IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-1528-2007 (O&M)
Date of decision: 09.07.2025

National Insurance Company Limited ...Appellant

Versus

Sanjeev Kumar @ Sanjay and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Suvir Dewan, Advocate for the appellant.

Mr. Karan Vir Singh, Advocate for respondent No.3.

None for respondents No.1 & 2.

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SUDEEPTI SHARMA, J. (ORAL)

The case is listed before this Court for referral to the "Special Mediation Drive-Mediation 'For the Nation' List".

Learned counsel for the parties contend that the matter cannot be referred to Mediation and Conciliation Centre of this Court, since, the present appeal is filed against award dated 12.12.2006 whereby the claim petition filed by the respondent-claimant was allowed and insurance company was held liable to pay compensation.

FAO-1528-2007

1. The present appeal has been filed by the appellant-Insurance Company of the offending vehicle against the Award dated 12.12.2006 passed in the claim petition under Section 166 of the Motor Accident Claims Tribunal, Hoshiarpur (for short, 'the Tribunal'), wherein, the Ld. Tribunal allowed the claim petition filed by the claimants and held the Insurance Company liable to pay compensation.

BRIEF FACTS OF THE CASE

2. The averments made in the claim petition are that on 18.12.2002, claimant was driving Van bearing registration No. PB-32-3575 and was proceeding from Phagwara to Chabbewal, Surjit Singh, Jaswant Singh and Sital Kaur alias "Jit Kaur were travelling in the said Van. At about 8.30 AM, when they were at a short distance from Village Mukho Majara, the bus belonging to CTU bearing registration No.CH-01-G-8174 being driven in a rash and negligent manner, without blowing any horn came from Hoshiarpur side at a fast speed and when the driver of the said bus was over-taking Rehra (Cart) and in the process, brought his bus, on the wrong side of the road and struck against the Van of the claimant and as a resultant impact, the passengers travelling in the Van sustained injuries, including the claimant. The identity of the driver of the bus was revealed as Santokh Singh son of Sarwan Singh, resident of Khurdpur, who fled away from the spot, after leaving the bus at the spot, that the accident took place due to entire rash and negligent driving of Santokh Singh driver of the bus. Claimant Sanjeev Kumar alias Sanjay and other injured were initially shifted to Avtar Nursing Home but they were referred to Civil Hospital, Mahilpur, from where they had been referred to DMC Hospital, Ludhiana. On the statement of Surjit Singh, FIR No.212 dated 18.12.2002 under Sections 279,337,338, 427 IPC regarding the accident was registered at Police Station, Mahilpur.

3. Upon notice of the claim petition, appellant appeared and contested the claim petition by filing written reply denying the factum of compensation/accident.

4. From the pleadings of the parties, the Tribunal framed the

following issues:-

> *1. Whether Sanjiv Kumar received injuries as a result of accident on 18.12.2002 due to rash and negligent driving of Santokh Singh respondent No.1, driver of bus bearing Registration No.CH-01G-8172 ?OPR*
>
> *2. Whether respondent No.1 was not holding a valid driving licence at the time of accident ? OPR*
>
> *3. Whether the bus in question was not being driven according to terms and conditions of the insurance policy ? OPR.*
>
> *4. Whether the claim petition is bad for non-joinder of necessary parties ? OPR*
>
> *5. Whether the claim petition has been filed in collusion with respondents No.1 and 2, if so to what effect ? OPR.*
>
> *6. Whether the claimant is entitled to compensation, if so to what amount and from whom ? OPR.*
>
> *7. Relief.*

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the claimants. Further, the Ld. Tribunal has held the Insurance Company liable to pay the compensation. Hence, the present appeal.

<u>SUBMISSIONS OF LEARNED COUNSELS FOR THE PARTIES</u>

6. Learned counsel for the appellant–Insurance Company vehemently contends that the Learned Tribunal erred in fastening liability upon the Insurance Company to pay compensation to the claimant. It is submitted that the Insurance Company, through cogent evidence, established that the driving licence purportedly issued in the name of the respondent-driver, Santokh Singh, was fake one as it did not have any corresponding record with the licencing authority. Therefore, he prays that present appeal be allowed and liability of insurance company to pay the compensation be

set aside.

7. Per contra, learned counsel for respondent No.3 owner of the offending bus, submits that the Insurance Company has been rightly held liable to pay compensation. He submits that it was incumbent upon the Insurance Company to establish that the insured did not take reasonable care and caution and was negligent while employing the driver. He further contends that the appellant/insurance company failed to discharge the said burden, consequently, he prays for dismissal of the present appeal.

