

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 15.05.2018

1. FAO No.346 of 2014(O&M)

Madan Lal ... Appellant

Versus

Savita & ors. ... Respondents

2. FAO No.347 of 2014(O&M)

Madan Lal ... Appellant

Versus

Rajinder Singh & ors. ... Respondents

3. FAO No.352 of 2014(O&M)

Madan Lal ... Appellant

Versus

Smt. Manju & ors. ... Respondents

4. FAO No.5473 of 2013(O&M)

Smt. Manju & ors. ... Appellants

Versus

Pardeep & ors. ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Naresh Kaushal, Advocate,
for the appellant in FAOs No.346, 347 and 352 of 2014, and
for respondent No.2 in FAO No.5473 of 2013.

Ms. Bhavna Grewal, Advocate, for
Mr. S.K. Yadav, advocate,
for the appellants in FAO No.5473 of 2013, and
for respondents No.1 to 4 in FAO No.352 of 2014.

Mr. M.B. Jain, Advocate,
for the respondent-Insurance Company
in all cases.

RAMENDRA JAIN, J.(Oral)

Through this common judgment, above titled four appeals are being disposed of viz, FAOs No. 346, 347 and 352 of 2014, filed by owner of the offending vehicle against granting of rights to respondent No.3-Insurance Company to recover the compensation amount from him on the ground that the driving licence of the offending driver respondent No.2 (Pardeep) was fake and FAO No.5473 of 2013 by the claimants for enhancement of compensation, modifying the consolidated impugned award dated 25.07.2013 of the Motor Accident Claims Tribunal, Narnaul, (in short 'the Tribunal'). For brevity facts are taken from FAO No.346 of 2014.

In nutshell, on 24.07.2010, one Sunil while driving tempo bearing Registration No.1-1R-19-6847 was going from Dholi to Mahendergarh carrying Sarvsmt. Nathi Devi and Savita Devi. When he reached near the canal bridge situated on Mahendergarh to Charkhi Dadri Road, offending truck bearing Registration No.HP-12-D-2055 driven by respondent No.2 namely Pardeep in FAO No.346 of 2014, respondent No.6 in FAO No.342 of 2014, respondent No.12 in FAO NO.347 of 2014 and respondent No.1 in FAO No.5473 of 2014, while coming from the wrong side in a rash and negligent manner, hit the aforesaid tempo driven by Sunil. As a result thereof, deceased Sunil along with occupants of his tempo received multiple grievous injuries. His tempo had also got damaged. Respondent No.2, Pardeep, after accident, fled away leaving offending truck at the spot. FIR No.258, dated 24.07.2010 under Sections 279/337/304-A IPC was registered at Police Station Mahendergarh against the offending driver Pardeep for causing the accident in question.

Sunil driver of the tempo and occupant Nathi Devi succumbed to their injuries, whereas occupant Savita Devi was discharged after proper medical treatment from Civil Hospital, Mahendergarh. Legal heirs of deceased Sunil and Nathi Devi and injured Savita Devi filed their respective claim petitions under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') claiming compensation against the death of Sunil and Nathi Devi and injuries suffered by Savita Devi.

Learned Tribunal after holding trial, vide impugned award dated 25.07.2013, awarded compensation of ₹7,67,000/- to the legal heirs of the deceased Sunil and ₹1,64,000/- to legal heirs of Smt. Nathi Devi and ₹30,000/- to injured Savita Devi.

Learned counsel for the appellant (owner of the offending vehicle) relying upon Jasbir Kaur Vs. Om Parkash and others, 2007(1) RCR (Civil) 347 and Bajaj Allianz General Insurance Company Limited Vs. Mahesh Kumar and others, 2010 (2) RCR(Civil) 785, *inter alia* contends that report Ex.R-5 allegedly given by the Licensing Authority, Mathura was not legally proved by respondent-Insurance Company by summoning and examining official of Licensing Authority, Mathura. Therefore, the learned Tribunal in the absence of formal proof of report (Ex.R-5) has erred in granting recovery rights to the Insurance Company against the appellant owner of the offending vehicle, illegally and wrongly. The appellant, at the time of appointment of driver Pardeep under bona fide belief, trusted him that he must be having a valid driving licence and therefore, he could not have fastened with any liability.

