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

FAO No.1648 of 2017 (O&M)
Date of Decision: May 31, 2018

Bharti AXA General Insurance Company Limited ...Appellant
Versus
Divesh Kumar and others ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Rajbir Singh, Advocate for Mr.Sanjeev Goyal, Advocate for the applicant/appellant – Insurance Company.

HARINDER SINGH SIDHU, J.

For the reasons stated in the applications, the delay of 84 days in filing and 08 days in re-filing of the appeal is condoned.

The insurer has filed the present appeal challenging the award dated 15.03.2016 of the Motor Accident Claims Tribunal, Fatehabad (for short 'the Tribunal').

Brief facts as disclosed in the claim petition are that on 13.11.2014 at about 2.30 PM in the area of Kath Mandi, Fatehabad, a vehicular accident took place involving Santro Car No.HR-22H-4396 (herein for short 'the offending vehicle'), wherein, Divesh Kumar – respondent No.1 suffered injuries on his right leg. The accident was alleged to have been caused due to rash and negligent driving of the offending vehicle. FIR regarding the accident was also registered.

On a claim petition having been filed by the injured – claimant Divesh Kumar, the Tribunal assessed the compensation as follows:

1.	Pain and suffering	₹ 10,000/-
2.	Medical expenses	₹ 30,000/-
3.	Loss of amenities of life, loss of earning capacity and future prospects, etc.	₹ 20,000/-

4.	Transportation charges	₹ 5,000/-
5.	Special diet and attendant charges	₹ 5,000/-
	Total	₹ 70,000/-

Challenging the Award, Ld. Counsel for the appellant – Insurer has argued that the driver is a permanent resident of Haryana yet he has produced a licence which has been issued by the State of Nagaland. Hence this licence cannot be considered to be valid because as per Section 9 of the Motor Vehicles Act, 1988 a person can apply for a licence only to the licensing authority where he ordinarily resides. The contention therefore is that a licence issued by a licensing authority of the place where the driver is not a permanent resident is invalid.

This argument of the Insurance Company cannot be accepted for more reasons than one.

First, it is well settled that the onus to prove that the driver was not having a valid driving licence is on the insurance company. That onus can only be discharged by examining an official of concerned licensing authority/getting the licence verified from that authority. That exercise has not been undertaken, as noted by the Tribunal in the impugned award. The Tribunal has specifically recorded that "*no effort was made to check its authenticity from the Licensing Authority which issued the same*".

Similar argument of the Insurance Company was repelled by this Court in **New India Assurance Company Limited Versus Vijay Kumar and Ors. 2015(8) R.C.R.(Civil) 596** by observing as under:

> "***13.*** *Learned counsel for the appellant has submitted that findings of the Tribunal on issue No.2 are wrong. Vijay Kumar was permanent resident of District Kurukshetra and he is alleged to have been issued licence from Nagaland. The said*

licence cannot be said to be a valid document. Normally, the licence is issued at a place where the driver ordinarily resides. The ordinary residence of Vijay Kumar driver was Village Niwarsi, Police Station Ladwa, District Kurukshetra and as such, the learned Tribunal has wrongly decided issue No.2 against the insurance company.

14. *I have considered the said submission but do not find any force in that submission.*

15. *It is settled law that onus to prove that driver was not holding a valid driving licence lies on the insurance company. The driver has produced the driving licence. The insurance company has not summoned any one from Nagaland Transport Authority to prove that the said licence is invalid. The driver Vijay Kumar has also stated that he has been visiting and plying vehicle at Nagaland and as such there is no abnormality in issuing the licence by Nagaland Transport Authority. The fact remains that onus is on the insurance company to prove that Vijay Kumar was not having a valid driving licence and insurance company has failed to discharge the onus of that issue. So, the finding on issue No.2 stands affirmed.* "

Secondly, there is no pleading by the insurance company before the Tribunal that the licence is liable to be considered to be invalid on this ground. The driver, thus, did not have an opportunity to explain the circumstances in which the licence was obtained from Nagaland.

In **Jaipal Singh vs. Meena Devi and others FAO No. 1653 of 2014 decided on 6.9.2016** it was held :

"There cannot be any quarrel with the settled position in law that if the insurance company wants to avoid its liability to pay compensation in view of the defences available under Section 149(2) of the Act, it is enjoined upon the insurer to plead and prove violation of a condition envisaged under the said provision. Indisputably, the licence held by the appellant bearing No. 12414/MTR/07 has been verified to be issued. There cannot be any quarrel with the settled position in law that if the insurance company wants to avoid its liability to pay compensation in view of the defences available under Section 149(2) of the Act, it is enjoined upon the insurer to plead and prove violation of a condition envisaged under the said provision. Indisputably, the licence held by the appellant bearing No. 12414/MTR/07 has been verified to be issued by the licensing authority at Mathura.

Counsel for the respondent has failed to invite my attention to any such fact brought on record either by way of pleadings or evidence that Jaipal Singh was not competent to submit an application to the licensing authority at Mathura as he is residing in village Gharonda as per his address given in the claim petition filed in the year 2011. In absence of the insurance company having raised such a plea, no such factual controversy can be entertained much less accepted without giving an opportunity to the appellant to explain his position as to under what circumstances, he submitted an application to the licensing authority at Mathura for obtaining a driving licence in the year 2007. That being so, the respondent cannot derive any advantage to its contention by invoking the provisions of Section 8 of the Act for the first time before the appellate court. As the appellant was holding a valid driving licence at the time of occurrence, the findings recorded by the learned Tribunal that the insured is guilty of violating the terms and conditions of policy or the insurance company is entitled to recover the amount of compensation from the owner cum driver of the vehicle cannot be allowed to sustain and accordingly set aside."

Further, a licence issued by a licensing Authority would remain valid till it is revoked by the authority or nullified in any other appropriate proceedings. Section 19 of the Motor Vehicles Act, 1988 empowers the licensing authority to disqualify the holder of the licence or to revoke the licence after giving opportunity of being heard. The fact that a licence has been obtained by misrepresentation or fraud is a ground for disqualifying or revoking the licence. There is nothing on record to indicate such misrepresentation or fraud nor has the licensing authority been moved in this regard. Thus the licence has to be treated as valid.

Accordingly, the appeal is dismissed.

May 31, 2018 **(HARINDER SINGH SIDHU)**
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No