313

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

Date of decision : 08.09.2017

1. FAO-1372-1998

Harjit Singh

... Appellant(s)

Versus

Kiratpal Singh and others

... Respondent(s)

2. FAO-1522-1998

Kiratpal Singh and others

... Appellant(s)

Versus

Harjit Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Swaich, Advocate
for the appellant(s) in FAO-1372-1998 and
for respondent No.1 in FAO-1522-1998.

Mr. K.S. Sidhu, Advocate
for respondent Nos.1 to 4 in FAO-1372-1998 and
for the appellants in FAO-1522-1998.

Mr. Navin Kapur, Advocate
for respondent No.6 in FAO-1372-1998 and
for respondent No.3 in FAO-1522-1998.

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AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two appeals bearing ***FAO No.1372 of 1998*** titled as ***"Harjit Singh V/s Kiratpal Singh and others"*** filed at the instance of the appellant-owner against the findings rendered by the Motor Accident Claims Tribunal (in short 'the Tribunal) fastening the liability upon him and the other bearing ***FAO No.1522 of 1998*** titled as ***"Kiratpal Singh and others V/s Harjit Singh and others"*** filed at the instance of the appellants-claimants being sons and grandsons of the deceased-Raghbir Singh seeking enhancement of compensation of ₹ 2 Lacs awarded by the learned Tribunal on account of death of Raghbir Singh, aged 71 years, who had died in a road accident occurred on 16.09.1993.

Mr. S.S. Swaich, learned counsel appearing on behalf of the owner-Harjit Singh submits that the learned Tribunal has committed illegality and perversity in fastening the liability upon the owner as the Insurance Company failed to discharge the onus viz-a-viz the authenticity and validity of the driving licence. In this regard, he has drawn the attention of this Court to the statement of RW-1-Jiwan Kumar, a witness, who is stated to have been examined by the Insurance Company. He further submits that the witness had not brought on record any Register to *prima facie* prove the factum of the driving licence being forged or fake, therefore, *ratio decidendi* culled out by the Hon'ble Supreme Court in ***"National Insurance Company Ltd. V/s Swaran Singh and others" 2004 (2) RCR (Civil) 114***, squarely applies to the facts and circumstances of the case. While employing the driver, he made a reasonable enquiry with regard to the authenticity and validity of the driving licence, which is a sufficient requirement of law and therefore, the learned Tribunal ought not to have absolved the Insurance Company.

Mr. K.S. Sidhu, learned counsel appearing on behalf of the claimants submits that the compensation of ₹ 2,00,000/- awarded to the claimants, is too meagre and less as the father of respondent Nos.1 & 2 and grandfather of respondent Nos.3 & 4, had died, who were dependent upon him, therefore, they have been not only deprived of love and affection, but also certain other amenities, which grandfather were provided to them, thus, urges this Court for enhancement of the compensation.

Mr. Navin Kapur, learned counsel appearing on behalf of the Insurance Company submits that it was incumbent upon the employer to make a statement with regard to the verification of the driving licence i.e. a reasonable care in terms of the *ratio decidendi* culled out in the judgment cited supra. Having failed to do so, the Insurance Company discharged the onus of proving the authenticity and validity of the driving licence to be not genuine, rightly so, the liability has been fastened upon the owner and the driver, thus, urges this Court for dismissal of the appeals as there is no illegality and perversity in the award, under challenge.

I have heard the learned counsel for the parties and appraised the paper book.

The question with regard to the authenticity and validity of the driving licence and viz-a-viz the discharge of the liability as per the provisions of Section 149 of the Motor Vehicles Act came to be pondered upon by the Hon'ble Supreme Court in ***Swaran's case (supra)*** and after discussing all law points and provisions of the Law culled out the following points, which are narrated herein below:-

> *"105. The summary of our findings to the various issues as raised in these petitions are as follows:*

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) *Insurer is entitled to raise a defence in a claim petition filed under Section 163 A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.*

(iii) *The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. 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 insured, the insurer has to prove that the insurer 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.*

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) *The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same* *would depend upon the facts and circumstance of each case.*

(vi) *Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under section 149(2) of the Act.*

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix)*The claims tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between insurer and the insured in the course of* *adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.*

(x) *Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.*

(xi) The provisions contained in sub-section (4) with proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by relegating them to the remedy before regular court in cases where on given

