

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Pronounced on : 22.03.2023

1. FAO-672-2019

Mukesh Kumar ...Appellant

Versus

Sokat and others ...Respondents

2. FAO-3051-2019 (O&M)

Imran Khan ...Appellant

Versus

Mukesh Kumar and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Aditya Jain, Advocate
for the appellant in FAO No.672 of 2019 and
for respondent No.1/claimant in FAO No.3051 of 2019.

None for respondent No.1/driver in FAO No.672 of 2019.

None for respondent No.2/driver in FAO No.3051 of 2019.

Mohd. Arshad, Advocate
for respondent No.2/owner in FAO No.672 of 2019 and
for the appellant/owner in FAO No.3051 of 2019.

Mr. Amit Kundra, Advocate
for respondent No.3/Insurance Company
in FAO No.672 of 2019.

Mr. Raj Kumar Bashamboo, Advocate
for respondent No.3/Insurance Company
in FAO No.3051 of 2019.

RITU TAGORE, J.

1. This judgment shall dispose of FAO No.672 of 2019 filed by

Mukesh Kumar, appellant-claimant, seeking enhancement of compensation

for the injuries and permanent disablement suffered by him in the accident

And FAO No.3051 of 2019 filed by Imran Khan appellant-owner (respondent No.2) of the offending vehicle, a truck bearing registration No.HR-73-8720, challenging the liability imposed upon him to satisfy the award dated 15.09.2018 for committing breach of terms of the insurance policy.

2. The Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as 'the Tribunal') awarded a compensation of Rs.4,47,922/- under the various heads to the claimant-injured (Mukesh) along with interest @ 7.5% p.a. from the date of filing of the petition till actual realisation.

3. The brief facts of the case are given hereunder:-

The appellant-claimant Mukesh suffered grievous injuries in road accident that occurred on 13.05.2016 while driving the vehicle Eicher Canter bearing registration No.HR-38-Q-0533 by observing all traffic rules on Punhana-Hodal Road. When the claimant reached opposite CHC Punhana at about 1.40 PM, a TATA truck bearing registration No.HR-73-8720 (the offending vehicle) being driven by respondent No.1, in a rash and negligent manner came from Punhana side and banged into the vehicle of appellant-claimant. The appellant-claimant was first shifted to CHC Punahana, where he was medico-legally examined and after providing necessary medical aid, he was referred to Mandikheda, but was shifted to Nagpal Maternity and Orthopaedic Hospital, 1-C/62, NIT, Faridabad due to his serious condition and was treated as an indoor patient from 13.05.2016 to 23.05.2016 and 31.05.2016 to 05.06.2016. The appellant-injured continued his treatment at Nagpal Hospital, Faridabad till November, 2016 and thereafter, he took treatment from Handa Hospital, Sector-16, Faridabad, where his right leg was again operated upon. On account of the accident, appellant-claimant suffered permanent disability to the extent of 40% restricting movement of his right leg.

4. FIR bearing No.268 dated 17.05.2016 under Sections 279 and 337 IPC was registered against respondent No.1-driver at P.S. Punhana.

5. It is claimed that appellant-claimant is a driver. He was employed with M/s Vijay Bharat Transport Company, Faridabad on a salary of Rs.15,500/- per month with incentive at the time of accident.

6. In pursuance to notice, by filing a joint reply, the respondent No.1 (driver) and respondent No.2 (owner) denied the accident and their involvement in it. Further, averred that respondent No-1-driver had a valid and effective driving licence to drive the offending vehicle along with a valid route permit, fitness certificate etc. at the relevant time and, by denying the averments of the appellant-claimant as to his entitlement for compensation, prayed for dismissal of the petition.

