

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

**FAO No.1877 of 2015 (O & M)
Date of Decision:-17.1.2018**

The New India Assurance Company Ltd.

...Appellant

Versus

Baljeet and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rajesh K. Sharma, Advocate
for the appellant.

Service of respondent No.4 dispensed with as he was ex-parte
before the Tribunal.

AMIT RAWAL J.(Oral)

The appellant-Insurance Company is in appeal against the findings rendered by the Motor Accident Claims Tribunal (MACT), Jhajjar, on issue No.3 whereby the contention of the Insurance Company with regard to the authenticity and validity of the driving license held by the driver of vehicle bearing registration No.DL9CS-1905 has been rejected.

Mr. Rajesh K. Sharma, Advocate learned counsel appearing for the appellant-Insurance Company submits that no doubt in order to prove its case the Insurance Company had examined RW1 to RW3 as the original driving license was issued by RTO, Mathura whereas renewal was found to be genuine but the original license as per the testimony of RW2, was issued

in the name of Satender Kumar Sharma son of Ishwar Chand Sharma, resident of Tangada Mohalla, Kosi Kalan, Mathura and not in the name of Sunil Kumar son of Deep Chand resident of Shashtri Nagar, Bahadurgarh. But in cross-examination RW2 Abhay Sahai Saxena, Clerk, Office of ARTO Office, Mathura (U.P.) deposed that he was not deputed on the post of License Clerk in ARTO Office, Mathura but was working as Clerk in Challan Section. With regard to the testimony of RW3 Raj Kumar Sharma, Clerk, Office of ARTO Office, Mathura it was submitted that he produced the entire record with regard to the validity of the driving license, which was scanned from the original record though in cross-examination he deposed that he did not bring the original record.

In view of the aforesaid evidence recovery rights ought to have been granted to the insurance company.

I have heard learned counsel for the appellant appraised the paper book and of the view that there is no force in the merits. The testimonies of RW2 and RW3 examined by the Insurance Company in their defence read as under :-

RW2 Abhay Sahai Saxena, Clerk, Office of ARTO Office, Mathura, U.P.

On S.A.

Stated that I have brought the original summoned record regarding driving license number 1831/MTR/03 Ex.R3, is the correct copy as per the original summoned record. DL of said license was issued in the name of Satender Kumar Sharma S/o Ishwar Chand Sharma R/o Tangada Mohali, Kosi

Kalan, Mathura. The ARTO Officer Mathura has not sent the original register. The only computerized record of driving license which was summoned by the Court, send in the Court. The above said driving license has not issued in the name of sunil S/o Deep Chand R/o Shashtri Nagar, Bahadurgarh.

Xxxxxxxx by H.n. Lohchab, Counsel for the petitioner.

It is correct that I am not posted as License Clerk in ARTO Office, Mathura, but I am working as Clerk in Challan Section. It is correct that in the year 2003, we used to maintain the manual record, however, the whole office record is computerized for last two years. I cannot tell the serial number of the driving licenses issued by our office on 10.2.2003. Vol. Same can be clarified only from the record. The original register might be available in our office and I can produce the same.

At this stage further cross examination is deferred on the request of learned counsel for the petitioner with direction to the witness to produce the original register.

RO & AC

(Rajesh Malhotra) PO
MACT/JJR/25.09.2014”

RW3 Raj Kumar Sharma, Clerk, Office of ARTO
Office, Mathura, U.P.

On S.A.

Stated that I have brought the summoned record

regarding driving license No.1831/MTR/03. Now, I produce the copy of DL downloaded from our computer server pertaining to the said DL as all the documents were scanned from 2006 onwards. I have brought the office copies of DLs prepared from 1800/MTR/03 to 1848/MTR/03 for the day dated 10.2.2003. Same is collectively exhibit Ex.RW4/A (objected to as original documents not produced). I cannot produce the original register for the said day as our office record is missing and the same is not traceable.

Xxxxxby H.N. Lohchab, counsel for the petitioner.

I do not know since when the original record is missing. At present Girish Kumar is posted as record keeper and the record missing previous to posting of Girish Kumar. No FIR was lodged by our office pertaining to missing of record. I joined the office in June, 2013. I am in Registration Branch, therefore, I cannot say when this particular fact came to knowledge of their office. I never remained posted in the Scanning Section or in Computer Server Branch. The present document Ex.RW4/A is not an attested copy. Vol. The same was downloaded from the computer server and the original record is missing and hence, Ex.RW4/A was not attested by any official of our office. I have no knowledge when the DLs were scanned after preparation of the same. I do not know who was the Licensing Officer on 10.2.2003 and I also cannot identify his signature or his initials. The handwriting on the particulars of DL is in the handwriting of Jagdish Rawat. I

never worked with him. Jagdish Rawat expired in the year 2012 before I joined the present office. I have no personal knowledge about the handwriting of Jagdish Rawat. It is correct that the scanned documents can be changed in the computer server if any mistake comes to our knowledge later on. It is incorrect to suggest that I have not produced the original register knowingly. Kedar Singh and Girish Kumar are working as Licensing Clerk. License Clerk was summoned by this Court but warrant was issued in my name. It is incorrect to suggest that I am deposing falsely.

RO & AC

(Rajesh Malhotra) PO
MACT/JJR/18.10.2014”

On perusal of the statements it is evident that both the witnesses on a specific question, submitted that the record in original was missing. Photocopies of the record even if downloaded cannot be looked in to as per Section 65 of the Indian Evidence Act for the purpose of leading secondary evidence particularly when the loss of the original had not been proved. In my view the insurance company has not been able to discharge the onus. Hence, no ground for interference is made out.

Dismissed.

January 17, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No