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

209 **FAO-3902-2007 (O&M)**
Date of Decision: October 15, 2024

Mehar Singh and another **......Appellants**

Vs.

Oriental Insurance Co. Ltd and others **....Respondents**

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Madan Lal Saini, Advocate
for the appellants.

Mr. Suvir Dewan, Advocate
for respondent No.1-Insurance Company.

SUDEEPTI SHARMA J. (ORAL)

1. The instant appeal has been preferred by the owner and driver of the offending vehicle for modifying the award dated 09.09.2006 passed by the learned Motor Accident Claims Tribunal, Fatehgarh Sahib (for short, 'the Tribunal'), whereby the claimants were awarded compensation of Rs.3,23,800/- along with interest @ 9% per annum.

FACTS NOT IN DISPUTE

2. The brief facts of the case as mentioned in the claim petition are that on 8.10.2004 at about 3:30 p.m., Deep Kaur (since deceased) was going on foot after doing labour work in the grain market on the road leading from Tower to the main gate in the grain market Sirhind. She was going on the left side of the road. In the meantime, a truck bearing registration No.HR-37-A-4939 (hereinafter referred to as 'offending

vehicle') came at a fast speed from behind and struck against Deep Kaur (deceased). As a result of this accident, she died at the spot.

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

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

> *"1. Whether Deep Kaur died due to an accident which had taken place on 8.10.2004 at about 3.30 pm on road leading from Tower to the main gate in the grain market, Sirhind due to rash and negligent driving of Mehar Singh while driving truck No. HR 37-A-4939?OPP*
>
> *2. Whether respondent no.1 was not holding a valid driving license at the time of the accident? if so, its effect?OPR*
>
> *3. Whether the claimants are entitled to receive compensation, if so, to what and from whom?OPP*
>
> *4. Relief."*

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the tune of Rs.3,23,800/-, along with interest @ 9% per annum and Mehar Singh-driver (respondent No.1), Mohinder Singh-owner (respondent No.2) were jointly and severally held liable to pay the said amount. Since the vehicle was insured with respondent No.3-Oriental Insurance company Ltd., initially respondent No.3/Insurance Company was directed to make

payment of compensation with the liberty to recover the amount of compensation payable to the claimants from the respondents No.1 and 2. Hence, the driver and owner-respondents No.1 and 2 filed the present appeal.

SUBMISSIONS OF THE COUNSELS FOR THE PARTIES

6. The learned counsel for the appellants contends that the present appeal has been filed challenging the award passed by the Ld. Tribunal, whereby recovery rights have been given to the insurance Company. He further contends that the owner appeared in the witness box as RW-2 and deposed that he had employed Mehar Singh-respondent No.1 on his truck bearing registration No.HR-37-A-4939 as driver four years ago. He had conducted driving test of Mehar Singh and had ensured that he had verified his driving licence. Since, he verified the licence of respondent No.1-Mehar Singh therefore, the Tribunal has wrongly granted the recovery rights to the Insurance Company and prays that the award may be set aside and the appeal be allowed.

7. *Per contra*, learned counsel for the respondent No.3-Insurance Company, however, vehemently argues that the Ld. Tribunal has rightly granted the recovery rights to the Insurance Company to recover the amount from owner and driver of the offending vehicle. The driving licence was valid for 23 years and it was rightly observed by the Ld. Tribunal that driving licence was apparently fake. Therefore, the Insurance Company was not made liable to pay the compensation by the Ld. Tribunal. He prays for dismissal of the appeal.

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

9. A perusal of the record shows that Ex. R-2 is the report made by the office of District Transport Officer on 29.9.2005 wherein it was reported that driving licence in question did not exist.

10. Ex. RY is the report regarding the driving licence of respondent No.1, which was placed on record by the respondents (appellants herein) wherein it was reported that the driving licence was genuine but the report was undated.

11. Ex. R-1 is the driving licence of respondent No.1 for HTV only, which was issued on 05.06.1986 and was valid upto 29.05.2005 i.e. for a period of 19 years, whereas as per Section 14 sub clause 2 of the Motor Vehicle Act the driving license or renewal under this Act, in case of license to driver transport vehicle shall be effective for a period of three years.

12. The relevant portion of the award dated 09.09.2006 is reproduced as under:-

> *12. Learned counsel for the Insurance company has argued that the driver of the offending vehicle was not holding a valid driving license at the time of the accident. In support of his argument, learned counsel placed reliance on Ex. R2 and R3 verification reports. Driving license for H.T.V. could not be issued for 23 years.*
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> *13. Learned counsel for respondents no.1 and 2 has argued that the driver of the offending vehicle was holding a valid*

driving license at the time of the accident and placed reliance on verification report Ex.RX.

14. As per Ex. R2 report made by District Transport Officer on 29.9.2005 the driving license in question did not exist. On the other hand, as per report Ex. RY placed on record by the learned counsel for respondents no.1 and 2 the driving license in question was genuine and said report is un-dated. Perusal of Ex.R1 reveals that the same was allegedly issued on 5.6.1986. Driving license is valid up to 29.5.2005 issued in the name of Mehar Singh son of Manju Ram. Date of birth of Mehar Singh is given as 22.9.57. As per Section 14 sub clause 2 of the Motor Vehicle Act the driving license or renewal under this Act, in case of license to driver transport vehicle shall be effective for a period of three years. Driving License Ex. R1 had allegedly been issued for 23 years for HTV and as such it is a fake driving license on the face of it. Therefore, no reliance can be placed on the report of Transport Authority placed on record by respondents no.1 and 2 Ex. RX.

15. RW2 Mohinder Singh deposed that he was owner of the offending vehicle and had employed Mehar Singh to drive the truck for about 4 years ago. He had taken a driving test of Mehar Singh and had ensured that he had a valid driving license. Said witness in his cross-examination deposed that he was doing work of agriculture and transport. He himself also drove the truck and had got a valid driving license for HTV. Thus, it cannot be said that the owner of the offending truck had no knowledge with regard to the period for which driving license for HTV is issued. Owner himself was driving the truck and is running the business of transport. As such, in the facts and circumstances of the present case it is evident that owner *of the truck had not taken due care to verify the genuineness of the driving license Ex R1 which on the face of it appears to be fake. As such, it cannot be said that the owner of the vehicle was not guilty of infringing the conditions of the Insurance policy. In these circumstances, keeping in view the law laid down by the Hon'ble Supreme Court of India in National Insurance Compeny Limited Vs. Swaran Singh and others, Shimla Law Journal Page 983, Insurance company is directed to satisfy the award in the first instance and would be at liberty to recover the amount from the owner and driver of the vehicle afterwards. This issue is disposed of accordingly."*

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 9.9.2006 passed by Ld. Tribunal, Fatehgarh Sahib stands vitiated by a complete absence of judicial application of mind to the extent that the respondents No.1 and 2 were held jointly and severly liable to pay the compensation.

16. In view of the above, the present appeal is allowed and the award dated 9.9.2006 passed by ld. Tribunal Fategarh Sahib is modified to the extent that respondent No.3-Insurance Company shall be solely liable to pay the amount of compensation.

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

(SUDEEPTI SHARMA)
JUDGE

October 15, 2024
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Whether speaking/non-speaking : Speaking
Whether reportable : Yes