On the other hand, learned counsel for the respondent-Insurance Company, strongly refuting the above arguments of learned counsel for the

appellant owner of the offending vehicle, contends that the appellant Madan Lal made a futile attempt before learned Tribunal to produce another driving licence of his driver Pardeep, allegedly, issued by Licensing Authority, Nagaland, coming to know that driving licence (Ex.R-3) of Pardeep has been declared fake by the Licensing Authority, Mathura, by way of moving application for additional evidence, which was rejected vide order dated 08.07.2013. Strict rules of evidence are not applicable to a Tribunal constituted under the Act, because proceedings, in a claim petition before it, are summary in nature. Therefore, the report Ex.R-5 issued by the Licensing Authority Mathura, declaring the driving licence Ex.R-3 invalid, has rightly been considered by the learned Tribunal. As per the stand of the owner to his driver, Pardeep was resident of Kangra (HP), whereas he had produced his driving licence, allegedly, issued by Licensing Authority, Mathura. This fact in itself is sufficient to draw an adverse inference against him that his driving licence (Ex.R-3) was fake and recovery rights have rightly been given to the respondent-Insurance Company against the appellant. In support of his contention, he has placed reliance on Kuljeet Singh Vs. Surinder Kaur & ors., 2015(8) RCR (Civil) 350 and Shri Ram General Insurance Co. Ltd. Vs. Asha & ors., 2014(39) RCR (Civil) 201.

Having given thoughtful consideration to the submissions made by both the sides, this Court finds that the appeals filed by the appellant, owner of the offending truck, are completely devoid of any merit for the reasons to follow.

Perusal of Tribunal's record shows that the appellant Madan Lal moved application for additional evidence to produce another driving licence of his driver Pardeep on 17.12.2012 i.e. after tendering report (Ex.R-5) of the

Licensing Authority, Mathura, declaring driving licence (Ex.R-3) of his driver Pardeep as fake. That fact in itself is sufficient to draw adverse inference against appellant Madan Lal that he tried to hoodwink the Court, acting cleverly for producing a second licence of his driver Pardeep allegedly issued by Licensing Authority, Nagaland after coming to know that driving licence (Ex.R-3) has been declared fake, but remained unsuccessful in his malafide attempt as his application for additional evidence was rejected vide order dated 08.07.2013.

Relevant Section 6(i) of the Act to resolve this issue is reproduced hereunder:-

“6. Restrictions on the holding of driving licences.-

(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 authorizing, in accordance with the rules made under Section 139, the person specified therein to drive a motor vehicle.”

From the above provision, it is manifestly clear that a person can possess only one driving licence at one point of time. In case, some addition has to be made, the same has to be endorsed on the same driving licence. It is not worth digestible as to why a person would possess two driving licences. The reason is obvious so as to hoodwink the law enforcing agencies. Reference can be had to the judgment of a Coordinate Bench in *Asha's case (supra)*, where it is held as under:-

“7. xxx xxx xxx xxx xxx xxx xxx

A particular driving licence is to be used in a

particular set of circumstances as per convenience of the user. In criminal proceedings a forged driving licence is handed over to the police, but in proceedings under Motor Vehicles Act, to avoid civil liability, another driving licence which is perhaps 'obtained' for that very purpose is tendered. The method adopted is too mischievous. The object is to deceive the Insurance Companies. Should the Tribunal or the Court become a party to such frauds by ignoring forgery and hold that at least one driving licence was genuine?

8. The answer must be 'no'. It was never the intention of the Legislature framing the law. While granting compensation, the Tribunal has to uphold the law. Anybody found to be tinkering with it has to be dealt with a strong hand. Such malpractices cannot and should not be tolerated. The fact remains that the driving licence which respondent No.1 was holding at the time of the fateful accident was a forged document. Merely because the appellant later on came up with another driving licence in his name, does not mean that at the time of the accident, respondent No.1 was holding an effective driving licence.”

More so, driver Pardeep is resident of Himachal Pradesh, whereas he had tried to produce two driving licences on record, one was issued by Licensing Authority, Mathura and another by Licensing Authority, Nagaland. His above contumacious conduct raises a suspicion that as to why he obtained driving licences from too far away places with which he had no concern at any point of time. In similar circumstances, a Coordinate Bench of

this Court in *Kuljeet Singh's case (supra)* has held that recovery rights to the insurance Company have been rightly granted.

