IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 8252 of 2017 (O&M)
Date of Decision: July 10, 2019

Jasbir Singh

...... Appellants(s)

Versus

The United India Insurance Co. Ltd. and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

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

Mr. Vinod Chaudhri, Advocate
for respondent no.1.

None for respondents no.2 to 6.

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LISA GILL, J. (oral)

This appeal has been filed by the appellant who is the owner of the offending vehicle. He has challenged award dated 22.08.2017, passed by the learned Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri to the extent that the insurance company has been given the right to recover the awarded compensation from him on the ground that the driving licence held by the driver of the offending vehicle was not valid at the time of the accident.

Brief facts necessary for adjudication of the case are that petition under Section 166 of the Motor Vehicles Act, 1988 filed by the respondents-claimants, seeking compensation on account of death of Pushpinder Kumar was allowed by the learned Tribunal vide impugned award dated 22.08.2017. A sum of Rs.9,60,000/- was awarded. The quantum of compensation is not in issue in the present appeal, therefore, there is no necessity of referring to the details in respect thereto. Learned Tribunal held that the driving licence of the driver of the offending truck was not found to have been issued by the authorities at Raipur, Madhya Pradesh, therefore, it was an invalid licence even though it was subsequently renewed validly by the Transport Authority, Kurukshetra. In this view of the matter, it was directed that the insurance company after depositing the awarded amount, would have the right to recover the same from the owner of the offending vehicle.

Learned counsel for the appellant argues that the owner has discharged his responsibility. He took due care and caution while engaging the services of the driver. The appellant verified the current driving licence held by the driver, which was admittedly renewed by the transport authorities in Kurukshetra. Reference is made to the testimony of RW-2 Ashok Kumar, Clerk from the office of Secretary, R.T.A., Kurukshetra. He further states that it is specifically pleaded by the appellant that due care and caution was exercised before engaging the services of the driver. The owner has duly testified as RW-3 before the learned Tribunal. Learned counsel has relied upon the judgment of Hon'ble Supreme Court in ***National Insurance Co. Vs. Swarn Singh, 2004(3) SCC 297, Pepsu Raod Transport Corporation Vs. National Insurance Company, (2013) 10 SCC 217*** as well as judgment of this Court in ***New India Assurance Company Ltd. Vs. Vijay Kumar and others in FAO No. 3770 of 2015***, decided on 26.05.2015. It is, thus, prayed that appeal be allowed.

Learned counsel for the insurance company refutes the above said arguments and submits that the evidence on record clearly proves that the licence was never issued by the authorities at Raipur, Madhya Pradesh. Reference is made to Ex. R-11. Thus renewal of an invalid or fake driving licence cannot in any manner clothe it with genuineness. Moreover, the evidence on record proves that the owner was not vigilant enough and did not take necessary steps before engaging the service of the driver. He refers to the testimony of RW-1 Ram Lal – driver of the offending vehicle. Reliance is placed upon ***Mahi Ram and others Vs. Jaila Devi and another 2015(71) RCR (Civil) 138***.

I have heard learned counsel for the parties and have gone through the photocopy of the record produced in Court today.

The appellant-owner has specifically pleaded that at the time of engaging the services of the driver, he exercised due care and caution. He satisfied himself about the ability and the driving skills of the driver. Appellant who testified as RW-3 before the learned Tribunal, specifically stated that respondent no.1 had a valid driving licence at the time his services were engaged and RW-3 also took a driving test of the driver before engaging his services. RW-3 in his cross-examination has revealed that he was engaged in the transport business for the last 15 years. The driving licence of Ram Lal was got verified from the authorities at Kurukshetra. He also revealed that the respondent driver was earlier driving the truck of another person in Radaur Mandi for the last many years. He has denied the suggestion that driving test of the said respondent was not taken by him.

There is no dispute regarding the argument raised by learned counsel for the insurance company that a valid renewal of a fake or an invalid licence cannot clothe it with genuineness. However, at the same time, it is a settled position that the insurer cannot escape its liability, in case it is proved on record that the owner of the vehicle had exercised due care and caution at the time of engaging the services of the driver. It is a matter of record that RW-2 Ashok Kumar, Clerk from the office of Secretary, RTA, Kurukshetra specifically stated that as per their record, the driving licence held by Ram Lal was renewed firstly w.e.f. 11.02.2003 to 10.02.2006. It was originally issued by the licensing authority M.P. on 24.03.1984. It was earlier renewed by R.T.A, Yamuna Nagar and that since the year 2003, the licence of respondent Ram Lal was being renewed by the R.T.A., Kurukshetra from time to time. Copy of the register was proved as Ex. R-4. RW-2 has categorically stated that the licence of the respondent-driver is valid since 2003 continuously, without any default and is valid up to 2018. RW-2 Ashok Kumar clearly stated as under:-

> *"As per our record the license of the respondent is valid since 2003 continuously without any default and it is valid upto 2018. The license was renewed from 26.06.2012 to 09.02.2015. Before renewal the license authority get verification from previous license authority regarding the genuineness of license."*

In such a situation, reliance upon Ex. R-11 i.e. intimation dated 22.07.2017 obtained by the learned Tribunal from licensing authority at

Raipur, Madhya Pradesh is of no avail to the insurance company. No doubt, it is mentioned in the said intimation that the licence in question was not found to have been issued by the said agency as per their record but at the same time, the Court cannot lose sight of the fact that the owner i.e. insured took all possible steps to verify the validity of the driving licence held by the respondent-driver at the time of engaging the services. Reference by learned counsel for the insurance company to the statement of the driver or to that of RW-3 Jasbir Singh to the effect that he did not have a copy of the verification which may have been supplied to him by the licensing authority, Kurukshetra is of no avail. This is so in the wake of the specific statement of RW-2. It is not expected of an owner to seek and keep written verification about the licences from the concerned authority. Similarly, it cannot be expected by the appellant-owner to have verified the issuance of the original licence in 1983 from the authorities at Raipur, Madhya Pradesh. RW-2 has specifically stated that the licence in question was being renewed continuously since the year 2003 and that verification is sought from the previous licensing authority as well. The accident in question took place on 22.01.2014.

It has been held by the Hon'ble Supreme Court in ***National Insurance Company Limited versus Swaran Singh and others*** 2004 (3) SCC 297 that mere absence or fake or invalid licence at the relevant time are not the defences available to the insurer against the insured or third parties. To avoid its liability towards the insured, the insurer company has to prove the insured to be guilty of negligence and failure to exercise reasonable care in compliance of the conditions of the policy. Burden to establish breach of policy is upon the insurer by leading cogent evidence on record. Evidence on record in the present case, clearly proves that the owner of the offending vehicle exercised due care and caution as required to him before engaging the services of the driver.

In the factual matrix of the case, learned Tribunal has clearly erred in affording the right to recover the amount of compensation from the owner. Said finding is thus set aside. It is held that the appellant owner has discharged the duty cast upon him and the insurance company is liable to indemnify the insured.

No other argument has been addressed.

Appeal is accordingly allowed.

July 10, 2019.
Sunil

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No