988 to take a defence that the driver of the vehicle involved in the accident was not duly licensed. But even after it is proved that the licence possessed by the driver was a fake one, whether liability can be fastened on the insurer is the moot question.

Regarding this it was held that 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.

This principle has been reiterated ***in Pepsu Road Transport Corporation Vs. National Insurance Co. Ltd. (2013) 10 SCC 217.*** Thus, in such cases the liability as between the insurer and the insured would depend upon the reasonable care taken by the owner while employing a qualified and competent driver.

Returning to the facts of the present case, statements of Vijay Singh (RW3) and Mehtab Singh (RW4) leave no room of doubt that Vijay Singh had taken due care and caution before employing the driver, as he had seen the driving licence and had also satisfied himself by taking a practical driving test, wherein, he observed that Banarsi Dass was a competent driver.

In view of the above discussion, there is no ground to interfere in the finding recorded by the Tribunal.

All four appeals are dismissed.

May 05, 2016 **(HARINDER SINGH SIDHU)**
JUDGE

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