

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

FAO no.1184 of 2015(O&M)

Date of Decision:09.10.2018

Sunil Yadav and another

.....Appellants

Vs.

The Oriental Insurance Co. Ltd and another

....Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.Neeraj Gupta, Advocate,
for the appellants.

Mr.Ram Avtar, Advocate,
for respondent no.3.

AMOL RATTAN SINGH, J. (Oral)

This is an appeal by the driver and owner of the vehicle that was involved in an accident on 12.10.2012, i.e. a bus bearing Registration No.HR-53P-6888, which is contended to have hit respondent no.2 herein (the appellant in the connected appeal FAO-4432-2014), resulting in her sustaining a grievous injury on her person. The said respondent having filed a claim petition before the learned Motor Accident Claims Tribunal, Gurugram, the appellants herein as also respondent no.1, i.e. the insurance company that had insured the aforesaid vehicle, filed their respective written statements, refuting the claim filed by the claimant, with the insurance company having taken a preliminary objection that appellant no.2, who was the driving the aforesaid vehicle, did not hold a valid and effective driving licence on the date of the accident and that the vehicle was being plied without a route permit and fitness certificate.

On the merits of the petition, it was claimed that the amount of compensation sought was highly exaggerated.

Accordingly, the following issues were framed by the learned Tribunal:

1. Whether the accident has been caused on 12.10.2012 at about 3.30 p.m. due to rash and negligent driving of respondent no.1 while driving offending vehicle bearing No.HR-55P-6888 and caused injuries to Ms.Asmita Gupta as alleged? OPP
2. If issue no.1 is prove, then what amount of compensation the petitioner is entitled to and from whom? OPP
3. Whether the respondent no.1 was not holding a valid and effective driving licence at the time of accident? OPP
4. Whether the respondent has violated the terms and conditions of the insurance policy? OPP
5. Whether the insurer is liable to indemnify the insured? OPR
6. Whether the petition is not maintainable in the present form? OPP
7. Relief.

As regards this appeal, the issues which are actually to be adjudicated upon are at Sr. nos.2 to 5 hereinabove, i.e. whether respondent no.1 (appellant no.2 herein) was holding a valid driving licence or not and if not, the liability of the insurance company to indemnify respondent no.2 (appellant no.1 herein), i.e. the owner of the vehicle, as regards the compensation awarded by the Tribunal to the claimant.

A perusal of the impugned Award shows that the findings on those issues were based, by the Tribunal, after appraising the evidence essentially in the form of the testimony of RW1 Hari Om Mourya, a Junior Assistant from the office of the Regional Transport Officer, Agra, as also the

testimony of RW2 Raj Kumar, a Clerk from the office of the RTO Gurugram.

The Clerk from the RTOs' office Agra, had deposed that the driving licence bearing no.12052(Ag/03) dated 05.09.2003, as was contended by appellant no.2 herein to have been validly issued to him, was actually issued to one Smt.Masrat Sunni of Agra, valid from 05.09.2013 to 04.09.2016, for driving a motor cycle/light motor vehicle, to prove which statement he had also proved in Court the relevant page of the register where the entry with regard to the licence had been made (duly exhibited in Ex.R4).

Thus, as per the said witness, the driving licence carried by appellant Satbir, Ex.R37, was a fake licence.

RW2, i.e. the Clerk from the RTOs' office at Gurugram, had deposed that the aforesaid licence shown to be issued in Agra was renewed on 01.12.2011, valid upto 30.11.2014, enabling the holder thereof to drive a motor cycle/LMV/HTV/HPV.

This witness had also stated that as regards the old driving licence bearing DL No.12052/A/03 dated 15.11.2003, it was actually to be renewed after obtaining a no objection certificate from the authority at Agra, which he admitted had not been obtained.

Thus, the Tribunal came to the conclusion that the driving licence held by appellant no.2 herein was a fake driving licence.

On that finding, it was held that the insurance company would pay the compensation to the claimant but would have the right to recover the same from the present appellants, i.e. respondents no.1 and 2 in the claim petition.

The appellants are thus aggrieved of that part of the Award and have consequently challenged it, with no challenge to the actual amount of

compensation awarded to the respondents, which was for an amount of Rs.9.64 Lakhs alongwith interest at the rate of 6% per annum upon it.

Learned counsel for the appellants relies upon a judgment of the Supreme Court in “**Singh Ram vs. Nirmala and others**” AIR 2018 SC 1290, from which he points to paragraph 7, which reads as follows:

“7. In Swaran Singh (supra), this Court held that the holder of a driving licence has a period of thirty days on its expiry, to renew it:

"45. Thus, a person whose licence is ordinarily renewed in terms of the Motor Vehicles Act and the Rules framed thereunder, despite the fact that during the interregnum period, namely, when the accident took place and the date of expiry of the licence, he did not have a valid licence, he could during the prescribed period apply for renewal thereof and could obtain the same automatically without undergoing any further test or without having been declared unqualified therefor. Proviso appended to Section 14 in unequivocal terms states that the licence remains valid for a period of thirty days from the day of its expiry.

