IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No. 2624 of 1999 (O&M)
Date of Decision:- 28.04.2017

New India Assurance Company Limited **Appellant**

vs.

Kuldip Singh and others **....Respondents**

F.A.O. No. 2625 of 1999

New India Assurance Company Limited **Appellant**

vs.

Binder Pal Kaur and others **....Respondents**

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CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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Present:- Mr. Ashwani Talwar, Advocate and
Mr. Varun Sharma, Advocate,
for the appellant.

Mr. Ashish Gupta, Advocate,
for respondent No.1.

Mr. H.S. Gharoo, Advocate for
Mr. Vijay K. Garg, Advocate,
for respondents No. 2 and 3.

Mr. Suvir Dewan, Advocate,
for respondent No. 4 in FAO No. 2624 of 1999 and
for respondent No. 5 in FAO No. 2625 of 1999.

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DAYA CHAUDHARY, J.

By this judgment of mine, two appeals bearing FAO No. 2624 of 1999 titled as **New India Assurance Company Limited vs. Kuldip**

Singh and others and FAO No. 2625 of 1999 titled as **New India Assurance Company Limited vs. Binder Pal Kaur and others** shall stand disposed of as both have arisen out of the same award passed by the Motor Accident Claims Tribunal, Mansa (hereinafter referred to as 'The Tribunal') decided on 8.6.1999. For the sake of convenience, facts are being taken from FAO No. 2624 of 1999.

Briefly the facts of the case are that two separate claim petitions were filed by claimants Kuldip Singh and Binder Pal Kaur under Section 166 read with Sections 140 and 141 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'The Act') for grant of compensation stating that On 17.9.1996 at about 7.30 p.m., Kuldeep Singh-claimant was returning from Chandigarh to Mansa while driving Maruti Car No. PB-40-0002 along with his wife Binder Pal Kaur and Bhag Singh Chugh, Sarpanch of the Village Kera Khera. On reaching the area of village Kotra, near Bhikhi crossing, a truck bearing registration No. PAT-2220 which was being driven in a rash and negligent manner came from the opposite direction and by going on the wrong side, hit the car. Due to the impact of collision, the Maruti car turned its face towards the back side and Kuldip Singh, his wife and Bhag Singh Chugh, Sarpanch, sustained injuries and the car was also badly damaged. The injured were sent to Civil Hospital, Mansa and were examined by the doctors At the time of accident, injured Kuldip Singh was 55 years of age. He was an advocate by profession having monthly income of ₹ 4500/- per month. It was also stated in the claim petition that he was also an agriculturist and was getting income to the tune of ₹ 2 lacs per annum. Claimant claimed compensation for pain and agony, medical expenses, attendant and special diet. FIR No. 69 dated 18.9.1996 was registered under Sections 338/337/427/279 IPC at Police Station Bhikhi. Claimant-Kuldip Singh claimed compensation to the tune of ₹ 3,60,000/- with interest whereas Binder Pal Kaur claimed compensation to the tune of ₹ 4,50,000/-.

The Tribunal allowed both the claim petitions in favour of claimants Kuldip Singh and Binder Pal Kaur by holding that Vijay Kumar (driver), Ramji Dass (owner) and New India Assurance Company Limited were jointly and severally liable to pay the amount of compensation to the tune of ₹ 41,635/- to Kuldip Singh and ₹ 12,365/- to Binder Pal Kaur. Both the claimants were also held entitled to interest @ 12% per annum from the date of filing their claim petitions till its realization. It was also mentioned in the award that in case any amount under Section 140 of the Act has been received by the claimants, the same shall be adjusted towards the awarded amount. The claim petitions titled as **Kuldip Singh vs. Vijay Kumar etc.** against National Insurance Company and the claim petition titled as **Binder Pal Kaur vs. Vijay Kumar etc.** against National Insurance Company and against Kuldip Singh were dismissed.

The present appeals i.e. FAO Nos. 2624 of 1999 and 2625 of 1999 have been filed by New India Assurance Company Limited against claimants Kuldip Singh, Binder Pal Kaur, Vijay Kumar-driver, Ramji Dass-owner and National Insurance Company Limited by raising various grounds.

