**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

219 **FAO-1412-2007 (O&M)**
Date of Decision: September 26, 2024

M/s New Sutlej Transport Co. Pvt. Ltd. ....Appellant

Vs.

Smt. Chinno and others ....Respondents

219-A **FAO-1413-2007 (O&M)**
Date of Decision: September 26, 2024

M/s New Sutlej Transport Co. Pvt. Ltd. ....Appellant

Vs.

Charan Ram and others ....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Rajiv Joshi, Advocate and
Ms. Srishti Shukla, Advocate
for the appellant.

Mr. Anil Kumar Spehia, Advocate
for respondents No.1 and 2.

Mr. Suvir Dewan, Advocate
for respondent-Insurance Company.

SUDEEPTI SHARMA J. (ORAL)

This is an old matter pertaining to the year 2007 but no one has put in appearance on behalf of the Insurance Company.

2. Previously vide order dated 18.07.2024 in FAO No.1682 of 2007, this Court had already issued directions to the Insurance Companies that in the

event, any of their empanelled counsel fails to appear, this Court would request the counsel empanelled with the Insurance Company, who is present in the Court to assist in the matters. Further, the concerned Insurance Companies were directed to disburse the current scheduled fees to the counsel engaged by this Court for assisting in the matters.

3. On the asking of the Court, Mr. Suvir Dewan, Advocate accepts notice on behalf of respondent-Insurance Company.

4. Learned counsel for the appellants has handed over copy of the paper-book alongwith relevant record to the learned counsel for respondent-Insurance Company-Mr. Suvir Dewan, Advocate

5. In view of the order dated 18.07.2024 passed in FAO No.1682 of 2007, the Insurance Company is directed to disburse the current scheduled fees to Mr.Suvir Dewan, Advocate, the counsel engaged by this Court in the present case.

Main appeals

This order shall dispose of the above said two appeals as identical question of law is involved therein. For brevity, facts have been taken up from **FAO-1412-2007.**

2. The instant appeals have been preferred by the owner of the offending vehicle for setting aside the award dated 13.01.2007 passed by the learned Motor Accident Claims Tribunal, Jalandhar (for short, 'the Tribunal'), whereby, the claimants were awarded compensation.

FACTS NOT IN DISPUTE

3. The brief facts of the case as mentioned in the claim petition are that on 12.1.2004, Dass Ram alongwith other persons (Smt. Baksho and Budh Ram) were going from village Bagowal, District Nawanshahr towards village

Ladhewali, District Jalandhar on new Scooter No.A/F, (Engine No. CDEBHF 46153, Chassis No. 06-CBHF 7332) on the correct left hand side of the road at a moderate speed. Budh Ram was driving the scooter, while Dass Ram and Smt. Baksho were the pillion riders. At about 9.45 a.m. when they reached on G.T.road and after crossing, both lanes of G.T.road had taken turn towards right hand side i.e Jalandhar side and they reached on the extreme left side of the road, if one proceed from Phagwara side to Jalandhar side and after taking turn, they had covered a distance of about 10 yards, in the meantime, a private bus of M/s Sutlej Transport Co. Ltd bearing registration No.PB-08-AG-1581 (hereinafter referred to as 'offending vehicle') being driven rashly and negligently by respondent No.1 came from behind i.e Phagwara side and hit against their scooter by going on the extreme left side of the road near Kacha berm. The front left side of the bus hit the rear portion of the scooter and dragged the scooter upto a distance of 10-15 yards. The fire broke in the scooter and the same was burnt on the spot. The riders of the scooter sustained burns as well as other injuries. However Smt. Baksho was crushed under the left side wheel of the bus while, Dass Ram had sustained head injury besides burns injuries. Unfortunately Smt. Baksho and Dass Ram died on the spot on account of injuries sustained by them in the accident. Budh Ram was taken to Civil Hospital, Phagwara but he died on reaching 'the Civil Hospital, Phagwara on account of injuries sustained by him.

