IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

129 **FAO No.6764 of 2023 (O&M)**
Reserved on : 21.02.2024
Date of Decision : 11.03.2024

Gagandeep Singh ...Appellant

VERSUS

Manpreet Kaur and Others ...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. K.S. Brar, Advocate for the appellant.

ALKA SARIN, J.

CM-23619-CII-2023

This is an application for condonation of 863 days delay in refiling the appeal. For the reasons stated therein, the application is allowed and the delay in refiling the appeal is condoned.

FAO-6764-2023

1. The present appeal has been filed by the owner challenging the award dated 06.02.2020 passed by the Motor Accident Claims Tribunal, Bathinda (hereinafter referred to as the 'Tribunal') granting recovery rights to the Insurance Company.

2. The only argument raised by learned counsel for the appellant in the present case is that as per the law laid down by the Supreme Court in the case of **Pepsu Road Transport Corporation vs. National Insurance Company [2013(4) RCR (Civil) 273]** even though the driver may have possessed a fake driving licence, however, the Insurance Company is liable

to pay the compensation and not the owner of the vehicle. Learned counsel for the appellant would further contend that the owner has to only satisfy himself that the driver had a valid driving licence and once the owner had satisfied himself, the liability would be of the Insurance Company

3. I have heard learned counsel for the appellant.

4. In the present case the Tribunal had held that the driver of the offending vehicle had failed to show that he was holding a driving licence which was effective on the day of the accident. Though learned counsel for the appellant has not assailed the findings qua the validity of the driving licence, however, it has been argued that the liability could not have been fastened on the owner. The judgment relied upon by learned counsel for the appellant would be of no avail to the appellant inasmuch as in the present case the owner of the offending vehicle had not stepped into the witness-box. Hon'ble Supreme Court in the case of **Pepsu Road Transport Corporation** (supra) has held 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 licenced. 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."

5. Though it has been argued by learned counsel for the appellant that once the owner had satisfied himself that the driver had a valid driving licence the liability would be of the insurer i.e. the Insurance Company, the said argument cannot be accepted in view of the fact that the owner did not

step into the witness-box. Had the owner stepped into the witness-box and stated that while hiring the driver he had checked the driver's driving licence and was satisfied that the same was a valid licence, then the same would have been sufficient to fasten the liability on the Insurance Company. However, in the absence of the same no benefit can be drawn from the said judgment.

6. In view of the above, I do not find any merit in the present appeal which is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

11.03.2024
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO