

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 1918 of 2016 (O&M)
Date of decision: 12.09.2019

Bajaj Allianz General Insurance Co. Ltd. ...Appellant

V/s.

Ashok Kumar and others ...Respondents

AND
FAO No.1919 of 2016 (O&M)

Bajaj Allianz General Insurance Co. Ltd. ...Appellant

V/s.

Rekha and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Vishal Aggarwal, Advocate for the appellant.

Mr. Ashish Yadav, Advocate for the respondents.

RITU BAHRI, J. (Oral).

This order shall dispose of two appeals bearing Nos. 1918 of 2016 and 1919 of 2016.

The insurance company has come up in appeals against the award of the Motor Accident Claims Tribunal, Sonipat (hereinafter referred to as 'Tribunal') dated 23.11.2015 whereby compensation has been awarded to the claimants on account of the accident which occurred on 08.05.2014 at about 7:15 a.m.

Brief facts of the case are that on 08.05.2014 at about 7:15 a.m. injured Ashok alongwith Ram Mehar Singh son of Sukhbir resident of village Rajpur, were coming from Smalkha to native place on their motorcycle bearing No. HR-10F-1308 being driven by injured Ashok at a

moderate speed while observing the traffic rules and Ram Mehar was pillion rider and when they reached opposite Patti Kaliyana, in front of pond, G.T. Road, then the offending swift car bearing No. DL-4CAM-4772 came from back side and hit their motorcycle from behind, due to said impact both of them fell in the ditches and at that time, the offending vehicle also hit other vehicle i.e. Omni Van bearing No. DL-8CNB-9719 being driven by a young man, as injured Ashok had seen the car before hitting him through side mirror of his motorcycle. That after the accident injured Ashok became unconscious and when he regained consciousness, injured came to know that pillion rider Ram Mehar Singh had died due to the injuries sustained in the accident. The claimants have filed claim petitions before the Tribunal.

Before the Tribunal, separate written statements were filed by respondents No. 1 and 2. Respondent No.3 filed a separate written statement taking a plea that respondent was a victim of accident at the hands of respondent No. 1. Respondent No. 4-insurance company filed its reply taking a plea that no such alleged accident ever took place with the vehicle bearing registration No. DL-4CAM-4772 and the same has been falsely involved by the claimants, his associates and connivance of respondents No. 1 and 2 with the help of police just to grab compensation from the answering respondent.

The Tribunal had framed following issues:-

- 1. Whether injuries to claimant Ashok Kumar son of Jagdish and death of Ram Mehar son of Sukhbir Singh are the result of accident which took place on 08.05.2014 due to rash and negligent driving of respondents No. 1 and 3, drivers of offending vehicles i.e. Swift Car No. DL-4CAM-4772 and Omni Van No. DL-8CNB-9719? OPP*

2. *If issue No. 1 is proved, to what amount of compensation the claimants/petitioners are entitled to and from whom? OPP*
3. *Whether the respondent No.1 was not holding a valid driving licence at the time of accident and the offending vehicle violated the terms and conditions of the Insurance Policy, if so its effect? OPR-4.*
4. *Relief.”*

Learned counsel for the insurance company is challenging the finding on issue No. 3 that respondent No. 1 was not holding a valid driving licence at the time of accident and hence liability of insurance company to make compensation be absolved.

On issue No. 3, the insurance company has led evidence by examining RW-2 Ankit Jalan, Sr. Executive, Bajaj Allianz General Insurance Com. Ltd, who vide his affidavit Ex.RW2/A has stated that respondent No. 1 was holding driving licence issued by RTO Patna and the same was found invalid upon verification. Further respondent No. 1 has also produced on record driving licence issued by DTO, Phek, Nagaland. During cross-examination, Ankit Jalan has admitted that he cannot say whether document Ex.R1 is valid or not and till date he did not receive any kind of document/report regarding invalidity of the document Ex.R1. Further admitted that as per document Ex.R6, the licence of respondent No. 1 was valid for auto rikshaw only which was issued by RTO Patna. He further stated that he did not know whether in Bihar, separate licence for non-electronic vehicle and electronic vehicle are issued by the authority and he also did not know that in Bihar, auto rikshaw comes under the pool of non-electronic vehicle.

The insurance company has further examined RW2 (inadvertently repeated) Nilesh Bairwa, Senior Executive Legal, Bajaj

General Insurance Company Ltd., who tendered in evidence Ex.R-10 (wrongly numbered) driving licence verification report issued by DTO, PHEK, Nagaland in RTI, Ex.R-11 envelope in which said report Ex.R-10 received. As per Ex.R-10 driving licence No. 53059/PHEK was found fake. He further admitted that they did not receive any record from Nagaland authority except the verification report Ex.R-10 and that they did not summon any person from the Nagaland authority. He further admitted that it is not in the verification report in whose name license no.53059/PHEK was issued.