> *facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims."*

Mr. Swaich, emphatically relied upon sub-para (iii) of Para No.105 of the judgment cited supra to submit that the appellant-owner had taken a reasonable care i.e. authenticity and validity of the driving licence, in employing the driver, which is a sufficient requirement of law. In support of his contentions, he relies upon the paras 7 & 8 of the subsequent judgment rendered by the Hon'ble Supreme Court in ***"Pepsu Road Transport Corporation V/s National Insurance Company Ltd." 2013 (4) RCR (Civil) 273,*** which are narrated hereinbelow:-

> *"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:*
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> > *"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…"*
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> *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."

A question which has been raised before this Court is whether the Insurance Company can be absolved or not, in view of the facts and circumstances, noticed above, i.e. evidence both oral and documentary evidence.

In order to answer the aforementioned question, it would be apt to reproduce the statements of the RW-1 Jiwan Kumar, Licence Clerk and RW-2 Ajit Singh, a witness, which reads as under:

"RW-1 Jiwan Kumar, Licence Clerk, office of Licencing Authority, Una on SA.

Every licence issued by the Licencing Authority, of Una, is entered in a register. Name, Licence number, and date of licence along with photograph of licence holder is entered in the said register. I have seen the licence Ex.A2. It was not issued by our office. The number is also fictitious.

XXXXX by Shri Rosh Walia

I joined this office in July 1995. It is wrong that I was not working on this seat in November 1995. It is wrong that the licence is signed by our Licencing authority."

RW-2 Ajit Singh son of Mehar Singh respondent No.1 as his own witness on SA

I employed Balwinder Singh respondent No.2 as driver about 4 months earlier to the accident. He was employed in 1993. At the time of his employment, he was holding a licence. After employment of Balwinder Singh as driver, I accompanied him twice to Gawahati.

XXXX by Shri P.S. Bhinder counsel for claimants.

Many times, on the way to Gawahti, police had checked the documents of the truck along with the driving licence. We were not challaned because of invalid driving licence.

XXX By Shri Ashok Mathur.

The driver was resident of Village Dadhera. I did not verify the licence to ascertain if the same was genuine or faked. The driver is permanent resident of Village Dadhera. Dadhera falls within the jurisdiction of DTO Patiala. It is wrong that I have not prepared a bogus licence after the accident in the name of respondent No.2 to escape the liability of payment of compensation. It is also wrong that I have deposed falsely."

On conjoint reading of the aforementioned statements, I am of the view that the findings rendered by the learned Tribunal in fastening the liability upon the owner by absolving the Insurance Company is not in correct perspective. The statement of the Licence Clerk-Jiwan Kumar, examined by the Insurance Company, does not reveal that he had brought the Register and on verifying the same, found the licence to be fake one. He had just seen the licence and orally said that our office had not issued the licence. This is not the sufficient requirement of law, on the basis of which, the Insurance Company wants to escape the liability. Had the Insurance Company discharged the onus, perhaps the statement of RW-2-Ajit Singh, was required to examine as to whether, he had taken a reasonable care or not. It would be a farcical exercise for this Court to examine the aforementioned statement as the Insurance Company, in the first instance, had failed to discharge the burden/onus.

For the reasons aforementioned, I am of the view that the learned Tribunal has misdirected the oral evidence brought on record by absolving the Insurance Company.

As regards the enhancement of compensation viz-a-viz the appellants-claimants on account of death of Raghbir Singh, I am of the view that the deceased, at the time of accident, was 71 years. The claimants are two sons and two grand-sons. They would not be dependent upon the deceased aged 71 years and therefore, in my view, they are not entitled to seek the enhancement. The compensation awarded as lump-sum to the tune of ₹ 2,00,000/- cannot be tinkered with.

With the aforesaid observations, the appeal bearing ***FAO No.1522 of 1998*** at the instance of the claimants seeking enhancement of compensation is hereby dismissed and that of the owner bearing ***FAO***

No.1372 of 1998 is hereby allowed. The findings regarding fastening the liability upon the owner are hereby reversed by modifying the award, under challenge and the liability is fastened upon the Insurance Company to pay the compensation.

(AMIT RAWAL)
JUDGE

08.09.2017
Yogesh Sharma

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