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

9. The relevant portion of the paperbook is reproduced as under:-

> *14. In order to prove theses issues copy of the driving licence of respondent Santokh Singh Ex.R-7 issued by the Driving Licence authority, Jalandhar has been placed on record and there is testimony of respondent Santokh Singh driver of the bus in question in this behalf, the Insurance Company examined RW-1 Kulwant Kaur from the Licencing authority, Jalandhar and RW-2 Jaswinder Kaur, Clerk from the office of Sub Divisional Magistrate/Licencing Authority, Garhshankar.*
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> *15. The argument of the learned counsel for the Insurance company was that the Insurance company had been able to prove from the evidence of RW-1 Kulwant Kaur taken together with the report of Ex.R-2 that though the present driving licence in the name of respondent Santokh Singh had been renewed from time to time but the original driving licence in the name of Santokh Singh No.7946/8182 was not issued by their office. The contention was that once the issuance of the original driving licence had been shown by the Insurance Company to be fake, the subsequent renewal of the driving licence would not revalidate the issuance of the driving licence in the name of respondent Santokh Singh and, therefore, the*

Insurance company after initially payment of the amount of compensation to the claimants would be entitled to recovery of the said amount from the insured as there was breach in the conditions of the insurance policy.

16. On the other hand, argument of the learned counsel for the respondent No.1 Shri Surinder Saini and Government pleader for respondent No.2 was that even if the original driving licence issued in the name of the respondent could not be proved, on that basis alone the insurance company would pay in the first instance to the claimant and that the insurance company was require to show that the insured did not take the reasonable care and caution and was negligent while employing the driver which was required and in support of his contention, reliance was placed on United India Insurance Company Ltd. Vs. Amin Chand (2006-3) PLR-47 Lal Chand Vs. Oriental Insurance Co. Ltd. (2006-3) Punjab Law Reporter-741, Narinder Singh Vs. The Oriental Insurance Company Limited and others (2006-3) PLR-258 and Surinder Pal Singh Vs. Paramjit Kaur and others 2006(4) RCR (Civil) 662.

17. I have anxiously considered the rival contentions of the Insurance Company and that of government pleader assisted by counsel for the driver.

18. There is no dispute regarding the proposition of law contained in the authorities United India Insurance Company Ltd. Vs. Amin Chand (supra) Lal Chand (supra) Narinder Singh (supra) and Surinder Pal Singh (supra) and the position which can be summed up is that even if the original driving licence is shown to be fake but if the same had been repeatedly renewed from time to time and the Insurance Company did not lead any evidence to show negligence of the owner in handling over the vehicle of the driver, the Insurance company was not entitled to refund of the amount which the Insurance company is liable to pay to the claimant. In this case also, though the Insurance company has been able to show that there was no record in the office of the Licencing authority regarding issuance of the original driving licence in the name of the respondent Santokh Singh. However, there had been renewal from time to time by the *concerned Licencing authority in respect of the said driving licence, yet, no evidence was led on behalf of the Insurance company to show any negligence on the part of the insured General Manage, C.T.U in employing Santokh Singh respondent as driver of the bus who was holding driving licence which had been renewed. On the basis of the said authorities, though the Insurance Company had been able to show that the original driving licence issued in the name of respondent Santokh Singh driver, does not have any corresponding record with the licencing authority, but in the absence of proving the negligence of the insured-General Manager, C.T.U the Insurance company is not entitled to refund of the amount of compensation which in the first instance is to be paid by the insurance company to the claimant. These issues are accordingly decided.*

10. Upon a careful perusal of the record, it is evident that Respondent No. 3, Chandigarh Transport Undertaking (CTU), had engaged Respondent No. 1, Santokh Singh, as a driver after undertaking requisite due diligence. The evidence on record, particularly the testimony of Santokh Singh (RW-3), establishes that prior to his appointment, the CTU conducted a driving test and verified the validity of his driving licence. The relevant portion of his deposition reads as follows:

"I have been employed as a driver with the Chandigarh Transport Undertaking since 1998. I am a skilled and experienced driver. I possess a valid and genuine driving licence which has been renewed by the competent licensing authority. At the time of my appointment, my driving abilities and the validity of my licence were duly examined by the officers of the CTU."

11. This Court is conscious of the legal position that while the

insurer is entitled to raise a statutory defence under Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988, on the ground that the driver did not possess a valid driving licence, the onus to establish that the insured was guilty of wilful breach of policy conditions or failed to exercise reasonable care in verifying the licence rests squarely upon the insurer.