The claim of the insurance company was based on report Ex.R-10 that the driving licence from Nagaland authority was fake in the hands of respondent No. 1. The Tribunal proceeded thereafter to examine the evidence led by respondent No. 1 and 2 in the form of office order dated 28.09.2015 (Ex.R13 to Ex.R15) which was issued by the office of DTO Phek, Nagaland to the effect that the verification report Ex.R10 is of no consequence as stood cancelled. Respondent No. 1 got issued Smart Card driving licence Ex.R16 from the competent authority i.e. DTO Phek, Nagaland which stood verified vide office orders Ex.R13 to Ex.R15. Vide orders Ex.R13 to Ex.R15, the Tribunal has held that the driving licence of respondent No. 1 was valid which was issued by DTO, Phek, Nagaland and the verification report Ex.R10 has cancelled. The insurance company was held liable to make payment of compensation as the driver had a valid driving licence.

Learned counsel for the insurance company has vehemently argued that the respondent No. 1 had two driving licences one Ex.R1 issued by RTO Patna bearing no. 1727/210/Patna and the second driving licence

issued by DTO, Phek, Nagaland. Since one of the driving licences was fake, the insurance company can disclaim its liability and has referred to the judgments of Division Bench of this Court in the cases of ***United Insurance Company Limited V/s. Jitender Kumari 2001(4) RCR (Civil) 848, Paramjit Kaur and others V/s. Nahar Singh and others, FAO No. 8848 of 2014 and Shri Ram General Insurance Co. Ltd. V/s. Asha and others, FAO No. 6997 of 2011.***

Learned counsel for respondents No. 1 and 2 has referred to the Supreme Court judgment in ***National Insurance Co. Ltd. V/s. Swaran Singh and others 2004(4) R.C.R. (Civil) 114, Punam Devi and another V/s. Divisional Manager, New India Assurance Co. Ltd., 2004(2) R.C.R. (Civil) 236, Pepsu Road Transport Corporation V/s. National Insurance Company 2013(4) RLW 3237*** and the judgment passed by division bench of this Court in ***Oriental Insurance Co. Ltd. V/s. Ashwinder Singh and others 2006(3)R.C.R. (Civil) 120*** to contend that as per Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988, even though the insurance company has right to take all the defences available, the invalidity of the driving licence at the time of accident is not available to the insurance company against the insured or third party. However, to avoid its liability towards the insured also the insurer has to prove the insured to be guilty of negligence and failure to exercise reasonable care in compliance of conditions of the policy, burden is on the insurer to establish breach of policy by leading cogent evidence.

After hearing learned counsel for the parties, the present appeals deserve to be dismissed. A perusal of the award shows that the insurance company has led evidence on issue No. 3. With respect to

document Ex.R6, licence of respondent No. 1 Ex.R1 was found valid for driving auto rikshaw and it was issued by DTO, Patna and on its verification, the same was found to be invalid. Further in the cross examination of RW-2 Ankit Jalan, he stated that he did not know whether in Bihar, separate licences of non-electronic vehicle and electronic vehicle are issued by the authority and he also did not know that in Bihar, auto rikshaw comes under the pool of non-electronic vehicle. Hence, the information with regard to document Ex.R-6 was not complete. At the same time, respondent No. 1 and 2 had tendered into evidence Ex.R16 the driving licence issued by the DTO, Phek, Nagaland which stood verified vide office orders Ex.R13 to Ex.R15 and the verification report Ex. R10 was cancelled with respect to driving licence bearing No. 53059/PK/PROF which was found to be fake and the licence issued by respondent No. 1 by way of digitized smart card bearing No. NL-0820100004298 was valid and genuine which was issued on 20.11.2010 and valid upto 30.04.2027 from DTO, Phek, Nagaland.

The case is now to be examined whether the respondent No. 2, the owner of the vehicle, was negligent in appointing respondent No. 1 as a driver. A reference at this stage can be made 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*. While examining the provisions of Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988, the Supreme Court has held 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.”

This judgment was thereafter followed again in ***Punam Devi and another V/s. Divisional Manager, New India Assurance Co. Ltd.*** The Division Bench of this Court in the case of ***Oriental Insurance Co. Ltd. V/s. Ashwinder Singh and others, FAO No. 1318 of 2006*** has held that the onus to prove that the driving licence of the driver was forged and fabricated is on the insurance company. The insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the conditions of the policy. A reference of Supreme Court of judgment of ***National Insurance Co. Ltd. (supra)*** was also made in this judgment. The Supreme Court in ***Pepsu Road Transport Corporation V/s. National Insurance Company*** 2013(4) RLW 3237 while considering the provision of section 149(2)(a)(ii) has observed that when an owner hires a driver he has to satisfy that driver had valid driving licence and competent to drive the vehicle but owner cannot go to extent of verifying the genuineness of the driving licence with the licensing authority.

In the facts of the present case, the driving licence issued by DTO, Phek, Nagaland after conversion in smart card was valid as per the office orders (Ex.R13 to Ex.R15) and hence for all intents and purposes, respondent No. 1 was holding valid driving licence on the date of accident. Respondent No. 2 had taken a reasonable precaution in hiring the driver that the driver had the driving licence issued from DTO, Phek, Nagaland. The driver had another licence from RTO, Patna cannot be made a ground to absolve the liability of insurance company as per the ratio of the Supreme

Court judgment in *National Insurance Co. Ltd. V/s. Swaran Singh and others 2004(2) R.C.R. (Civil) 114.*

Hence, both the appeals are dismissed.

Pending applications also stand dismissed.

(RITU BAHRI)
JUDGE

12.09.2019
Divyanshi

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