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

Date of decision : 09.08.2017

1. **FAO-2251-2000**

New India Assurance Company Ltd.

... Appellant(s)

Versus

Miss Pooja Mehra and others

... Respondent(s)

2. **FAO-2252-2000**

New India Assurance Company Ltd.

... Appellant(s)

Versus

Amita Mehra and others

... Respondent(s)

3. **FAO-2253-2000**

New India Assurance Company Ltd.

... Appellant(s)

Versus

Amita Mehra and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Deepak Suri, Advocate
for the appellant(s)/Insurance Company.

Mr. Amit Jain, Advocate
for the respondent(s)/Claimants.

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AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of three appeals bearing ***FAO***

No.2251 of 2000 titled as ***"New India Assurance Company Ltd. V/s Miss Pooja Mehra and others",*** ***FAO No.2252 of 2000*** titled as ***"New India Assurance Company Ltd. V/s Amita Mehra and others"*** and ***FAO No.2253 of 2000*** titled as ***"New India Assurance Company Ltd. V/s Amita Mehra and others",*** preferred by the Insurance Company/appellant(s) against the findings rendered by the Motor Accident Claims Tribunal (in short 'the Tribunal') fastening the liability of payment of compensation.

Mr. Deepak Suri, learned counsel appearing on behalf of the appellant/Insurance Company submits that through the testimony of RW-1 Sarvjit Singh, License Clerk, RTA, Faridabad, two Driving Licences, which brought on record i.e. DL No.3556/95 and DL No.3550/95, were in the name of Abdul Sattar s/o Kanwar Khan and Shamsudin s/o Nizra, respectively and not of Mahboob, who was driving the vehicle on that day, therefore, the owner caused a breach of terms and conditions of the Insurance Policy. The Insurance Company/appellant(s) is not liable to indemnification. This part of evidence has been ignored by the learned Tribunal. The statement of RW-6 is not inconformity with the *ratio decidendi* culled out by the Hon'ble Supreme Court in ***"Pepsu Road Transport Corporation V/s National Insurance Company Ltd." 2013 (4) RCR (Civil) 273***, as the owner did not appear in the witness box, but only attorney holder, thus, there was a defiance to the provisions of Order 3 Rules 1 and 2 of the Code of Civil Procedure. The agent cannot depose in place of principal. The original knowledge would be only of a principal. Mere reference of verifying the driving licence is not a sufficient compliance, therefore, the learned Tribunal ought to have let off the Insurance Company from the payment of the liability.

It has been brought to the notice of this Court that the owner Siri Chand had died and no efforts have been made by the Insurance Company/appellant(s) to bring his LRs, which fact is evident from the order dated 11.01.2017.

Mr. Amit Jain, learned counsel appearing on behalf of the respondent(s)/Claimants submits that in view of the interim order granted by this Court, the claimants/respondent(s) have not been given any amount of compensation as there is no evidence on record that the appellant(s)/Insurance Company complied with the interim order dated 28.09.2000.

He further submits that RW-6 had authority to make a statement on behalf of the Siri Chand and he had been very specific not qua regard to the verification of the driving licence of the driver, but his appointment also. In the cross-examination, nothing contrary surfaced, thus, urges this Court for upholding the award, under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that Hon'ble Supreme Court had an occasion to deal with the controversy in the matter, where the owner after making reasonable enquiry with regard to the authenticity of the licence of the driver, employed the driver and in that eventuality, he would be entitled to seek the indemnification in case of any accident, in other words, the Insurance Company/appellant(s) cannot be absolved off the liability. The findings rendered by the Hon'ble Supreme Court in the judgment cited supra, reads as under:-

> *"7. Swaran Singh's case (supra) was subsequently considered by a two- Judge Bench of this Court in "National Insurance*

Company Limited vs. Laxmi Narain Dhut" 2007 (2) RCR (Civil) 345. It was explained that:

> *"Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time are not in themselves defences available to the insurer against either the insured or the third parties. 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 condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time…"*

8. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii)to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. 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. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate *action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation."*

By applying the the aforementioned *ratio decidendi* culled in the judgment cited supra and evidence brought on record i.e. statements of RW-1 Sarvjit Singh, Licence Clerk, RTA, Faridabad and RW-6 Mahabir Singh, would be necessary to reproduce, which reads thus:-

"RW-1 : I have brought summoned record of D.L. No.3556/95 issued in the name of Abdul Sattar s/o Kanwar Khan and D.L. No.3550/95 issued in the name of Shamsudin S/o Nizra R/o Rozka Meo. I identify the signature of Sh. Roop Chand Ex. Licence Clerk RTA, Faridbad on Ex.R-1 (Objected to)

XXXX

I had jointed the office of RTA Faridabad in April 98. I have not brought the register containing entries regarding deposit of fee for issuance of driving licence. I have brought only summoned record and not the record of other licences issued in 1995. I have not seen the original D.L. Or photocopy thereof today. I cannot say who has done overwriting in Ex.R-1 in the subject portion. It is correct that the over writing does not bear the signature or initials of any one. I cannot say whether any D.L. Has been issued in name of Mehboob from our office and if so at what number. I am only licence clerk posted in the office. It is wrong that I have deposed falsely at the instance of respondent No.3. I did not make any verification regarding Ex.R1.

XXX by respondent Nos.1 and 2.

I cannot tell how many licences were issued in 1995. It is *correct that there is separate record of licence of the year 1995 but I have not brought the same. I cannot say whether Mehoboob has been issued any licence from our office. There is no photocopy of D.L. Along with document Ex.R-1. I have not seen any photograph of Mehboob. It is wrong that I have deposed falsely.'*

RW-6 : Siri Chand is owner of vehicle No.DEG-3650. He is 90 yrs old. I am looking after his business and also am authorised to appoint driver etc. I am special power of attorney which is Ex.RW6/A. I appointed Mehboob as driver after verifying his driving licence and after test driving licence and found him to be perfect driver.

XXX by Ms. Shashi Bala Adv. For Ins. Co.

I have not signed written statement on behalf of Siri Chand. I had not verified the said D.L. From concerned authority. I have seen the licence and same was valid on that day. It is wrong that I am not looking after the business of Siri Chand."

I am of the view that the owner had taken a preventive measure in verifying the licence, which according to him, apparently looked to be genuine. Be that as it may, even the Insurance Company/appellant(s) has not been able to discharge the burden qua genuineness of the driving licence, for, RW-1, Sarvjit Singh, Licence Clerk, RTA, Faridabad, in cross-examination, admitted that on the register brought, there was a cutting and was not initialed by any endorsement. Neither he saw the photocopy of the licence or that of original one. He was not specific as to whether the driving licence had been issued in the name of Mahboob or not, thus, it remained a mystery whether Mahboob was holding a valid/effective driving licence or not.

The cumulative effect of the evidence and view of mine drawn from the *ratio decidendi* culled out in the judgment cited supra, irresistibly leads to conclusion that no case is made to interference in the impugned award, under challenge and accordingly, the appeals are dismissed.

Since, Mr. Deepak Suri, learned counsel appearing on behalf of the appellant(s)/Insurance Company has not been able to apprise this Court with regard to the deposit of money in the Tribunal, I deem it appropriate to direct the Insurance Company/appellant(s) to deposit the amount of compensation in the Tribunal within a period of two months from the date of the receipt of the certificate copy of this order and the Tribunal shall disburse the amount to the claimant/appellant within a period of one month thereafter.

(AMIT RAWAL)
JUDGE

09.08.2017
Yogesh Sharma

Whether speaking/reasoned	**Yes/** ✓	**No**
Whether Reportable	**Yes/**	**No** ✓