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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3233 of 2012 (O&M)
Date of decision: October 26, 2017

Oriental Insurance Company Limited ....Appellant

Versus

Shanti and others ....Respondents

CORAM: HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Sanjiv Pabbi, Advocate
for the appellant.

Mr. Shalender Mohan, Advocate
for respondents No.1 to 4.

<u>B.S. WALIA, J.(ORAL)</u>

1. Appeal has been filed by the Insurance Company challenging award dated 25th February, 2012 in Claim Petition No.13 of 2009 filed by Smt. Shanti and others on account of death of Ram Chander, husband of respondent No.1 and father of respondents No.2 to 4.

2. Solitary plea of the appellant is qua denial of the right to effect recovery from the owner of the offending vehicle after making payment of compensation in terms of the award.

3. Learned counsel for the appellant contended that the driving licence issued to the driver of the offending vehicle had been proved to be fake. However, he fairly concedes that in paragraph No.37 of the award, the learned MACT had taken into account that on the basis of evidence it stood established that the driving licence of the driver of the offending vehicle had been renewed from time to time.

4. Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Swaran Singh and others*, *2004 (3) SCC 297*** took into account the effect of renewal of fake driving licence. As per paragraph No.105(iii) of the aforementioned judgment-

> *"...... 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 toward 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 conditions of the policy regarding use of vehicles by duly licensed driver or one who has not disqualified to drive at the relevant time."*

5. It has been pointed out by learned counsel for the respondents that the owner of the offending vehicle appeared in the witness box and stated that he had perused the licence as had been shown to him i.e. the renewed licence (Ex.P-3) and further that he had seen the driver of the offending vehicle driving the vehicle. On the basis of the same, learned counsel for the respondents contended that the owner of the offending vehicle had discharged the onus caste upon him and that he had acted with due care and diligence in perusing the renewed driving licence shown to him. Learned counsel for the respondents contended that once it stood established that the renewed licence had been shown to the owner of the offending vehicle and the same had admittedly been renewed by the authorities concerned, in that situation, it could not be said that the owner of the offending vehicle had not acted with due diligence or had in any manner violated the terms and conditions of the insurance policy and committed breach thereby. Learned counsel for the respondents contends that in the

circumstances, the plea of the learned counsel for the appellant-Insurance Company that the Insurance Company was entitled to recover the amount from the owner of the offending vehicle was without any basis.

6. I have considered the submission made by learned counsel for the parties and have gone through the record.

7. Admittedly, the licence which was initially issued to the driver of the offending vehicle was fake. However, the same came to be renewed from time to time and it was the renewed licence which was perused by the owner at the time of engaging the driver of the offending vehicle. The owner of the offending vehicle also saw the driver of the offending vehicle driving the vehicle to his satisfaction. Therefore, it could not be said that the owner of the offending vehicle had not acted with due diligence or that he had committed breach of any of the terms and conditions of the insurance policy. Right to recover is available to the Insurance Company only in the eventuality where the driver of the offending vehicle did not have a valid driving licence and the owner of the offending vehicle is guilty of negligence in engaging the driver of the offending vehicle without verifying the genuineness of the licence of the driver. However, owner is not required to verify the genuineness of the driving licence from the Licensing Authority. In the instant case, the owner of the offending vehicle had categorically stated that he had perused the renewed driving licence. In cross-examination, the owner of the offending vehicle simply stated that he had not verified from the Licensing Authority with regard to genuineness of the licence. Hon'ble Supreme Court in ***Pepsu Road Transport Corporation Vs. National Insurance Company*****, 2014 AIR (SC) 305** observed as under:

> *"118. ...... 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."*

8. In view of the above decision, the Insurance Company is not entitled to recover the amount from the owner of the offending vehicle as the owner of the offending vehicle had perused the driving licence which had been renewed by the Licensing Authority.

9. No other point has been argued.

10. In view thereof, the appeal is bereft of merit and is accordingly dismissed.

October 26, 2017 **(B.S. WALIA)**
m. sharma **JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No