46. Section 15 of the Act does not empower the authorities to reject an application for renewal only on the ground that there is a break in validity or tenure of the driving licence has lapsed, as in the meantime the provisions for disqualification of the driver contained in Sections 19, 20, 21, 22, 23 and 24 will not be attracted, would indisputably confer a right upon the person to get his driving licence renewed. In that view of the matter, he cannot be said to be delicensed and the same shall remain valid for a period of thirty days after its expiry."

The following conclusion has been recorded in the judgment:-

"(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer.

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 a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof therefor would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case".

Learned counsel for the appellants points from the record of the Tribunal to the application filed by them to lead additional evidence, which is dated 07.03.2014, and submits that the evidence of the respondents, i.e. RW2,

having been recorded on 18.12.2013, it was at that stage that appellant no.1 came to know that the licence held by appellant no.2 was a fake and forged one, though he was employed by appellant no.1 behaving it to be a genuine license. He submits that the said application was dismissed vide order dated 7.3.2014, firstly observing therein that the evidence of respondent no.3 was closed on 14.11.2013 which is factually incorrect, and further, that right uptill that time the appellants (respondents no.1 and 2 in the claim petition), had not led any evidence and therefore, appellant no.1 (respondent No.2 in the claim petition) could not be allowed to do so, as he appeared to have awoken from a deep “slumber and at the fag end of the case”, when it was ripe for decision.

Learned counsel for the respondent-Insurance Company, on the other hand, has pointed to the fact that the reasoning now being given before this Court, that appellant no.1 came to know the *factum* of the licence held by appellant no.2 being a fake one only upon the evidence of the insurance company having been led, has not been taken anywhere in the application filed for leading additional evidence.

Learned counsel for the appellant has also relied upon a judgment of the Supreme Court in “**New India Assurance Co. Shimla Vs. Kamla**” **2001 (3) RCR (Civil) 716**, to submit that the Supreme Court in that case also had remanded the case to the Tribunal to enable the owner of the vehicle to adduce evidence to the effect that he had been duly diligent at the time of employing the driver.

Having considered the argument on both the sides, though undoubtedly what learned counsel for the respondent insurance company has submitted is correct to the effect that no ground has been specifically taken in the application that the said evidence was being led in view of the fact that the

witnesses for the insurance company had deposed that the licence of appellant no.2 was a fake licence, however, considering that it was in summary proceedings where the applications are often filed by counsel and it seems to be possible that the owner of the vehicle did not know that the licence held by his driver was a fake licence till that was testified to by the witnesses from the offices of the licensing authorities, in my opinion, appellant no.1 deserves to be granted a chance to lead additional evidence, to prove that he had been duly diligent at the time of employing his driver as regards his skills in driving and as regards the genuineness of his license.

Consequently, this appeal is allowed to the extent that the matter is remanded to the Motor Accident Claims Tribunal, Gurugram, to afford one opportunity to appellant no.1 to lead evidence to the aforesaid effect. Thereafter, the question of the liability of appellant no.1 as regards being indemnified by the respondent insurance company to the extent of the compensation to be paid to the respondent claimant, would be determined by the Tribunal.

It is to be said here, that appellant no.2 having been found to have been in possession of a fake driving licence, the insurance company, no matter what the result of the finding of the tribunal, would still be entitled to recover such compensation from him.

Even though the case has been remitted to the learned Tribunal, however, it having been seen by this Court that it was admitted by the witness who appeared from the office of District Transport Officer, Gurugram, that no clearance was obtained from the Licensing Authority at Agra, before renewing the licence at Gurugram, the Deputy Commissioner, Gurugram, is directed to file an affidavit after holding a preliminary enquiry, as to who was responsible

for allowing such renewal without such necessary verification.

A copy of this order be given to learned counsel for the State, even though the State of Haryana is not a party, it being now impleaded as respondent no.3, through the Deputy Commissioner-cum-Collector, Gurugram.

If the affidavit is not filed by the next date of hearing, the Deputy Commissioner, Gurugram, shall remain present in Court on that date itself.

A copy of this order be given to Mr. Pawan Jhanda, Assistant Advocate General, Haryana, for onward conveyance to the Deputy Commissioner, Gurugram.

Adjourned to 14.11.2018 for that purpose.

To be shown in the urgent list.

(AMOL RATTAN SINGH)
JUDGE

October 09, 2018.

dharamvir/archana

Whether speaking/reasoned	: YES/No
Whether Reportable	: YES/No