IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO Nos. 9301 of 2014 (O&M)
Date of Decision: March 08, 2017

National Insurance Company Ltd.
..Appellant(s)

Versus

Jitender and others ..Respondent(s)

with

FAO Nos. 9366 of 2014 (O&M)

National Insurance Company Ltd.
..Appellant(s)

Versus

Shakuntla Devi and others
...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Neeraj Khanna, Advocate
for the appellant(s).

None for respondent no.3.

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ANITA CHAUDHRY, J.

These two appeals have been filed against the award dated 18.07.2014, passed by the Motor Accidents Claims Tribunal, Kaithal.

The submission of the appellant-insurance company was that the driving licence issued to respondent no.2 was found to be fake, therefore, they should have been given the right to recover the compensation from respondent no.3 and they were only to indemnify the claimants. Notice was issued only to respondent no.3, who failed to appear.

The counsel for the appellant cites **United India Insurance Co. Ltd. Vs. Davinder Singh 2008 ACJ 1** and has referred to the finding recorded by the Tribunal in para in.22 of the award and urges that though the Tribunal had noted that the driving licence was fake but still chose to place the liability upon the insurance company relying upon judgment of Apex Court in Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and others 1987 AIR (SC) 1184, the counsel urges that in the later judgment namely United India Insurance Company's case the Apex Court after referring to a number of judgments including Swaran Singh's case had gone to the extent of holding that even renewal of fake licence would not take away affect of fake licence as there was an inherent defect and as per Swaran Singh's case, they were entitled to recover the amount from the insured.

The Tribunal had recorded a categoric finding that the licence was fake. The owner had not stepped into the witness box to make a statement that he had seen the licence. The Tribunal could not have discharged the owner by assuming that the employer had verified the genuineness of the driving licence and could not be exonerated. Since the licence was fake, the insurance company was entitled to recover the amount from the owner-driver. Both the appeals are allowed and the award is modified giving the insurance company the recovery rights.

(ANITA CHAUDHRY)
JUDGE

March 08, 2017
sunil
Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No