$~14

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 09.05.2019*

\+ **MAC.APP. 898/2018**

PARVEEN KATHURIA ..... Appellant

Through: Mr. Ajit Nair and Mr. Avdhesh Nuniwala, Advs.

versus

RELIANCE GENERAL FINANCE CO LTD & ORS ..... Respondents

Through: Mr. Rajeev M. Roy, Adv. for R-1.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

MAC.APP. 898/2018, CM APPLs. 41604-05/2018

1. The appellant has impugned the recovery right granted against him to the insurance company for the compensation paid by the latter to the beneficiaries of the Award. A motor vehicle accident resulted in fatality of the injured/victim. The appellant is the owner of the offending vehicle. Before the learned Tribunal his stand was that neither he nor the driver of the insured vehicle was involved in the accident. His written statement is rather pithy and it reads thus:

> *"3. That the respondent/driver as well as respondent no. 2/owner of the vehicle has no concern /connection/link of the said alleged accident case.*
>
> *4. That the vehicle was full injured and the respondent is a poor person and the family members are fully dependent upon the respondent."*

2. The insurance company, however, has specifically contended that the vehicle was being driven by a person who did not hold a valid driving licence. It contended as under:

> "*..... 1- That the Respondent No.3 (i.e. Reliance General Insurance Company Ltd.) is filing the present written submissions relating to the FIR No. 55/2011, Police Station I.P. Estate, New Delhi under Section 279/337/338. IPC.*
>
> *2- That as per the investigation report filed by the Police authorities, the driver of the offending vehicle Sh.Nawal Yadav was not holding any driving licence, much less than any valid driving licence to drive the offending vehicle No.DLlL-G-7340 (Tata 407). In fact the driver of the offending vehicle has also been challenged under Section 3/181 of the Motor Vehicles Act. Thus the respondent No.3 (Reliance General Insurance company Ltd.) is not liable to compensate the owner/driver of the offending vehicle and has no liability to pay any compensation for and on behalf of Respondents No. l & 2 even if so held to be payable by them to the claimants.*
>
> *3. That as per the investigation report/DAR filed by the Police Authorities, the offending vehicle bearing No.DL-lL-G-7340 (TATA 407) involved in -the alleged accident was insured with the Answering Respondent No.3 (Reliance General Insurance Company Ltd.) on the date of the alleged accident vide Policy No. 1306702334000839, for the period 22.05.2010 to 21.05.2011.*
>
> *4. That the answering respondent No.3 (Reliance General Insurance Company Ltd.) also seeks leave of this Hon'ble court and reserves its right to amend and/or to file the additional written statement/'written submissions as per the reply/written statement filed by the Respondents No.l & 2 with regard to the factum of accident, negligence and injuries sustained and/or if any other fact/evidence comes*

to the notice of the Respondent No.3 and/or is proved on record before this Hon'ble court at any later stage.

5. That the Answering Respondent No.3(Reliance General Insurance Company Ltd.) reserves its right under Section 149(2) and Section 170 of The Motor Vehicles Act. It is also stated that the said complaint must not be construed prejudicial to the rights of the Respondent No.3 (Reliance General Insurance Company Ltd.) available under Section 149(2) and Section 170 M.V. Act.

6. That in these circumstances, the Hon'ble Court may be pleased to absolve the Respondent No.3 (Insurer of the offending vehicle) from any liability whatsoever may be enforced) and/or held to be payable by the respondents No.l & 2 to the claimant. Any other- order directions or relief, as this Hon'ble Court may deem fit and proper in the circumstances of the case may also kindly be passed/ awarded in favour of the Respondent No.3...."

