[104] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision : 20.01.2023

1. FAO No.1754 of 2016 (O&M)

Daljit Singh …Appellant

versus

United India Insurance Co. &Ors. ….Respondents

2. FAO No.2881 of 2016(O&M)

Daljeet Singh …Appellant

versus

United India Insurance Co. &Ors. ….Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Ramneek Vasudeva, Advocate for the appellant(s).
Mr. Ram Avtar, Advocate for respondent No.1.
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B.S. Walia, J. (Oral)

[1] This order shall decide FAO No.1754 of 2016 and FAO No.2881 of 2016 as identical point is in issue in both the cases, besides the award impugned,although passed in different claim petitions, yet pertains to the same accident.

[2] Learned counsel contends that vide the impugned award, compensation awarded to the respondents / claimants was directed to be paid by the Insurance Company with liberty to the Insurance Company to recover the same from the insured. Learned counsel further contends that despite the appellant having raised the plea that once the owner of the vehicle had been diligent enough to verify that the driving licence produced by the person whom he was employing as a driver appeared to be genuine, besides, had

tested the driving capability of such person, then in such a situation the Insurance Company could not be absolved of its liability to pay compensation on the ground that the driving licence of the driver was invalid. Learned counsel further contends that as per the evidence of the RTO, licence issued to the driver of the offending vehicle was valid on the date of accident. However, the Insurance Company was absolved of its liability on the sole ground that the licence-holder driver was underage and had procured the licence by misrepresenting his age.

[3] Learned counsel appearing for respondent No.1 does not dispute the aforementioned position.

[4] I have considered the submissions of learned counsel.

[5] Admittedly, the driving licence issued to the driver of the offending vehicle was conceded as valid as on the date of accident. It is also not disputed that as per the evidence of the appellant/owner, due diligence had been exercised in verifying the driving licence produced by the driver whom the appellant was engaging as a driver and of his being satisfied that the same appeared to be genuine as also of the appellant/owner having tested the driving capability of the driver. In the circumstances, the matter is squarely covered by the decision of Hon'ble the Supreme Court in ***Pepsu Road Transport Corporation vs. National Insurance Company, 2013 (10) SCC 217.*** Relevant extract of the same is reproduced as under:-

> *"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.

[6] In view of the position noted above, I am of the considered view that the award to the extent it absolves the Insurance Company of liability while directing the Insurance Company to make payment to the respondents/claimants and to recover the same from the insured owner is legally unsustainable.

[7] In the light of the position noted above, while upholding the award, the sameis set aside to extent it absolves the Insurance Company and entitles it to recover compensation paid by it to the respondents/claimants from the appellant-owner.

[8] Amount of Rs.25,000/- deposited in each of the cases is directed to be refunded to the appellant.

(B.S. Walia)
Judge

20.01.2023
'Amit'

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