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

**FAO No. 9933 of 2014 (O&M)
DECIDED ON: APRIL 11, 2019**

SANT BABA LABH SINGH

APPELLANT

VERSUS

M/S NEW INDIA ASSURANCE CO. LTD. AND OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Shivoy Dhir, Advocate
for the appellant.

Mr. S.S. Sidhu, Advocate
for respondent No.1-Insurance Company.

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AVNEESH JHINGAN, J (Oral):

The award dated 16.12.2013 passed by the Motor Accident Claims Tribunal, Shaheed Bhagat Singh Nagar (for brevity 'the Tribunal') has been assailed by the owner of Tata 407 bearing registration No. PB-12-E-9278 (hereinafter referred to as 'offending vehicle') being aggrieved of recovery rights granted to the insurer of the offending vehicle.

The insurer (i.e. M/s New India Assurance Company Ltd.) of the offending vehicle has been arrayed as respondent No.1; claimants have been arrayed as respondents No.2 to 5 and driver of the offending vehicle has been arrayed as respondent No.6 in the appeal.

The factum of accident is not disputed by the parties. A motor vehicular accident took place 26.08.2012. The accident proved fatal for

Harbans Singh.

A claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act'). The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the rash and negligent driving of the offending vehicle.

The Tribunal awarded a sum of ₹5,75,000/- alongwith interest @ 7% per annum to the legal representatives of the deceased.

As it was proved by the insurer that the original driving licence of the driver of the offending vehicle issued by the SDM, Anandpur Sahib was fake, the insurer was held liable to pay compensation but was given rights to recover the compensation amount from the owner and driver of the offending vehicle.

During the pendency of the present appeal, an application was moved for placing on record the verification report issued by the District Transport Office, Rupnagar.

Notice of the application was given to the non-applicants.

Heard learned counsel for the parties and perused the record produced by them.

Learned counsel for the appellant contends that the Tribunal erred in granting the recovery rights to the insurer, as Kuldip Singh, Clerk, DTO office Rupnagar deposed that the licence was valid on the date of accident. He relies upon the verification report dated 21.07.2016 issued by DTO office Rupnagar, which is now produced with the civil misc. application wherein, it has been mentioned that the licence was genuine as per their office record.

Learned counsel for the insurer argues that since the original licence was fake, subsequent renewal will not make it valid.

The offending vehicle was a Light Motor Vehicle (LMV) being Tata 407. The licence was exhibitted before the Tribunal.

The licence was originally issued by the SDM, Anandpur Sahib and subsequently, renewed by District Transport Office, Rupnagar in 2003. Kuldeep Singh, Clerk from the office of District Transport Office, Rupnagar deposed before the Tribunal as RW-2 and stated that the licence was valid for HTV w.e.f. 09.09.2009 to 08.09.2012. He further stated that the original licence was issued from Anandpur Sahib.

Rakesh Kapila, Clerk, SDM office Anandpur Sahib deposed as RW-3 before the Tribunal and categorically stated that the licence bearing No. 4257/97-98, 2226/00/01 and 2933/00/01 was not issued by the office of SDM, Anandpur Sahib. He further stated that numbers of driving licence mentioned above do not pertain to the office of SDM, Anandpur Sahib. It was further stated that the original number of the driving licence will remain the same even after its renewal. On the basis of the said evidence, it was held that the original licence which was subsequently renewed from the office of DTO, Rupnagar was fake.

The Supreme Court in ***National Insurance Co. Ltd. vs. Laxmi Narain Dhut; (2007) 3 SCC 700;*** while relying upon its earlier decision in ***New India Assurance Co., Shimla v. Kamla and others; (2001) 4 SCC 342,*** has held as under:-

> "39. *The inevitable conclusion therefore is that the decision in Swaran Singh's case (supra) has no application to own damage*

cases. The effect of fake license has to be considered in the light of what has been stated by this Court in New India Assurance Co., Shimla v. Kamla and Ors. (2001 (4) SCC 342). Once the license is a fake one the renewal cannot take away the effect of fake license. It was observed in Kamla's case (supra) as follows:

"12. As a point of law we have no manner of doubt that a fake licence cannot get its forgery outfit stripped off merely on account of some officer renewing the same with or without knowing it to be forged. Section 15 of the Act only empowers any Licensing Authority to "renew a driving licence issued under the provisions of this Act with effect from the date of its expiry". No Licensing Authority has the power to renew a fake licence and, therefore, a renewal if at all made cannot transform a fake licence as genuine. Any counterfeit document showing that it contains a purported order of a statutory authority would ever remain counterfeit albeit the fact that other persons including some statutory authorities would have acted on the document unwittingly on the assumption that it is genuine.

As noted above, the conceptual difference between third party right and own damage cases has to be kept in view. Initially, the burden is on the insurer to prove that the license was a fake one. Once it is established the natural consequences have to flow.

In view of the above analysis the following situations emerge:

1. The decision in Swaran Singh's case (supra) has no application to cases other than third party risks.

2. Where originally the license was a fake one, renewal cannot cure the inherent fatality.

3 In case of third party risks the insurer has to indemnify the amount and if so advised to recover the same from the insured.

4. The concept of purposive interpretation has no application *to cases relatable to Section 149 of the Act."*

It was also held that the renewal of fake driving licence cannot take away the effect of the fake licence.

In view of above, no interference is called for in the findings recorded by the Tribunal.

Dismissed.

(AVNEESH JHINGAN)
JUDGE

APRIL 11, 2019
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Whether speaking/reasoned ***Yes/No***
Whether reportable ***Yes/No***