

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 597 of 2007
Date of decision:20.09.2019

Surjit Khan

...Appellant

V/s.

United India Insurance Co. Ltd. and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. H.S. Dhandi, Advocate for the appellant.

Mr. Nitin Gupta, Advocate for respondent No. 1.

RITU BAHRI, J. (Oral).

The present appeal has been filed by the owner of the vehicle Surjit Khan against the award of the Tribunal dated 04.09.2006 whereby finding on issue No. 4 has been returned against the owner that driver was not having effective driving licence to drive HTV at the time of accident and in this backdrop after paying the compensation by the insurance company, recovery rights have been given to the insurance company to recover the amount from the owner, the present appellant and the driver.

The facts not in dispute between the parties are that on 03.03.2001 Pappu Ram was going on a cycle from Faggan. He was behind the tractor trolley. When he reached near bus stop of village Hardashpur from Faggan Majra to Patiala, a bus bearing No. PB-13H-3786 being driven by respondent No. 1 rashly and negligently was going to hit the tractor trolley, however the accident was avoided due to activeness of driver of tractor trolley and then the bus hit into the bicycle of Pappu Ram by going extreme wrong side of the road. As a result of this accident, Pappu

Ram suffered multiple grievous injuries and died on the spot. The driver of the bus namely Mehtab Singh left the bus at the spot and ran away. After the accident FIR No. 199 dated 03.03.2001 was registered at Police Station Sadar Patiala under Sections 279/304A IPC against the driver of the bus Ex.P4. The challan was submitted by the police in Court against the driver on negligent driving. The bus was taken into police possession from the accident and photographs Ex.P26 to P31 were sufficient to return a finding that accident took place by rash and negligent driving of respondent No.1. Thereafter the tribunal proceeded to calculate the compensation as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Annual income	Rs.24,000/-
(ii)	1/3 rd deduction for personal expenses	24000-8000=16,000/-
(iii)	Multiplier of 12 applied	16,000X12=Rs.1,92,000/-
	TOTAL COMPENSATION AWARDED	Rs.1,92,000/-

However, the challenge in the present case is with regard to finding on issue No. 4. Learned counsel for the appellant has referred to the Supreme Court judgment in the case of *National Insurance Co. Ltd. V/s. Swaran Singh and others* 2004(2)R.C.R.(Civil) 114 to contend that even if the driving licence of the driver was fake, the insurance company cannot be absolved of the liability to make payment of the compensation as the owner of the bus i.e. the appellant was not required to verify the genuineness of the licence which was produced at the time of employing a person as a driver. He further argued that insurance company had produced and examined RW2 Balraj Kaur, Clerk, office of DTO Amritsar. She produced the record pertaining to driving licence Ex.R3 produced by respondent No. 1 Mehtab Singh and stated that as per record this driving licence bearing No. 1091 dated 27.11.1996 Ex.R3 has not been issued by their office but was renewed by their department. The driving licence had

been issued in favour of one Inderjit Singh son of Gurcharan Singh and the original licence is dated 18.05.1993. The entry of this licence was produced as Ex.R4.

The question for consideration is whether the original licence was fake and it was subsequently renewed as admitted by Balraj Kaur, Clerk DTO Office, as RW2 the owner be held liable to make payment of compensation?

At this stage, the Supreme Court judgment of ***National Insurance Co. Ltd. (supra)*** goes in favour of the appellant. The appellant being owner of the bus had employed the driver keeping in view the driving licence Ex.R3 which had been renewed by the DTO Department, Amritsar, however the original licence had not been issued and on verification; the original licence was found to be fake. The owner is not expected to verify the genuineness of the licence which was already renewed by the DTO office, Amritsar.

While examining the provisions of Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988, the Supreme Court has held in the aforesaid judgment that mere non-production of licence or evidence by the insured cannot be considered as discharge of burden of insurer. It has further been held that to avoid its liability, the insurer has to prove the insured to be guilty of negligence. The summary of findings in this judgment is reproduced as under:-

“(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this

paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.

(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 toward insured, the insurer has to prove that the insurer was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the conditions of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the

insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply “the rule of main purpose” and the concept of “fundamental breach” to allow defence available to be insured under section 149(2) of the Act.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

viii) If a vehicle at the time of accident was driven by a person having a learner’s licence, the insurance companies would be liable to satisfy the decree.

(ix) The claims tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.

(xi) The provisions contained in sub-section (4) with proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.”

Applying the ratio of the aforesaid judgment, this appeal is allowed and award dated 04.09.2006 is modified by reversing the finding on issue No. 4 that the liability to make the payment of compensation against all the respondents is joint and several.

(RITU BAHRI)
JUDGE

20.09.2019
Divyanshi

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