

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

FAO No. 417 of 1999 (O&M)
DATE OF DECISION : 16.08.2017

New India Assurance Co. Ltd.

.... APPELLANT

Versus

Mamta Rani and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Vipul Sharma, Advocate, for
Mr. Paul S. Saini, Advocate,
for the appellant.

Mr. Rajender Sharma, Advocate,
for respondent No.8.

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AVNEESH JHINGAN, J. (Oral)

1. This is an appeal filed by the Insurance Company against the award dated 15.10.1998 passed by the Motor Accident Claims Tribunal, Gurdaspur (hereinafter referred to as 'the Tribunal').

2. The brief facts of the case, relevant for decision of the appeal, are that on 20.01.1994 Madan Lal (deceased) boarded a bus bearing registration No. PBF-425 for coming to Gurdaspur. The said bus was being driven by respondent No.7 Lakhwinder Singh. When the bus reached near village Babri, the driver tried to cross a standing jeep. The bus was being driven recklessly and negligently. While overtaking the jeep, the driver lost the control over the bus and it struck against the trees. As a result of the impact, Madan Lal died at the spot, whereas other passengers suffered injuries.

3. A claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') was moved by the widow, three minor children and mother of the deceased.

4. The Tribunal, on the basis of evidence and the witnesses produced before it, vide award dated 15.10.1998, held that the bus bearing registration No. PBF 425 was being driven rashly and negligently by the driver, which resulted into an accident in which Madan Lal lost his life. The Tribunal, after considering the entire case, further found that the claimants (respondents No.1 to 5 herein) were entitled to compensation of ₹ 1,08,000/- with interest at the rate of 12% per annum from the date of the claim petition till realisation of the amount, for which the driver, owner and the Insurance Company were held jointly and severally liable.

5. The only ground to challenge the impugned award is that since Lakhwinder Singh (respondent No.7 herein), the driver of the bus was not holding a valid driving licence, therefore, the appellant – Insurance Company should not have been made liable to pay the compensation awarded by the Tribunal.

6. Learned counsel for the appellant - Insurance Company argued that the Tribunal did not provide reasonable opportunity to the appellant – Insurance Company to discharge its onus that the driving licence possessed by the driver of the offending bus was not valid. Reliance in this regard has been placed upon an order dated 14.10.1998 (Annexure P-4) passed by the Tribunal, vide which evidence of the appellant – Insurance Company was closed by order. The order is re-produced below :-

“Counsel for respondents no. 1, 2 and 4 closed their evidence after producing copy of the insurance policy. No evidence of respondent No.3 is present. Summons of licensing authority Solan received back with the report that he is bound down in some other court but the witness has not mentioned in the summons in which court he is to appear as a witness. It seems that he is intentionally making such reports. I consider that there is no justification for further adjournment of the case for evidence of respondent no.3. As such the evidence of respondent no.3 is closed by order.”

A perusal of the aforesaid order will show that summons issued to the licensing authority, Solan, were received back with the report that the person who had to appear before the Tribunal was bound down in other court. However, name of the other court where he was bound down was not mentioned by the witness. Thus, the Tribunal was of the opinion that the witness was intentionally making such reports. Be as it may, evidence of the appellant – Insurance Company was closed by order.

7. Learned counsel for the appellant further argued that in spite of moving an application, the driver and owner of the offending bus did not produce the driving licence before the Tribunal. The appellant – Insurance Company appointed an investigator who managed to get copy of the driving licence. On verification from the licensing authority, Solan, it was disclosed to the appellant that it was a fake driving licence. It was thereafter that the appellant – Insurance Company summoned the official of the licensing

authority, Solan, for 14.10.1998. However, the Tribunal closed evidence of the appellant on that day, in spite of the fact that there was a report that the concerned official of the licensing authority, Solan, was unable to appear before the Tribunal, as he had to appear in some other court as a witness.

8. This court vide order dated 03.02.2014, taking note of the facts mentioned above, remitted the matter back to the Tribunal, directing the owner and driver of the offending vehicle to place the original driving licence on record. It was made clear that in case the original driving licence is produced, two effective opportunities would be granted to the appellant – Insurance Company to produce their evidence with regard to validity of the licence. The Tribunal was directed to send its report to this court.

9. In compliance with the order of this court dated 03.02.2014, a report was sent by the Tribunal, in which it was stated that earlier due to non-filing of correct addresses of the owner and driver of the bus, summons could not be issued. Later on, summons were issued but could not be served, as address of the owner was incorrect and the summons issued to the driver was received back with the report that he is residing abroad. Thereafter, both the respondents were ordered to be summoned through publication in the newspaper. Even after publication, no body appeared on behalf of the driver and the owner and they were proceeded against ex-parte on 15.05.2015. Subsequently, on 19.05.2015, Sh. Balwinder Singh, owner of the vehicle, moved an application before the Tribunal and he was allowed to join the proceedings at that stage. After stating these facts in the report, it

was stated by the Tribunal that the case was fixed for 14.07.2015 for producing licence.