12. Be that as it may, this Court is of the considered view that an employer is expected to ascertain whether a prospective driver possesses a driving licence that appears, on the face of it, to be valid and issued by a competent authority and that the driver is duly qualified to operate the class of vehicle for which he is being employed.

13. The law does not impose an obligation upon the employer to undertake an independent verification of the licence with the issuing Regional Transport Office (RTO), unless there are specific circumstances or tangible reasons that cast doubt on the authenticity or validity of the licence. Placing a higher burden on the insured to conduct elaborate verification across jurisdictions would amount to imposing an unreasonable and impractical obligation, especially in the absence of any apparent cause for suspicion. The standard to be applied is one of reasonableness, not that of absolute vigilance.

14. In the present case, the record clearly reflects that CTU had verified driving licence of Santokh Singh at the time of his appointment and found it to be facially genuine. Furthermore, there is no material on record to suggest that the driver exhibited incompetence in his duties or that the CTU had any reason to doubt the authenticity of his licence.

15. Significantly, the appellant/insurance company has failed to

discharge the burden of proving any negligence on the part of the CTU in the process of employing the said driver. There is no evidence to indicate that the CTU had knowledge, actual or constructive, that the licence was fake or invalid.

16. 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.

17. Furthermore, this Court, in its judgment in FAO-1779-2006 titled as ***Namita Vs. Nirmal Singh and Another,*** decided on 19.02.2018 while relying on judgment of Apex Court in Rishi Pal Singh's case (supra) has already adjudicated upon a similar issue and held that the owner of the vehicle is expected to verify driving skills and not run to license authority to verify the genuineness of the driving licence before employing a driver the relevant extracts of the same is reproduce as under-:

> *9. A perusal of the record shows that the appellant-Pawan Kumar appeared as RW-1 and stated that he had employed Manjit Singh-respondent No.1 as driver for his truck after duly verifying his driving licence. Furthermore, he had obtained verification from DTO Bhatinda through applications marked as Ex.-R1 and Ex.R2.*
>
> *10. The relevant portion of the award dated 17.11.2001 is*

reproduced as under:-

"24. Now the question which calls for determination is as to from which of the respondents, the applicants are entitled to recover the above mentioned amount of compensation. Mr. P.K. Jindal, Advocate, learned counsel for the respondents no. 1 and 2 maintained that as emanates from the testimony of Pawan Kumar (RW.1), owner of the offending truck, he had employed Manjit Singh, respondent as driver on the truck after having verified his driving licence and even he had obtained verification from the D.T.O. Bathinda by making applications Ex.R1 and Ex.R2 and that being so, in no manner, Pawan Kumar, respondent can be fastened with any liability to compensate the applicants. 25. As against this, Mr. N.K. Sharma, Advocate, learned counsel for respondent no. 3 contended that vide Ex.R6, the Licencing Authority/D.T.O. Raipur has intimated that the driving licence no. 43024/R/1162/MP was never issued in favour of Manjit Singh, respondent and that being so, this licence being fake, the respondent insurance company cannot be saddled with any liability to pay the compensation to the applicants. 26. I have well considered the rival contentions. Of late, the Hon'ble Supreme Court in re: New India Assurance Co. Vs. Kamla, 2001 (3) Recent Civil Reports (Civil) 716, land down that "a fake licence cannot get its forgery outfit stripped off merely on account of some officer renewing the same with or without

knowing it to be forged. Section 15 of the Motor Vehicles Act, 1988 only empowers any licence authority to renew a driving licence issued under the provisions of the Act. N licence authority has the power to renew a fake licence. Therefore, an opportunity must be given to the insurer to prove that the licence in question was not validly issued and was not valid despite its subsequent renewals. If a vehicle was insured for third party claims at the time of accident, but driven by a person not holding a validly issued driving licence, under the terms and conditions, the insurance company as Laos the insured are bound. The third party claims have been statutorily protected under the Act. The insurer is under an obligation to satisfy the third party claim However, at the same time, the Tribunal will direct the insured to indemnify the insurer for the amount paid by it for which it was otherwise not liable. However, it will still be open for the insured to establish that he was not guilty to breach of any terms of the policy and he made all possible enquiries before handing over his vehicle to such a driver to satisfy himself qua validity of his licence. If there was no knowingly or deliberate breach of conditions of policy on his part, he may still be absolved of the liability.

27. It is in the light of above ratio, it is to be seen as to whether or not the respondent insurance company or the owner of the offending truck can be charged with any liability as to compensation. It is crystal clear from the afore-extracted *observations that the owner of the vehicle/insured can be absolved of his liability only if he or she establishes on the record that he or*

she had made all possible enquiries before handing over his or her vehicle to such a driver who to his satisfaction had a valid and effective driving licence or that the driving licence which he was holding was to his knowledge not a take. Here in this case, it is manifestly clear from Ex.R6 that driving licence o.43024/R/1162/MP was never issued by the licencing authority/D.T.O. Raipur in favotir of Manjit Singh, respondent. Pawan Kumar as RW.1 has merely deposed that he had employed Manjit Singh respondent on his truck No. PB-13A/3769 as driver after having verified his driving licence. In his cross examination, he admitted in candid terms that he had not sought the verification of driving licence of the said respondent (referred to Manjit Singh) from the D.T.O. Raipur (Madhya Pradesh). He has further deposed that he cannot say if the Raipur Licencing Authority has given report after verification that driving licence is fake and that he had never seen Manjit Singh signing or writing and that the signatures of said respondent were not being obtained by him in token of his having received his monthly salary as driver on his truck. These words trickled from his mouth explicate that he did not make the due inquiries which he was required to make so as to absolve himself from liability to pay compensation. He has *merely proved the applications Ex.R1 and Ex.R2 which he had moved before D.T.O. Bathinda who in turn made his reports Ex.R1/A and Ex.R2/A as to his having renewed the driving licence. In view of the above observations made in re: New India Assurance Co. Versus Kamia (supra) mere renewal cannot transform a fake driving licence as genuine. Ex.R4 the certified copy of driving licence of Manjit Singh,Mespondent has been tendered into evidence, which is alleged to have been issued by the Licencing Authority, Raipur (M.P.). As is borne out from Ex.R6, this driving licence was never issued by the said Licencing Authority and if so, this licence has to be dubbed and branded as fake one. That being so, Pawan Kumar respondent being the insured cannot be absolved of his liability as he has not adduced any evidence in roof of the fact that breach of conditions of policy Ex.R5 was not intentional or deliberate on his part. In view of the observations made by the Hon'ble Apex Court in the afore quoted case, the respondent insurance company here in this case being the insurer is under an obligation to satisfy the claim of the applicants. 28. As established of record and admitted by Pawan Kumar, respondent, Manjit Singh respondent was the driver on his offending truck when the accident took place. So, he (Pawan Kumar) is vicariously liable for his (Manjit Singh, respondent's) act as the accident took place when Manjit Singh respondent was in his (Pawan Kumar, respondent's) employment. As per Ex*

R5, the insurance policy, the offending truck was insured with the respondent insurance company. Therefore, in these premises, it is held that all the respondents shall be jointly and severally liable to pay/deposit the amount of compensation worth Rs. 3,80,000/- If this amount or any part of it is paid/deposited by the respondent insurance company, in that eventuality, Pawan Kumar, respondent being the insured shall indemnify it (respondent Pawan Kumar) for the amount paid/deposited by it, as it was imperative upon him Pawan Kumar, respondent) to have verified about the genuineness of the driving licence of Manjit Singh, respondent before employing him as such and he did not make the due enquiries in this regard from the Licencing Authority, Raipur (M.P.) and accordingly, both these issues in both the petitions are decided.

x x x x x x

31. In the result, both the petitions succeed and are accepted with costs. Consequently, I hereby pass an award for Rs. 3,80,000/- in favour of Surjit Kaur, Nasib Kaur and Simarjit Singh, applicants and against respondents Manjit Singh, Pawan Kumar and the National Insurance Company Ltd. Bathinda who will be jointly and severally liable to pay/deposit the said amount within two months from today, failing which the said applicants shall be entitled to claim interest at the rate of Rs. 9% per annum from the date of their respective petitions on their respective share amounts ……..”

18. 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."

19. In view of the foregoing discussion and in consonance with the view taken by this Court, the findings recorded by the learned Motor Accident Claims Tribunal are well-reasoned, legally sound, and do not call for any interference.

20. Accordingly, the present appeal is dismissed, being devoid of any merits.

21. Further Insurance Company is directed to disburse the current schedule fee to Mr. Suvir Dewan, Advocate, pursuant to order dated 18.07.2024 passed in FAO No.1682 of 2007 by this Court, within a period of twenty days from the date of receipt of copy of this judgment.

22. Pending application(s), if any, stand disposed of.

09.07.2025 **(SUDEEPTI SHARMA)**
Yogesh **JUDGE**

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No