It is pertinent to mention here that the appellant Madan Lal never appeared in the witness box to depose that while giving employment to Pardeep on his truck, he had taken his driving test and under bona fide belief that his driving licence was genuine, provided him employment. In the absence of any such evidence, the arguments in this respect raised by learned counsel for the appellant beyond pleadings and evidence is, thus, liable to be turned down. Even the offending driver Pardeep did not enter into the witness box, which fact is sufficient to draw an adverse inference against him that he did not adopt any such exercise deliberately, intentionally and knowing well that he was not possessing valid driving licence on the date of accident. Even in the written statement either the appellant owner or driver of the offending truck never took any such above plea. Therefore, the appellant owner cannot be permitted to raise this argument.

No benefit of the citations relied upon by learned counsel for the appellant Madan Lal can be given to him in view of the fact that strict rules of evidence are not applicable in proceedings before the leaned Tribunal being summary in nature. If the report (Ex.R-5) was not liable to be relied upon, being not proved by examining its author, in that eventuality, same analogy has to be applied to the appellant owner of the offending vehicle, who did not enter into witness box and simply tendered driving licence (Ex.R-3). Coordinate Bench of this Court did not consider this aspect of the matter that if a driving licence tendered by owner of the offending vehicle is taken into consideration without its formal proof without adhering to the strict principles of Evidence Act, in that eventuality, any report produced by the

Insurance Company allegedly issued by the licensing authority, a State Government functionary, has also to be given due weight. In other words, it cannot be ignored.

In case, the respondent-Insurance Company did not prove report (Ex.R-5), declaring driving licence (Ex.R-3) fake, appellant Madan Lal also did not ever try to prove driving licence (Ex.R-3) by summoning official of the Licensing Authority, Mathura. Therefore, unrebutted report (Ex.R-5) produced by respondent-Insurance Company, applying the same analogy as in case of tendering driving licence (Ex.R-3) has rightly been relied upon by the learned Tribunal and recovery rights have legally been granted to the Insurance Company against the owner appellant.

No doubt, provisions of Sections 161 and 163 of the Act are benevolent in nature to compensate the motor vehicular accident victims, but it is needless to mention here that there is a flagrant violation thereof for the reason that the Courts, since last many decades, are liberal in granting compensation to the legal heirs of deceased or injured in all circumstances overlooking or ignoring the various factors intentionally and deliberately, even in the cases of invalid or fake driving licences, antedated insurance policy or in the fake claim petitions filed in connivance with the owner and driver of the alleged offending vehicle, relying upon the false depositions of the alleged witnesses by keeping their eyes closed to help them in illegal manner. However, much water has already flown. Time has come to curb down such type of malpractices and to remain vigilant in not giving undue advantage, in the cases of violation of terms and conditions of insurance policy.

In view of discussion made above, three appeals bearing FAOs

No. 346, 347 and 352 of 2014 filed by owner of the offending vehicle are dismissed.

FAO No.5473 of 2013(O&M)

Both the parties are *ad idem* to the effect that this appeal has to be decided according to principles laid down in National Insurance Company Ltd. Vs. Pranay Sethi & ors., 2017(4) RCR (Civil) 1009.

As per calculations Annexure 'A' furnished by learned counsel for the appellants-claimant, in accordance with judgment aforesaid, the appellants-claimant are entitled to enhanced compensation of ₹2,10,000/- over and above the compensation already awarded to them by the learned Tribunal vide impugned award.

Learned counsel for the respondent-Insurance Company has not been able to controvert or point out any mistake in the above calculations Annexure 'A'.

In view of discussion made above, this appeal stands disposed of with direction to respondent No.3-Insurance Company to deposit the enhanced compensation of ₹2,10,000/- before the learned Tribunal within two months from today along with upto-date interest @ 7.5% per annum from the date of institution of the claim petition till realization for onward disbursement to the appellants-claimant in proportion so arrived at by it, in accordance with law against proper receipt and identification.

15.05.2018
monika

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No