7. Insurance Company (respondent No.3) in its written reply denied the accident and involvement of the offending vehicle and alternatively pleaded the fault of claimant in occurrence of the accident. In addition, pleaded a case of hit-and-run by an unknown vehicle and asked the claimant to prove his averments strictly. Respondent No.3 further took the plea of fundamental breach of the terms and conditions of the insurance policy by the insured-owner on account that respondent No.1-driver had no valid and effective driving licence to drive the vehicle and other documents at the relevant time, and prayed for absolving the company from its liability to pay compensation.

8. On the basis of pleadings the Tribunal framed following issues:-

1. Whether the petitioner had sustained injuries in a motor vehicular accident took place on 13.05.2016 at about 2.15 pm opposite CHC Punhana, District Nuh, Mewat P.S. Punhana, caused by respondent No.1 while driving TATA Truck bearing registration No.HR-73-8720 in a rash and

negligent manner ?OPP

2. Whether petitioner is entitled to compensation, as claimed in petition, if so, to what amount and from whom ?OPP

3. Whether the respondent No.1 was not holding a valid and effective driving licence at the time of accident ?OPR3

4. Whether owner and insured have contravened, violated and infringed terms and conditions of Insurance Policy ?OPR3

5. Relief.

9. On the assessment of evidence led on record, the Tribunal came to a definite conclusion that accident in question took place because of rash and negligent driving of respondent No.1-driver, causing serious injuries to appellant-claimant and awarded a compensation of Rs.4,47,922/- along with interest @ 7.5% per annum from the date of filing of the petition till actual realisation.

10. The Tribunal further held that respondent No.1-driver had a fake licence, thereby, absolved the insurance company from its liability to pay compensation and made respondent No.1 (driver) and respondent No.2 (owner) jointly and severally liable to pay the awarded compensation.

11. Being aggrieved with the award, the appellant-claimant and appellant-owner (respondent No.2) preferred the instant appeals.

12. Learned counsel for the appellant-claimant contended that the Tribunal erred in law by granting inadequate compensation to the claimant for injuries suffered by him. The appellant-claimant was working as a driver on a salary of Rs.15,500/- per month, but due to injuries, he suffered 40% physical permanent disablement rendering him completely unable to pursue his occupation as a driver. His physical disability ought to have been taken at

Rs.2,000/- for per percent of disability, contrary to the settled proposition of law as laid down by Hon'ble the Supreme Court in case 'K. Suresh Vs. New India Insurance Company Limited and another' 2012 (12) SCC 274, 'Raj Kumar Vs. Ajay Kumar and others', 2011 (2) R.C.R Civil (101) and 'Sidram Vs. The Divisional Manager, United Insurance Company Limited and another', 2023 (1) RCR (Civil) 44. In support of his contentions, the learned counsel for the appellant referred to the testimonial account of Dr. Ravi Shankar Gaur, Orthopaedic Surgeon (PW-13), who proved the disability certificate (Ex.P-267) and the statement of the claimant-Mukesh who appeared as PW-12 and spoke about the injuries suffered on his person and their impact on his work. However, the Tribunal failed to consider the same in a correct perspective.

13. The learned counsel for the appellant-claimant further contended that the Tribunal also failed to grant future prospects while assessing the loss of income to the appellant and awarded a meagre amount of compensation. It was also urged that a very small amount was granted towards transportation charges, pain and suffering, expenses on the special diet and prayed for modification of the award by making reference to the observations made in 'R. D. Hattangadi Vs. M/s Pest Control (India) Pvt. Ltd.', 1995 AIR (SC) 755.

14. On the other hand, learned counsel for the appellant-owner (respondent No.2) assailed the findings of the Tribunal by urging that burden to prove the breach of terms of the insurance policy was upon the insurance company (respondent No.3), but, the company failed to discharge the burden of proving the alleged breach of conditions of contract of insurance policy. The appellant-owner proved on record that the driver-respondent No.1 had a valid driving licence (Exh.R-1/Annexure D-7) issued by licensing Authority,

Nagaland. The Tribunal wrongly placed reliance on the statement of Sh. Manhei, LDA-cum-Computer Assistant, Tuensang, Nagaland (RW-1) and the documents (Exh.R-1 to Exh.R-3) so tendered by him on record, who admittedly did not bring the entire record pertaining to the driving licence (Exh. R-1/Annexure D-7). Therefore, the statement given by him that the driving licence in question is fake could not have been relied upon. The learned counsel stated that appellant-owner had taken all necessary precautionary measures that were expected of him to verify the genuineness of the driving licence so produced by respondent No.1 before engaging him as a driver. The appellant-owner satisfied himself about the competency of the driver to drive the vehicle. There was no occasion for the owner to know that driving licence was fake. Thus, there was no willful breach of the terms of the policy. Learned counsel stated that even if licence is fake, the law is that the insurance company is liable to pay compensation. Here. in present case, the insurance company has failed to prove that appellant-owner had deliberately committed the breach of terms of policy. Therefore, the findings of the learned Tribunal making the appellant and the respondent No.1-driver jointly liable to pay compensation should be set aside and insurance company be made liable to pay compensation. In support of his arguments, placed reliance on authorities 'United India Insurance Company Limited vs. Lehu and others' 2003 (2) R.C.R (Civil) (278), 'Lal Chand Vs. Oriental Insurance Company Ltd', 2006 (4) R.C.R. (Civil) 204, 'Pepsu Road Transport Corporation Vs. National Insurance Company', 2013 (4) RLW 3237, 'Surjit Khan Vs. United India Insurance Co. Ltd and others', 2020 (1) R.C.R.(Civil) 801 and 'Nirmala Kothari Vs. United India Insurance Co. Ltd.', 2020 (2) R.C.R. (Civil) 159.

15. Per contra, learned counsel for the insurance company submitted that it is proved on record that respondent No.1-driver had no valid driving licence. Sh. Manhei, LDA-cum-Computer Assistant, Tuensang, Nagaland (wrongly numbered as RW-1) has categorically deposed that driving licence (Exh.R-1/Annexure D-7) was never issued by the licensing authority, Nagaland. The driver-respondent No.1 Sokat when appeared as RW-1 admitted that he never resided or visited Nagaland. He rather deposed that he is permanent resident of village Nagla, District Palwal and has his Aadhaar Card and Ration Card is of village Nagla. Learned counsel stated that Section 9 of the Act deals with grant of driving licence and it provides that application for issuance of driving licence can be applied either to the authority in which the applicant ordinarily resides or carries on business or the place where the school or establishment as referred to in Section 12 of the Act for imparting instructions in driving of motor vehicles is situated. The learned counsel submitted that admittedly the respondent No.1-driver did not fulfill the above said conditions of Section 9 of the Act before getting the driving licence in question. The appellant-owner also led no evidence to show that the driving licence was ever issued as per Section 9 of the Act. On the other hand, according to the statement of Sh. Manhei (RW-1), the concerned official of licensing authority, Nagaland specifically stated that driving licence in question was never issued in favour of the respondent No.1-driver by the licensing authority, Nagaland. Learned counsel stated that the Tribunal has correctly held that the driving licence in question is a fake document and has rightly absolved the insurance company from their liability. In support referred to the observations made by a co-ordinate Bench of this Court in case

'United India Insurance Company Vs. Kesar Devi and others and connected matters', in FAO No.5907 of 2011 decided on 14.08.2018 and prayed to

dismiss the appeal preferred by the appellant-owner.

16. The Tribunal granted the following compensation to claimant Mukesh Kumar under different heads.

(i) Reimbursement of expenses towards the purchase of medicines and hospital charges.	Rs.3,02,922/-
(ii) Loss of salary for six months @ of Rs.5,000/-	Rs.30,000/-
(iii) For pain and suffering, day to day life (past, present and future), special diet and transportation etc.	Rs.20,000/-
(iv) Transport charges in lump-sum	Rs.15,000/-
(v) Permanent disability 40% @ of Rs.2,000/- percentate	Rs.80,000/-
Total	Rs.4,47,922/-

17. I have considered the submissions of the learned counsel for the parties and have gone through the record and the paper book.

The issues which need determination are:-

- i). What should be the appropriate compensation payable to the appellant-claimant (Mukesh)?*
- ii). Whether driver-respondent No.1 (Sokat) of the offending vehicle was holding any valid licence or not?*

18. It may be noticed that appellant-injured (Mukesh) suffered multiple injuries including fracture of his right lower limb, leading to physical disablement at 40% qua the lower limb. The statement of claimant-Mukesh (PW-12) has received support from the statement of Dr. Ravi Shankar Gaur (PW-13) who proved the disability certificate (Exh.P-267). The witnesses PW-1 to PW-9 proved various medical bills of the claimant from (Exh.P-1 to Exh.P-46). Dr. Harish Handa (PW-9) proved the treatment given by him to the claimant from 16.12.2016 to 23.12.2016, 09.05.2017 to 16.05.2017 and 01.08.2017 to 06.08.2017 and the charges taken by him for the treatment. He tendered the discharge summary report Mark-A. The above evidence has remained un-rebutted on record.

19. Ramesh Chand, Manager, Vijay Bharat Transport Company (PW-10) deposed that claimant was working as a driver in the aforesaid company. He tendered the attendance register (Exh.P-260), salary certificate (Exh.P-261) and experience certificate (Exh.P-262). The statement of Ramesh Chand (PW-10) was impugned on the ground that the register brought by him does not bear any authentication from any Government official. In substance, the evidence as regard the occupation of the claimant as driver has remained unchallenged. In the initial version given in the FIR (Exh.P-266), it is mentioned by the claimant (PW-1) that he is working as a driver with Brij Gopal Gupta, resident of Faridabad, who is the proprietor of M/s Vijay Bharat Transport Company. No evidence, contrary, has been led by the respondent No.3-insurance company to believe otherwise. Nonetheless, monthly salary reflected in the salary certificate (Ex.P-261) appears to be on the higher side as compared to minimum wages in the year 2016, which were around Rs.10,000/- per month. Except the salary certificate no other evidence namely, documentary or oral evidence reflecting the social standing of the claimant has been placed on record to accept that claimant-injured was in fact getting Rs.15,500/- and other incentives per month as claimed by him. The income of the injured-claimant, therefore, in given facts, is taken at Rs.10,000/-per month on the basis of the minimum wages.

20. The Tribunal granted Rs.2,000/- for every percentage of disability and granted Rs.80,000/- for the permanent physical disability. It is observed that the Tribunal went wrong in determining the loss of earning capacity of the claimant by applying the percentage method without adverting to the functional loss to the claimant on account of his physical disability. In ***K.Suresh*** (supra), Hon'ble the Supreme Court of India by referring to authority titled '**Arvind Kumar Mishra Vs. New India Insurance Company**

Limited and others, 2010 (4) R.C.R. (Civil) 917 and *'Kerala State Road Transport Corporation Vs. Susamma Thomas', 1994 ACJ 1 (FC)* upheld the multiplier method for determining the loss of future earnings in a case of permanent disability.

21. In *'Concord of India Insurance Company Limited Vs. Nirmala Devi, 1979 AIR (SC) 1666*, Hon'ble Apex Court expressed that 'the determination of the quantum must be liberal, not niggardly since the law values life and limb in free country in generous scales'. Similarly, in *'Mrs. Helen C. Rebello and others Vs. Maharashtra State Road Transport Corpn. and another', 1998(4) RCR (Civil) 177*, the concept of just compensation was reiterated.

22. Adverting to the facts of the present case, the Tribunal did not grant future prospects to the claimant-injured. In *Sidram* (supra) Hon'ble the Supreme Court in para No.31 observed as under:-

"31. It is now a well settled position of law that even in cases of permanent disablement incurred as a result of a motor-accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects as well. We have come across many orders of different tribunals and unfortunately affirmed by different High Courts, taking the view that the claimant is not entitled to compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. That is not a correct position of law. There is no justification to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading is illogical because it denies altogether the possibility of the living victim progressing further in life in accident cases - and admits such possibility of future prospects, in case of the victim's death."

23. Further in Para No.30 and 32 of **Sidram** (supra), Hon'ble the Apex Court has observed :

30. The principle consistently followed by this court in assessing motor vehicle compensation claims, is to place the victim in as near a position as she or he was in before the accident, with other compensatory directions for loss of amenities and other payments. These general principles have been stated and reiterated in several decisions. [Govind Yadav v. New India Insurance Co. Ltd., (2011) 10 SCC 683.]

32. This Court has emphasised time and again that "just compensation" should include all elements that would go to place the victim in as near a position as she or he was in, before the occurrence of the accident. Whilst no amount of money or other material compensation can erase the trauma, pain and suffering that a victim undergoes after a serious accident, (or replace the loss of a loved one), monetary compensation is the manner known to law, whereby society assures some measure of restitution to those who survive, and the victims who have to face their lives.

24. The reassessment of the compensation needs to be done in view of the precedents governing the injury cases.

25. The disability certificate dated 13.12.2017 records the age of claimant at 46 years, other medical record mentions the age of the claimant between 40 to 46 years. In Exh.P-47 the age of the claimant is mentioned as 45 years. The claimant while appearing as PW-12 in 2018 recorded his age as 46 years. No evidence was led by the respondents to show that the injured was 50 years at the time of accident as per their suggestion. In view thereof, the age of the injured-claimant is taken between 45/46 years at the time of the accident. According to Dr. Ravi Shankar Gaur (PW-13) the disability to the

claimant is qua the right lower limb only and not for the whole body and it is permanent in nature. As per disability certificate (Exh.P-267) it was a case of fracture of shaft femur right with restricted range of movement of right knee with inability to sit cross leg, squat, kneel and stand on right lower limb. No response was elicited from Dr. Ravi Shankar Gaur (PW-13) by the claimant-injured that disability in question has in fact rendered him completely incapable to drive any vehicle in future. Keeping in view the disability in question and the occupation of the claimant-injured as a driver, the functional loss is thus, assessed at 20% affecting his working capacity. Therefore, the loss of income on account of disability is calculated as under:-

Salary	-	Rs.10,000/-
Future prospects 25% (keeping in view his age at 46)	-	Rs.2,500/-
Total income	-	Rs.12,500/-
Total loss of income on account of disability (12,500 (income) x 12 (months) x 13 multiplier x 20% (disability)	-	Rs.3,90,000/-

26. The grant of Rs.30,000/- as loss of salary for six months during the period of recovery as given by the Tribunal is seemingly not based on evidence. Dr. Harish Handa (PW-9) deposed that approximately such kind of injuries takes one year to recover, satisfactorily. Further, his statement shows that the claimant remained hospitalized on different dates from 16.12.2016 to 06.08.2017 for removal as well as insertion of implants. Thus, in the given facts, claimant is entitled for loss of income during the period of his recovery for one year Rs.1,20,000/- (Rs.10,000 salary x 12 months).

27. Insofar as medical expenses of Rs.3,02,922/- as granted by the Tribunal are concerned, same are based on evidence and requires no interference.

28. The evidence shows that appellant-claimant suffered several injuries including fracture of right leg and had to be hospitalized for a long period for his treatment. He was operated upon for removal and insertion of the implants. The claimant thus suffered a lot of physical pain and mental agony and these operations may have also affected expectation of his life besides suffering loss of amenities. The grant of Rs.20,000/- by the Tribunal under the aforesaid head is on the lower side. To my mind, compensation needs to be enhanced to a reasonable extent. On the modest estimation, Rs.50,000/- is granted under the head of physical pain and mental suffering, loss of amenities and expectation of life.

29. Grant of transportation charges at Rs.15,000/- as granted by the Tribunal is reasonable and requires no interference.

