

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

**FAO No. 3087 of 2012 (O&M)
Date of Decision: October 13, 2017**

Jasbir @ Jagbir and another

..Appellant(s)

Versus

Oriental Insurance Co. Ltd. and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. K.S. Malik-I, Advocate
for the respondents.

Mr. Naveen Kapur, Advocate
for respondent no.1-Insurance Company.

ANITA CHAUDHRY, J.

This appeal has been filed by the owner-driver disputing the recovery rights given to the insurance company.

It is necessary to sketch the bare facts. An accident had occurred on 26.02.2010. The deceased was coming on a motorcycle. A tractor driven by appellant no.1 - Jasbir @ Jagbir came in a rash and negligent manner and struck the motorcycle which led to his death.

Respondents no.1 & 2 contested the petition and pleaded that the vehicle was insured and the driver had a valid and effective driving licence.

Insurance company took the plea that the driver did not have a valid and effective driving licence and there was a violation of the terms and conditions of the policy.

The Tribunal ascertained the amount that was payable to the claimants and on the issue of licence, it noted that there were three driving licences i.e. Ex. R-3 that was produced by the owner-driver, Ex. R-8 that was handed over by the driver to the police and one other licence Ex. R-6 issued by the Licensing Authority, Mathura. It noted that the licence issued by Licensing Authority, Rohtak was found in the police file and had been proved by the Ahlmad who brought the file of the trial pending against the driver.

Faced with this situation, the argument on behalf of respondents no.1 & 2 was that the owner had no knowledge that the licence was fake and his duty was only to take a test drive and see whether the driver had a licence and it is the insurance company who has to pay the compensation.

The Tribunal had noted that had the owner seen the licence as he had stated then he would also have seen that it was issued by the Licensing Authority, Nagaland whereas he was a resident of Haryana. The Tribunal also noted that the licence which was found with the driver at the time of accident had been issued from Licensing Authority, Rohtak, which was only issued to drive a scooter, motorcycle and car and he did not have the licence to drive a tractor whereas the licence issued by Licensing Authority, Mathura was found

to be fake. The Tribunal gave the recovery rights to the insurance company.

An application for additional evidence was filed in this appeal which was allowed and the appellants were permitted to place on record the judgment of acquittal recorded by the trial Court.

I have heard the submissions of both the sides and have gone through the record.

Counsel for the appellants had relied upon ***Pepsu Road Transport Corporation Vs. National Insurance Company 2013(4) RCR (Civil) 273*** and ***United India Insurance Co. Ltd. Vs. Shanti Devi and others 2008(3) RCR (Civil) 541*** and had submitted that the owner was only to satisfy that the driver had a driving licence and was not expected to verify the genuineness of the driving licence and he had stepped into the witness box to make that statement and the recovery rights could not have been granted to the insurance company.

On the other hand, the counsel appearing on behalf of the insurance company had relied upon judgments of this Court ***Paramjeet Singh Vs. Satish Kumar and others FAO-99-2015, D.O.D. 31.03.2015***, ***Kuljeet Singh Vs. Surinder Kaur and others FAO-1749-2015, D.O.D. 24.03.2015***, ***Suresh Kumar Vs. Chola mandalam Ms. General Insurance Co. Ltd. and others FAO-1623-2014, D.O.D. 21.03.2014*** and ***Bharat Kharabanda Vs. New India Assurance Co. Ltd. and others CR-4355-2007, D.O.D. 16.4.2009*** and urged that a driver cannot hold two different licences and there is a prohibition

under Section 6 of the Motor Vehicles Act, 1988 and if any licence has to be upgraded then it is the same licence which has to be submitted under Section 11 of the Act. It was urged that the owner and driver were represented by the same counsel and licence Ex. R-3 issued from Nagaland was tendered in evidence by the counsel on 19.09.2011 and later the owner stepped into the witness box to state that he had seen the licence of Jagbir. It was urged that the driver had given another licence to the police which is Ex. R-8 and had been issued by Licensing Authority, Rohtak which was only for a scooter, motorcycle and car and was issued on 16.03.2007 which was valid till 2027. It was urged that there was another licence Ex. R-6 which had been issued from Mathura and was issued on 30.05.2007 which was verified and was found to be fake. It was contended that a person could not hold more than one licence and the driver was a resident of Rohtak and there is no assertion with regard to his employment or residence in Nagaland and he had not explained as to how he came in possession of the licence nor any supporting documents were tendered at the time of applying for that licence. It was urged that the appellant-driver could not explain the licence he had handed over to the police at the time of his arrest and the appellants cannot be discharged only because the owner had stepped into the witness box to say that he had taken a driving test or had checked the driving licence. It was urged that in authorities referred to by the appellants, the issue is not regarding two licences.

The driver is a resident of Rohtak (Haryana). There was no assertion that he had ever resided in Nagaland or he had got any employment there. The licence issued from Mathura (Uttar Pradesh) was found to be fake. The licence handed over to the police at the time of the arrest is the third licence. The law does not permit a person to hold more than one licence. The driver is a resident of Haryana and he got the licence from Nagaland, it *prima facie* raises a doubt that the licence is not genuine. The owner cannot be allowed to take shelter of the fact that he merely looked at the licence and thought it to be genuine. Something more than that was required to be done. Had he made more enquiries, the truth would have come out. The entire attempt of the owner-driver is to wriggle out from the liability and pass it on the insurance company. There is a categorical finding recorded by the Tribunal which is against the owner-driver and I have no reason to take a different view. There is no merit in the appeal and is dismissed.

(ANITA CHAUDHRY)
JUDGE

October 13, 2017

sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No