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

**FAO No.1845 of 1996 (O&M)
Date of Decision: March 14, 2018.**

National Insurance Company Limited

..........APPELLANT(s).

VERSUS

K.K. Girdhar and another

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

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

Mr. Deepak Girhotra, Advocate for
Mr. Aman Bansal, Advocate
for respondent No.1.

Mr. S.S. Sahu, Advocate
for respondent No.2.

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SURINDER GUPTA, J.

This is appeal by National Insurance Company Limited against the award dated 08.01.1996 passed by Motor Accident Claims Tribunal, Hisar, awarding a sum of ₹75,000/- to claimant-respondent No.1 for the injuries suffered by him in a motor vehicle accident with the offending vehicle (truck bearing registration No.HRB-7785).

The only issue raised by learned counsel for the appellant in this appeal is that the appellant be allowed to right to recover the compensation from the owner of the offending vehicle as at the time of accident, driver of the offending vehicle was not having a valid driving licence. The Tribunal has looked into this aspect and observed in para 20 and 21, as follows:-

> "20. Before coming to the concluding part of this award, the two points raised on behalf of the insurance company needs to be discussed. Firstly that the driver of the truck did not possess valid driving licence and secondly that the petition is bad for non joinder of the driver as party to the case.
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> 21. On the first point it stands proved from the statement of Jiwan Kumar RW3 that the licence of Rohtash, copy Ex.P6 had not been issued from that office. Obviously, it was fake licence but the licence was got renewed by Rohtash from Licensing Authority, Fatehabad in 1992 for the period upto 18.02.1995. The renewal was not disputed on behalf of the insurance company in view of the decision of Division Bench of our Hon'ble High Court in ***National Insurance Company Limited Vs. Sucha Singh and others (1994-1) PLR 140,*** the licence is valid and at this point, this issue is answered against the Insurance Company."

Learned counsel for respondent No.2 Narotam (owner of the offending vehicle) has argued that though this fact is proved that licence of the driver of the offending vehicle was not valid at the time of accident but it was got renewed from Fatehabad and no evidence has been produced by the insurance company that renewal of driving licence was not valid. The owner of the offending vehicle has only to see the latest renewal and there is no evidence on record to show that the owner of the offending vehicle knowingly, deliberately and wilfully committed breach of the terms of the insurance policy.

The driver of the offending vehicle is not named in the claim petition. It was within the knowledge of the owner to disclose his name. Though he had not disclosed the name of the driver in his written statement/reply but has examined Rohtash as RW1, who has stated that he was driver of the offending vehicle on the date of accident. Regarding his driving licence, he has stated as follows:-

> "The driving licence had been got prepared by me from Una. The licence was issued to me at Delhi on payment of ₹2500/-. I have got it renewed at Fatehabad."

Owner of the offending vehicle has not stepped into the witness box to state that he had checked or verified the licence of the driver at the time of his employment or at any other stage. This matter was examined by Hon'ble Apex Court in case of ***Pappu and others Vs. Vinod Kumar Lamba and anr. Civil Appeal No.20962 of 2017 (arising out of SLP (C) No.29032 of 2015)***, and it was observed in para 11 of the judgement, as follows:-

> "11. The question is: whether the fact that the offending vehicle bearing No.DIL-5955 was duly insured by respondent No.2 Insurance Company would per se make the Insurance Company liable? This Court in the case of National Insurance Co. Ltd. (supra), has noticed the defences available to the Insurance Company under Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988. The Insurance Company is entitled to take a defence that the offending vehicle was driven by an unauthorised person or the person driving the vehicle did not have a valid driving licence. The onus would shift on the Insurance Company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorised by him to drive the vehicle and was having a valid driving licence at the relevant time. In the present

case, the respondent No.1 owner of the offending vehicle merely raised a vague plea in the Written Statement that the offending vehicle DIL-5955 was being driven by a person having valid driving licence. He did not disclose the name of the driver and his other details. Besides, the respondent No.1 did not enter the witness box or examine any witness in support of this plea. The respondent No.2 Insurance Company in the Written Statement has plainly refuted that plea and also asserted that the offending vehicle was not driven by an authorised person and having valid driving licence. The respondent No.1 owner of the offending vehicle did not produce any evidence except a driving licence of one Joginder Singh, without any specific stand taken in the pleadings or in the evidence that the same Joginder Singh was, in fact, authorised to drive the vehicle in question at the relevant time. Only then would onus shift, requiring the respondent No.2 Insurance Company to rebut such evidence and to produce other evidence to substantiate its defence. Merely producing a valid insurance certificate in respect of the offending Truck was not enough for the respondent No.1 to make the Insurance Company liable to discharge his liability arising from rash and negligent driving by the driver of his vehicle. The Insurance Company can be fastened with the liability on the basis of a valid insurance policy only after the basic facts are pleaded and established by the owner of the offending vehicle - that the vehicle was not only duly insured but also that it was driven by an authorised person having a valid driving licence. Without disclosing the name of the driver in the Written Statement or producing any evidence to substantiate the fact that the copy of the driving licence produced in support was of a person who, in fact, was authorised to

> drive the offending vehicle at the relevant time, the owner of the vehicle cannot be said to have extricated himself from his liability. The Insurance Company would become liable only after such foundational facts are pleaded and proved by the owner of the offending vehicle."

Respondent No.2 (Owner of offending vehicle) has not taken any plea in the written statement/reply that driving licence of the driver of the offending vehicle was valid on the day of accident. He has not stepped into the witness box or produced any evidence in this regard. It is amply proved on record that driving licence of Rohtash was not issued by Licensing Authority, Una from where it is purported to be issued. Rohtash, when stepped into the witness box as RW1 stated that he got this licence at Delhi for ₹2500/-.

Testimony of Rohtash corroborates the statement of RW3 Jiwan Kumar, Motor Licensing Clerk that his driving licence is fake. His statement shows that he had not gone to Una to get the driving licence, rather it was procured from Delhi after paying ₹2500/-. It is settled law that once the original licence is proved to be fake, subsequent renewal of the same will not convert it into a valid one.

Keeping in view evidence on record and observation of Hon'ble Apex Court in the above referred case, I am of the considered view that there is breach of terms of insurance policy as the driver of the offending vehicle was possessing a fake licence.

Consequently, this appeal has merits and is partly accepted and the award passed by the Tribunal is modified to the extent that appellant on payment of amount of compensation shall have right to recover the same from respondent No.2 (owner of offending vehicle) with interest @ 6% per annum from the date of payment till the date of recovery.

(SURINDER GUPTA)
JUDGE

March 14, 2018.
Sachin M.

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No