IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.425 of 2016 (O&M)
Date of Decision.21.01.2016

Balbir Singh ....Appellant

Vs.

National Insurance Company Limited and another ....Respondents

Present: Mr. Vikram Bali, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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

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K. KANNAN J. (ORAL)

1. The appeal is filed at the instance of the owner after a delay of nearly 7 years. I wanted the counsel to inform me about the facts of the case to appraise whether there is any merit in the appeal for consideration.

2. The owner was made liable on the ground that there was no proof that the driver ever had a driving licence. The driver and the owner did not appear before the Tribunal as witness. It appears that the insurance company had already caused the appellant to be arrested in execution of the decree providing for recovery and the petitioner had served a month long sentence by the process of execution.

3. The appeal is filed to contend that even a fake driving licence cannot be taken as ground for the insurer to plead exoneration of liability in terms of the judgment of the Supreme Court in ***National Insurance Company Ltd. Vs. Swaran Singh and others (2004) 3 SCC 297***. The decision ought not to be understood that fake licence is irrelevant at all times. The Court was only explaining that in situations where driving licence itself is not relevant and there was no proof of nexus of the accident

as resultant to the driving skills where the licence requirement also becomes otiose, then the fact that the driver did not have a valid driving licence ought not to be taken as material. An outstanding illustration could be a situation where the accident had taken place when the vehicle had been parked or in a place where there was no need for testing the skill of the driver. In every other situation where the driver had driven the vehicle and it was shown that the driver did not have a driving licence at the relevant time, it will surely be admissible defence for the insurance company to rely on in terms of Section 149 of the Motor Vehicles Act. The counsel further states that it shall be the burden only on the insurance company to prove that there had been a violation of terms of policy. It is literally in the nature of negative proof that a person did not have a driving licence and if such contention is taken that driver did not have a driving licence and the owner and driver would not be in a position to join issues and produce the necessary evidence, the inference ought to be only that there was a violation of tems of the policy. The exoneration of the insurance company to the extent of providing for a right of recovery after satisfying the claim of the third party was prefectly in accordance with law in the light of the judgment of the Surpeme Court in ***Swaran Singh's*** case itself referred to above.

4. I do not find that there is any error in the order for making an intervention and there is no scope also for filing an appeal after such a delay. The application for condonation of delay and the appeal are dismissed.

(K. KANNAN)
JUDGE

January 21, 2016
Pankaj*