IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
FIRST APPEAL NO. 569 OF 2024

Future Generali Insurance Co. Ltd.]
Office Address: Forbes Building,]
East Wing, 3rd Floor, Charanjit Rai Marg,]
Fort, Mumbai - 400001]
…. Appellant (Org. Opp. Party No.2)

Versus

1. Savita Utpal Acharya]
Age: 40 Years.]
(Widow of the Deceased)]

2. Swayam Utpal Acharya]
Age: 08 Years.]
(Son of the deceased)]

3. Tanish Utpal Acharya]
Age: 02 Years.]
(Son of the deceased)]

4. Mukul Shailachandra Acharya]
(Deleted since died during pendency of]
Application)]
Age: 88 Years.]
(Son of the deceased)

All residing at: Room No. 13, Chawl No.12,]
Azad Nagar, Rahiwashi Sangh, Mahakali]
Gumpha Road, Andheri (E),]
Mumbai – 400093.]

5. Bisleri International,]

Western Express Highway, Andheri,]
Mumbai 099 (Owner of offending vehicle)]
…. Respondents

(Present Respondent Nos.1 to 4 being Original Applicants and Respondent No.2 being Opponent No.1)

Mr. Rajesh Kanojia i/b Res Juris, for the Appellant.
Mr. S. R. Gupta, for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 25th NOVEMBER, 2024.

ORAL JUDGMENT :

1. The issue involved in this appeal is the driver of offending vehicle was holding fake driving licence.

2. It is contention of learned counsel for the Appellant that the driver of offending vehicle was not holding effective and valid driving licence. The driving licence produced on record was fake and fabricated but this fact is not considered by the Tribunal.

Learned counsel further submitted that the Tribunal has relied on the judgment of Hon'ble Apex Court in the case of ***Rishipal Singh Vs. New India Insurance Company Limited and Ors. 2022 ACJ 1868***. The ratio laid down by the Hon'ble Apex Court in the above case is contrary to the ratio laid down in the case of ***Pappu and Ors Vs. Vinod Kumar Lamba and Anr [2018] 1. S.C.R. 195*** . The Tribunal should not have relied on the said judgment. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the Respondents that to prove the defence that driver of offending vehicle was holding fake and fabricated driving licence. No evidence is produced on record, the Tribunal has passed well reasoned order and no interference is required in it. Hence, requested to dismiss the appeal.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Mumbai (for short "the Tribunal").

4.1. To prove the defence of fake driving licence, the insurance company has examined their Officer Umakant Shirsat at Exhibit-48. He has stated that their insurance company had appointed the Insurance Investigator to verify the vehicular documents and involvement of insured vehicle in the accident. The investigator obtained certified true copy of driving licence extract of driving licence No.UP-62-2012000597. As per the driving licence extract information given by the R.T.O. Jaunpur, Uttarpradesh, the said driving licence is fake and bogus and not registered in their record. The notice was given to owner of the offending vehicle about fake and fabricated driving licence.

4.2. In cross-examination, he admitted that no specific defence of fake driving licence was taken in their written statement. He further admitted that the driver of offending vehicle is not charged for the offence for holding fake driving licence. The owner is also not charged under Section 5 of the Motor Vehicles Act 1988, for handing over a vehicle to a person, who was not holding valid and effective driving licence. He further admitted that, own damage is contractual liability and third party is statutory liability. He has not seen the original licence of driver of the offending vehicle. He has not visited personally to R.T.O. Authority. He admitted that their Investigating Officer visited it. This witness further admitted that in the present case their company appointed two investigators one from Uttarpradesh and one from Maharashtra. He received the report of investigator appointed for insured vehicle from local area.

4.3 Considering evidence of this witness, it appears that, this witness never sent letter to R.T.O. Jaunpur nor he has seen original driving licence driver of the offending vehicle. On the basis of letter issued by the R.T.O. Jaunpur, this witness states that, the driving licence of driver of the offending vehicle is fake. The letter issued by the R.T.O. Jaunpur is on record. From this reply, it cannot be said that, the driving licence was fake. When defence witness admitted that they had appointed their investigator to verify the driving licence, they should have examined the investigator to prove the said fact. But it has not been done. The person who is not aware about the correspondence and who had not actually visited to R.T.O. office has been examined as a defence witness, which is not proper. Hence, I do not see merit in the contention that the driving licence produced on record was fake and fabricated. Moreover, the said defence was not taken in the written statement filed by the Appellant/Insurance Company.

8. I have gone through the case law cited by the learned counsel for the Appellant. The facts of the cited case and present case are different, hence not applicable. In the present case, the Appellant failed to prove before the Tribunal that the driving licence produced on record was fake.

9. In view of above, I pass following order:

ORDER

i. Appeal is dismissed.

ii. The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

iii. The statutory amount be transmitted to the Tribunal. The parties are at liberty to withdraw it, as per rule.

iv. Record and Proceeding be sent back to the Tribunal.

10. All pending applications, if any, stands disposed of.

(SHIVKUMAR DIGE, J.)