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

FAO No.6107 of 2015 (O&M)
Date of Decision: November 28, 2018.

M/s Onkar Bus Service Ltd.

..........APPELLANT(s).

VERSUS

Avtar Singh and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sudhir Paruthi, Advocate
for the appellant (s).

Mr. Ishan Cooner, Advocate
for respondent No1 to 3.

Mr. R.C. Kapoor, Advocate
for respondent No.4.

None for respondent No.5.

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SURINDER GUPTA, J.

In the claim petition filed by Avtar Singh and others against respondents No.1 to 3, Motor Accident Claims Tribunal awarded compensation of ₹4,13,000/- to the claimants for the death of Smt. Harminder Kaur in a motor vehicle accident with bus bearing registration No.PB-08BC-9229(later referred to as the offending vehicle) owned by the appellant M/s Onkar Bus Service Ltd. The tribunal passed the award against the owner, driver and insurer of the vehicle jointly and severely and allowed recovery rights to the insurer against the owner of the offending vehicle on the ground that original driving licence of the driver of the offending vehicle was fake and same could not be validated by subsequent valid renewals.

The appellant has challenged the grant of recovery right to the insurer against it with the plea that before employing the driver, appellant had checked his licence, taken his test and found him to be a qualified driver.

Learned counsel for the appellant while referring to the observations of Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Swaran Singh and others 2004 (3) SCC 297,*** has argued that 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. In this case, driver was holding a driving licence which had valid renewal and the appellant before employing him, had taken his test and also seen his driving licence which apparently appears to be valid. There was no reason for the appellant to doubt that the original driving licence of the driver was fake. He has also relied on the observations in case of ***United India Insurance Company Vs. Lehru and others 2003 (3) SCC 338*** and has argued that if the licence held by driver seems to be valid on the face ot it, the owner cannot be expected to make a roving inquiry to find out its validity.

Learned counsel for the insurer has argued that the original licence of the driver was fake and no evidence has been produced by the owner to prove that he made inquiry from the Licensing Authority regarding the genuineness of the licence. Once it is proved on file that the original licence of the driver was fake, any subsequent valid renewal does not turn it into a valid driving licence.

The licence of the driver of the offending vehicle bearing No.10983 was allegedly issued on 15.06.1999. RW1 Wassan Singh, Junior Assistant DTO Office, Amritsar has deposed that the above licence in fact had been issued in the name of Gaurav Sharma son of Satish and the licence placed on file by Ajaib Singh (driver of the offending vehicle) is a fake one. RW2 Kamal Kumar, Junior Assistant DTO Office, Jalandhar had brought the relevant record and had stated that licence of Ajaib Singh No.EN-8643 (HTV) was renewed and valid upto 16.11.2004. Thereafter, this licence was again renewed upto 15.11.2007 and again vide No.R15441 upto 10.11.2010. Thereafter, as per entry No.R-21787, the licence of Ajaib Singh was renewed upto 25.11.2013. As per renewal of licence allowed to him, he was competent to drive any type of heavy transport vehicle i.e. bus or truck.

Learned tribunal took note of the above fact but concluded that if the original driving licence is not genuine, any subsequent valid renewal cannot validate the same and while reaching the above conclusion, it relied on the observations in case of ***New India Assurance Company Limited Vs. Vasudev Kalra and others 2014(3) RCR (Civil) 1009.***

The legal proposition as relied by learned tribunal that a fake driving licence cannot be validated by subsequent valid renewal is not disputed. However, while allowing recovery right to insurer of offending vehicle, the tribunal has ignored the statement of RW3 Anand Mohan Sharda, Managing Director M/s Onkar Bus Service, Jalandhar, who deposed as follows:-

> "That Ajaib Singh respondent No.1 has been our Driver in Onkar Bus Service. He was firstly appointed in Feb.2007 and at that time, the said driver was holding driving licence No.R10041 dated 16.11.2004 which was valid upto 15.11.2007 issued by the Licensing Authority, Jalandhar City, copy of which is Ex.R1/A. The said licence was verified from the Licensing Authority, Jalandhar and found to be genuine. But later due to his family circumstances, Ajaib Singh Driver left the job on 08.10.2008. However, he again sought appointment in Feb-2009 and was reappointed accordingly. At the time of his reappointment, he had shown and submitted the driving licence No.R15441 dated 19.11.2007 issued by the Licensing Authority which was valid upto 18.11.2010. The said Driving Licence was also got verified from DTO Office, Jalandhar and was found to be genuine one. The said driver at the time of his appointment has disclosed his experience of driving heavy vehicle for the last more than seven years. He got the said licence again renewed and the copy of the renewed (licence) is Ex.R1/B. We also took the test of his driving and found that Driver Ajaib Singh was competent to drive the bus. ...."

In case of ***Pepsu Road Transport Corporation Vs. National Insurance Company 2013 (10) SCC 217***, 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. Lehru 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. ....
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> 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 but it was validly renewed four times from the year 2001 onwards to 2013. At the time of his appointment, owner of offending vehicle had not only taken his test but had also checked his driving licence which had been renewed twice before his appointment, as such, there was no reason for him(owner) to doubt that licence of driver of offending vehicle was not valid. Accident had taken place on 01.09.2012 and in the meanwhile driving licence of respondent No.5 was again validly renewed upto 10.11.2010 and again upto 25.11.2013 and as per renewal, he was competent to drive bus or truck. 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.5 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. Lehru and others (supra), National Insurance Company Limited Vs. Swaran Singh and others (supra),***

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.

(SURINDER GUPTA)
JUDGE

November 28, 2018.
Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***