In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

FMA No.224 of 2021
Sunita Pramanik & Ors.
vs.
ICICI Lombard General Insurance Co. Ltd. & Anr.

Mr. Saidur Rahaman
… for the appellant/claimant

Mr. Parimal Kumar Pahari
… for the respondent No.1/insurance company.

Heard on: 3rd January, 2025.

Judgment on: 3rd January, 2025.

Ananya Bandyopadhyay, J:-

1. The Learned Advocates representing the appellants/claimants as well as respondent No.1/insurance company are present.
2. The instant appeal had been preferred by the appellants/claimants against the judgment and award dated 31st July, 2019 passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track Court-3, Berhampore, Murshidabad in M.A.C. Case No. 490 of 2014.
3. An application under Section 163A of the Motor Vehicles Act was filed by the appellants/claimants on account of the death of the victim in an accident which occurred on 13th September, 2014 at about 8.30 p.m. with the involvement of the offending vehicle being one Bolero Van bearing Registration No. WB-57B/6649 which approached from Berhampur towards Morgram and collided with the victim at an exceeding speed driven recklessly resulting in the death of the victim at Berhampure Medical Collage and Hospital on 26th September, 2014.
4. The Learned Tribunal after recording the evidence, disposed of the issues framed and awarded a sum of Rs.4,17,500/- along with an interest @ 6%

per annum from the date of filing of the claim application i.e. 11.11.2014 till the realization of the awarded amount.

5. The compensation was to be paid by the owner of the offending vehicle considering the observation as mentioned in disposing of issue No.3 framed by the learned Tribunal. The learned Tribunal opined that the driving licence marked as Ext. A series along with other documents marked as Ext. B series appeared to be faked and exonerated the respondent No.1/insurance company to disburse the compensation in favour of the claimants/appellants.

6. The Hon'ble Supreme Court held the following in **IFFCO Tokio General Insurance Co. Ltd. v. Geeta Devi**[1]

> *12. Thereafter, in National Insurance Co. Ltd. v. Swaran Singh, a 3-Judge Bench of this Court dealt with the interpretation of Section 149 of the Act of 1988. The cases before the Bench involved, amongst others, instances where the driving licence produced by the driver or owner of the vehicle was a fake one. The Bench noted that Section 149(2)(a) opened with the words:'that there has been a breach of a specified condition of the policy', which would imply that the insurer's defence of the action would depend upon the terms of the policy. It was observed that an insurance company which wished to avoid its liability is not only required to show that the conditions laid down in Section 149 (2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. Such a breach on the part of the insured must be established by the insurer to show that the insured used or caused or permitted to be used the insured vehicle in breach of the provisions. The Bench went on to state that where the insurer, relying upon the violation of law by the assured, takes exception to pay the assured or a third party, it must prove a willful violation of the law by the assured. Noting that the proposition of law is no longer res integra that the person who alleges breach must prove the same, the Bench observed that an*

[1] 2023 SCC OnLine SC 1398

insurance company would be required to establish the said breach by cogent evidence and in the event an insurance company fails to prove that there has been breach of the conditions of the policy on the part of the insured, such an insurance company cannot be absolved of its liability.

13. Further, in the context of cases where the driver's licence was found to be fake, the Bench observed that the question would be whether the insurer could prove that the owner was guilty of willful breach of the conditions of the insurance policy. It was pointed 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 company 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 would have to be determined in each case. The earlier decision in United India Insurance Co. Ltd. v. Lehru[4] was considered and the Bench observed that the ratio therein must not be read to mean that an owner of a vehicle can, under no circumstances, have any duty to make an inquiry with regard to the genuineness of the driving licence and the same would again be a question which would arise for consideration in each individual case. The argument that the decision in Lehru (supra) meant that, for all intent and purport, the right of the insurer to raise a defence that the licence was fake was taken away was, however, rejected as not being correct and it was held that such a 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. The findings summed up by the Bench, to the extent presently relevant, are as under:

'(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has 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 the 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 a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, 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 the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances 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 the 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 insurer 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.'

14. More recently, in Ram Chandra Singh v. Rajaram, 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.

The Hon'ble Supreme Court held the following in ***National Insurance Co. Ltd. v. Swaran Singh***[2]:-

[2] (2004) 3 SCC 297

Where the driver's licence is found to be fake

92. *It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of the wilful breach of the conditions of the insurance policy or the contract of insurance. In Lehru case [(2003) 3 SCC 338 : 2003 SCC (Cri) 614] the matter has been considered in some detail. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of the law in terms whereof the insurer is to establish wilful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or for the owners to be absolved from any liability whatsoever. We would be dealing in some detail with this aspect of the matter a little later.*

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(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has 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 the 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 a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, 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.

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(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 the 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 insurer 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.

7. In view of the judgment of the Hon'ble High Court in Urmilla Halder v. The New India Assurance Company Ltd. and the same being affirmed by the Supreme Court on 08/02/2024 and the notification dated 22nd May, 2018, the appellants/claimants are entitled to Rs.5,00,000/- of just compensation with regard to second schedule 1(a) and notification dated 22nd May, 2018 and also the aforesaid observations of the High Court at Calcutta and the Hon'ble Supreme Court.

> *"Fatal Accidents:*
>
> *Compensation payable in case of Death shall be five lakh rupees."*

8. The appellants/claimants are entitled to receive the balance amount of Rs. 5,00,000/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.
9. The learned advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 5,00,000/- along with an interest as aforesaid before the office of the learned Registrar General, High Court Calcutta within four weeks from the date of passing of this order.
10. The respondent No.1/insurance company is to recover the same from the owner of the offending vehicle being respondent No.2 on proper evidence that the driving licence marked as Ext. A series had been faked.
11. The office of the Registrar General, High Court, Calcutta shall encash the cheques and thereafter disburse the same to the present

appellants/claimants in the award passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track Court-3, Berhampore, Murshidabad in M.A.C. Case No.490 of 2014 on proof of proper identification of the appellants/claimants subject to payment of *ad valorem* Courts fees.

12. The instant appeal is disposed of accordingly.

13. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

c.m.

(Ananya Bandyopadhyay, J.)