IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2346 of 2006
Date of Decision.15.09.2017

National Insurance Company Limited ....Appellant

Vs

Gurmail Singh and others ....Respondents

2. **FAO No.2368 of 2006**

National Insurance Company Limited ....Appellant

Vs

Gurmail Singh and others ....Respondents

3. **FAO No.2369 of 2006**

National Insurance Company Limited ....Appellant

Vs

Harmail Singh and others ....Respondents

Present: Mr. V. Ramswaroop, Advocate
for the appellant.

Mr. Parveen Jain, Advocate for
Mr. Amit Jhanji, Advocate
for respondent No.5 in FAO No.2346 of 2006 and
for respondent No.4 in FAO No.2368 and 2369 of 2006.

Mr. Parminder Singh, Advocate.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

This order of mine shall dispose of three aforementioned appeals preferred by the insurance company on the ground that driver of the vehicle involved in the accident i.e. truck bearing registration No.MP-09-KB-5157 was not having a valid and effective driving licence.

Mr. V. Ramswaroop, learned counsel appearing on behalf of the appellant submits that the finding of the Tribunal in para 18 of the award is wholly erroneous inasmuch as that the driving licence bearing No.534/REN dated 19.4.2004 (old No.227/R/01-02) was issued in the name of Baldev Singh. According to report Ex.R2, it was proved that the aforementioned driving licence in the name of Baldev Singh was valid from 19.4.04 to 18.04.07, in essence, the driver did not have effective and valid driving licence on the date of the accident i.e. 10.12.2003. Therefore, there was breach of terms and conditions of the insurance company, thus, the insurance company is liable to be absolved from indemnification.

On the contrary, learned counsel appearing for the owner submits that the onus of proving the fakeness and invalidity of the driving licence heavily relies upon the insurance company and having failed to discharge the same, mere exhibition of the document i.e. Ex.R2 would not dispense with proof of the same. In other words, he submits that no witness from DTO, Hoshiarpur has been examined to prove report, much less, effectiveness and validity of the driving licence, thus, urges this Court for upholding the order under challenge.

I have heard learned counsel for the parties, appraised the paper book and of the view that the finding rendered by the Tribunal does not call for interference. For the sake of brevity, the finding rendered by the Tribunal in paragraph 18 reads thus:-

> "*18. Now coming to the liability of the respondents in making the payment of the compensation, it is the statement made by the respondent Baldev Singh RW1 that he is holding a valid driving licence. EX.RW1/B is the attested copy of the D.L. No.534 REN dt. 19.4.04 issued by the Licensing Authority (MV) Hoshiarpur in the name of the respondent Baldev Singh valid up to 18.4.07. Respondent No.3 has produced in*

> *evidence Ex.R2 the report made by the DTO Hoshiarpur on the basis of an order got passed by the Tribunal on 20.3.06 on the basis of an application moved in this regard, to the effect that DL Old No.6340/RDL/88-89 2A HSP and renewal No.3800/R/95-96 and renewal No.227/R/01-02 and Renewal No.534/R/04-05 for LTV and HTV valid from 19.4.04 to 18.4.07 stands recorded in the name of Baldev Singh s/o Sashu Ram, V&PO Garshankar Distt. Hoshiarpur as per the office record. However, it is reported that 6340/R-88-89 is not traceable and available in the office. It is nowhere the report made by the DTC Hoshiarpur that the DL No.6340/RDL/88-89 was not issued by his office. It was for the Insurance Company to have led the positive evidence that DL No.534 REN dt. 19.4.04 bearing old No.227/R/01/02 was not ever issued by the Licensing Authority (MV) Hoshiarpur. Consequently, it would appear that respondent No.1 was holding a valid driving licence and therefore, it shall be the liability of the respondent No.3 to make the payment of the compensation. I, therefore, hold issues Nos.2, 3 and 4 in favour of the petitioners and against the respondents and issue No.5 against the respondent No.3."*

It is settled law that mere exhibition of the document does not dispense with its proof. The aforementioned view of mine is derived from the ratio decidendi culled out by the Hon'ble Supreme Court in ***Sait Tarajee Khimchand and othrs Vs. Yelamarti Satyam and others 1971 AIR (SC) 1865.*** The relevant paragraphs of the same reads as under:-

> *"15. The plaintiffs wanted to rely on Exhibits A-12 and A-13, the day book and the ledger respectively. The plaintiffs did not prove these books. There is no reference to these books in the judgments. The mere marking of an exhibit does not dispense with the proof of documents. It is common place to say that the negative cannot be proved. The proof of the plaintiffs' books of account became important because the plaintiffs' accounts were impeached and*

falsified by the defendants' case of larger payments than those admitted by the plaintiffs. The irresistible inference arises that the plaintiffs' books would not have supported the plaintiffs."

Admittedly, no witness from the office of DTO, Hoshiarpur has been examined to support the contents of the report. Even otherwise, the report would not be a clincher or a concrete evidence to establish the authenticity of the driving licence. The owner has been deprived of an opportunity to cross-examine the witnesses in an attempt made by the insurance company to fasten the liability on him.

On consideration of the aforementioned facts, I am of the view that the finding rendered by the Tribunal does not call for interference. Resultantly, the appeals filed by the insurance company are dismissed. It has been brought to the notice of this Court that in two cases 50% of amount of compensation has already been deposited and the claimants have been allowed to withdraw same on furnishing adequate security. The insurance company is directed to satisfy the remaining portion of the award within a period of two months from the date of receipt of certified copy of this order, failing which it shall entail interest @12% per annum.

(AMIT RAWAL)
JUDGE

September 15, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes