IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO No.5907 of 2011 (O&M)
Date of Order:14th August, 2018

United India Insurance Company Limited
..Appellant

Versus

Kesar Devi and others
..Respondents

(2) FAO No.5945 of 2011(O&M) &
XOBJC-33-CII-2014 (O&M)

United India Insurance Company Limited
..Appellant

Versus

Priyanka alias Pinki and another
..Respondents

(3) FAO No.6311 of 2012(O&M)

Harbhajan Singh ..Appellant

Versus

United India Insurance Company Limited
and another ..Respondents

(4) FAO No.6317 of 2012 (O&M)

Harbhajan Singh ..Appellant

Versus

United India Insurance Company Limited and another.
..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.K.Bashamboo, Advocate,
for the appellant (FAO Nos.5907 and 5945 of 2011)
for respondent no.1(in FAO Nos.6311 and 6317 of 2012)

Mr. R.K.Saini, Advocate,
for respondent no.1 (in FAO No.5945 of 2011 and
for respondent no.2 (in FAO No.6311 of 2012)

Mr. Ivneet Singh Pabla, Advocate,
for the appellant (in FAO Nos.6311 and 6317 of 2012)
for respondent no.5 (in FAO No.5907 of 2011)

ANIL KSHETARPAL, J.

By this judgment, FAO Nos.5907 of 2011, 5945 of 2011, 6311 of 2012 and 6317 of 2012 and cross objection No.33-CII-2014 filed by the injured-claimant shall stand disposed of as two claim petitions arising out of one accident were consolidated and disposed of by a common judgment by the learned Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as 'the Tribunal').

In an unfortunate motor vehicular accident which happened on 10.12.2009 at 3.30 pm, late Sh. Dharampal, aged 44 years lost his life, whereas his married daughter Ms. Priyanka, cross-objector suffered injuries. The accident is stated to have taken place between a two wheeler on which deceased along with her daughter was travelling and offending motor car which was being owned and driven by Harbhajan Singh, the appellant, in FAO No.6311 and 6317 of 2012.

An FIR was registered and respondent no.1 was prosecuted by the police. During the investigation, respondent no.1 produced a driving licence Ex/R1 issued by the Licensing Authority, Agra, Uttar Pradesh.

While filing written statement in response to the claim petition, respondent no.1 denied the accident and in the alternative pleaded that he has purchased the insurance policy and is holding a valid driving licence. Particulars of the driving licence were not provided in the written statement.

As per the final report under Section 173 of the Code of Criminal Procedure, which is Ex.P8 on the record, the police produced registration certificate of the vehicle and copy of the driving licence of

Harbhajan Singh.

Counsel appearing for the Insurance Company vide his statement dated 29.03.2011, produced a copy of the alleged driving licence produced by Harbhajan Singh before the police authorities and the verification report Ex.R/2, certifying that the driving licence produced by Harbhajan Singh is fake.

As per report submitted by the Insurance Company, driving licence produced by the driver before the police authorities has been found to be fake by the investigator employed by the Insurance Company, who verified this fact from the Licensing Authority, Agra, the issuing authority.

However, learned counsel for the driver and owner Harbhajan Singh-respondent no.1 before the learned Tribunal tendered another driving licence Ex.R2, vide statement dated 22.02.2011. The alleged driving licence is said to have been issued by Licensing Authority, Dimapur, (Nagaland) on 23.12.2006.

Learned Tribunal without realizing that a different driving licence has been produced, directed the Regional Transport Authority/Licensing Authority, Agra to send a verification report, as noticed in the orders dated 08.03.2011 and 22.03.2011.

Ultimately, evidence was closed as counsel for the Insurance Company produced verification report Ex.R/2, vide statement dated 29.03.2011.

Taking into consideration the aforesaid facts, learned Tribunal assessed the compensation payable to the claimants. Driving Licence as produced by Harbhajan Singh, owner and driver was held to be fake and the Insurance Company was given recovery rights against owner/driver.

With regard to death of Dharampal, aged about 44 years, the learned Tribunal assessed compensation payable at Rs.5,50,000/-. Whereas with respect to the injuries suffered by Ms. Priyanka, the cross-objector, the court assessed the compensation at Rs.85,648/-, noticing that she has suffered 17% permanent disability.

Against the award passed, two appeals have been filed by the Insurance Company, whereas other two appeals have been filed by Driver-cum-owner Harbhajan Singh and cross objections have been filed by claimant Priyanka.

It may be noted that late Sh. Dharam Pal, the deceased have 3 daughters, all married, a widowed mother, as claimants. Wife of late Sh.Dharam Pal had pre-deceased him.

The issues which need determination is :-

(i) Whether Harbhajan Singh, owner and driver of the offending vehicle was holding any valid driving licence or not?

(ii) What should be the appropriate compensation payable to the claimant.

Now let's first deal with the issue of driving licence.

As already noticed, Harbhajan Singh while filing reply to the claim petition, did not disclose the particulars of driving licence possessed/held by him. Before the police authorities, he had produced driving licence Ex.R1, allegedly issued by Licensing Authority, Agra, which on verification was found to be fake. Another driving licence was produced Ex.R2, allegedly issued by Licensing Authority, Dimapur

(Nagaland) valid from 23.12.2006 to 22.12.2012.

During the pendency of the present appeal, Insurance Company was granted opportunity to verify validity of the driving licence. An application for additional evidence was filed and the Insurance Company has produced copy of communication dated 11.08.2016, informing that the aforesaid driving licence allegedly produced by Harbhajan Singh has not been converted into smart card and therefore such driving licence is treated as cancelled and invalid. Along with the communication, Insurance Company has also produced public notice issued on 01.08.2014 by the office of Regional Transport Commissioner to all the licence holders from 30.10.2009 to convert the driving licence on booklet into a smart card by 01.12.2014.

Another memorandum has been produced dated 12.01.2015 directing the concerned enforcement personal to seize all the driving licences in the old format which are no more valid.

Reply to the application has been filed by the claimant submitting that since licence in question has been issued on 23.12.2006, hence, the aforesaid notification/public notice and communications would not apply because the licence in question was issued before 30.10.2009.

As per Section 9 of the Motor Vehicle Act, 1988 (hereinafter referred to as 'the Act'), any person may apply to the licensing authority having jurisdiction in the area for issuance of driving licence. Section 9 of the Motor Vehicle Act, 1988 is extracted as under:-

> ***"9. Grant of driving licence.—***
>
> *(1) Any person who is not for the time being disqualified for holding or obtaining a driving licence may apply to the licensing authority having jurisdiction in the area—*

(i) in which he ordinarily resides or carries on business, or

(ii) in which the school or establishment referred to in section 12 from where he is receiving or has received instruction in driving a motor vehicle is situated. for the issue to him of a driving licence.

(2) Every application under sub-section (1) shall be in such form and shall be accompanied by such fee and such documents as may be prescribed by the Central Government. 1[(3) If the applicant passes such test as may be prescribed by the Central Government, he shall be issued the driving licence: Provided that no such test shall be necessary where the applicant produces proof to show that—

(a) (i) the applicant has previously held a driving licence to drive such class of vehicle and that the period between the date of expiry of that licence and the date of the application does not exceed five years, or

(ii) the applicant holds or has previously held a driving licence to drive such class of vehicle issued under section 18, or

(iii) the applicant holds a driving licence to drive such class of vehicle issued by a competent authority of any country outside India, subject to the condition that the applicant complies with the provisions of sub-section (3) of section 8,

(b) the applicant is not suffering from any disability which is likely to cause the driving by him to be a source of danger to the public; and the licensing authority may, for that purpose, require the applicant to produce a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8: Provided further that where the application is for a driving licence to drive a motor vehicle (not being a transport vehicle), the licensing authority may exempt the applicant from the test of competence to drive a vehicle prescribed under this sub-section, if the applicant possesses a driving certificate issued by any institution recognised in this behalf by the State Government.]

(4) Where the application is for a licence to drive a transport vehicle, no such authorisation shall be granted to any applicant unless he possesses such minimum educational qualification as may be prescribed by the Central Government and a driving certificate issued by a

school or establishment referred to in section 12. 2[(5) Where the applicant does not pass the test, he may be permitted to re-appear for the test after a period of seven days: Provided that where the applicant does not pass the test even after three appearances, he shall not be qualified to re-appear for such test before the expiry of a period of sixty days from the date of last such test.]

(6) The test of competence to drive shall be carried out in a vehicle of the type to which the application refers: Provided that a person who passed a test in driving a motor cycle with gear shall be deemed also to have passed a test in driving a motor cycle without gear.

(7) When any application has been duly made to the appropriate licensing authority and the applicant has satisfied such authority of his competence to drive, the licensing authority shall issue the applicant a driving licence unless the applicant is for the time being disqualified for holding or obtaining a driving licence: Provided that a licensing authority may issue a driving licence to drive a motor cycle or a light motor vehicle notwithstanding that it is not the appropriate licensing authority, if the licensing authority is satisfied that there is good and sufficient reason for the applicant's inability to apply to the appropriate licensing authority: Provided further that the licensing authority shall not issue a new driving licence to the applicant, if he had previously held a driving licence, unless it is satisfied that there is good and sufficient reason for his inability to obtain a duplicate copy of his former licence.

(8) If the licensing authority is satisfied, after giving the applicant an opportunity of being heard, that he—

(a) is a habitual criminal or a habitual drunkard; or

(b) is a habitual addict to any narcotic drug or psychotropic substance within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(c) is a person whose licence to drive any motor vehicle has, at any time earlier, been revoked, it may, for reasons to be recorded in writing, make an order refusing to issue a driving licence to such person and any person aggrieved by an order made by a licensing authority under this sub-section may, within thirty days of the receipt of the order, appeal to the prescribed authority.

> *(9) Any driving licence for driving a motor cycle in force immediately before the commencement of this Act shall, after such commencement, be deemed to be effective for driving a motor cycle with or without gear.*

On careful examination of Section 9 of the Act, it is clear that the application for issuance of driving licence can be applied either to the authority in which the applicant ordinarily resides or carries on business or the place where the school or establishment as referred to in Section 12 of the Act set for imparting instructions in driving of the motor vehicles, is situated. In other words, any person desirous of applying for issuing driving licence is either ordinarily the residents or carries on business in the area concerned or where school or establishment is situated from which he has learnt driving. No third party has been given any power to issue driving license.

Usage of fake driving licence is quite rampant amongst professional drivers. It has been noticed that most of the professional drivers carry/possess more than one driving licences. Recently Hon'ble Supreme Court in the case of ***Pappu and others v. Vinod Kumar Lamba and another, (2018-1)189 PLR 425***, have laid down certain guidelines.

In the considered opinion of this court, the learned Tribunal on the very first opportunity, must issue directions to the driver or the owner of the vehicle to produce or at least supply complete particulars of the driving licence along with a photocopy thereof. Owner or the driver must plead in its reply, the complete particulars of the driving licence held by the driver. In absence thereof, insurance companies who are dealing with public money would stand deprived from proper opportunity to contest before the tribunal. If driving licence is allowed to be produced by the owner or driver at the stage of evidence without complete particulars or photocopy of the same, insurance companies would not get proper opportunity to verify its correctness. Therefore, learned Tribunals are directed to ensure that particulars of the driving licence are made available to the Tribunal at the very first opportunity. This would also ensure speedy disposal of the claim petitions.

Whenever more than one driving licence is produced by the owner or the driver (with respect to the person driving at the time of accident), the learned Tribunal must view the same with suspicion and call upon the person who has produced the second driving licence to prove its genuineness.

In fact as per Section 6 of the Act, no person is authorized to hold more than one driving licence, except the learner licence or licence issued in accordance with the provisions of Section 18 or a document authorizing driving in accordance with rules made under Section 139 of the Act. Section 6 of the Act is also extracted as under:-

> ***6. Restrictions on the holding of driving licences.—***
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> *(1) No person shall, while he holds any driving licence for the time being in force, hold any other driving licence except a learner's licence or a driving licence issued in accordance with the provisions of section 18 or a document authorising, in accordance with the rules made under section 139, the person specified therein to drive a motor vehicle.*
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> *(2) No holder of a driving licence or a learner's licence shall permit it to be used by any other person.*
>
> *(3) Nothing in this section shall prevent a licensing authority having the jurisdiction referred to in sub-section (1) of section 9 from adding to the classes of vehicles which the driving licence authorises the holder to drive.*

During the proceeding before the learned Tribunal, such act on the part of the owner and driver must be seriously viewed by the learned

Tribunal.

Now let us revert to the facts of the present case. In the present case, owner is the driver. Before the police authorities, he produced a driving licence issued by the Licensing Authority, Agra. No evidence was produced that Harbhajan Singh, driver-cum-owner was ever resident or carried out business within the jurisdiction of Agra or had received any training for driving in any school or establishment, situated within the jurisdiction of the Licensing Authority, Agra. As per report Ex.R/2, the aforesaid licence was found fake.

Second driving licence which is issued is from Dimapur (Nagaland). There is neither any pleadings nor any evidence that the aforesaid driving licence was issued after complying with the requirement of Section 9 of the Act i.e. Harbhajan Singh either lived or carried business or had received training of driving, in the school or establishment, situated within the jurisdiction of Dimapur (Nagaland). In absence thereof, the driving licence produced by the respondent is to be viewed with suspicion. Second driving licence produced is also in violation of Section 6 of the Act, 1988 as the first driving licence which was relied upon has been found to be fake and second driving licence does not fall within the exception carved out in Section 6 of the Act.

Although, learned counsel for Harbhajan Singh has submitted that the notification produced making conversion of the driving licence issued in Booklet form into Smart Card is only applicable with respect to driving licence issued after 30.10.2009 and Harbhajan Singh had since shifted abroad, therefore, smart card was not necessary to be got issued, is just to be noticed and rejected for two reasons:-

(i) no evidence has come on record that the alleged driving licence issued by Licensing Authority, Dimapur, (Nagaland) was issued in accordance with Section 9 of the Act.

(ii) initially Harbhajan Singh had produced another driving licence which has been found to be fake.

Although, learned counsel for the Insurance Company has raised a strong argument that in such circumstances, the insurance company cannot be forced to first pay and then recover, however this court does not find substance therein, particularly in view of the fact that the issuance of insurance policy is not in dispute. At the most, it is the case of violation of insurance policy, therefore, Insurance Company although has been absolved from the liability but must first ensure payment to the claimant(s) with the right to recover the amount from the owner i.e. insured.

As regards cross objections, it may be noticed that Priyanka had suffered injuries including fracture of right leg. The learned Tribunal awarded Rs.19648/- towards medical expenses as produced. The learned Tribunal also awarded Rs.20,000/- on account of mental agony, trauma and tension. For special diet she was awarded Rs.4000/-, for medical and transportation charges Rs.4000/- under each head and Rs. 4000/- for the attendant. Although not specifically mentioned that it is apparent that on account of permeant disability Rs.2000/- per percent of disability was awarded i.e. Rs.34,000/-.

Learned counsel for the cross-objector has submitted that no amount has been awarded on account of future medical expenses and loss of income. It is claimed that claimant Priyanka was doing work of sewing and stitching, earning Rs.5000/- per month. Although no evidence has been produced to prove this fact, however, she was aged about 19 years at the time of accident.

Keeping in view the fact that her husband is labourer, she must be doing something to augment the income of the family.

In view thereof, claimant shall be entitled to Rs.10,000/- on account of loss of income. On account of future medical expenses, in the absence of evidence, this court is left with no other choice but for to apply guess work and another amount of Rs.10,000/- is awarded on that account. This court, however, does not find any force in the argument of learned counsel that on account of permanent disability, amount awarded is less. If one looks at the evidence of Dr. Bimla Gauri, who appeared as PW1, she has specifically stated that disability may reduce to some extent after removal of the implant and physiotherapy. No evidence has been led to prove that with passage of time the permeant disability has not come down.

In view of the aforesaid, appeals filed by the Insurance Company and owner-cum-driver are dismissed, whereas cross objections are allowed to the extent that there shall be enhancement of Rs.20,000/- in the compensation payable to the cross-objector along with interest @ 7.5% from the date of claim petition till the date of payment. This amount also also be first paid by the Insurance Company with recovery rights from the owner-cum-driver.

14th August, 2018 **(ANIL KSHETARPAL)**
nt **JUDGE**

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