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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1385 of 2014

- Prateek Kumar Jain, S/o Shri Prakesh Chand Jain, Age- about 32 years, R/o Main Road, Bus Stand Dondilohara, Police Station Dondilohara, Tahsil Dondilohara, District Balod (C.G.)

  (Owner)

---- Appellant/Non-applicant No.2

Versus

1. Shri Jagannath Kureti, S/o Late Shri Amrit Kureti, Caste- Gond, Age about 32 years, R/o Village Muskera, Post Ponda, Tahsil- Gurur, District Balod (C.G.)

   (Claimant)

2. Nupendra Kumar, S/o Shri Bednath Deshmukh, Age about 28 years, R/o Village Dudhli (Malighori), Police Station- Balod, District Balod (C.G.) Presently residing at Brahmanpara Dondilohar, Police Station Dondilohara, Tahsil Dondilohara, District Balod (C.G.)

   (Driver/Non-applicant No.1)

3. IFCO Tokyo General Insurance Company Limited, Through Head Office, Lal Ganga Shopping Mall Complex, Ghadi Chowk, Raipur (C.G.)

   (Insurer/Non-applicant No. 3)

---- Respondents

For Appellant	:	Shri Malay Shrivastava, Advocate
For Respondent No. 1	:	Shri Vikash Shrivastava, Advocate
For Respondent No. 2	:	None
For Respondent No. 3	:	Shri Amrito Das and Shri Abhyoday Singh, Advocates

Hon’ble Shri Justice Gautam Chourdiya, J

Judgment on Board

08.04.2019

1. This is owner's appeal against the award dated 21.08.2014 passed by the Second Additional Motor Accident Claims Tribunal, Balod, District Balod (C.G.) in Claim Case No. 35 of 2013.

2. As against the compensation of Rs.22,50,000/- claimed by Respondent No.1/Claimant- Jagannath Kureti by filing application under Section 166 of the

Motor Vehicles Act, 1988 for the injuries sustained by him in the motor accident dated 25.12.2012, the Tribunal awarded a total sum of Rs.5,58,000/- along with interest @ 6% per annum from the date of application till realization. The Tribunal, while exonerating the Insurance Company/non-applicant No.3, fastened liability on driver & owner/non-applicants No. 1 & 2 jointly and severally to pay compensation to the Claimant.

3. Facts of the case, in brief, are that on 25.12.2012 Claimant Jagannath Kureti alongwith his daughter Nandini was going from Village Muskera to Kaneri by the offending vehicle Maruti Ritz bearing registration No. CG-07/MA/9063 which was being driven by non-applicant No.1, owned by non-applicant No.2 and insured with non-applicant No.3. When the said offending vehicle reached at village Jagtara, it hit against the electric pole and met with an accident due to driving by non-applicant No.1 in a rash and negligent manner. As a result thereof, Jagannath sustained grievous injuries on his head, hands, legs and waist.

4. Learned counsel for the Appellant/Owner submits that the Tribunal was not justified in fastening liability on the driver &owner/non-applicants No. 1 & 2 to pay compensation to the Claimant on account of non-applicant No.1, driver of the offending vehicle, not having a valid and effective licence. He further submits that in connection with the said accident, FIR (Ex.-P/3) was registered against non-applicant No.1 and consequent thereof driving licence of non-applicant No.1 was seized by the Investigating Officer vide Ex.-P/7. He also submits that on the date of accident i.e. 25.12.2012, the offending vehicle was insured with non-applicant No.3 as per insurance policy Ex.-D/14 which was valid from 21.02.2012 to 20.02.2013 and there is no breach of policy conditions, therefore, the Tribunal erred in exonerating the Insurance Company from its liability. In support of his contention reliance has been placed on the decision of Hon'ble Supreme Court in the matter of ***Pepsu Road Transport Corporation*** Vs. ***National Insurance Company, (2013) 10 SCC 217***.

5. Learned counsel for Respondent No.1/Claimant supports the contention made by learned counsel for the Appellant. However, he submits that if this Court comes to the conclusion that the Insurance Company has rightly been exonerated from its liability, considering the facts and circumstances of the case, order of pay and recover may be passed in this case.

6. Learned counsel for Respondent No.3/Insurance Company supports the award passed by the Tribunal and submits that as per evidence of Satyendra Soni (NAW-1), Assistant Grade-III, R.T.O. Department, he states that as per seizure memo (Ex.-P/7), licence no. N.2386/D mentioned in the name of non-applicant No. 1 was not issued by the R.T.O. Department and the same was fake licence. There is specific breach of policy condition proved by the Insurance Company. He further submits that it is burden upon the insured to prove this fact that before handing over the offending vehicle to non-applicant No.1, the owner/non-applicant No.2 had taken all due care and caution and satisfied himself that non-applicant No.1 was having a valid and effective driving licence whereas no such evidence is there on record. Therefore, the Tribunal has rightly exonerated the Insurance Company from its liability.

