

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

**FAO No.3978 of 2013 (O&M)
Date of Decision: December 04, 2018.**

Gurmeet Singh

.....APPELLANT(s).

VERSUS

Surjit Kaur and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

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

Mr. Sehajbir Singh, Advocate
for respondents No.1 and 2.

Mr. Pardeep Goyal, Advocate
for respondent No.3.

Mr. Dhruv Khanna, Advocate for
Mr. IPS Kohli, Advocate
for respondent No.4.

SURINDER GUPTA, J.

This is appeal against award dated 01.12.2012 passed by Motor Accident Claims Tribunal, Patiala (hereinafter referred to as 'the tribunal') allowing compensation of ₹5,24,000/- for death of Bhag Singh, husband of claimant-respondent No.1 and father of claimant-respondent No.2, in a motor vehicle accident with truck bearing registration No.HR-64-4669 (later referred to as the offending vehicle) owned by Gurmeet Singh, appellant. The tribunal observed that the driver of the offending vehicle was not holding an effective driving licence at the time of accident, as such, primary

liability shall be that of driver and owner of the offending vehicle. The insurer of the vehicle was directed to pay the amount of compensation to the claimants with liberty to recover the same from owner and driver of the offending vehicle. Against the impugned award, owner of the offending vehicle has come up with the present appeal.

As the issue raised by the appellant is with regard to the liability of the appellant and respondent No.4 to pay the amount of compensation on the ground that driver of the offending vehicle i.e. respondent No.4 was not having valid and effective driving licence, detailed facts of the case are being skipped of for the sake of brevity.

The offending vehicle at the time of accident on 24.07.2010 was driven by Narinder Singh-respondent No.4. His driving licence was produced on file as Ex.RX, which was stated to be valid from 19.04.2010 to 18.04.2013. To prove that this was not a valid driving licence, the insurance company produced on file report of Licensing Authority, Mathura from where the licence Ex.RX was alleged to have been issued. This report Ex.RY states that Licence No.15434/MTR/03 had been issued in the name of Gyasuddin Khan son of Salim Khan for motorcycle. At this serial number, no licence had been issued in the name of Narinder Singh son of Shri Dalip Singh. In order to prove this fact, Sunil Kumar, Licence Clerk, A.R.T.O. Office Mathura was examined as RW2, who has stated this fact on oath. He has stated that this licence Ex.RX was not issued by their office and is a forged and fabricated document. So far as the statement of this witness is concerned, it could not be shattered in his cross-examination. Report Ex.RY is based on the documents in the office of Licensing

Authority, Mathura. This fact has been specifically stated that at the number of licence i.e. 15434/MTR/03 (Ex.RX), it has been issued in the name of Gyasuddin Khan son of Salim Khan and not in the name of Narinder Singh.

In view of the above evidence, I find no reason to differ with the finding of the tribunal that the licence produced on file by Narinder Singh was not a valid driving licence.

The other question, which arises for consideration, is as to whether on proving the above fact regarding the driving licence of Narinder Singh, right to recover the amount of compensation paid by the insurer could be allowed by the tribunal.

The owner of the offending vehicle had appeared as RW3. He has tendered his affidavit in his examination in chief as Ex.RW3/A, wherein he has stated that he had taken precautions, reasonable care and due diligence while appointing Narinder Singh as driver. Very strangely, this evidence has been totally ignored by the tribunal.

In para 4 of his affidavit, appellant has stated as follows:-

“4. That it is pertinent to mention here that at the time of employment of the respondent No.1 i.e. Narinder Singh, the deponent took all the precautions, which a prudent man is expected to have taken. The deponent has seen the driving license of respondent no.1, issued by the licensing authority, Mathura, which was valid from 19.04.2010 to 18.04.2013, which appeared to be a valid document and the said driving license on the face of it authorized the respondent no.1 to drive the motorcycle, light motor vehicle and heavy transport vehicle only, which clearly shows that as per

the said driving license respondent No.1 could have driven the above said truck owned by deponent, which is a heavy good vehicle. The said license was duly stamped and signed by the licensing authority, Mathura. The deponent presumed this driving license to be a valid effective and genuine and there was nothing to doubt about the same. The copy of the said license, which the deponent seen at the time of employing the respondent no.1 as his driver in the vehicle in question is Ex.RW3/F. Moreover, although the deponent himself had been seeing the respondent no.1 driving different Trucks at Truck Union, Cheeka, District Kaithal (Haryana) and he had never heard of any accident caused by him then also, the deponent as an abundant precaution, at the time of employing respondent No.1 as a driver, had enquired about his skills from other persons owning trucks and the deponent in his presence had got conducted the driving test of the respondent no.1 in his own presence. The deponent is an expert driver and has a driving license to drive heavy vehicles. The deponent himself could not doubt the skilled driving of respondent no.1 and had also satisfied about the genuineness of his driving license and it was only thereafter he had employed respondent no.1 as driver on the aforesaid truck the deponent had enquired from Karnail Singh, S/o Sh. Sera Singh R/o Village Thana, Tehsil Pehwa, Distt. Kurukshetra, with whom the respondent no.1 was earlier working as a driver on his truck. The said Karnail Singh appreciated the driving skills of respondent no.1 and recommended that respondent no.1 is a very good driver and can be employed by the deponent.”

