

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2143 of 1995 (O&M)

Date of Decision: February 14, 2018

National Insurance Co. Ltd.

...Appellant

VERSUS

Usha Rani and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rohit Goswami, Advocate
for the appellant.

None for the respondents.

SURINDER GUPTA, J.(Oral)

This is appeal by the Insurance Company for setting aside the award dated 26.8.1995 passed by the Motor Accident Claims Tribunal, Chandigarh (later referred to as 'the Tribunal') for death of Avtar Chand (later referred to as 'the deceased'), in a motor vehicle accident on 25.3.1991 with truck bearing registration no. PIA-9861 (later referred to as 'the offending vehicle').

Since the appellant-insurance company has challenged the impugned award on the ground that the driving license Ex.R-1 is fake and forged, the detailed facts of the case are being skipped for the sake of brevity.

Learned counsel for appellant submits that a plea was taken before the Tribunal that driving license of respondent no.1-Balwinder Singh, driver of offending vehicle was fake. In order to prove this fact, RW-2 Jasdev Singh, official of District Transport Office, Amritsar was examined who stated that the driving license Ex.R-1 was forged and vague. The Tribunal has ignored his statement and also held the driving license as valid.

The only question raised in this appeal is about validity of driving license of driver of offending vehicle. Appellant is pressing for recovery right to be allowed against the owner of offending vehicle.

The Tribunal has discussed the issue with regard to validity of driving license in para no.33 to 36 of the award which reads as follows :-

- “33. The accident took place on 25.3.1994. It is the case of the respondent no.1 that the licence was valid and legal and had been got renewed from the District Transport Officer, Amritsar. Photo-stat copy of the driving licence is Ex.R-1. The original is also on the file. Vide report Ex.RW-2/a it was mentioned that the driving licence had not been prepared by the District Transport Officer, Amritsar which was allegedly issued on 24.8.1995.*
- 34. As per summons Ex.RX the official of District Transport Officer Amritsar was required to produce the record of issuance of original licence as also of renewal record pertaining to the month of January, 1991 and January, 1994 particular and details sufficient identify the record are detailed in the summons Ex.RX. The District Transport Officer had marked the summons Ex.RX for compliance to the concerned official who appeared as RW-2.*
- 35. His deposition would go to show that he is very sweeping and general. Though he states that the driving licence was neither issued by them nor was renewed by them. However, pointed cross examination effected on*

him brings out hollowness of his stand. He was posted in Ludhiana in the relevant time and neither identifies the signature of District Transport Officer of the relevant date nor knows his hand writing.

36. *Despite having been asked to produce the relevant record this witness did not produce the record. The record of renewal of the licence was to be produced by him. In his probing cross examination when he was put to critical test of cross examination he admitted that he could not say anything about renewal as he had not brought the record. Report Ex.RX of the District Transport Officer, Amritsar clearly establishes that the driving licence of the respondent no.1 had been renewed w.e.f. 18.1.1994 to 14.1.1997 for heavy traffic vehicles. It was this renewal which was valid and enforce at the relevant time of accident. Thus it cannot be said that the respondent no.1 was not holding a valid driving licence at that time.....”*

The question which arise in this appeal is whether Insurance Company i.e. appellant has been able to prove that driver of offending vehicle was not having valid driving license at the time of accident. Firstly, no documentary evidence has come on record to show that driving license of respondent no.1 was not genuine; secondly, the statement of official of District Transport Office, Amritsar examined as RW-2 has been discarded by the Tribunal being unreliable.

From the observations of the Tribunal, it is evident that RW-2 Jasdev Singh despite directions to the District Transport Officer had not brought the original record from which he could state that driving license was not a valid one. It was proved on record that driving license was validly renewed. It was incumbent upon the appellant to prove from record that driving license of respondent no.1 was not validly issued by the concerned authorities. Though a report has come on record that the license was not issued by the District Transport Office, Amritsar but when the official from that office was called, he did not produce any record which formed basis for the report. The record of the District Transport Office, if produced, would have gone a long way to prove that there was no entry of issuance of license Ex.R1 by that office. RW-2 Jasdev Singh, official of District Transport Office, Amritsar was not in a position to identify signature of District Transport Officer of the license Ex.R1. In the case of ***United India Insurance Company Limited vs. Lehu and others***, (2003) 3 SCC 338, a two Judges Bench of Hon'ble Apex Court has held that it was incumbent upon the insurer to prove the willful breach of conditions of the policy. It was also held that employer is not expected to verify the genuineness of the license from the issuing authority at the time of employment. When the owner is hiring a driver he will have to check whether the driver is having a valid driving license. If the driver produces a driving license, which on the face of it looks genuine, the owner is not expected to find out whether the license has in fact been issued by a competent authority or not. In the case of ***National Insurance Company Limited vs. Swaran Singh and others***, (2004) 3 SCC 297, Hon'ble the Apex Court while disagreeing with the observations of two Judges Bench in

Lehru's case (supra) has observed in para no.100 as follows :-

“100. This Court, however, in Lehru must not be read to mean that an owner of a vehicle can under no circumstances have any duty to make any enquiry in this respect. The same, however, would again be a question which would arise for consideration in each individual case.”

Hon'ble the Apex Court in the case of **National Insurance Company Limited vs. Laxmi Narain Dhut**, (2007) 3 SCC 700 has observed as follows :-

“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 towards the insured the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time....”

In this case, the renewal of the driving license was valid and in normal course it was sufficient for the employer to rely upon the renewal to believe that the driver is having a valid driving license. The onus is on the insurer to prove that there was willful negligence on the part of owner of the offending vehicle while committing breach of the terms and conditions of the insurance policy. No such evidence has come on record in this case. Though observations of the Tribunal that when the renewal is valid at the relevant time, the driving license is held to be valid cannot be defended but

in the facts and circumstances of the case, it can safely be held that the insurer has failed to prove that owner of the offending vehicle has committed breach of terms and conditions of the policy. The Tribunal has based its finding on the evidence on record. I find no reason to interfere with the same. This appeal has no merits and is dismissed.

February 14, 2018
deepak

(SURINDER GUPTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>