

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

**FAO-7279-2015 (O&M)
Reserved on:16.10.2018
Date of decision:17.01.2019**

Tajeev Yadav @ Rajeev Yadav

... Appellant

Versus

Cholamandalam MS General Insurance Co. Ltd. & others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Satnam Singh Thakur, Advocate for
Mr. Gopal Sharma, Advocate for the appellant.

Mr. Rajneesh Malhotra, Advocate for respondent No.1.

...

TEJINDER SINGH DHINDSA, J.

The Motor Accident Claims Tribunal, Gurgaon vide award dated 09.01.2015 awarded a compensation amount of Rs.4,51,467/- in favour of Hardutt for the injuries that he suffered in a motor vehicle accident dated 05.06.2013 involving the offending/insured Tata Canter vehicle bearing registration No.HR-47-B-2571. Insofar as the liability to pay the compensation amount was concerned, the Tribunal took a view that the amount of compensation shall be paid by the Insurance Company in the first instance and thereafter shall be entitled to recover the same from the owner and driver of the offending vehicle jointly and severally.

Instant appeal has been filed at the hands of the owner of the offending vehicle assailing the recovery rights that had been granted by the Tribunal in favour of respondent No.1/Insurance Company.

Counsel representing the appellant has argued that the Tribunal

has committed a grave error in holding the owner to be also liable for the compensation and has not appreciated the fact that the appellant had appointed respondent No.2 driver after seeing his driving license as also testing his driving ability. Counsel further urges that the driving license Ex.P16 was valid upto 15.01.2035 for Non-Transport Vehicle and was valid till 10.05.2013 for Transport Vehicle and the accident had taken place on 05.06.2013 i.e. within a period of 25 days of the expiry of the license for Transport Vehicle and as per provisions of the Motor Vehicles Act, 1988, there is a grace period of 30 days for renewal of the license and in the present case, the grace period was upto 10.06.2013. Since the accident took place on 05.06.2013, the Tribunal could not have taken a view that the driver was without license. Further argued that no evidence had been produced by the Insurance Company to substantiate that expiry of the license in any case was in the knowledge of the appellant/owner of the vehicle.

Per contra, learned counsel representing respondent No.1/ Insurance Company has argued that as on the date of the accident, the authorization in favour of the driver to drive a Transport Vehicle had already expired and as such, the vehicle was being driven in contravention of the terms and conditions of the Insurance policy. Counsel submits that the recovery rights as such have rightfully been granted by the Tribunal in favour of the Insurance Company.

Counsel for the parties have been heard at length and even the records of the case that were requisitioned have been perused minutely.

The Tribunal in the award dated 09.01.2015 has noticed the driving license of the driver Ex.P16 and has taken note that the same was

valid for a Transport Vehicle upto 10.05.2013 and for a Non-Transport Vehicle, valid upto 15.01.2035. Date of the accident is 05.06.2013. Tribunal has further noticed that as per registration certificate of the offending vehicle, Ex.P17, the class of vehicle mentioned therein was Medium Goods Vehicle (MGV). Accordingly, the offending vehicle has been taken as a Transport Vehicle and it has been opined that since on the date of the accident, the driver did not have authorization to drive a Transport Vehicle, the same was being driven in contravention of the terms and conditions of the Insurance policy and as such recovery rights were granted to the Insurance company to recover the compensation amount from the driver/owner jointly and severally.

In the considered view of this Court, the grant of recovery rights by the Tribunal in the award dated 09.01.2015 in favour of the Insurance Company cannot sustain.

It is a case where the appellant/owner of the offending vehicle had taken a categorical plea that he had engaged/employed the driver after having seen his driving license and also having seen him driving the vehicle. Law does not require the owner to verify the genuineness of the driving license. Owner was only to be satisfied that the driver had a valid driving license and for the Insurance company, as such, to be made liable. In the present case, the issue is not even with regard to driving license being fake or not genuine. As on the date of engagement of the driver, the appellant/owner had seen the driving license, Ex.P16 and only thereafter had employed him. It would be apposite to take note of the statement of the appellant recorded before the Tribunal as RW1. The statement was to the

following effect:

“RW1.