Learned counsel for respondent No.3-insurance company has

argued that though the appellant has stated that he had taken due care and

precautions regarding driving licence of Narinder Singh-respondent No.4 but his statement is not reliable as Narinder Singh is resident of village Khushal Majra, Tehsil Guhla, District Kaithal and the licence Ex.RX was issued by Licensing Authority, Mathura. No Licensing Authority could issue the driving licence to a person, who is not a resident of area falling in its jurisdiction. He further submits that the dates mentioned in the driving licence are also showing that it is a fake document. While date of issue has been mentioned as 04.11.2003, the date below the vehicles mentioned in driving licence, which were allowed to be driven is mentioned as 19.04.2007 and the date of validity of driving licence is 19.04.2010 to 18.04.2013.

On giving a careful thought to the submissions of learned counsel for the insurance company, I find no merits therein as the date of issue mentioned in the driving licence is the date when it was originally issued. The licence was issued for Motorcycle, LMV and Transport vehicles. Below the types of vehicles permitted for driving vide his licence, date 19.04.2007 is mentioned which a layman can take as date when the permission was allowed to drive these vehicles after date of issuance of licence which appeared to have been issued in the year 2003. This licence was valid from 19.04.2010 to 18.04.2013. Appellant has stated that he had seen this licence, inquired about skill of respondent No.4 and has also taken his driving test. The appellant himself is an expert driver, who possesses licence to driver heavy vehicles. He had no doubt about the skill of respondent No.4 as a driver. He had also made inquiry from his previous employer about working of respondent No.4, who had appreciated his

driving skill. The above fact shows that appellant had taken due care and precautions as required from him while employing Narinder Singh as driver of the offending vehicle. He was not supposed to go to Licensing Authority, Mathura to verify genuineness of the driving licence. The law in this regard has been well settled in the following cases:-

- (i) ***United India Insurance Company Vs. Leheru and others 2003 (3) SCC 338;***
- (ii) ***National Insurance Company Limited Vs. Swaran Singh and others 2004 (3) SCC 297;*** and
- (iii) ***Pepsu Road Transport Corporation Vs. National Insurance Company 2013 (10) SCC 217.***

In case of ***Pepsu Road Transport Corporation Vs. National Insurance Company (supra)***, the driver of the vehicle was found having a fake driving licence. Contention of the employer was that the driver was given proper training in its driving school and reasonable steps for verifying the driving licence were taken. In view of above facts and circumstances, the Apex Court observed as follows:-

“8. *In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable*

*care in employing a person who is qualified and competent to drive the vehicle. **The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver.** However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation."*

In case of ***United India Insurance Company Vs. Leheru and others (supra)***, it was observed by Apex Court as follows:-

“18. We are thus in agreement with what is laid down in aforementioned cases viz. that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The Insurance Company must establish that the breach was on the part of the insured.

19.

20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on

the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that Insurance Companies expect owners to make enquiries with RTO's, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149 (2) (a)(ii). The Insurance Company would not then be absolved of liability. If it ultimately turns out that the licence was fake the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in *Skandia 's Sohan Lal Passi 's and Kamla 's* case. We are in full agreement with the views expressed therein and see no reason to take a different view.”

In case of *National Insurance Company Limited Vs. Swaran Singh and others (supra)*, a three Judges' Bench of Apex Court discussed various issues relating to liability of insurer to pay compensation in an accident case and observed in para 105 (iii) as follows:-

“(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, have 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 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, original driving licence of driver of offending vehicle was fake. At the time of his appointment, owner of offending vehicle had not only taken his test but had also seen his driving licence and inquired from his previous employer, as such, there was no reason for him/owner to doubt that licence of Narinder Singh was not valid. Accident had taken place on 24.07.2010 and the driving licence of respondent No.4 was stated to be valid w.e.f. 19.04.2010 to 18.04.2013. Owner of offending vehicle has been successful in proving that there was no wilful negligence or lack of reasonable care on his part while employing or allowing respondent No.4 to drive the offending vehicle. Tribunal while allowing recovery right to the insurer has not looked into the evidence, as discussed above and the law is settled by Hon'ble Supreme Court in cases of ***Pepsu Road Transport Corporation Vs. National Insurance Company (supra)***, ***United India Insurance Company Vs. Lehu and others (supra)***, ***National Insurance Company Limited Vs. Swaran Singh and others (supra)***.

Learned counsel for respondent No.3 has argued that respondent No.4, who is resident of Haryana, could not be issued licence by

looking into the genuineness of the licence Ex.RX, while employing respondent No.4.

This argument has no merit as owner of a vehicle is not required to make enquiries as to where the driver was living at the time of issuance of driving licence to him. He is not supposed to doubt the validity of driving licence, even if, validly issued, on the ground that the person to whom it was issued, was resident of beyond the area of jurisdiction of Licensing Authority. Such roving enquiries are not expected from the owner of vehicle, while employing a driver and no term of insurance policy has been pointed out during course of argument, which binds the insured to make such enquiries or which provides that failure on the part of insured to make enquiry about domicile of driver at the time of issuance of driving licence to him, will result in breach of term of insurance policy.

As a sequel of my above discussion, I find merits in this appeal and the same is accepted. Impugned award to the extent it grants recovery rights to the insurer against the insured, is set aside.

December 04, 2018.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

√
Yes/No

Whether Reportable:

√
Yes/No