

112 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1149-1995 (O&M)

Decided on 18.10.2024

The United India Insurance Co. Ltd. & anr. ....Appellants

Versus

Mohan Singh (Deceased) through his LRs. & anr. ....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. D.P.Gupta, Advocate and
Mr. Shubham Gupta, Advocate for the appellants.

Mr. S.S.Rangi, Advocate for respondent No.1.

None for other respondent.

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PANKAJ JAIN, J.(ORAL)

Counsel for the parties are *ad idem* that the insured as well as the insurer filed the present appeal jointly. However, in amended memo of parties filed along with CM No.24180-CII of 2016, insured-Bhupinder Singh was wrongly mentioned as one of the respondents.

On the oral request made by Mr. Gupta, Advocate amended memo of parties is ordered to be corrected.

Main case

1 Both the insured as well as the insurer have jointly filed present appeal impugning award passed by Motor Accident Claims Tribunal, Sangrur dated 30.11.1994 allowing the claim petition.

2 Claimant filed claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation on account of injuries sustained by him in a Motor vehicular accident involving truck owned by appellant No.2-Bhupinder Singh and insured by appellant No.1.

3 Claimant claimed that he was a passenger traveling in Haryana Roadways bus going from Sangrur to Tohana when the offending vehicle coming from the opposite side driven rashly and negligently ram into the bus. The claimant sustained multiple injuries including fracture of ribs and multiple fractures in left hand and right leg. The factum of accident was admitted by the respondents, however, negligence was denied. On the basis of pleadings, Tribunal framed following issues :-

> *"1) Whether injured Mohan Singh sustained injuries on 8.12.1991 at about 5 am in the area of village Khetla on account of rash and negligent driving of Truck No.PCI-4928 by respondent No.1 Jagtar Singh owned by respondent No2 ?OPA*
> *2) To what amount of compensation the claimant is entitled to and against whom? OPA*
> *3) Whether the driver of the truck was holding a valid driving licence ? OPA.*
> *4) Whether the claim petition is bad for non- joinder of Driver and owner of the Bus in which the claimant was travelling ?OPR*
> *5) Relief."*

4 Tribunal decided issue No.1 in favour of claimant and against the respondents. Tribunal found that as per the evidence, respondent No.1 was driving offending vehicle rashly and negligently coming on the wrong side when it rammed into the bus invoking to the principle of *"res ipsa loquitur"*. Tribunal held driver of the offending vehicle negligent. There is

no serious dispute with respect to the quantum of the compensation. While ascertaining the liability, Tribunal held that insurance of the offending vehicle was proved. Insurer however disputed driving license of the driver and thus claimed breach of the conditions of the insurance policy. The owner produced copy of driving license, as per which the same was renewed by office of District Transport Officer, Sangrur upto 12.07.1991 and thereafter the same got renewed from District Transport Officer, Bathinda from 12.07.1991 to 11.07.1994. The Tribunal further held that insurance company failed to rebut the aforesaid driving license produced by the owner and thus held the insurer jointly and severally liable to pay the amount of compensation.

5 Learned counsel for the appellants-insurer is not in a position to dispute that initial onus to prove issue No.3 was discharged by the owner by producing copy of the license of the driver and thereafter onus shifted upon the insurer to rebut the same. No evidence was led by insurer. The issue with respect to plea of a valid insurance raised by the insurer is no more *res-integra* and stands answered by Supreme Court in the case of ***National Insurance Co., Ltd. Vs. Swaran Singh (2004) 3 SCC 297*** holding as under :-

> *"SUMMARY OF FINDINGS :*
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> *110. The summary of our findings to the various issues as raised in these petitions are as follows:*
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> *(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory*

insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163 A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. 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 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.

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main

purpose" and the concept of "fundamental breach" to allow defences available to the insured under section 149(2) of the Act.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The claims tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be

recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.

(xi) The provisions contained in sub-section (4) with proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims."

6 The same was relied upon and reiterated by Supreme Court ***Ram Chandra Singh Vs. Rajaram (2018) 8 SCC 799*** observing as under :-

10. The decision in Pepsu RTC (Pepsu RTC v. National Insurance Co., (2013) 10 SCC 217: (2013) 4 SCC (Civ) 713: (2013) 4 SCC (Cr) 768: (2014) 1 SCC (L&S) 750) 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. v. Lehru (United India Insurance Co. Ltd. v. Lehru, (2003) 3 SCC 338: 2003 SCC (Cri) 614), and then to the three-Judge Bench decision in National Insurance Co. Ltd. v. Swaran Singh (National Insurance Co. Ltd. v. Swaran Singh, (2004) *3 SCC 297: 2004 SCC (Cri) 733) Paras 99-101 of Swaran Singh (National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297: 2004 SCC (Crl) 733) have been extracted, which read thus: (SCC p. 339)*

"99. So far as the purported conflict in the judgments of Kamla (New India Assurance Co. v. Kamla, (2001) 4 SCC 342: 2001 SCC (Cri) 701) and Lehru (United India Insurance Co. Ltd. v. Lehru, (2003) 3 SCC 338: 2003 SCC (Cri) 614) 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 each case.

100. This Court, however, in Lehru United India Insurance Co. Ltd. v. Lehru, (2003) 3 SCC 338:2003 SCC (Cri) 614) 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 (United India Insurance Co. Ltd. v. Lehru, (2003) 3 SCC 338: 2003 SCC (Cri) 614), 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." (Pepsu RTC case (Pepsu RTC v. National Insurance Co., (2013) 10 SCC 217: (2013) 4 SCC (Civ) 713: (2013) 4 SCC (Cri) 768: (2014) 1 SCC (L&S) 750), SCC pp. 222-23, para 8)

The Court then went on to advert to a two-Judge Bench decision of this Court in National Insurance Co. Ltd. v. Laxmi Narain Dhut (National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC

700: (2007) 2 SCC (Cri) 142), before dealing with the facts of the case before it.

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.

7 In view of above, this Court finds that the insurer having failed to lead any evidence to rebut the validity of the license which was placed on record by the owner, there is no reason to interfere in a well-reasoned finding recorded by the Tribunal.

8 In view of above, the present appeal is dismissed.

(PANKAJ JAIN)
JUDGE

18.10.2024
Pooja Sharma-I

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