

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1180 of 2022

**FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

Approved for Reporting	Yes	No
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RELIANCE GENERAL INSURANCE CO LTD
Versus
MULCHAND KUNCHAND KHUHA & ANR.

Appearance:

MS KIRTI S PATHAK(9966) for the Appellant(s) No. 1
MR NISHIT A BHALODI(9597) for the Defendant(s) No. 1
RULE SERVED for the Defendant(s) No. 2

CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

**Date : 19/11/2025
ORAL JUDGMENT**

[1.0] This appeal has been preferred by the appellant–original opponent No.2 – Reliance General Insurance Co. Ltd. against the judgment and award dated 31.03.2021 passed by the learned Motor Accident Claims Tribunal (Auxi.), at Rajula, District Amreli (for short referred to as “learned Tribunal”) in Motor Accident Claim Petition No.10 of 2016 filed under Section 166 of the Motor Vehicles Act, 1988 (for short referred to as “MV Act”) wherein the learned Tribunal has partly allowed the claim petition of respondent No.1 and awarded compensation of Rs.3,20,880/- with interest at the rate of 8.5% per annum from the date of the claim petition.

[2.0] Heard learned advocates for the respective parties. Though served, none appears for respondent No.2.

[3.0] The brief facts of the present claim petition are that the accident took place on 30.03.2016, when the respondent No.1 – original claimant was coming from Mahuva to Rajula in his Alto Car and reached between village Victor and Dataradi at about 8.30 p.m., from the opposite direction, driver of Truck No.GJ-04-X-6410 came with full speed and dashed with the car of the original claimant pursuant to which the original claimant sustained serious injuries on face and head and on other parts of the body. In this regard, a complaint was lodged with Marine (Pipavav) Police Station bearing I-CR No.15/2016.

[4.0] Learned advocate Ms. Kirti Pathak appearing for the appellant has submitted that the learned Tribunal has materially erred in not appreciating the defence of fabricated license raised by the insurance company though it was proved by the appellant – insurance company that the driver of Truck No.GJ-04-X-6410 was not holding valid and effective license, which was produced at Marks 5/5 and 5/6 and in light of the said document, insurance company ought to have been exonerated. Further, the insurance company had also examined one Devangbhai Bhikhubhai Parikh, Legal Manager and employee of the appellant – insurance company vide Exh.24 and established that the driver of the offending Truck namely Ajitkumar Sudarshan Yadav was driving the Truck without any driving license and thus has breached the terms and conditions of the insurance policy. Hence, she has requested to allow the appeal.

[4.1] She has alternatively submitted that in the event of passing an order of Pay and Recover, as the owner failed to step into the

witness box, though served and has not disclosed the fact about license though he is duty bound and thus, the insurance company has proved the defence. Hence, she has requested to pass an order of Pay and Recover the amount of compensation from the owner of the offending vehicle. She has relied on the decision of the Hon'ble Supreme Court in the case of **Pappu and Others vs. Vinod Kumar Lamba and Another** reported in **(2018) 3 SCC 208** and argued that if the offending vehicle is driven by unauthorized person or having no any valid or effective driving license, then the insurance company is required to be exonerated and said defence is available to the insurance company which is already pleaded and proved by the insurance company.

[5.0] Learned advocate Mr. Nishit Bhalodi appearing for the original claimant has opposed the appeal on the ground that the original claimant is a third party who has nothing to do with the fact as to whether the driver of offending vehicle was holding valid and effective license or not. He has further submitted that the learned Tribunal has properly appreciated the evidence and no any evidence is produced before the learned Tribunal with regard to the fact that the license was fake and defence is also not proved. Hence, original claimant is entitled to get the compensation as awarded by the learned Tribunal. Hence, he has requested to dismiss the present appeal.

[6.0] As the appellant – original opponent No.2 has not challenged the impugned judgment and award on the ground of quantum of compensation or on any other ground but only the question of “fabricated license” of the driver of offending vehicle Truck is

raised, present appeal is considered in narrow compass.