Mohd. Dilgan Ansari was my driver in the year 2013. After seeing the driving license Ex.P16 I had kept him as a driver. I have seen him driving the vehicle. He was driving the vehicle prior to two year after joining me.”

The Apex Court in **Pepsu Road Transport Corporation Vs. National Insurance Company, 2013 (4) RCR (Civil) 273** had taken a view that an owner has to satisfy himself at the stage of hiring a driver that he holds a valid driving license. Owner cannot possibly go to the extent of verifying the genuineness of the driving license with the Licensing Authority and even if it emerges subsequently that the driver was having a fake driving license, the Insurance Company cannot be absolved of its liability to pay the compensation amount. The case of the present appellant would have to be viewed on a better footing.

A division Bench of this Court in **National Insurance Company Limited Vs. Sushil Kumar & others, 2006 (3) RCR (Civil) 642** had held that non-renewal of a valid driving license in itself cannot be held to have contributed to be the cause of the accident and the burden is upon the insurer to show that non-renewal contribute to be the cause of accident. While relying upon an earlier decision of the Apex Court in **National Insurance company Vs. Swaran Singh, 2004 (2) RCR (Civil) 114**, the Division Bench had held as follows:

“3. Having heard the learned Counsel, we are of the view that no interference of this Court, in exercise of jurisdiction under [Section 173](#) of the Motor Vehicles Act, 1988, would be warranted because the Insurance Company has failed to prove that the application for renewal of the driving licence was not

filed within 30 days of the expiry of the driving licence. There is specific issue carved out being Issue No. 4 concerning renewal of driving licence and the burden to prove the issue has been placed on appellant-Insurance Company. The Insurance Company-appellant could have easily called for the record of the Licensing Authority and could have proved the aforementioned issue. The failure of the appellant-Insurance Company may result in raising of an inference against it. Moreover, such a non-renewal of driving licence did not contribute to causing of accident which was also required to be shown by the appellant-Insurance Company. In that regard, reliance may be placed on [Section 149\(2\)](#) of the Act as construed by the Supreme Court in the case of [National Insurance Co. v. Swaran Singh](#) . A three-judge Bench of Hon'ble Supreme Court in Swaran Singh's case (Supra), after detailed discussion in paras 40-50, has recorded the conclusions in this respect in para 108 (vi) of its judgment, which reads as under:

(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 the 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 Tribunal in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under [Section 149\(2\)](#) of the Act.

The law as laid down in Swaran Singh's case (supra) must be followed because the supporting rationable discernible from paras 40 to 50 of the judgment is that the language of [Section](#)

149(2) of the Act in contra distinction to other sections like Section 3, proviso to Sections 14, 15 and 19 to 24, have been found to be entirely different. It has been further held that Section 3 uses the expression 'effective licence' which is different than the expression 'duly licenced' used in Section 149(2) of the Act. Therefore, Hon'ble the Supreme Court has held that an Insurance Company would not be allowed to avoid its liability towards the insured unless the breach is so fundamental which has contributed to the cause of accident."

What clearly emerges is that even if the insurer succeeds in proving a breach of driving license that by itself is not sufficient to avoid the liability. It would have to be demonstrated that the breach of the policy condition was the immediate cause of accident. It would also be imperative for the insurer to establish that the owner was guilty by wilful breach of conditions of the insurance policy or the contract of insurance.

In the facts of the present case, concededly, no evidence has been led by respondent No.1/Insurance Company to prove that the accident in question had taken place as a consequence to the driving license having expired and not having been renewed. Furthermore, there is no evidence as regards the appellant/owner of the vehicle being guilty of wilful breach of any conditions of the insurance policy.

Under such circumstances, the grant of recovery rights in favour of respondent No.1/Insurance Company pertaining to the compensation amount cannot sustain. It is so held.

For the reasons recorded herein above, the appeal is allowed. The impugned award dated 09.01.2015 passed by the Motor Accident Claims Tribunal, Gurgaon is amended to the extent of denial of recovery rights to respondent No.1/Insurance Company as regards the compensation

amount payable in favour of victim/injured, Hardutt.

Appeal is allowed in the aforesaid terms.

17.01.2019
harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |