

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

FAO-4947-2017(O&M)

Date of decision:-9.12.2019

Paras Feeds

...Appellant

Versus

Oriental Insurance Company Ltd. and others

...Respondents

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

Present: Mr.Tarun Dhingra, Advocate
for the appellant.

Mr.Mayank Mathur, Advocate for
Mr.Ashok Mathur, Advocate
for respondent No.1.

H.S. MADAAN, J.

CM-15071-CII-2017

Heard.

For the reasons mentioned in the application, the same is
allowed and delay of 71 days in filing of the appeal stands condoned.

FAO-4947-2017(O&M)

On account of suffering injuries in a motor vehicular
accident, which took place on 25.11.2015 at about 9:30 a.m. in the area of
village Chammu Kalan, statedly on account of rash and negligent driving
of Canter bearing registration No.HR-38Q-6939 (hereinafter referred to as

the offending vehicle) by respondent No.1 – Ashok Kumar, petitioner/claimant Ishwar Chand had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Ashok Kumar – driver, Paras Feeds, Karnal – owner and The Oriental Insurance Company Ltd. - insurer of the offending vehicle, claiming compensation.

On being put to notice, all the three respondents put in appearance and filed written statements contesting the claim petition praying for its dismissal.

Issues on merits were framed and the parties were afforded adequate opportunities to lead evidence.

On conclusion of trial, after hearing arguments learned Motor Accidents Claims Tribunal, Kurukshetra (hereinafter referred to as the Tribunal) vide award dated 30.1.2017 allowed the claim petition and awarded compensation of Rs.2,21,334/- to the claimant payable by respondents No.1 and 2 jointly and severally. Interest @ 9% per annum from the date of filing of the claim petition till realization was also granted. However, respondent No.3 – insurance company was directed to first pay the compensation amount to the claimant and then recover the same from respondents No.1 and 2 by execution of the award. The reason for grant of recovery rights was that driving licence of respondent No.1 was fake and not genuine, which amounts to violation of terms and conditions of the insurance policy. Therefore, since the vehicle in question was not being driven by respondent No.1 having a legal and valid driving licence at the time of accident, respondent No.3 – insurance company is

not liable to indemnify the respondent No.2 – insured with regard to liability to pay the compensation to the claimant under the award.

Such award left the respondent No.2 – owner of the offending vehicle aggrieved and he has knocked at the door of this Court by filing of the appeal, notice of which was issued to the respondent – insurance company, which put in appearance through counsel.

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

The reasoning for grant of recovery rights to the insurance company is contained in paras No.43 to 51, which for ready reference are being reproduced as under:-

43. In the present case the respondents No.1 and 2 have produced driving license Ex.R1 issued by D.T.O. Zuneboto, Nagaland; certificate of registration Ex.R2, insurance Policy Ex.R3, fitness certificate Ex.R4 and route permit Ex.R5, report of driving license Ex.R6 and photostat copy of public information dated 01.08.2014 issued by the office of Transport Commissioner, Kohima (Nagaland) Ex.R7.

44. The onus of proving invalidity or ineffectiveness of driving license of the driver-respondent No.1 was on the insurance company. Reliance in this regard may be placed on the observations in

45. In order to discharge the onus of proof the respondent No.2 has examined the respondent No.1 as RW2. In his examination-in-chief RW2 Ashok Kumar has admitted that he is permanent resident

of village Mughal Majra, District Karnal; and he is not having any documentary proof regarding his stay in Nagaland. It may also be observed here that RW2 Ashok Kumar has not stated that he used to ply truck in the State of Nagaland.

46. Section 9(1) of the Motor Vehicles Act, 1988 provides that any person who is not for the time being disqualified for holding or obtaining a driving license may apply for the issue to him of a driving license to the licensing authority having jurisdiction in the area (i) in which he ordinarily resides or carries on business, or (ii) in which the school or establishment referred to in section 12 from where he is receiving or has received instruction in driving a motor vehicle is situated.

47. In the present case the respondent No.1 is not proved to have any temporary or permanent residence in Nagaland or to have received any training for driving of vehicle in Nagaland. Therefore, the respondent No.1 was not legally entitled to get driving license issued from the State of Nagaland and driving license Ex.R1 having been issued in violation of Section 9 of the Motor Vehicles Act, 1988 is not legal and valid.

48. Further, judicial notice can also be taken of the fact that Government of Nagaland issued notification No.TC-23/MC/2007(PT-1) dated 01.08.2014 under Section 19(1) (e) of the Motor Vehicles Act, 1988 requiring the holders of driving license to obtain driving license on smart card before 01.12.2014 while mentioning that enforcing agencies have detected large number of

fake driving licenses being issued in the State which had caused serious concern not only to road safety but criming activities. Admittedly, the respondent No.1 did not report to the concerned office for the purpose of digitizing his data and issue of driving license in smart card format. RW2 Ashok Kumar respondent No.1 has admitted verification report Ex.R6 and Public Information copy Ex.R7 to be correct according to which his driving license had not been converted to smart card format. This fact also gives rise to the inference that the driving license of the respondent No.1 is fake and not genuine. Even otherwise driving license of the respondent No.1 stood cancelled on his failure to get his driving license issued in smart card format.

49. *In FAO No.1623-2014 (O & M) titled **Suresh Kumar Vs. Cholamandalam MS General Insurance Company Limited and others decided on 21.03.2014** where the driver, a native of Karnal, did not make any assertion with regard to his employment or residence at Nagaland and did not produce any supporting documents tendered by him at the time of applying for issuance of the driving license, the driving license was held to be fake. The facts of the present case are similar and the observations in the above quoted judicial precedent are fully applicable to the facts of the present case.*

50. *In **New India Assurance Company Limited Vs. Vijay Kumar & others 2015 (4) Law Herald 2979 (Punjab & Haryana High Court)** (relied upon by the learned Counsel for the respondents*

No.1 & 2) the insurance company did not summon any one from Nagaland Transport Authority to prove that the driving license was invalid and the driver had stated that he had been visiting and plying vehicle at Nagaland. It was held that there was no abnormality in issuing the license by Nagaland Transport Authority and the insurance company was held liable for payment of compensation. The facts of the present case are evidently different as the respondent No.1, a native of District Kurukshetra, has not deposed regarding his training, employment, residence or visiting and plying truck in Nagaland. Therefore, the observations in **New India Assurance Company Limited Vs. Vijay Kumar and others 2015 (4) Law Herald 2979 (Punjab and Haryana High Court)** are not applicable to the facts of the present case and are not of any help to the respondents No.1 and 2.

51. It follows from the above discussion that the respondent No.1 did not have valid and effective driving license at the time of the accident and the respondent No.2 committed breach of the terms and conditions of the insurance policy by handing over the offending truck to the respondent No.1 who was not having valid and effective driving license. Therefore, the respondent No.3 is exonerated from its liability to indemnify the respondent No.2.

However, I find that the whole approach of the Tribunal was misdirected and improper. The onus of proving issue No.3 “Whether the respondent No.1 did not have valid and effective driving license at the time of accident, if so to what effect? OPR-3” was upon the insurance

company. Admittedly, the insurance company had not examined any official from the office of D.T.O. Zuneboto, Nagaland to prove that the licence produced by respondent No.1 had not been issued by that office. Furthermore, a plea had been put forward on behalf of respondents No.1 and 2 that respondent No.1 had been plying his truck and going to Nagaland, therefore his driving licence was issued from that office. The Tribunal has drawn an adverse inference keeping in view the fact that RW2 Ashok Kumar (respondent No.1) could not produce any documentary proof regarding his stay in Nagaland and could not show that he used to ply truck in Nagaland. The approach of the Tribunal has been hyper-technical. As already observed the insurance company had not summoned record from the issuing office to show as to whether the licence had been issued by D.T.O. Zuneboto, Nagaland or not. At least a report could have been sought from that office in that regard. As per normal practice, the insurance company hires various investigators. Such investigator could have gone to D.T.O. Zuneboto, Nagaland, move appropriate application and then get report in writing with regard to genuineness of the licence in question but nothing of that sort was done. The Tribunal relying upon the basic requirements for issuance of driving licence reached at the conclusion that licence could not have been issued from Nagaland and such licence issued in violation of Section 9 of the Motor Vehicles Act, 1988 is not legal and valid. If respondent No.1 had procured a licence by giving wrong particulars, he could have been prosecuted against various provisions of Motor Vehicles Act and under law of the land but for such like reason, in my view, the licence could not

be termed to be illegal and invalid. Similarly how and under what circumstances licence could not be issued in the form of Smart Card to respondent No.1 has not been tried to be probed properly.

Learned counsel for the appellant has contended that the insurance company has failed to point out violation of any terms and conditions of the insurance policy.

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.

In **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.

In **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.

In *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 – insurance company has argued that once the licence possessed by the driver was not proved to be legal and valid, 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 No.3 whether the respondent No.1 was not holding a valid driving licence at the time of accident was on the insurance company. 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 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.

9.12.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No