IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 4932 of 2014 (O&M)
Date of Decision : 21.05.2019

National Insurance Co. Ltd. .....Appellant

Versus

Sumitra Devi and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.C. Kapoor, Advocate
for the appellant.

Mr. Tarun Sharma, Advocate
for Mr. R.S. Bajaj, Advocate
for respondent no. 6.

Surinder Gupta, J.

This is appeal filed by National Insurance Co. Ltd. against award dated 28.07.2012 passed by Motor Accident Claims Tribunal, Ludhiana (later referred to as 'the Tribunal'), whereby compensation of ₹3,82,200/- was allowed to claimants-respondents no. 1 to 4 for death of Malak Chand (later referred to as 'the deceased') in a motor vehicle accident with truck bearing registration no. PB-08-AU-8694 (later referred to as 'the offending vehicle').

2. As the only issue involved in this appeal relates to liability of owner or driver of offending vehicle as awarded by Tribunal to pay the amount of compensation, detailed facts of the case are being skipped for the sake of brevity.

3. The compensation awarded to the claimants by the Tribunal was computed as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Name of the deceased	Malak Chand

(ii)	Age of the deceased	55 Years
(iii)	Date of accident	30.07.2009
(iv)	Income of the deceased	₹5100 per month
(v)	1/4th of (iv) above deducted towards personal expenses	(₹5100-1275)= ₹3825 per month
(vi)	Compensation calculated after applying the multiplier of 8	(₹3825X12X8)= ₹367200 per annum
(vii)	Compensation towards loss of dependence	₹5000
(viii)	Compensation towards loss of consortium	₹5000
(ix)	Compensation towards funeral expenses	₹5000
Total		**₹382200**

4. Learned counsel for the appellant has argued that the Tribunal held that driving licence of respondent no. 5-Parshotam Lal, driver of the offending vehicle, was fake, as such, appellant shall have right to recover amount of compensation from driver of the offending vehicle. This right should have been allowed against owner of the offending vehicle as appellant has no privity of contract with driver of the offending vehicle. An application was filed under Section 152 CPC for correction of award to this extent but the same was dismissed. In support of his contention he has relied on observations of Apex Court in cases of ***Pappu and others* vs. *Vinod Kumar Lamba and another*, 2018 (3) SCC 208** and ***National Insurance Co. Ltd.* vs. *Laxmi Narain Dhut*, 2007 (2) RCR (Civil) 345**.

5. Learned counsel for respondent no. 6 has argued that at the time of appointment of respondent no. 5 as driver, owner of the offending vehicle had seen his driving licence, which was validly renewed. He had also taken driving test of respondent no. 5 before employing him as driver. As per evidence on record, licence was validly renewed by District Transport Officer, Hoshiarpur. However, as per report received from D.T.O. Office,

Faridkot, original driving licence was not issued from that office. The appellant did not produce any witness from office of D.T.O., Faridkot to get this fact verified on the basis of record, as such, no liability of respondent no. 6 is made out to pay amount of compensation as per law settled in case of ***United India Insurance Co. Ltd.* vs. *Lehru and others*, 2003 (2) RCR (Civil) 278.** He has also relied on observations of a coordinate Bench of this Court in case of ***Sahun* vs. *Smt. Jubeda and others*, FAO No. 5926 of 2015, decided on 17.09.2018.**

6. The question, which arises for consideration in this appeal, is as to whether driver of the offending vehicle was possessing a valid driving licence. The Tribunal while looking into this aspect has observed as follows:-

> ***"Issue No. 3 :***
>
> ***Whether respondent no. 1 was holding valid and effective driving licence at the time of accident? OPR – 3***
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> *10. The onus to prove this issue was on the respondent no. 3. Ld. Counsel for respondent no. 1 has not led any evidence, however, ld. counsel for respondent no. 3 placed on record the copy of verification report by surveyor Ex. R2, verification report of driving licence by DTO Hoshiarpur Ex. R3, verification report of driving licence by DTO Faridkot as Ex. R4 and copy of driving licence as Ex. R5. As per this verification report although driving licence of respondent no. 1 has been renewed time and again, however, it was never issued by concerned authority of Faridkot. Rather report has been received as called by the Court and DTO, Faridkot has reported that no such driving licence in the name of Parshotam Lal has been issued against the number. This driving licence has also been got renewed through DTO, Hoshiarpur, but law is settled on this point that mere*