10. Now, a final report dated 18.08.2015 from the Tribunal has been received. In the said report, the driver of the vehicle has been proceeded against ex-parte. The Tribunal has reported that during the proceedings, photo copy of one driving licence Mark 'A' in favour of Lakhwinder Singh (driver) issued from Solan with effect from 1988 to 23.09.1992, renewed upto 22.09.1995, attached in the FIR case, was brought on record. After the remittance of the case by this court, the original driving licence bearing No. DL-9007/Amritsar/ 18.08.1992 renewed upto 16.08.1998, thereafter upto 15.08.2001 and upto 14.08.2004, issued by the Licensing Authority, Amritsar, in favour of Lakhwinder Singh driver was produced. Further, a report Ex.R3 was also received by the Tribunal, in which office of the District Transport Officer, Amritsar, reported that DL-817 dated 31.03.1993 was issued in the name of Lakhwinder Singh son of Bachan Singh for heavy vehicles, but its record was destroyed in bomb blast on 02.06.1999. The Tribunal further reported that the driving licence Mark 'A' issued by the transport authority, Solan, was argued to be fake by the Insurance Company, but at the same time the original licence Ex.R1 in favour of the driver was issued by the licensing authority, Amritsar, on 18.08.1992 and was renewed subsequently. The Tribunal further reported that even if the licence Mark 'A' issued in the year 1988 was fake, the driver got issued a licence from the Licensing Authority, Amritsar, on 18.08.1992, the original of which is produced as Ex.R1. This licence was effective on

the day of the accident, i.e. on 20.01.1994. As the Insurance Company failed to produce any evidence challenging the validity of the aforesaid driving licence, in spite of the opportunity having been granted to them, the licence Ex.R1 was held to be valid.

11. The said report of the Tribunal has been inspected by learned counsel for the parties.

12. Learned counsel for the appellant has not been able to show that any evidence was produced by the appellant – Insurance Company before the Tribunal to prove that the original driving licence Ex.R1 was not valid.

13. Learned counsel for the owner argued that in spite of the opportunities granted by the Tribunal, the appellant never adduced any evidence regarding validity of the licence. The driver possessed a valid driving licence on the date of the accident.

14. I have heard learned counsel for the parties and have perused the paper book and the reports.

15. The law is settled that initial onus that the driving licence is fake is on insurer. In **National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, 2007 (3) SCC 700**, the Hon'ble Apex Court held as under :-

“40. As noted above, the conceptual difference between third party right and own damage cases has to be kept in view. Initially, the burden is on the insurer to prove that the license was a fake one. Once it is established the natural consequences have to flow.”

16. In *National Insurance Company Limited Vs. Swaran Singh & Ors. 2004 (3) SCC 297*, it was held that to avoid its liability towards the insured, 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 a duly licenced driver or one who was not disqualified to drive at the relevant time. It cannot be said that the Insurance Company has been able to discharge the onus of proving negligence on the owner's part.

17. In the case of *United Insurance Company Ltd. Vs. Lehu & Ors., 2003 (3) SCC 338*, it was held by the Hon'ble Apex Court that owner of a vehicle while hiring a driver is not expected to check the records of the licencing officer to satisfy himself that the driving licence is genuine. If the driver produces a driving licence which on the face of it looks genuine, the owner cannot said to be negligent. The relevant para of the report is extracted as under :-

“20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that Insurance Companies expect owners to make enquiries with

RTO's, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149 (2) (a) (ii). The Insurance Company would not then be absolved of liability. If it ultimately turns out that the licence was fake the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia 's Sohan Lal Passi 's and Kamla 's case. We are in full agreement with the views expressed therein and see no reason to take a different view.”

In these cases, the Supreme Court has held that liability on the owner cannot be fastened only because the licence was fake; it has to be established that owner was aware or had notice of fake licence and yet permitted the person to drive.

18. In the present case, we are concerned with the initial stage. The appellant failed at the threshold and could not discharge the initial onus of proving that the driving licence was fake. The initial grievance of the

appellant that no opportunity was granted by the Tribunal to produce evidence regarding fake licence no longer exists. Rather after remittance from this court and after production of original licence, the appellant had not availed opportunities granted to it.

19. In view of the clear report of the Tribunal and in absence of any contrary evidence by the appellant - Insurance Company, the instant appeal filed by Insurance Company has no merit and is, hereby, dismissed.

August 16, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes