IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 700 of 2014. (O&M)
Date of decision: 11.01.2016

National Insurance Company Limited
... Petitioner

versus

Kamal Puri and others
.... Respondents

2. FAO No. 1054 of 2014. (O&M)

National Insurance Company Limited
... Petitioner

versus

Firoz and others
.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. S.S. Sidhu, Advocate for the appellant.
None for the respondents.

K.Kannan, J. (ORAL)

The Insurance Company is in appeal on issue of liability. It was a case of the driving licence said to have been issued by DTO office at Abohar and renewed subsequently by DTO office at Ambala. The renewal was not in doubt but the original issue was found to be not genuine as per the evidence produced before the Tribunal. The owner gave evidence to the effect that he saw the driving licence with the renewal endorsement produced by the driver but vouch for his own belief that he thought that the licence was genuine and the driver had the valid driving licence.

As far as the 3rd party is concerned, the liability of the insurer is unexceptional, for, even a breach of terms and conditions in the language employed under Section 149 (4) & (5) and as interpreted by the Supreme Court in National Insurance Vs. Swaran Singh and others (2004, 3 SCC 297).

The recovery rights will be guided fully on proof of violation of terms of policy and that proof would still be rendered by the Insurance Company only. The violation of terms of policy cannot be presumed and the burden of proof is only on the insurer to state that the owner-insured had breached the terms by the deliberate participation with the owner in fabricating the licence or he knew that the driver did not have a valid driving licence. If the owner gives evidence of his satisfaction, there can be no argument that the owner did not state about the manner of examination which he did before he gave employment to his driver. It is not even necessary for the owner to check up with the original issuing office whether they had issued any such driving licence. This aspect had been considered by the Supreme Court in PEPSU Road Transport Corporation Vs. National Insurance Company 2013 (4) RCR (Civil) 273.

The counsel also contends that the licence was LMV with the transport endorsement and it cannot be understood as a heavy vehicle. If the transport vehicle is used as such and stated so is the way the Motor Vehicles Rules requires in Form 6. There is no particular expression like 'heavy transport vehicle' or 'light transport vehicle'. The form of licence issued after GSR 684 dated 05.10.1999 & 22.10.1999 merely employs an expression 'transport vehicle'. It cannot be an argument that there was no expression made as a 'heavy transport vehicle' which is not contemplated under the Rules.

There are no merits in the appeals and both the appeals are dismissed.

(K.KANNAN)
JUDGE

11.01.2016
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