> *renewal of driving licence cannot make it genuine. On this point authority is there by Hon'ble Supreme Court cited as **'M/s United India Insurance Company Ltd. vs. Davinder Singh' 2007 (4) RCR (Civil) 790 (S.C.).** Hon'ble High Court of Punjab & Haryana, Chandigarh in another authority cited as **'National Insurance Co. Ltd. vs. Nirmla Devi and others' 2009 ACJ 1538** that **in such circumstances insurance company is exempted from liability and it is driver who is liable**. However, in other authority as relied upon by the ld. counsel for respondents is there titled as **'National Insurance Co. Ltd. vs. Laxmi Narain Dhut' 2007 ACJ 721** wherein Hon'ble Supreme Court has expressed the opinion that **where driving licence is fake, insurance company can avail this defence. However, under such circumstances insurance company has to indemnify the amount in a third party claim where the driving licence is found to be fake**. In the present case, as per verification report by DTO, Faridkot, no such driving licence was issued as per report Ex. R4. Its renewal does not make it genuine. Hence, it is found to be fake. In such circumstances only liability of insurance company is that it shall pay the claim amount and has right to recover the same from the driver, respondent no. 1……………"*

7. While making above observations, the Tribunal has not looked into statement of RW-1 Munish Sehgal, owner of the offending vehicle, who has stated that he had employed respondent no. 5-Parshotam Lal, as driver after inspecting his driving licence, which was deemed as genuine. He had also taken trial of the driver through some expert driver. District Transport Officer, Hoshiarpur had renewed the driving licence of respondent no. 5-Parshotam Lal after verifying record of his previous driving licence. The relevant part of his testimony to this effect as contained in para 2 of his affidavit (Ex. RA) is reproduced as follows:-

> *"2. That the deponent employed Parshotam Lal son of Shri Parkash Chand, resident of Village Nansota, District Hoshiarpur as driver after inspecting his driving licence, the said driving licence of the said driver was deemed to be genuine one and the deponent has also taken trial of the driver through some expert driver and he plied the vehicle/truck diligently and carefully and he was expert driver to drive the truck and was expert in his profession. The deponent has not committed any deliberate act of breach of terms of insurance policy. The said driver applied for renewal of said driving licence from District Transport Officer, Hoshiarpur and District Transport Officer after verifying the record of his previous driving licence renewed the same from time to time. The said driver namely, Parshotam Lal, was competent to drive the truck and other heavy vehicles. The driving licence of said Parshotam Lal was valid at the time of alleged accident. Even otherwise, no accident took place with the vehicle of the deponent by the driver Parshotam Lal. The police of Police Station Sadar Khanna has planted a false criminal case bearing FIR No. 193 dated 30.07.2009, under Section 279, 304-A, IPC. The driver of the vehicle was driving the aforesaid vehicle with great care and caution and diligently and there is no complaint regarding his driver from any corner and he was expert in driving the heavy vehicle and he has good knowledge of the traffic rules................"*

8. Apex Court in case of ***Lehru (supra)*** has observed in para 20 as follows:-

> *"20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take*

> *the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that Insurance Companies expect owners to make enquiries with RTO's, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The Insurance Company would not then be absolved of liability. If it ultimately turns out that the licence was fake the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia 's Sohan Lal Passi 's and Kamla 's case. We are in full agreement with the views expressed therein and see no reason to take a different view."*

9. In case of ***Ram Chandra Singh*** ***vs.*** ***Rajaram and others, 2018 (3) Law Herald (SC) 2028,*** Apex Court discussed this issue again and observed as follows:-

> *"11. Suffice it to observe that it is well established that if the owner was aware of the fact that the licence was fake and still permitted the driver to drive the vehicle, then the insurer would stand absolved. However, the mere fact that the driving licence is fake, per se, would not absolve the insurer. Indubitably, the High Court noted that the counsel for the appellant did not dispute that the driving licence was found to be fake, but that concession by itself was not sufficient to absolve the insurer."*