Learned counsel for the appellant-Insurance Company submits that a specific stand was taken in the written statement that the driver of the offending vehicle Vijay Kumar was not holding a valid driving licence at the time of accident and the insurance company could not be held liable to indemnify the owner qua his liability pursuant whereto specific issue No. 8 was also framed by the Tribunal in this regard. Learned counsel for the appellant also submits that Vijay Kumar, the driver of the offending vehicle appeared as RW-1 and admitted that the truck being driven by him was involved in an accident which occurred on 17.9.1996. He also deposed that his first driving licence was issued from Una which was taken from the Court where criminal case was pending for its renewal. Learned counsel also submits that insurance-company examined Sh. Ramesh Chand, Sr. Assistant of the office of the Licensing Authority, Una by deputing a Commission and original record pertaining to the year 1987-88 and 1988-89 was also inspected and it was found that no driving licence bearing No. 8527/RN/285/Una/88 was ever issued from their office in favour of Vijay Kumar. This number does not exist in their original record and the driving licence at Sr. No. 285 was found to have been issued in favour of one Shashi Kumar. This witness also deposed that he had also seen the original register for the year 1987-88 at Sr. No. 285 and driving licence was found to have been issued in favour of someone else. However, the endorsement issued on 17.7.1997 bears the signature of one Jivan Kumar, Licence Clerk, who was working in the same branch. The driving licence was renewed from District Transport Office, Bathinda for the period from 12.9.1994 to 11.9.1997. Learned counsel further submits that the renewal of the licence was on the basis of fake licence, whereas, it was never issued. The fake document is non-est in the eyes of law and it cannot be considered as valid document on the basis of renewal only. Learned counsel also submits that the insurance company cannot be held liable to indemnify the owner qua injuries caused to the third party. He further submits that owner of the truck Sh. Ramji Dass never appeared before the Tribunal and it cannot be said that he has checked the driving licence possessed by driver Vijay Kumar to verify its correctness. At the end, learned counsel for the appellant submits that award passed by the Tribunal be modified by absolving the appellant-insurance company from its liability by giving a finding that the driver of the offending vehicle was not holding a valid driving licence at the time of accident.

Learned counsel for respondents No. 1 to 3 have opposed the submissions made by learned counsel for the appellant. Learned counsel for respondent No.4-National Insurance Company Limited submits that the driving licence of the driver was believed to be genuine after its renewal and there was no reason to doubt the same as it was duly signed by the District Transport Officer, Bathinda, after checking the validity of driving licence from 12.9.1994 to 11.9.1997. It could not be imagined that the driver of the offending vehicle was not holding a valid driving licence. There was no fault on the part of the owner of the truck in handing over the vehicle to the driver as the driving licence and its validity was checked.

Learned counsel for the appellant has challenged the award passed by the Tribunal only on the ground that driver of the offending vehicle was not holding valid driving licence as it was found that the fake licence was renewed by District Transport Officer, Bathinda for the period from 12.9.1994 to 11.9.1997 and same was even admitted by the driver himself. It has also been argued that a fake document is non-est in the eyes of law and insurance company cannot be held liable to indemnify the owner qua the injuries caused to the third party.

Facts relating to filing of claim-petitions under Section 166 read with Sections 140 and 141 of the Motor Vehicles Act, 1988 and grant of compensation to claimant-Binder Pal Kaur and Kuldip Singh are not disputed.

Admittedly, the driver of the offending vehicle was holding the licence which was never issued by the licencing authority, Una but it was subsequently renewed by the District Transport Officer, Bathinda.

The issue for consideration before this Court is as to whether the insurance company is liable to pay compensation in case the driver of the offending vehicle was not having valid and genuine driving licence and forged driving licence was renewed by the competent licencing authority. Same issue was there before the Full Bench of this Court in case **National Insurance Company Limited vs. Smt. Santro Devi and others, 1997 (1) ACJ 111** wherein it has been held that a forged driving licence may be validly renewed but it would not become a valid driving licence or a duly issued driving licence in accordance with the Motor Vehicles Act, 1988. The observations made by the Full Bench are reproduced as under:-

> (1) A forged driving licence though may be validly renewed, would not become a valid driving licence or a duly issued driving licence in accordance with the Motor Vehicles Act.