7. Heard learned counsel for the parties and perused the material available on record.

8. In *Pepsu Road Transport Corporation* (supra), by allowing the owner's appeal, the Hon'ble Supreme Court said that a motor accident had occurred on account of negligent driving by the third respondent driver of a bus owned by the appellant. The claimants' father had died in the accident. The bus was insured with the respondent. The Tribunal awarded compensation to the claimants. However, the respondent was absolved of its liability under Section 149(2)(*a*)(*ii*) of the Motor Vehicles Act since the driving licence (No.12385) of 1985) issued to the said driver, on verification made by the respondent, was found to be fake. The licensing authority stated in his evidence before the Tribunal that as per the official records no Licence No. 12385 of 1985 was issued to the third respondent driver as licence numbers of 1985 started from 22579, though it could be possible that another licence register pertaining to the year 1985 which might have been misplaced, might contain name of the said driver. The appellant submitted that the said driver appointed by them had been given proper training from the driving school and there was no breach of any conditions of the policy and thus even if the licence was fake, the owner having taken all reasonable steps the insurer was liable to pay compensation. It was also submitted that even on merits the insurer failed to establish before the Tribunal that the licence issued to the said driver was fake. It was observed by the Supreme Court in paras 8, 9, 10 & 11 as under:

> "8. The matter was subsequently considered by a three-Judge Bench of this Court in *National Insurance Co. Ltd.* v. *Swaran Singh, (2004) 3 SCC 297*. The said Bench was of the view that in case the insured did not take reasonable and adequate care and caution to verify the genuineness or otherwise of the licence, the liability would still be open-ended and will have to be determined on the basis of facts of each case. The relevant discussion are available at paras 92 and 99-101, which are extracted below: (SCC pp. 337 & 339)
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>> "*92*. It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of the willful breach of the conditions of the insurance policy or the contract of insurance. In *United India Insurance Co. Ltd* v. *Lehru, (2003) 3 SCC 338*, the matter has been considered in some detail. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of the law in terms whereof the insurer is to establish willful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or for the owners to be absolved from liability whatsoever.
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>> 9*9*. So far as the purported conflict in the judgments of *New India Assurance Co.* v. *Kamla, (2001) 4 SCC 342* and *Lehru* (supra) is concerned, we may wish to point out that the defence to the effect that the licence held by the person driving the vehicle was a fake one, would be available to the insurance

companies, but whether despite the same, the plea of default on the part of the owner has been established or not would be a question which will have to be determined in each case.

100. This Court, however, in *Lehru* (supra) must not be read to mean that an owner of a vehicle can under no circumstances have any duty to make any enquiry in this respect. The same, however, would again be a question which would arise for consideration in each individual case.

101. The submission of Mr. Salve that in *Lehru case*, this Court has, for all intent and purport, taken away the right of insurer to raise a defence that the licence is fake does not appear to be correct. Such defence can certainly be raised but it will be for the insurer to prove that the insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver."

9. *Swaran Singh case* (supra) was subsequently considered by a two-Judge Bench of this Court in *National Insurance Co. Ltd.* v. *Laxmi Narain Dhut, (2007) 3 SCC 700*. It was explained that: *(Swaran Singh case, SCC p. 341, para 110)*

"110. (iii) ….. 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 the 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 a duly licensed driver or one who was not disqualified to drive at the relevant time."

10. 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 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.
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> 11. On facts, in the instant case, the appellant employer had employed the third respondent Nirmal Singh as driver in 1994. In the process of employment, he had been put to a driving test and he had been imparted training also. The accident took place only after six years of his service in PRTC as driver. In such circumstances, it cannot be said that insured is at fault in having employed a person whose licence has been proved to be fake by the Insurance Company before the Tribunal. As we have already noted above, on scanning the evidence of the licensing authority before the Tribunal, it cannot also be absolutely held that the licence to the driver had not been issued by the said authority and that the licence was fake. Though the appellant had also taken a contention that the compensation is on the higher side, no serious attempt has been made and according to us justifiably, to canvas that position."

9. In present case, it is not disputed that as per Ex.-P/7 seizure memo, original driving licence of non-applicant No.1 was seized by the Investigating Officer during investigation in which the number and its validity also mentioned. As per joint written statement filed by non-applicants No. 1 & 2, in paras-15 & 16 they state that on the date of accident, non-applicant No.1 was having a valid and effective driving licence alongwith fitness and the vehicle was being run under the conditions of the policy and as per Ex.-D/14, insurance policy, on the date of accident, the offending vehicle was duly insured with non-applicant No.3. No specific plea was taken before the Tribunal by the Insurance Company/non-applicant No.3 that the driving licence of non-applicant No.1 was fake in its written statement. Therefore, keeping in view of the discussions in the judgment of *Pepsu Road Transport Corporation* (supra), the Insurance Company/non-applicant No. 3 has failed to prove that non-applicant No.1, driver of the offending vehicle, was having a fake driving licence.

10. When the matter is examined in its totality, in my opinion, the Tribunal has certainly fallen in error in exonerating non-applicant No. 3/Insurance Company of its liability of payment of compensation and the same is not sustainable in the present case.

11. For the reasons mentioned hereinabove, the appeal is allowed. The award insofar as it relates to exoneration of non-applicant No.3/Insurance Company of its liability of payment of compensation of Rs.5,58,000/- is set aside. Instead, it is held that non-applicant No.3/Insurance Company is liable for payment of compensation to Respondent No. 1/Claimant. The award is modified to the above extent. Rest of the conditions of the award shall remain intact.

12. If any amount has been deposited by the Appellant/non-applicant No. 2 (owner of offending vehicle) and disbursed to the Claimant/Respondent No. 1, he is entitled to recover the same from non-applicant No.3/Insurance Company in accordance with law.

13. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

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