

In the High Court of Punjab and Haryana at Chandigarh

FAO No. 3450 of 2015(O&M)

Date of Decision: 14.3.2019

Bane Singh and another

---Appellants

versus

M/s Oriental Insurance Company Limited and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. P.R.Yadav, Advocate
for the appellants**

**Mr. Ram Avtar, Advocate,
for the insurance company**

Rekha Mittal, J.

The driver and registered owner of offending vehicle bearing No. HR-55-D-1388 have filed the appeal to assail findings of the Tribunal on issue No. 3 whereby it has been held that Bane Singh driver of offending vehicle did not possess a valid licence and the insured is guilty of violating the terms and conditions of the insurance policy on the basis whereof the insurance company has been given right of recovery against the driver and registered owner of the vehicle.

The appeal qua appellant No. 1, driver of offending vehicle was withdrawn vide order dated 14.9.2015 and as such counsel for appellant No. 2 has argued the appeal on behalf of Madhubala (respondent No. 2 therein). It is argued that Madhubala appeared in the witness box and tendered into evidence her affidavit by way of examination in chief to say

that when she employed Bane Singh, she checked his driving licence and took it as genuine, therefore, the insured cannot be held guilty of committing breach of terms and conditions of the insurance policy. In support of his contention, he has placed reliance upon judgments of Hon'ble the Supreme Court *United India Insurance Company Limited vs. Lehu and others* 2003(2) RCR(Civil) 278 and *Pepsu Road Transport Corporation vs. National Insurance Company Limited*, 2013 (4) R.C.R. (Civil) 273.

Counsel representing the insurance company, on the other hand, would argue that licence possessed by Bane Singh purported to be issued by Licensing Authority, Mathura was found to be fake, in view of testimony of Abhey Sahai Saxena, Sr. Assistant, ARTO, Mathura as he deposed that driving licence No. 10028 dated 11.6.2009 was issued in the name of one Bhagwan Singh son of Bhoj Mal resident of Mathura and proved copy of extract of register Ex. R1. It is further argued that Madhubala in her cross examination has stated that Bane Singh joined duty as driver 20 years ago but alleged licence in the name of Bane Singh was issued in the year 2009, sufficient to falsify and belie plea of Madhubala that she had seen driving licence in question at the time when Bane Singh was given employment as driver by Madhubala. It is further argued that neither the driver nor the registered owner has produced any other licence possessed by Bane Singh, therefore, the appellant cannot derive any advantage to her contention from what has been enunciated in *Pepsu Road Transport Corporation's case (supra)*.

Be that as it may, there is no dispute that driving licence No. 10028 dated 11.6.2009 possessed by Bane Singh, driver of the offending

vehicle was found to be fake, in the light of facts elicited in examination of official witness from the office of ARTO, Mathura. The Tribunal, in para 35 of the award, has taken note of testimony of Smt. Madhubala and on detailed consideration of the facts elicited in her cross examination has refused to accept contention of the insured that she is not guilty of infringing the terms and conditions of insurance policy.

I have gone through testimony of Smt. Madhubala and in view of facts brought forth in her cross examination, it is difficult to differ with findings of the Tribunal or accept contention of the appellant that findings of the Tribunal in respect of insured being guilty of violating the terms and conditions of insurance policy are erroneous much less perverse, warranting intervention. In view of the above, the appellant cannot derive any advantage to her contention from the judgments of Hon'ble the Supreme Court *Lehru and others' case (supra)* and *Pepsu Road Transport Corporation's case (supra)*.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

14.3.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No