3. The appellant abandoned the proceedings midway despite knowing the stand of the insurance company. The driving licence produced by the driver was found to be fake by the police. The appellant has nowhere stated that he had found the driver to be possessing a valid driving licence or that he had employed the said person after the latter had shown the employer a driving licence which the employer believed to be true and after the latter had tested the driving skills of the prospective driver. The appellant relies upon the dicta of the Supreme Court in ***Ram Chandra Singh vs. Rajaram and Ors.*** 2018 Law Suit (SC) 740 which held inter alia as under:

[9] The Tribunal while answering issue No.3, however, made no attempt to analyse the pleadings and evidence on record to ascertain whether the appellant (owner) was aware of the fake driving licence possessed by the driver

(respondent No.6). The Tribunal merely adverted to the investigation and verification report and found that the stated driving licence was invalid. The High Court also made no attempt to enquire into the relevant aspect, as has been consistently expounded by this Court and restated in PEPSU Road Transport Corporation. Even in the case of Premkumari, the Court after considering the judicial precedents opined as follows:

> "It is clear from the above decision when the owner after verification satisfied himself that the driver has a valid licence and was driving the vehicle in question competently at the time of the accident there would be no breach of Section 149(2)(a)(ii), in that event, the insurance company would not then be absolved of liability. It is also clear that even in the case that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner was aware or noticed that the licence was fake and still permitted him to drive."

[10] The decision in PEPSU Road Transport Corporation was relied upon by the appellant before the High Court which, however, distinguished the same by observing that it was on the facts of that case, where the Court opined that there was no evidence to prove that the driving licence produced by the authorities was fake. That approach, in our opinion, is manifestly wrong. Whereas, even in that case, the Court was called upon to deal with the similar question as is involved in this appeal. In that case, the Court first adverted to the decision in ***United India Insurance Co. Ltd. Vs. Lehru*** *and Ors.. 2003 3 SCC 338 and then to the three-Judge Bench decision in* ***National Insurance Co. Ltd. Vs. Swaran Singh & Ors*** *2004 3 SCC 297. Paragraphs 99-101 of Swaran Singh have been extracted, which read thus:*

> "99. So far as the purported conflict in the

judgments of Kamla and Lehru is concerned, we may wish to point out that the defence to the effect that the licence held by the person driving the vehicle was a fake one, would be available to the insurance companies, but whether despite the same, the plea of default on the part of the owner has been established or not would be a question which will have to be determined in 6ach case.

100. This Court, however, in Lehru must not be read to mean that an owner of a vehicle can under no circumstances have any duty to make any enquiry in this respect. The same, however, would again be a question which would arise for consideration in each individual case.

101. The submission of Mr Salve that in Lehru case, this Court has. for all intent and purport, taken away the right of an insurer to raise a defence that the licence is fake does not appear to be correct. Such defence can certainly be raised but it will be for the insurer to prove that the Insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver."

The Court then went on to advert to a two-Judge Bench decision of this Court in National Insurance Co. Ltd. Vs. Laxmi Narain Phut 2007 3 SCC 700 before dealing with the facts of the case before it."

4. The learned counsel for the appellant submits that the issue of fake driving licence or the fact that the appellant engaged the driver despite knowing that the driver had a fake licence was never raised by the insurance company. The Court considers the said contention as ex-facie untenable,

because the insurance company has clearly raised an issue about the driving licence being fake; indeed, it was so found after investigation by the police. The appellant had voluntarily abandoned the claim proceedings, after having taken the plea that his vehicle and his driver were not involved in the accident, whereas the DAR found otherwise.

5. Since he had abandoned the proceedings before the learned Tribunal, the insurance company had no other option to do but to press its case on the basis of the pleadings. The appellant did not pursue its case or lead any evidence to disprove the contentions of the insurer. Nor did the appellant set up a plea that the driver was employed after he had shown a driving licence which the appellant believed to be genuine and valid and after the driving skills of the driver had been tested by the appellant.

6. In view of the above, this Court finds no error in the reasoning and findings of the impugned order. The petition is without merit and it is accordingly dismissed.

NAJMI WAZIRI, J

MAY 09, 2019/acm