10. In case of ***Pepsu Road Transport Corporation*** ***vs.*** ***National***

***Insurance Company Ltd.*, 2014 (1) SCC (L&S) 750,** in para 7 and 8, it was observed as follows:-

> *"7. Swaran Singh's case (supra) was subsequently considered by a two- Judge Bench of this Court in National Insurance Company Limited v. Laxmi Narain Dhut, 2007 (2) RCR (Civil) 345 : 2007 (1) Recent Apex Judgments (RAJ) 956 : (2007) 3 SCC 700. It was explained that: "Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time..."*
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> *8. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the*

vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation."

11. Learned counsel for the appellant while referring to observations of Apex Court in case of ***Pappu (supra)*** has argued that liability of the insurer to prove the licence arises only after owner of the offending vehicle has disclosed name of the driver and proved that licence possessed by him was valid. The relevant observations of Apex Court in para 11 are extricated as follows:-

"11. ……………………The Insurance Company can be fastened with the liability on the basis of a valid insurance policy only after the basic facts are pleaded and established by the owner of the offending vehicle - that the vehicle was not only duly insured but also that it was driven by an authorised person having a valid driving licence. Without disclosing the name of the driver in the Written Statement or producing any evidence to substantiate the fact that the copy of the driving licence produced in support was of a person who, in fact, was authorised to drive the offending vehicle at the relevant time, the owner of the vehicle cannot be said to have extricated himself from his liability. The Insurance

> *Company would become liable only after such foundational facts are pleaded and proved by the owner of the offending vehicle."*

12. So far as name of the driver is concerned the same has been disclosed even by the claimants. Owner of the offending vehicle while appearing as RW-1 has specifically stated that at the time of appointment of Parshotam Lal, he had not only verified his driving licence but has also taken his test and found him to be an efficient driver, as such, the owner has discharged his duty to explain that there was no lapse on his part while employing respondent no. 5 as driver.

13. Before proceeding further it will be relevant to have a look as to whether the appellant had been able to prove that driving licence of Parshotam Lal, driver of the offending vehicle, was fake one. In this regard reliance has been placed on the report of District Transport Officer, Faridkot (Ex. R-4), which states that driving licence No. 7020 had been issued in the name of Amarjit Singh son of Hardit Singh and was valid upto 30.11.1998. The report nowhere says that it is referring to licence no. 7020 dated 09.07.1998 and when the licence no. 7020 referred in the report, was issued. The fact that this licence was valid upto 30.11.1998 implies that it was issued at least 3/5 or more years prior to 1998. No witness was examined to prove this report (Ex. R-4). This report also explains about some document at serial no. 19460 in the name of Jarnail Singh, which was valid upto 06.01.1997. From perusal of report (Ex. R-4), it is evident that it is made on the order of the Tribunal endorsed to Licencing Authority, Faridkot but there is no endorsement on this report indicating that it was sent to the Tribunal through proper channel. The question remains as to who brought and placed this report on record. The Tribunal has committed error while relying upon

this report without taking note of the fact that this report has not come on file through proper channel and no opportunity was afforded to owner and driver of the offending vehicle to test the genuineness of this report by cross-examining the person, who made report or concerned official of the department. I am of the considered opinion that report (Ex. R-4) cannot be relied to hold that the driving licence of respondent no. 5-Parshotam Lal, driver of the offending vehicle, was fake one, to fasten the liability to pay amount of compensation on owner or driver of the offending vehicle. This fact is not disputed that driving licence placed on file as Ex. R-5 was issued by the Licencing Authority, Hoshiarpur and was valid upto 26.02.2010. This licence was issued on the basis of some old licence. Once report (Ex. R-4) is held to be not validly proved on record, no conclusion can be drawn that old licence of Parshotam Lal originally issued by Licencing Authority, Faridkot was fake and owner of the offending vehicle was aware of this fact so as to fasten the liability on him to pay amount of compensation to the Insurance Company.

14. As a sequel of my above discussion, I am of the considered opinion that this appeal has no merit as appellant has no right to recover amount of compensation from owner of the offending vehicle.

Dismissed.

May 21, 2019 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*