4. Upon notice of the claim petition, respondents appeared and denied the factum of accident/compensation.

5. From the pleadings of the parties, the Tribunal framed the following issues:-

1. Whether Dass Ram has died in a motor vehicle accident caused by Ram Pal, respondent No.1 while driving bus bearing registration No.PB-08-AG-1581 negligently on 12.01.2004 rashly and in the jurisdiction of P.S Sadar, Phagwara? OPP

2. Whether Smt. Baksho has died in a motor vehicle accident caused by Ram Pal, respondent No.1 while driving bus bearing registration No.PB-08-AG-1581 rashly and negligently on 12.1.2004 in the jurisdiction of P.S. Sadar Phagwara? OPP

3. Whether claimants are entitled to compensation, if so, to what amount? OPP

4. Whether Ram Pal, respondent No.1 was not holding a valid driving licence at the time of alleged accident? OPR

5. Whether Bus No. PB-08-AG-1581 was insured with National Insurance Company Ltd. Jalandhar, respondent No.3 ? OPR 1 & 2.

6. Whether scooter bearing Engine No.CDEBHF 46153, Chassis No.06-CBHF 7332 was insured with National Insurance Company Ltd Jalandhar, respondent No.4?
OPR 4

7. Who are liable to pay the amount of compensation? OPP .

8. Relief.

6. After taking into consideration the pleadings and the evidence on record,

i) **<u>in FAO-1412-2007</u>**

the learned Tribunal awarded compensation to the tune of Rs.4,04,000/-. Ram Pal-driver (respondent No.1), New Sutlej Transport Co. Pvt. Ltd.-owner (respondent No.2) were jointly and severally held liable to pay the said amount.

ii) **in FAO-1413-2007**

the learned Tribunal awarded compensation to the tune of Rs.3,65,000/-. Ram Pal-driver (respondent No.1), New Sutlej Transport Co. Pvt. Ltd.-owner (respondent No.2) were jointly and severally held liable to pay the said amount.

The amount of compensation was to be paid by Insurance Company to the claimants at the first instance which was to be recovered from respondents No.1 and 2 i.e. owner and driver of the offending vehicle. Hence, the present appeal.

SUBMISSIONS OF THE COUNSELS FOR THE PARTIES

7. The learned counsel for the appellants contends that the Ld. Tribunal has erred in law as well on facts while fastening the entire liability on the appellant/owner of offending vehicle. He further contends that Ld. Tribunal has overlooked the fact as emanates from the record that the licence of the driver stood duly renewed by the competent authority following the due procedure as required by the Motor Vehicles Act, 1988 and Rules therein.

i) Learned counsel for the appellant has placed reliance on the judgment passed by Hon'ble the Apex Court in Civil Appeal No.2387 of 2001 titled as ***'New India Assurance Co.Vs. Kamla', 2001(4)SCC 342.*** The relevant portion of the same is as under:-

> *"24. The principle laid down in the said decision has been followed by a three-Judge Bench of this Court with approval in Sohan Lal Passi v. P. Sesh Reddy and ors., 1996(5) SCC 21.*
>
> *25. The position can be summed up thus the insurer and insured are bound by the conditions enumerated in the policy and the insurer is not liable to be insured if there is*

violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence. Learned counsel for the insured contended that it is enough if he establishes that he made all due enquiries and believed bona fide that the driver employed by him had a valid driving licence in which case there was no breach of the policy condition. As we have not decided on that contention it is open to the insured to raise it before the Claims Tribunal. In the present case, if the Insurance Company succeeds in establishing that there was breach of the policy condition, the Claims Tribunal shall direct the insured to pay that amount to the insurer. In default the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimants-third parties) from the insured person.

ii). He has further placed reliance on the judgment passed by Hon'ble the Apex Court in Special Leave Petition (C) No.2023 INSC 954, titled as '***IFFCO General Insurance Co. Ltd. Vs. Geeta Devi and others'.*** The relevant portion of the same is as under:-

13. More recently, in Ram Chandra Singh v. Rajaram and others (2018) 8 SCC 799, the issue before this Court was whether an insurance company could be absolved of liability on the ground that the insured vehicle was being driven by a person who did not have a valid driving licence at the time of the accident. This Court found that no attempt was made to ascertain whether the owner was aware of the fake driving licence possessed by the driver and held that it is only if the owner was aware of the fact that the licence was fake but still permitted such driver to drive the vehicle *that the insurer would stand absolved. It was unequivocally held that the mere fact that the driving licence was fake, per se, would not absolve the insurer.*

14. Applying the aforestated edicts to the case on hand, it may be noted that the petitioner- insurance company did not even raise the plea that the owner of the vehicle allowed Ujay Pal to drive the vehicle knowing that his licence was fake. Its stand was that the accident had occurred due to the negligence of the victim himself. Further, the insurance policy did not require the vehicle owner to undertake verification of the driving licence of the driver of the vehicle by getting the same confirmed with the RTO. Therefore, the claim of the petitioner-insurance company that it has the right to recover the compensation from the owners of the vehicle, owing to a willful breach of the condition of the insurance policy, viz., to ensure that the vehicle was driven by a licenced driver, is without pleading and proof.

15. As already pointed out supra, once a seemingly valid driving licence is produced by a person employed to drive a vehicle, unless such licence is demonstrably fake on the face of it, warranting any sensible employer to make inquiries as to its genuineness, or when the period of the licence has already expired, or there is some other reason to entertain a genuine doubt as to its validity, the burden is upon the insurance company to prove that there was a failure on the part of the vehicle owner in carrying out due diligence apropos such driving licence before employing that person to drive the vehicle. Presently, no evidence has been placed on record whereby an inference could be drawn that the deceased vehicle owner ought to have gotten verified Ujay Pal's driving licence. Therefore, it was for the petitioner-insurance company to prove willful breach on the part of the said vehicle owner. As no such exercise was undertaken, the petitioner-insurance company would have no right to recover the compensation amount from the present owners of the vehicle. The impugned order passed by the

Delhi High Court holding to that effect, therefore, does not brook interference either on facts or in law."

Therefore, he prays that the award may be set aside and the present appeals be allowed.

8. *Per contra*, learned counsel for the respondent Insurance Company, however, vehemently argues that the Ld. Tribunal has rightly made respondents No.1 and 2 liable and granted the recovery rights to the Insurance Company to recover the amount from owner and driver of the offending vehicle. Therefore, he prays for dismissal of the present appeal.

9. I have heard learned counsel for the parties and perused the whole record of this case.

10. The relevant portion of the award vide which respondents No.1 and 2 are made liable is reproduced as under:-

> *"27. On the other hand, ld.counsel for respondents no.1 and 2 has argued that the claimants are not entitled to claim any compensation as the scooter in question was being driven by one person and there were two pillion riders and they violated the provisions of the Motor vehicle Act. Being three riders, they themselves were negligent. A tin of biscuits was kept near the brakes of the scooter which fell on the brakes and the scooter rider could not apply the brakes and due to his own fault, caused the accident. The deceased came underneath the rear tyre of the bus in question and they are not entitled to claim any compensation as tripple riding is not allowed. The bus was going at a very slow speed and was on its correct side but the scooterist due to the rash and*

negligent act, came before the bus and did not apply the brakes on the turning and due to their own negligence caused the accident. The driver was never negligent and respondent no.1 and 2 are not liable to pay any compensation. The bus was also insured with respondent insurance company and the liability fell on the insurance company.

28. On behalf of the respondent insurance company, it has been argued that respondent no.1 was not holding a legal and valid licence and he has got the license renewed from DTO Jalandhar deposed by RW Kulwant Kaur but as the original. license was fake and a report was called and the report Ex R1 proves the same. The report was also called by this Tribunal from the DTO Kamroop, Guahati (Assam) and it was stated that the driving liçense no. 17642/91-92 was not issued from their office. It has been argued that in case the insurance company pays the compensation amount, then the insurance company is liable to recover the same from the driver and the owner of the bus in question. Only one pillion rider is permitted and not two pillion riders and the scooter was being driven against the terms and conditions of the policy and the insurance company is not liable to pay the compensation xxxxxxxxxxxxxxxx

xxxxxxxxxxxxxxxThe bus in question was admittedly insured vide policy Ex R2. RW Kulwant Kaur, Clerk DTO office, Jalandhar brought the summoned record relating to the *licence issued to Ram Pal and proved the endorsement/report Ex.R1. As per the licence of respondent Ram Pal was renewed whereas the original licence no.was 17642/Guahati/91-92 as per their record. A report was called by this Tribunal from the District Transport Officer, Kamroop, Guahati (Assam) vide letter no.2877/Ahlamad dated 28.9.05 and the report was received that driving licence no.17642/91-92 (Guahati) was not issued from their end. Thus the original licence of respondent Ram Pal was a fake and invalid licence and in such circumstances if the insurance company pays the compensation amount, then it is entitled to recover from the driver and owner of the offending vehicle ile the bus in the present case.*

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31. Applying the preposition of law to the facts and circumstances of the present case, the insurance company of the bus is not liable to pay the compensation to the legal heirs/dependents of deceased Baksho and Dass Ram but the insurance Company is liable legal to pay the compensation to the heirs/dependents of Budh Ram deceased. However, respondents no.1 and 2 are liable to pay the compensation to all the legal heirs/dependents of Budh Ram deceased, Baksho and Dass Ram and in case the insurance company pays the compensation to the legal heirs of Budh Ram, then it would be liable to recover the same from respondents no.1 & 2.).

36. xxxxxxxxxxx Claimant Chhino is entitled to recover this compensation amount from respondents no.1 & 2 being the driver and owner of the offending bus. Since Dass Ram, was a pillion rider and gratuitous passenger as such, Smt.Chhino claimant is not entitled to claim any compensation from respondent National Insurance Company i.e. the insurer of the offending bus.

Xxxxxxxxxx Claimant Smt.Chhino and respondent Rajinder Kaur in claim petition no.29/05 are entitled to compensation to the tune of Rs.4,04,000/- in equal shares from respondents no.1, 2 & 3 being the driver, owner and the insurance company of the offending bus and they are liable to pay the compensation jointly and severally. However, respondent no.4 National Insurance Company is not liable to pay any compensation. In this case, in case the respondent no.3 National Insurance Company pays the compensation amount to the claimants Smt. Chhino and Smt.Rajinder Kaur, then respondent no.3 National Insurance Company will be entitled to recover the said amount from respondents no.1 & 2 being driver and owner of the bus in question xxxxxxxxx"

11. A perusal of the above shows that RW-Kulwant Kaur deposed that licence was got renewed from DTO, Jalandhar. As referred to in the above mentioned relevant portion, report was called by the Ld. Tribunal from DTO Kamroop Guahati (Assam) vide letter No.2877/Ahlamad dated 28.9.2005 and it was stated that driving licence No.17642/91-92 (Guahati) was not issued from

their office. RW-Kulwant Kaur, Clerk of DTO office Jalandhar brought the summoned record relating to licence issued to Ram Pal and proved the endorsement/report Ex.R-1.

12. A perusal of the record further shows that licence of the driver was renewed from time to time by competent authority following the due procedure laid down under the Motor Vehicles Act, 1988 and Rules. Further perusal of the award reveals that the appellant took all reasonable care and on that basis, he employed the driver. There was no evidence whatsoever brought on the record to prove that the owner had knowingly and willfully allowed the driver to drive the vehicle in question, despite having the knowledge that his license was a fake one.

13. Hon'ble Supreme Court in **Rishi Pal Singh versus New India Assurance Co. Ltd. and others, SLP (Civil) NO.24933 of 2019** has held that the owner of the vehicle is expected to verify the driving skills and not run to the licensing authority to verify the genuineness of the driving licence before appointing a driver. Therefore, once the owner is satisfied that the driver is competent to drive the vehicle, it is not expected from the owner thereafter to verify the genuineness of the driving licence issued to the driver.

14. Further, the Hon'ble Supreme Court in **Pepsu Road Transport Corporation versus National Insurance Company, 2013 (9) SCR 266** 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 licensed. 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."

15. On the touchstone of hearinabove discussed findings and judicial precedent, the award dated 13.01.2007 passed by Ld. Tribunal, Jalandhar stands vitiated by a complete absence of application of judicial mind to the extent that the respondents No.1 and 2 were held jointly and severely liable to pay the compensation.

16. In view of the above, the present appeals are allowed and the award dated 13.01.2007 passed by ld. Tribunal Jalandhar is modified to the extent that respondent No.3-Insurance Company shall be solely liable to pay the amount of compensation.

17. Before parting with the judgment, this Court extends its appreciation to Mr. Suvir Dewan, Advocate, for his able assistance to the Court in the present matter.

18. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

26.09.2024
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Whether speaking/non-speaking : Speaking
Whether reportable : Yes /No