IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 16.05.2019

CM No. 2382 CII of 2019 in/and FAO No. 292 of 1999

The New India Assurance Company ....*Appellant*

Versus

Swaran and others ....*Respondents*

CM No. 2420 CII of 2019 in/and FAO No. 293 of 1999

The New India Assurance Company ....*Appellant*

Versus

Balwant and others ....*Respondents*

CM No. 2484 CII of 2019 in/and FAO No. 294 of 1999

The New India Assurance Company ....*Appellant*

Versus

Tarsem and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Ms Anamika Mehra, Advocate
for the applicant/appellant – insurance Company

Mr. Pankaj Kundra, Advocate for
Mr. Deepak Sabherwal, Advocate
for respondents No. 1 and 2 (FAO No. 292 and 294 of 1999)
for respondent No. 1 (FAO No. 293 of 1999)

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Rekha Mittal, J. (Oral)

CM No. 2382 CII of 2019

Prayer in this application is for recalling order dated 11.05.2018 whereby the main appeal was dismissed for non-prosecution.

In view of averments made in the application supported by an affidavit of counsel for the applicant/appellant coupled with that no objection was raised by counsel opposite, the application is allowed; order dated 11.05.2018 is recalled and main appeal is restored to its original number and stage and taken on Board today itself for final disposal.

Main appeal

This order will dispose of aforesaid appeals as identical questions of law and fact are involved for adjudication. However, for facility of reference, facts are taken from FAO No. 292 of 1999.

Counsel for the appellant would fairly inform that appeal has been preferred to assail findings of the Tribunal on issue No. 3 pertaining to driving licence and press for right of recovery against the insured as the insurance company has already discharged its liability towards the claimants.

Counsel for the appellant-insurance company would argue that the insurance company examined Darshan Lal, Clerk from the office of District Transport Officer, Jalandhar (RW3) and Mool Chand, Clerk from the office of Regional Transport Officer, Jaipur was examined by Local Commissioner appointed by the Court to substantiate its plea that Rashpal Singh driver of offending vehicle did not possess a valid licence on the date of occurrence. As per testimony of Mool Chand, licence vide entry No. 2184 was issued in the name of Puran Singh and renewed from time to time in the name of said Puran Singh. It is argued with vehemence that the Tribunal grossly erred by rejecting testimony of Mool Chand based on records maintained in the office of Regional Transport Officer, Jaipur, merely because that he could not identify signatures of the then District Transport Officer. It is further argued that since original licence at serial

No. 2184 of 1989-90 was not issued in the name of Rashpal Singh, renewal thereof by the authority at Jalandhar cannot cure the defect, thus, findings of the Tribunal on issue No. 3 are liable to be set aside.

Counsel for the claimants would state that the claimants have nothing to do with the controversy *inter se* the insured and insurance company, thus, he has no submissions to make. However, he has conceded that the insurance company has already paid compensation to the claimants, in terms of the award.

Before adverting to the submissions made by counsel for the insurance company, a relevant extract from para 12 of the award reads as follows:-

> "12. The onus to prove this issue was on the New India Assurance Company Limited, respondent No. 3. It was pleaded by respondent No. 3 that at the time of accident, Rashpal Singh, respondent No. 2, the driver of the offending bus was not holding a valid driving licence. To prove this plea, the respondents had examined RW2 Karnail Singh, Additional Ahalmad to the Court of Shri G S Jhaj, Additional Sessions Judge, Kapurthala. He stated that driving licence of Rashpal Singh was not on the file of the criminal case registered regarding the accident in question. RW3 Darshan Lal, Clerk of the office of the District Transport Officer, Jalandhar deposed that as per entry at serial No. 3331-A dated 15.06.1993, the driving licence of Rashpal Singh which was issued at Jaipur vide serial No. 2184 of 1989-90 was renewed upto 14.06.1996. The argument of Shri Mohit Kapur, Advocate, the learned counsel for the respondents

was that Mool Chand, Clerk of the office of Regional Transport Officer, Jaipur, who was examined by the Local Commissioner has stated that the driving licence vide entry No. 2184 was not issued by the Regional Transport Officer, Jaipur in favour of Rashpal Singh, rather vide this entry driving licence was issued in favour of one Puran Singh. It was thus submitted by the learned counsel for respondent No. 3 that the driving licence, if any, which was renewed by the District Transport Officer, Jalandhar, as stated by RW3 did not in fact was the driving licence of respondent No. 2. After carefully examining the statement Ex.R/3 of Mool Chand, I do not find any merit in this argument of the learned counsel for respondent No. 3. Mool Chand, Clerk categorically in his cross examination stated that he did not know the name of the District Transport officer who had issued the licence to Puran Singh. Otherwise also, what Darshan Lal Clerk, RW3 stated in cross examination was that the driving licence was issued at Jaipur. He did not specify the name of the Licensing Authority which had issued the driving licence. It cannot be said that the Regional Transport Officer, Jaipur was the only authority which was entitled to issue the driving licence. Moreover, the driving licence of Rashpal Singh was never produced either on the file of the criminal case registered regarding this accident or on the file of this Tribunal. In the absence of the said driving licence, no reliance can be placed on the statement of Mool Chand, Clerk, nor it can be said that the driving licence of

Rashpal Singh was a fake driving licence. Shri Mohit Kapur, Advocate , the learned counsel for the respondents has relied upon ***National Insurance Company Limited-appellant vs Santro Devi and others-respondents reported in 1997 ACJ Page 111***. In this case, a Full Bench of Punjab and Haryana High Court has held that when a person holding a fake driving licence gets it renewed by a competent authority, it would not amount to violation of the conditions of indemnity or the insurance policy or the contract or violation of any statutory provisions. At the same time, the Full Bench had also held that when a forged driving licence is validly renewed, it will not become a valid driving licence. On the basis of the law laid down in this authority, Shri Mohit Kapur, Advocate submitted that in the present case also, Rashpal Singh, respondent No. 2 was holding a forged driving licence and even if it was renewed, the same will not become a valid driving licence so as to bind the insurance company. I have given my thoughtful consideration to the arguments raised by the learned Counsel for the respondents. But, as discussed above, it has not been proved that Rashpal Singh, respondent No. 2 was holding a forged driving licence. Therefore, the proposition of law as laid down in Santro Devi's (supra) shall not be applicable to the facts of the present case. Moreover, the Hon'ble Supreme Court of India, before whom the Full Bench decision in Santro Devi's case was challenged had awarded the compensation to the petitioners even in the case where a forged driving licence was validly

> renewed. A reference in this respect can easily be made to ***National Insurance Company Limited – appellant vs Santro Devi and others-respondents, reported in 1998 (1) ACJ page 116***.

I have gone through copy of testimony of Mool Chand and report prepared by the Local Commissioner in this regard. Karnail Singh (PW2), Additional Ahalmad of the Court at Kapurthala was examined and he deposed that driving licence of Rashpal Singh is not available on the file of criminal case regarding the accident in question.

The Tribunal, in para 12 of the award, has noticed that it cannot be said that Regional Transport Officer, Jaipur was the only authority which was entitle to issue driving licence. Driving licence of Rashpal Singh was never produced either on the file of criminal case registered regarding this accident or on the file of Tribunal. Further, held that in absence of said driving licence, no reliance can be placed on the statement of Mool Chand, Clerk, nor can it be said that driving licence of Rashpal Singh was fake.

The Tribunal has failed to appreciate that though it is the obligation of the insurance company to establish that licence possessed by the driver was not valid or effective or the same was fake but primarily the insured is under an obligation to produce either copy of licence or supply particulars thereof in order to enable the insurance company to seek necessary verification from the concerned Licensing Authority. In this context, reference can be made to judgment of Hon'ble the Supreme Court ***Pappu and others vs Vinod Kumar Lamba and others, AIR 2018 SC 592.*** In the given circumstances, benefit of non-production of copy of driving licence, by no stretch of imagination, can be extended to the insured. There is nothing on record suggestive of the fact that either the insured raised any such plea that driving licence was originally issued in favour of Rashpal Singh by a particular Licensing Authority or the same was not issued by office of Regional Transport Officer, Jaipur. In this view of the matter, findings of the Tribunal to the aforesaid extent cannot stand the test of judicial scrutiny and liable to be rejected.

Shri Mool Chand, Clerk from the office of Regional Transport Officer, Jaipur made a statement on the basis of records maintained by the said authority. His testimony cannot be rejected merely because either he was not working in the office of said authority at the relevant time when licence at serial No. 2184 was issued in the name of Puran Singh or his failure to identify signatures of the then District Transport Officer. There is no evidence adduced by the driver or insured to counter testimony of Mool Chand, Clerk from the office of the Regional Transport Officer, Jaipur. Taking into consideration testimony of Mool Chand, Clerk from the office of Regional Transport Officer, Jaipur based upon records coupled with failure of the insured to produce the original driving licence as well as to counter testimony of Mool Chand, it can safely be held that licence purported to be issued by the Licensing Authority, Jaipur was not actually issued in favour of Rashpal Singh and, as such, renewal of said licence would not cure inherent defect in the licence possessed by Rashpal Singh.

To be fair to the driver and insured of the vehicle, it is pertinent to mention that Rashpal Singh appeared in the witness box, his testimony by way of examination-in-chief is conspicuously silent about licence possessed by him. However, in cross examination, he has stated that licence was taken into police possession and the same was issued by the Transport Authority, Jalandhar and number of his driving licence was 3331. He denied the suggestion that his driving licence was issued from Jaipur and it was only renewed from Jalandhar. His testimony to the aforesaid effect gets falsified and belied from testimony of a witness from the office of District Transport Officer, Jalandhar who had deposed that as per entry at serial No. 3331-A dated 15.06.1993, driving licence of Rashpal Singh which was issued at Jaipur vide Sr. No. 2184 of 1989-90 was renewed upto 14.06.1996. It appears that since Rashpal Singh knew that his licence was not issued by the authority at Jaipur, he intentionally withheld the driving licence from the Tribunal and left it for the insurance company to prove its contention qua driving licence.

In view of the above, I find merit in contention of the insurance company that Rashpal Singh was not holding a valid driving licence and the insured is guilty of violating terms and conditions of the insurance policy constituting defence under Section 149 (2) of the Motor Vehicles Act, 1988. That being so, the insurance company is entitle to have right of recovery against the insured after payment of compensation to the claimants.

In view of what has been discussed hereinabove, the appeals are partly allowed and the insurance company shall have right of recovery against the insured after payment of compensation to the claimants.

(Rekha Mittal)
Judge

16.05.2019
Mohan Bimbra

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No