30. The Tribunal granted less expenses on nourished diet. The claimant may have consumed special diet for at least 3-4 months for his fast recovery. Being on moderate side another Rs.12,000/- (Rs.100/- per day x 4 months) is granted for expenses on nourishment.

31. The Tribunal did not grant any compensation under the head of expenses of an attendant. With the nature of injury suffered by the claimant, he may have taken part-time services of a helper for at least 2-3 months to enable him to perform his daily ablutions. Accordingly, claimant is granted Rs.6,000/- (Rs.2,000/- per month x 3 months).

32. No evidence has been given by the claimant suggesting that any further medical intervention is required for his injury in question. Therefore, no compensation is granted under the head of future medical expenses.

33. The total compensation granted to the claimant is as under:-

Sr. No.	Heads	Amount in Rs.
1.	Disability	Rs.3,90,000/-

2.	Loss of Salary	Rs.1,20,000/-
3.	Medical Bills	Rs.3,02,922/-
4.	Loss of amenities, pain and suffering, loss of expectation of life	Rs.50,000/-
5.	Transportation Charges	Rs.15,000
6.	Nourished diet charges	Rs.12,000/-
7.	Attendant Charges	Rs.6,000/-
8.	Total Compensation	Rs.8,95,922/-
9.	Amount awarded by the Tribunal	Rs.4,47,922/-
10.	Enhanced amount of compensation	Rs.4,48,000/-

34. The enhanced amount of compensation **Rs.4,48,000/-** shall carry the same rate of interest as granted by the Tribunal from the date of filing of the petition till actual realisation.

35. Additionally, the claimant is ordered to be given **Rs.15,000/-** as litigation expenses, payable by the respondent-insurance company, in view of the judgment passed by Hon’ble the Supreme Court in case titled **‘Sidram vs. The Divisional Manager, United India Insurance Co. Ltd. and another’ 2023 (1) R.C.R. (Civil) 44.**

36. In view of the above discussion, point No.1 is accordingly answered in favour of the claimant.

37. Now lets deal with the issue of driving licence (point No.2 of determination).

38. In additional plea, the respondent No.1-driver and respondent No.2 (appellant-owner) took a specific plea that respondent No.1 had a valid and effective driving licence to drive the vehicle in question. The driver-respondent No.1 appeared as RW-1 and tendered the driving licence (Annexure D-7). He denied the suggestion that driving licence was fake.

However, he admitted that he had never visited Nagaland, from where the

driving licence (Annexure D-7) is shown to have been issued by the concerned licensing authority.

39. The insurance company-respondent No.3 took a specific plea that respondent No.1 had no valid and effective driving licence shown to be issued by DTO, Tuensang, Nagaland and the insured-owner willfully committed a fundamental breach of terms and conditions of the policy by handing over the vehicle to an unlicensed person. Thus, the insurance company is not liable to indemnify the owner-insured. To substantiate its version, the insurance company examined Sh. Manhei, LDA-cum-Computer Assistant, Tuensang, Nagaland (RW-1), he deposed that he has been authorized by the concerned department to depose in the present case and further testified that the driving licence in question (Exh.R-1/Annexure D-7) was never issued by DTO, Nagaland in the name of the respondent No.1 and also tendered on record the letter (Exh.R-2) in this regard, whereby the concerned DTO affirmed and verified that driving licence in question was never issued by DTO, Nagaland and driving licence be treated as fake. In cross-examination, he testified that after 2010, the department started to computerise the record, however, the old record has not been computerised. He admitted that he has not brought the record of year 2010, but deposed that driving licence in question was checked from the old record as well as from the computerised record and found no record pertaining to the driving licence in question in their office. He denied that the reports (Exh.R-2 and Exh.R-3) are false.

40. The respondent No.2-owner Imran Khan did not appear into the witness box to speak that he satisfied himself regarding the genuineness of the driving licence in question pertaining to respondent No.1 or found the driver-respondent No.1 as competent to drive the vehicle in question by taking his driving test. In *Lehru and others* (supra), it was held by Hon'ble the Supreme

Court that in case of fake driving licence, the insurance company has to first pay to third party the claim and may later on recover from the owner only, if it is proved that vehicle was knowingly and intentionally handed over to a driver not having a valid driving licence. If the licence held by the driver seems to be valid on the face of it, owner is not expected to do a roving inquiry to find out about its validity. In the aforesaid case, the driving licence was of 1989, but the insurance company has not brought the record for the aforesaid year and the appeal was dismissed holding that insurance company failed to prove willful breach of the terms of the policy. In ***Lal Chand*** (supra) the owner had not only seen and examined the driving licence but also took test of the driver and found him competent to drive and appointed him. It was held that the owner had not committed breach of terms of policy and company was directed to pay the compensation. In ***Pepsu Road Transport Corporation*** (supra), the driving licence so possessed by the driver was not found to be issued by the concerned licensing authority, the owner had imparted training to the driver and put him to the driving test. It was held that owner had made enough efforts to satisfy that driver was competent to drive the vehicle and company was made liable to pay compensation. Similar proposition of law has been laid down in case ***Surjit Khan*** (supra) and ***Nirmala Kothari*** (supra).

41. Adverting to the facts of the present case, as noticed above, the owner-appellant did not appear before the Tribunal to depose that he has satisfied himself about the competency of the driver-respondent No.1 to drive the vehicle either by checking his driving licence or by putting him to driving test. On the contrary, as noticed above Sokat-driver (RW-1) admitted that he had never been to Nagaland. Section 9 of the Act speaks of grant of driving licence. Its provisions are extracted as under:-

9. Grant of driving licence.-(1) Any person who is not for the being disqualified for holding or obtaining a driving licence may apply Jany licensing authority in the State]-

(i) in which he ordinarily resides or carries on business, or

(ii) in which the school or establishment referred to in section from where he is receiving or has received instruction in driving a mo vehicle is situated, for the issue to him of a driving licence.

(2) Every application under sub-section (1) shall be in such form shall be accompanied by such fee and such documents as may be prescri by the Central Government.

(3) If the applicant passes such test as may be prescribed by the Central Government, he shall be issued the driving licence: Provided that no such test shall be necessary where the applicant produces proof to show that-

(a)(i) the applicant has previously held a driving licence to d such class of vehicle and that the period between the date of expiry of that licence and the date of the application does not exceed five years, or

(ii) the applicant holds or has previously held a driving licent to drive such class of vehicle issued under section 18, or

(iii) the applicant holds a driving licence to drive such class vehicle issued by a competent authority of any country outside India, sh to the condition that the applicant complies with the provisions of section (3) of section 8

(b) the applicant is not suffering from any disability which is likely to cause driving by him to be a source of danger to the public; and the licensing authority may, for that purpose, require the applicant to produce a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8:

[Provided further that a driving licence for driving an adapted vehicle may be issued to the applicant, if the licensing authority is satisfied that he is fit to drive such motor vehicle.]

(4) Where the application is for a licence to drive a transport vehicle, no such authorisation shall be granted to any applicant unless he possesses a driving certificate issued by a school or establishment referred to in section 12. 3

[(5) Where the applicant does not pass the test, he may be permitted to re-appear for the test after a period of seven days: Provided that where the applicant does not pass the test even after three appearances, he shall not be qualified to re-appear for such test before the expiry of a period of sixty days from the date of last such test [and such applicant shall be required to complete a remedial driver training course from any school or establishment under section 12]

(6) The test of competence to drive shall be carried out in a vehicle of the type to which the application refers: Provided that a person who passed a test in driving a motor cycle with gear shall be deemed also to have passed a test in driving a motor cycle without gear.

