IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 1145 of 2013 (O&M)
DECIDED ON: MARCH 12, 2019

MOHAN KRISHNA CARGO MOVERS AND OTHERS

.....APPELLANTS

VERSUS

ICICI LOMBARD AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ashwani Arora, Advocate
for the appellants.

Mr. Subhash Goyal, Advocate
for respondent No.1-Insurance Company.

None for respondents No.2 and 3.

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AVNEESH JHINGAN J. (ORAL)

The award dated 29.01.2013 passed by Motor Accident Claims Tribunal, Chandigarh (for short the 'Tribunal') has been assailed by the owner and driver of truck bearing registration No. HR-46-0644 (hereinafter referred to as the 'offending vehicle') being aggrieved of the recovery rights granted to the insurer.

The facts in brief are that a motor vehicular accident took place on 25.09.2009. The accident proved fatal for Vikrant Rana aged 23 years. The accident took place due to rash and negligent driving of the offending vehicle.

In the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the Tribunal awarded compensation of ₹34,83,928/- alongwith interest @8% per annum.

During the proceedings before the Tribunal the driving licence was produced as Ex.R4. The insurer of the offending vehicle i.e. ICICI Lombard took a stand that the driving licence produced is fake. The clerk of Licensing Authority, Mathura, Sh. Sunil Kumar Singh was examined through commission. Relying upon the record he deposed that driving licence produced was issued in the name of Jai Singh son of Nahar Singh. He further deposed that the licence was never issued to Ram Nath Singh son of Bhairav Singh i.e. the driver of the offending vehicle. The Tribunal relied upon the said evidence and granted the recovery rights to the insurer. Hence, the present appeal has been filed.

Learned counsel for the appellants contends that the owner while employing the driver had taken the test of the driver and satisfied himself with regard to the genuineness of the driving licence, the Tribunal erred in granting recovery rights to the insurer. He relies upon the decision of the Supreme Court in ***Pepsu Road Transport Corporation vs. National Insurance Company; AIR 2014 SC 305.***

Learned counsel for the insurer contends that even from the cursory look of the driving licence, it was evident that the driving licence relied upon was not genuine. He relies upon the cross-examination of Mohan Upadaya i.e the owner of the offending vehicle wherein, he stated that he verified the said licence from the concerned authority and got an information that the said licence was genuine.

Before dealing with the issue, the relevant para of the award is reproduced:-

> *"Though it is claimed that the driving licence was verified by the owner, yet the fact remains that had he taken some pain, he would have to know that the driving licence was not genuine. The number of the driving licence as appearing at the top would have shown that it was not a valid and genuine driving licence as the year of issuance of the driving licence was written as 103, which was not possible as the year could either be written as 03 or 2003. The driving licence had been issued 25.10.2003, but it was valid from 29.04.2009 to 28.04.2012, which means the licence had been renewed. In case of renewal, the old number is given which is not written against the relevant column. If the number as mentioned, that is, 14876/MTR/103 is the old number, then the renewal number and date of renewal would have been there. The licence also does not bear the signatures of the Licensing Authority. All these circumstances would tell a prudent man that the licence is not genuine. As stated above, the Licence clerk Shri Sunil Kumar Singh has stated that driving licence No. 14876/MTR/03 was issued in the name of Jal Singh son of Nahar Singh resident of Near Gurshanda, Kath Ka Nagla, Mathura, authorizing him to drive MC and LMV(P) which is valid upto 03.01.2023. The witness also stated that the said driving licence was never issued to Ram Nath Singh son of Bhairav Singh and the copy of licence No. 14876/MTR/103 in the name of Ram Nath Singh is fake. Whether in the given circumstances, the owner can say that he had taken a test and found the driver to be a competent driver and his driving licence*

> *appeared to be genuine. The answer is 'No'. Had the owner gone through the licence, he would have found the above mentioned infirmities and could easily gather that the licence was not genuine. It is, therefore, held that the driver of the offending vehicle was not holding a valid and effective driving licence to drive the offending vehicle as on the date of accident. This issue is accordingly decided in favour of respondent No.4 and against respondents No.1 to 3."*

The Tribunal relied upon the fact that the year of issuance of driving licence was written as 103 instead of 03 or 2003. It was further opined that the driving licence produced was not signed by the authority. From the record it is evident that the said observations made by the Tribunal are factually wrong. The date of issue of driving licence has been mentioned on the licence as 25/10/2003. The slash has been read as word '1'. Moreover the driving licence number in the end had a figure '103'. There are some initials adjoining the stamp of Licensing Authority, Mathura. In spite of the said error in the award, the conclusion reached at by the Tribunal is upheld.

The contention raised by learned counsel for the appellants that the owner of the offending vehicle had satisfied himself with regard to the genuineness of the driving licence is not well founded.

From the perusal of the licence it is evident that the date of issue is mentioned as 25/10/2003 and in the bottom of the licence it is stated to be valid from 29.04.2009 to 28.04.2012. There is no mention of any validity period from 2003 to 2009. There is a hand written endorsement dated 29.04.2006 but it nowhere mentions that the said endorsement is for what purpose and what is the validity period of the endorsement. Not only this, the licence was issued in 2003 and its validity was from 2009, this itself creates a doubt. Even for sake of arguments, if it is taken that the licence was renewed subsequently, the column of old licence number has been left blank and the date of issuance is also left blank. There is no stamp or endorsement with regard to the renewal of the licence.

In such circumstances, the stand taken that the owner of the offending vehicle had satisfied himself with regard to the genuineness of the driving licence is only a plea putforth to avoid the liability .

There is another aspect of the matter that during the cross-examination the owner i.e. Mohan Upadaya stated as under:-

> "*I had taken the long driving test of Ram Nath regarding driving of truck. I found him competent, efficient and experienced driver. Thereafter I checked his driving licence which he showed to me and has placed on record in this case as Ex.R4 and it was found by me to be genuine. <u>Thereafter I got verified from the authorities from where it was issued and I got the information that the said driving licence was genuine.</u> Only after satisfying about the genuineness of the driving licence and his driving skill I engaged him as driver of truck.*" <u>*(emphasis applied)*</u>

In support of the statement made in the cross-examination, he never produced any document to show the information received from the authority with regard to the genuineness of the licence. It is clarified at this stage that there may not be a requirement in the law for the owner of the offending vehicle to go to the extent of verifying the licence from the said authority. But in the present case he himself made this statement that he was conscious enough even to verify the licence. The said statement is not supported by any document or any evidence. Even, in the appeal no such document has been produced to show that the statement made in cross-examination was backed up by some evidence. The pleadings was made that owner *prima facie* satisfied himself with regard to the genuineness of the driving licence produced. He could not with stand the test of cross-examination. He tried to improve upon his statement.

The reliance placed upon by the learned counsel for the appellant of the Supreme Court decision in ***Pepsu Road Transport Corporation's case (supra)*** does not enhance the case of the appellants. The relevant part is reproduced as under:

> *"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."

As per the afore-said decision of the Supreme Court the owner has to check whether the driver had a valid licence and thereafter, satisfy himself as to competence of the driver. For the reasons mentioned above even on a cursory perusal of the driving licence shows that it was fake document. The said plea cannot be allowed to be taken so liberally so as to avoid the liability, moreso, when the date of issue of driving licence and the validity had a difference of six years.

In view of afore-said discussion, the present appeal is dismissed.

(AVNEESH JHINGAN)
JUDGE

MARCH 12, 2019
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No