[7.0] Having heard learned advocate appearing for the respective parties and perusing the evidence on record, it appears that on the date of accident, the driver of the offending vehicle was having no any valid or effective license. In order to prove the said defence, the insurance company has examined one Devangbhai Parikh, Legal Manager of appellant – insurance company at Exh.24, who has stated that the offending Truck was being driven by the driver Ajitkumar Yadav, at the time of accident, without holding valid and effective license and thus, he has committed breach of terms and conditions of the insurance policy. If we peruse the evidence of said witness, more particularly his cross-examination, it appears that he has stated that he was not having the personal knowledge about the evidence as he is serving with the appellant – insurance company only since last 3 years and has further admitted that he cannot give opinion regarding the driving license and he has further stated voluntarily that he cannot say as to whether the driving license was fake or not. Further, he has admitted that neither he nor his company has given any notice to the driver or the owner of the offending Truck to produce the driving license.

[7.1] Perusing the said evidence, the learned Tribunal come to the conclusion that merely production of document or evidence at Mark 5/2 would not be helpful as the insurance company has failed to prove that on the date of accident, Ajitkumar Yadav – driver of the offending vehicle Truck was not having any valid or effective license. To prove the said fact, the insurance company has not led any reliable evidence from the office of the Regional Transport

Office (RTO) or elsewhere. In view of above, merely to plead in the written statement itself would not amount to defence and he who asserts has to prove the fact and in absence of any material to establish that the driver of the offending vehicle was not holding valid and effective license on the date and time of accident, the insurance company cannot be exonerated and learned Tribunal has rightly saddled the insurance company with the liability to pay the compensation and no error is committed by the learned Tribunal.

[7.2] So far as the authority relied on by the learned advocate for the appellant – insurance company in the case of Pappu and Others (Supra) is concerned, the defence is available to the insurance company but at the same time, burden to prove the defence is also on the insurance company and in the said authority it is clarified as to how the burden of proof is to be established and rebutted. Herein, in the case on hand, the insurance company has pleaded in the written statement that on the date of accident, no effective or valid driving license was there and thus there is a fundamental breach of the policy condition, which is required to be proved by the insurance company by leading evidence. If the insurance company succeeds in establishing the said defence then the insurance company is entitled to be exonerated or to get the order of Pay and Recover from the owner of the vehicle. In absence of any such evidence, the authority relied on by the learned advocate for the appellant would not avail any assistance to the appellant and hence, no case for passing of order of Pay and Recover is made out.

[7.3] Even otherwise, in case of fake driving license, owner of vehicle can, under no circumstances, have any duty to make an

inquiry with regard to genuineness of driving license and mere fact that the driving license was fake *per se* would not absolve the insurer. In this regard, reference is required to be made to the decision of the coordinate Bench of this Court in the case of **Reliance General Insurance Co. Ltd. vs. Somabhai Chaganbhai Parmar** reported in **2024 (2) GLR 1371** and decision of the Hon'ble Supreme Court in the case of **Rishi Pal Singh vs. New India Assurance Co. Ltd.** reported in **2022 ACJ 1868** wherein it has been held that the owner of the vehicle is expected to verify the driving skills of the driver before appointing him and once he is satisfied with that the driver is competent to drive the vehicle, he is not expected to verify the genuineness of the driving license of the driver. In this regard, reference is required to be made to the decision of the Hon'ble Supreme Court in the case of **Iffco Tokio General Insurance Co. Ltd. vs. Geeta Devi and Ors.** reported in **2023 SCC OnLine SC 1398**.

[8.0] In wake of aforesaid conspectus, the impugned judgment and award passed by the learned Tribunal do not call for any interference by this Court and the appeal fails in view of the fact that the appellant – insurance company has failed to prove the fundamental breach of the terms and conditions of the insurance policy which can lead to exoneration of the insurance company and hence, present First Appeal stands **dismissed**.

[9.0] The Tribunal shall disburse the entire awarded amount lying in the FDR and/or with the Tribunal, with accrued interest thereon, if any, to the claimant after fixing apportionment, if not already fixed, by account payee cheque / NEFT / RTGS, after proper

verification and after following due procedure.

[9.1] While making the payment, the Tribunal shall deduct the courts fees, if not paid, in accordance with rules/law.

[9.2] Record and proceedings, if any, be sent back to the concerned Tribunal, forthwith.

Sd/-
(HASMUKH D. SUTHAR, J.)

Ajay

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: AJAY CHANDRAN MENON(HC00939), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 20/11/2025 15:52:50