IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA-1399-1999 (O&M)
Reserved on : 27.08.2024
Pronounced on: 18.10.2024

Rajinder Singh ...... Appellant

versus

New India Insurance Company and others ...... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Vivek Suri, Advocate and
Mr. Dushyant Godara, Advocate
for the appellant.

Mr. Suman Jain, Advocate and
Mr. Man Mohan, Advocate
for the respondents.

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PANKAJ JAIN, J.

1. Plaintiff is in appeal.

2. Plaintiff filed suit for recovery of Rs.1,10,000/- against the defendant. Plaintiff claimed that he is owner of vehicle bearing registration No.CH-01-A-5776. The vehicle was fully insured with the defendant. Policy was in operation for a period commencing from 18.03.1992 till midnight of 17.03.1993. The car met with an accident on 10.11.1992. Driver of the car lost his life in the accident and the car was totally damaged. Total damage of the car was also proved by surveyor who recommended payment of an amount of Rs.90,000/- to the plaintiff. However, claim of the plaintiffs stands repudiated vide communication dated 25.10.1993. Plaintiff claimed that repudiation of the claim was illegal and cannot be sustained and thus sought recovery

of an amount of Rs.1,10,000/- as a claim under the insurance policy.

3. Defendant contested the suit, denying ownership of the plaintiff qua vehicle in question. However, insurance of the vehicle was admitted. Accident was also admitted. Repudiation of the claim was defended claiming that there was a breach of the policy as driver at the valid point of time was not holding legal and valid driving license. The license possessed by the driver was a forged and fabricated one.

4. The suit filed by the plaintiff was put to trial framing following issues:-

> "1. Whether plaintiff was owner of the car, which was involved in the accident? OPP
>
> 2. Whether plaintiff is entitled to recover the amount of insurance all alleged? OPP.
>
> 3. Whether civil Court has no jurisdiction to try the suit? OPD.
>
> 4. Whether suit is not maintainable in the present form? OPD."

5. Issue No.1 was decided in favour of the plaintiff holding that he is the registered owner of the vehicle in question. Issue No.2 was decided holding that the plaintiff is entitled to recovery of an amount of Rs.90,000/-. Issues No.3 and 4 were decided in favour of the plaintiff. Consequently, suit was decreed and plaintiff was held entitled to recover Rs.90,000/- alongwith interest @ 12% per annum from 10.11.1992 i.e. the date of the accident till date of actual realization.

6. In appeal preferred by the defendant, findings recorded by the Trial Court have been reversed. Lower Appellate Court held that the driving license of the deceased Shamshad Ali was found to be a forged and fabricated. It being a case of breach of insurance policy,

plaintiff was not entitled for any relief as the defendant has rightly repudiated his claim being in breach of the conditions of insurance policy.

7. Counsel for the appellant while assailing impugned order submits that it has come on record that the deceased was employed as a driver with some other person and the plaintiff used to engage him occasionally. The driving license of the deceased was brought on record which *prima facie* shows that the same has been issued by Regional Transport Authority, Cuttack. There was no reason for the plaintiff to doubt the veracity of the driving license as the deceased-driver was already employed regularly with the person known to him. Thus, it is a case wherein despite due diligence, plaintiff was not able to find that the driver was having fake license.

8. Trite it is that mere absence, fake or invalid driving license or disqualification of the driving license are not the defences available to the insurer against the insured and in order to repudiate his claim, insurer is under an obligation to prove that the insured was guilty of negligence and failed to exercise reasonable care. There being no evidence to the aforesaid facts, the impugned judgment and decree passed by the Court below is in the teeth of law laid down by Supreme Court in the case of ***National Insurance Co. Ltd vs Swaran Singh & Ors*** reported as ***2004 (3) SCC 297.***

9. *Per contra,* counsel for the respondent-insurer however submits that there is evidence on record to prove that the driver was carrying fake driving license. It being a case of breach of insurance policy, Lower Appellate Court has rightly non-suited the plaintiff and

dismissed the suit.

10. I have heard counsel for the parties and have carefully gone through the records of the case.

11. The fact that the driver was carrying fake driving license stands proved on record. The issue that arise for consideration of this Court is:

> *(i) Whether the vehicle being driven by a person carrying fake driving license is a reason sufficient to repudiate the claim of the insured by the insurer.*

12. The issue is no more *res integra* and the same stands settled by Supreme Court. Supreme Court in the case of ***Swaran Singh (supra)*** held as under:-

> "110. (iii) …. 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."

13. The aforesaid view was further followed in ***Nirmala Kothari vs. United India Insurance Co. Ltd. 2020 (2) RCR (Civil) 150***, wherein the Supreme Court held as under:-

> "While hiring a driver the employer is expected to verify if the driver has a driving licence. If the driver produces a licence which on the face of it looks genuine, the employer is not expected to further

investigate into the authenticity of the licence unless there is cause to believe otherwise. If the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving licence there would be no breach of Section 149(2)(a)(ii) and the Insurance Company would be liable under the policy. It would be unreasonable to place such a high onus on the insured to make enquiries with RTOs all over the country to ascertain the veracity of the driving licence. However, if the Insurance Company is able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive, the insurance company would no longer continue to be liable."

14. In view of the aforesaid dictum of law laid down by Supreme Court, the following proposition emerges:-

(i) mere absence, fake or invalid driving license or disqualification of the driver for driving at the relevant time are not in themselves defences available to the insurer;

(ii) 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 vehicle by a duly licensed driver;

(iii) in order to discharge the aforesaid onus, insurer is required to prove that the owner/insured was aware that the license was fake or invalid and still permitted the person to drive.

15. Applying the aforesaid parameters to the present case, it is evident from statement of plaintiff who appeared as PW-1 that the driver of the car was a driver by profession. The insurer was satisfied

that he was holding a driving license, photocopy of which was supplied by the plaintiff to the insurer. He further specifically stated in his cross-examination that the plaintiff used to engage him as a driver as and when his services was required by him. There is no suggestion put to him that he knew that the license was fake, yet engaged him. The evidence brought on record by the insurer is also to the effect that the driving license was fake and there is no evidence, ocular or documentary, which can lead to the inference that the driver was engaged by the plaintiff despite knowing that he was in possession of a fake driving license.

16. In view of above, this Court finds that the judgment passed by the Lower Appellate Court is in the teeth of dictum of law laid down by Supreme Court in the case of ***Swaran Singh (supra)***, further followed in the case of ***Nirmala Kothari (supra)*** and the same thus deserves to be set aside.

17. As a sequel of the discussion held hereinabove, findings recorded by the Lower Appellate Court on issue No.2 are hereby reversed and that recorded by the Trail Court are restored.

18. Appeal is hereby allowed. Judgment and decree dated 03.01.1997 passed by the Trial Court is ordered to be restored.

19. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

18.10.2024
Dinesh

Whether speaking/reasoned : Yes
Whether Reportable : Yes