

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-4365-2015 (O&M)

Date of decision: 06.12.2019

The Jondhan Kalan, Coop. Transport Society Ltd.

...Appellant(s)

Versus

Ganga Devi and others

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Vaibhav Sharma, Advocate for
Mr. Sanjiv Gupta, Advocate for the appellant(s).

Ms. Geeta Rani, Advocate for
Mr. Pawan Hooda, Advocate for respondent No.2.

Mr. Navin Kapur, Advocate for respondent No.3.

H.S. MADAAN, J.

Briefly stated facts of the case are that petitioner/claimant Ganga Devi had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Raj Singh-driver, The Jondhan Kalan Cooperative Transport Society Ltd., Panipat through its President Ram Mehar-owner and New India Assurance Company Ltd., Panipat-insurer of bus No.HR-67-5666 (for short 'the offending bus'), claiming compensation of Rs.50 lacs, on account of injuries suffered by her in a motor vehicular accident that has taken place on 30.11.2011 when she along with her husband Madan Lal and brother Rajender Singh was travelling in the offending bus going to Village Babail from Panipat. The bus was being driven by respondent No.1 Raj Singh. At about 12

noon, when the bus reached bus stop of Village Babail and petitioner/claimant was in the process of alighting from the bus from the front door, respondent No.1 suddenly drove the bus, as a result of which, she fell on the road and her right leg got crushed under the tyre of the bus. She was taken to Civil Hospital, Panipat, from where, she was referred to ESI Hospital Delhi. She was admitted in B.L. Kapoor Super Specialty Hospital, Delhi. The amputation of her right leg was advised. She was admitted in Dr. Virk Hospital, Karnal on 01.12.2011, where amputation of her right leg was done. Resultantly, she became permanently disabled. According to her, the accident had taken place due to rash and negligent driving of bus in question by respondent No.1. An FIR No.413 dated 03.12.2011 for offences under Sections 279, 337 and 338 IPC was registered with regard to the accident with PS Sadar, Panipat. According to the petitioner/claimant, she is aged about 40 years and prior to suffering injuries in the accident, she used to earn Rs.10,000/- per month. She was hale and hearty and was mother of two children. After suffering injuries in the accident, she remains confined to bed and now her movements have been restricted. She has now dependent upon others. Therefore, she prayed that her petition be allowed.

On being put to notice, all the three respondents appeared and filed written statements, contesting the claim petition. Respondents No.1 & 2 filed a joint written statement, in which, they raised various legal objections, challenging the locus standi of the claimant to file the claim petition, contending that no cause of action arose to her; as a matter

of fact, no such accident had taken place; the bus was duly insured with respondent No.3. A false FIR has been registered against respondent No.1 just to claim compensation. Both the respondents prayed for dismissal of the claim petition.

In the written statement filed by respondent No.3-Insurance Company, it has also taken various legal objections and statutory defences, contending that respondent No.2 has violated the terms & conditions of the insurance policy. No such accident had taken place. The claimant was herself negligent, as such, she is not entitled to get any compensation. Respondent No.1-driver was not having a valid and effective driving license at the time of accident. The claimant has got a wrong FIR registered against respondent No.1 in collusion with the police. It prayed for dismissal of the claim petition.

On pleadings of the parties, the following issues were framed:-

1. Whether the accident in question took place on account of rash and negligent driving of bus No.HR-67-5666 by respondent No.1, as alleged? OPP.
2. Whether the petitioner is entitled to get compensation, if so, to what amount and from whom?OPP.
3. Whether the petition is not maintainable? OPR.
4. Relief.

The parties led evidence in support of their respective claims. After hearing arguments, Motor Accidents Claims Tribunal, Panipat, (for brevity 'the Tribunal') decided issues No.1 to 3 in favour of the claimant and against the respondents, holding that claimant Ganga

Devi is entitled to receive a total compensation of Rs.7,60,000/- to be paid by all the respondents along with interest @ 7.5% p.a. from the date of filing of claim petition till actual realization with a direction that respondent No.3-insurance company would pay the compensation amount to the claimant at the first instance and thereafter, it would be entitled to recover the same from the owner of the bus in question. It was so done, vide award dated 03.03.2015.

Respondent No.2-owner of the offending bus felt aggrieved by the said award and has approached this Court, by way of filing the present appeal, notice of which was given to the respondents, however, only respondents No.2 & 3 have put in appearance to offer a contest.

I have heard learned counsel for the parties besides going through the record.

While discussing the aspect as to whether respondent No.1 was having a valid and effective driving licence at the time of accident, the Tribunal in paras No.17 & 18 has observed as under:-

“17. I have given due consideration to the arguments advanced by learned counsel for the parties and gone through the case law cited by them. The contention of the learned counsel for respondent insurance company to the effect that respondent no.1 did not possess a valid and effective driving licence as on the day when the accident took place merits consideration. The respondent no.1 has placed on file the copy of his driving licence no.04547/TPT/08 dated 15.4.2010 alleged to have been issued by the Licensing Authority, Rohtak. However RWI Sher Singh Clerk, Regional Transport Authority, Rohtak has stated that no such driving licence has been issued by the

office of Licensing Authority Rohtak. He has proved the report submitted by the Licensing Authority Rohtak to that effect as Ex.R6. No evidence to the contrary has been led on behalf of respondent no.1 to show that the driving licence produced by him has been issued or renewed by the competent Licensing Authority Rohtak. Accordingly it is held that it stands proved on record that respondent no.1 was not holding a valid and effective driving licence as on the day when the accident took place.

18. The question to be seen here is as to whether the respondent no.3 insurance company is entitled to avoid its liability towards the insured or not. The law on the subject has been settled by the Hon'ble Supreme Court of India in the authority titled National Insurance Co. Ltd. Vs. Swaran Singh and others 2004 ACJ 1.”

In para No.20, the Tribunal has observed as under:-

“20. In the instant case, the insurance company has failed to show that the owner was negligent or guilty of willful breach of the insurance policy. Nothing has been brought on record to show that breach by owner of the vehicle regarding holding of valid driving licence by the driver was so fundamental that it had contributed to the accident. Mere absence, fake or invalid driving licence of the driver by itself would not be sufficient for absolving from its liability to the claimant. Reference in this regard may also be made to the rulings National Insurance Co. Ltd. Vs. Chandu Lal and others, Sant Baba Labh Singh Vs. Santto, Oriental Insurance Co. Ltd. Vs. Bhuri Bai and others and Oriental Insurance Co. Ltd. Vs. Saraswati Malakar and others (supra) already referred to above.”

After making such observations, the Tribunal has directed grant of recovery rights as per discussion in para No.21, which is reproduced as under:-

*“21. In view of the observations made above, it is held that the respondents are liable to compensate the petitioner/claimant for the injuries suffered by her in the accident caused by rash and negligent driving of insured vehicle i.e. bus no.HR-67-5666 by respondent no.1. **However respondent no.3 insurance company would be liable to make the payment of the amount awarded in the first instance and thereafter recover the same from the owner of the vehicle in question. The insurer would be liable to be reimbursed for the compensation and other amounts which it may be compelled to pay to the third party under the Award.** The present petition on behalf of the petitioner is thus held to be very much maintainable. This issue is decided accordingly in favour of the petitioner-claimant and against the respondents.”*

The whole approach of the Tribunal was self-contradictory. Even, it is admitted that respondent No.1 was not having a valid and effective driving licence at the time of accident, the crucial thing to be seen is as to whether the owner was negligent or guilty of willful breach of the insurance policy. The Tribunal in para No.20 has found that it was not so. Under such circumstances, no reason was made out to grant recovery rights to the insurance company.

Learned counsel for the appellant has referred to various judgments in support of his contention that unless the insured is found to be grossly negligent while employing a driver, the insurance company

cannot come up with a plea that terms and conditions of the insurance policy had been violated.

The first authority referred to was **United India Insurance Company Ltd. Versus Lehu and Ors, 2003(2) RCR(Civil) 278** by the Apex Court wherein while dealing with the liability of insurer in a claim petition when driving licence of the driver of the vehicle was found to be fake, it was observed that breach of contract by owner of insured vehicle must be established by the insurance company to avoid its liability with regard to third party claim. The Insurance Company can recover from the owner only if it is proved that the vehicle was knowingly and intentionally handed over to a driver not holding any valid licence to drive such vehicle and if the licence held by the driver seems to be valid on the face of it, the owner is not expected to make a roving inquiry to find out its validity and that without proving knowledge and intention of the owner, breach of conditions of policy cannot be attributed to the insured.

The second authority referred to by learned counsel for the appellant was **National Insurance Co. Ltd. Versus Swaran Singh and others, 2004 ACJ 1** wherein answering a question, whether insurance company in order to avoid its liability towards insured has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling conditions of the policy regarding driving of vehicle by a duly licensed driver or one who was not disqualified to drive at the relevant time, in affirmative, it has been observed that mere absence, fake or invalid licence or disqualification of the driver for

driving, are not in themselves defences available to the insurance company.

Learned counsel for the appellant has also pressed into service **Pepsu Road Transport Corporation Versus National Insurance Company, 2013(4) RCR(Civil) 273**, wherein it was observed that when an accident is caused by a driver, who possessed a fake driving licence, the insurance company is liable to pay compensation and not the owner of the vehicle.

On the other hand, learned counsel for the respondent No.3 – insurance company has argued that once the licence possessed by the driver was found to be fake, the subsequent renewal would not make it valid and the owner insured has failed to explain as to what care and caution was taken by him to ascertain that the licence possessed by the driver was valid, therefore the terms and conditions of the insurance policy that the insured vehicle should be driven by a proper driver were violated absolving the insurance company liable to pay compensation. Therefore, the recovery rights were rightly granted to the insurance company by the Tribunal.

After hearing the learned counsel for the parties, going through the judgments referred to by learned counsel for the appellant and perusing the record, I find that the Tribunal was not justified in granting recovery rights to the insurance company.

The onus of proving the issue whether the respondent No.1 was not holding a valid driving licence at the time of accident was on the insurance company. The insurance company to discharge the onus had

examined RW1 Sher Singh, Clerk, RTA Office, Rohtak, who had brought the summoned record with regard to the driving licence in question and has stated that no such driving licence had been issued by their office. May it be so. It points out that licence possessed by respondent No.1 was fake. But then the crucial evidence that respondent No.2 – owner of the vehicle had knowingly and intentionally handed over the vehicle to respondent No.1 not holding any valid licence to drive such vehicle is missing. The licence possessed by respondent No.1 on the face of it seems to be valid and the owner could not have any suspicion regarding the same since it was renewed from time to time by various offices of the licensing authority. Therefore, it cannot be taken to be breach of the terms and conditions of the insurance policy relieving the insurance company of any liability to pay compensation. Rather the liability of insurance company is there and it is not entitled to get any recovery rights from the insured.

Therefore, the appeal filed by the appellant/owner is accepted. The impugned award is modified. Resultantly, the liability to pay the compensation amount is declared to be joint and several of all the three respondents and the liberty granted to the insurance company to recover this amount from the insured is hereby withdrawn.

06.12.2019

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No