(7) When any application has been duly made to the appropriate licensing authority and the applicant has satisfied such authority of his competence to drive, the licensing authority shall issue the applicant a driving licence unless the applicant is for the time being disqualified for holding or obtaining a driving licence: Provided that a licensing authority may issue a driving licence to drive a motor cycle or a light motor vehicle notwithstanding that it is not the appropriate licensing authority, if the licensing authority is satisfied that there is good and sufficient reason for the applicant's inability to apply to the appropriate licensing authority: Provided further that the licensing authority shall not issue a new driving licence to the applicant, if he had previously held a driving licence, unless it is satisfied that there is good and sufficient reason for his inability to obtain a duplicate copy of his former licence.

(8) If the licensing authority is satisfied, after giving the applicant an opportunity of being heard, that he-

(a) is a habitual criminal or a habitual drunkard; or

(b) is a habitual addict to any narcotic drug or psychotropic substance within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(c) is a person whose licence to drive any motor vehicle has, at any time earlier, been revoked, it may, for reasons to be recorded in writing, make an order refusing to issue a driving licence to such person and any person aggrieved by an order made by a licensing authority under this sub-

section may, within thirty days of the receipt of the order, appeal to the prescribed authority.

(9) Any driving licence for driving a motor cycle in force immediately before the commencement of this Act shall, after such commencement, be deemed to be effective for driving a motor cycle with or without gear.

[(10) Notwithstanding anything contained in this section, the driving licence to drive e-cart or e-rickshaw shall be issued in such manner and subject to such conditions as may be prescribed.]

42. The admission of Sokat-driver (RW-1) would show that for issuing the driving licence (Exh.R-1/Annexure D-7) to him, the conditions of Section 9 have not been complied with. The respondent No.2-owner as well as the respondent No.1-driver failed to impeach the testimony of Sh. Manhei, LDA-cum-Computer Assistant, Tuensang, Nagaland (RW-1) whereby he categorically stated that the driving licence in question is fake as it was never issued by the licensing authority, Nagaland. No evidence was led by the respondents (driver and owner) to contradict or rebut the evidence of RW-1 by bringing any record from the concerned licensing authority, Nagaland that driving licence (Annexure D-7) was ever validly issued in favour of the respondent No.1.

43. In view of the discussion made above and inferences drawn, I have no hesitation in holding that driving licence in question (Exh.R-1/Annexure D-7) is a fake and appellant-owner Imran Khan took no requisite precautionary measures to ensure that the respondent No.1-driver was competent to drive the vehicle in question before engaging him as a driver. There is, thus, willful violation of terms and conditions of the policy by the insured. The findings of the Tribunal are thus, affirmed to the aforesaid extent. The contention of the learned counsel for the insurance company that

company is not liable to pay and thereafter recover the same from the insured, is not tenable, particularly having once issued a valid policy and the same being active on the date of accident. It is a case of violation of the terms and conditions of the insurance policy in view of fake driving licence. The insurance company is absolved from the liability from making the payment at first instance but must ensure the payment to the claimant-injured, a third party with a right to recover the amount from the insured-owner. In other words, the insurance company is directed to satisfy the award passed in favour of the claimant-injured and is given the recovery rights to recover the award amount from the owner after making the payment.

44. No other point was raised or pressed.

45. As per the above discussion, appeal filed by the injured-claimant (Mukesh Kumar) is **allowed** in above terms. The awarded amount as assessed above, shall be deposited by the insurance company within a period of two months, with the learned Tribunal with recovery rights granted to the insurance company. The appeal filed by the insured-owner (Imran Khan) is **dismissed**, accordingly. The parties are left to bear their own cost.

46. Needless to mention that the amount of compensation, if any, already paid and received by the claimant-injured shall be adjusted. The directions as given by the Tribunal regarding disbursal of the awarded amount shall remain unaltered

47. Pending miscellaneous application(s), if any, is/are disposed of accordingly.

(RITU TAGORE)
JUDGE

Pronounced on 22nd March, 2023
Rimpal/Manpreet

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