IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3470 of 2014 (O&M)
Date of decision: 09.10.2017

United India Insurance Company Ltd. ...Applicant/Appellant

Versus

Ravi Sharma and others ...Respondents

FAO No.3471 of 2014 (O&M)

United India Insurance Company Ltd. ...Applicant/Appellant

Versus

Shashank Sharma and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Ms. Vandana Malhotra, Advocate
for the applicant/appellant.

Mr. Sanjeev Pandit, Advocate
for respondent No.1.

Mr. Surinder Gandhi, Advocate
for respondent No.3.

Mr. N.K. Manchanda, Advocate
for respondent No.4.

****

REKHA MITTAL, J. (Oral)

CM No.10656-CII of 2014 in FAO No.3470 of 2014
and
CM No.10658-CII of 2014 in FAO No.3471 of 2014

Heard.

For the reasons stated in the applications supported by affidavit of Sh. Ramesh Lal, Manager (Legal), United India Insurance Co.

Ltd., same are allowed. Delay of 66 and 71 days respectively in filing the appeals is condoned.

Main Cases

This order will dispose of FAO Nos.3470 and 3471 of 2014 as these have emerged out of the same award dated 04.12.2013 and involve identical questions of law and fact for adjudication. For facility of reference, facts are taken from FAO No.3470 of 2014.

Counsel for the appellant-insurance company has fairly informed that the appeal has been preferred to assail findings of the Tribunal on issue No.5 that reads as follows:-

> *"Whether offending vehicle was not having valid route permit and fitness certificate and even driver of the offending vehicle was not having valid and effective driving licence at the time of accident. If so, its effect? OPR4"*

It is argued that Kulwant Singh, driver of bus No.PB-30-E-5648 was possessing licence valid from 24.01.2008 to 27.11.2010. The licence was renewed from 10.11.2011 to 09.01.2014, thus, driver had no driving licence on 15.07.2011, the day accident in question took place. It is argued with vehemence that though the learned Tribunal in Para 13 of the award has noted the aforesaid dates but still committed a serious error by recording a finding that respondent No.1 was holding a valid and effective licence to drive the offending vehicle. It is further argued that as the licence possessed by driver was not effective w.e.f 27.11.2010 to 10.11.2011 and the accident took place during interregnum period, insurance company has no liability in law to indemnify the insured. In the alternative, it has been prayed that in case the insurance company is held liable to pay compensation to the claimants, recovery rights against the insured or transferee of the vehicle in question may be allowed. For this purpose, she has placed reliance upon judgments of Hon'ble the Supreme Court of India **Ishwar Chandra and ors. VS. The Oriental Insurance Co. Ltd and ors., 2007(2) RCR (Civil) 370** and **Ram Babu Tiwari VS. United Indian Insurance Co. Ltd. and ors., 2008(3) RCR (Civil) 912**. Further reference has been made to judgment of this Court **Devinder Singh and ors. VS. Rambha Devi and ors.,** FAO No.5978 of 2002 decided on 24.12.2008.

Counsel representing transferee of the vehicle namely Jughar Constructions and Travel Pvt. Ltd. (respondent No.2 before the Tribunal) held liable to pay compensation being owner of the bus in question, would urge that Kulwant Singh, driver of the offending vehicle was issued licence valid from 29.11.2004 upto 28.11.2007. Later, this licence was renewed on dated 24.01.2008 being valid upto 27.11.2010 with endorsement for HTV. According to counsel, under Section 14(2) of the Motor Vehicles Act, 1988 (in short 'the Act') a driving licence issued or renewed under the Act, in the case of a licence to drive a transport vehicle, shall be effective for a period of three years. It is further argued that licence of Kulwant Singh was renewed on dated 24.01.2008 and as per Section 14(2) of the Act said renewal shall be effective for a period of three years, therefore, the renewal on 24.01.2008 would be deemed to be effective till 23.01.2011.

Counsel representing the insurance company, in reply, would urge that the licence originally issued was valid upto 28.11.2007 and renewal was made valid upto 27.11.2010. Though there is no evidence on record as to the date on which application for renewal of licence was filed by Kulwant Singh but in view of the date of expiry of licence originally issued coupled with validity of renewal upto 27.11.2010 when examined in the light of provisions of Section 15 of the Act, it can be safely inferred that application for renewal was filed within a period of 30 days from the date of expiry of licence on 28.11.2007. Another submission made by counsel is that even if contention of counsel for respondent No.3 is accepted that renewal is to taken as effective w.e.f 24.01.2008 for a period of three years (upto 23.01.2011) even then there was no licence with the driver on the date of accident i.e. 15.07.2011.

I have heard counsel for the parties, perused the paper book and records.

Perusal of the documents on record leaves no doubt that driving licence No.696 was issued in favour of Sh. Kulwant Singh son of Dara Singh on 29.11.2004 and it was valid upto 28.11.2007. The licence was renewed on 24.01.2008 with endorsement for HTV with validity upto 27.11.2010. Later, the same was renewed w.e.f 10.11.2011 upto 09.11.2014. Indisputably, accident in question took place on 15.7.2011 and on that day, driver did not possess licence to drive the vehicle in question. As has been rightly argued by counsel for the insurance company that there is no material on record as to on which date, application was filed for renewal of the licence that was valid upto 28.11.2007. But as the licence was renewed upto 27.11.2010, it can be safely inferred that driver filed the application for renewal within a period of 30 days from the date of expiry and for that reason licence was renewed upto 27.11.2010. This apart, though contention raised by counsel for respondent No.3 that renewal on dated 24.01.2008 is to be taken as valid upto 23.01.2011 for a period of three years in terms of Section 14(2) of the Act does not appear to be meritorious but even otherwise the said contention will not come to rescue of the respondent as accident happened in July, 2011. A careful consideration of the documents on record would certainly establish that driver of the offending vehicle was not possessing any licence to drive the vehicle on the day of occurrence, sufficient to conclude that the insured is guilty of committing breach of the terms and conditions of contract of insurance. However, in the light of judgment of Hon'ble the Supreme Court **Ram Babu's case (supra)**, the insurance company shall be liable to pay compensation to the claimant(s) but would have right of recovery against transferee of the vehicle in question namely Jughar Constructions and Travel Pvt. Ltd.

With the abovesaid observations, appeals filed by the insurance company are partly allowed in the aforesaid terms.

09.10.2017 **(REKHA MITTAL)**
ashok **JUDGE**

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