(2) The insured bonafidely believing in the validity of a forged driving licence employing the holder of a fake driving licence renewed by a competent authority, would not amount to violation of the conditions of contract or of insurance policy. It would not be violating either conditions of indemnity or the insurance policy or the contract or violation of any statutory provisions. Under these circumstances, merely employing a driver with a forged driving licence would not absolve the insurer of its liability;

(3) In the absence of mansrea or knowledge or intention to violate the terms of policy or the provisions of the Act by the insured, the insurance company would not be discharged of its liability from indemnifying the insurer or of its statutory liability to third party or its contractual liability to third party.

(4) The insurance company cannot refuse to meet its liability qua third party for any act or omission bonafidely or otherwise committed by the insured or its liability inasmuch as third party for whose benefit the insurance has been provided, is not a privity to any breach as being not in control of the act or conduct of the insured or its employee or insurer. Thus, the insurance company cannot refuse to meet its liability qua third party.

(5) The insurer is duty bound and liable statutorily as well as contractually to reimburse third party claim, for the tortuous act committed by the insured or his employee as well as the liability incurred by insured or his employee under the Motor Vehicles Act;

(6) The insurance company can neither refuse to indemnify nor is discharged from its liability to the insured or the claimants for an act of fraud committed by the third party qua the insured though it has a right to recover any loss suffered by it from the person, who committed the fraud or from any other authority, as permissible either under tort or any other statute; and

(7) The insurance company would be entitled to recover the amount, which it has paid to the claimant from the insured or his driver or employee who has perpetuated fraud and the insurance company was made to reimburse third party who suffered loss because of the tortuous act of the insured or his employee. The insurer would not be left without remedy to reimburse itself. It would be at liberty to approach under tort in accordance with law for the failure of the State to discharge common duty care as well as the insured for not observing due care of an ordinary prudent person expected from the insured, as a duty towards the insurer as well as the person who has committed the fraud. Remedy, as available to the insurer

is not a decision by this court while dealing with the question, rather it is left open to be determined as and when a question arises in the facts and circumstances of a particular case."

On the basis of observations made by the Full Bench of this Court, it can be held that renewal of a driving licence can be equated with a driving licence or renewal of a fake driving licence and it would result in its validation. It was the duty of the insurer or the owner to verify the genuineness of the driving licence. The insurance company cannot refuse to meet its liability qua third party for any act or omission otherwise committed by the insured and as such the insurance company cannot refuse to meet its liability qua third party. In such circumstances, the insurance company is duty bound to reimburse the claim to third party. Accordingly, the insurance company can neither refuse nor discharge from its liability, although it has a right to recover any loss from the person, who has committed the fraud or from any other authority as permissible either under Code or any other Statute. In case, the driver has played fraud and the licence which was obtained in a fraudulent manner was subsequently renewed by the competent licencing authority at different place, said licence was believed by the owner in a bona fide manner and even the insurance company did not make any efforts to verify its genuineness. The observations made by Hon'ble the Apex Court in case **National Insurance Company Ltd. vs. Swaran Singh and others, 2004(2) RCR (Civil) 114,** are reproduced as under:-

"We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act . However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given opportunity to defend at all. Such a course of action may also be resorted when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage.

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The summary of 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 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.

(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. The decision rendered on the claims and disputes inter se between the insurer and 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."

In the present case, it was found on verification that the driver of offending vehicle was having fake driving licence and getting it renewed subsequently by the competent authority does not make it valid. Accordingly, the insurance company cannot be held liable to indemnify the owner qua the injuries to the third party. Accordingly, the insurance company has wrongly been held liable jointly and severally.

For the reasons recorded and the law position as discussed above, there is no merit in the contentions raised by learned counsel for the appellants qua to compensation awarded to the claimants and the appeals being devoid of any merit are accordingly dismissed. However, the appellant-Insurance Company is at liberty to recover the amount from the owner and driver of the offending vehicle.

April 28, 2017 **(DAYA CHAUDHARY)**
poonam **JUDGE**

Whether speaking/reasoned **Yes**

Whether Reportable **Yes**