



FAO-4946-2007 (O&M)

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

FAO-4946-2007 (O&M)

Date of Decision: 23.01.2025

Ram Milan Yadav

.....Appellant

Vs.

Tarsem Lal and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Sudhir Paruthi, Advocate,
for the appellant.

Mr. Paul S. Saini, Advocate, and
Mr. Vipul Sharma, Advocate,
for respondent No.4-Insurance Company.

SUDEEPTI SHARMA J. (ORAL)

1. The instant appeal has been preferred by the appellant/owner of the offending vehicle for setting aside the award dated 24.07.2007 passed by the learned Motor Accident Claims Tribunal, Jalandhar (for short, 'the Tribunal'), whereby the claimants were awarded compensation of Rs.1,75,000/- along with interest @ 7% per annum.

FACTS NOT IN DISPUTE

2. The brief facts of the case as mentioned in the claim petition are that on 23.07.2004 around 08:20 PM, Sunil Dutt (since deceased) was going on his bicycle alongwith his mother from the side of Guru Nanak Pura East, Jalandhar, towards Hargobind Nagar via link road, touching Lodowali Road, Jalandhar, to purchase medicines for his mother. When he reached near PAP



Chowk, Jalandhar, a truck bearing registration No. PUQ-7687, being driven by respondent No.1-Ram Adhar, in a rash and negligent manner and at a very high speed, came from the side of Railway crossing and without giving any horn struck against the bicycle of the Sunil Dutt (since deceased) and crushed him underneath. As a result of which, Sunil Dutt (since deceased) died on the spot. In this regard, FIR No.81 dated 23.07.2004, under Sections 279 and 304-A of the Indian Penal Code, 1860, was registered at Police Station Division No.3, Jalandhar.

3. Upon notice of the claim petition, respondents appeared and filed written reply denying the factum of accident/compensation.

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

1. *Whether Sunil Dutt died in an accident which occurred on 23.07.2004 due to the rash and negligent driving of respondent No.1 while driving truck No.PUQ-7687? OPP.*
2. *Whether the claimants are entitled to the compensation, if so to what extent and from whom? OPP.*
3. *Whether respondent No.1 Ram Adhar was not holding a valid driving licence at the relevant time? OPR.*
4. *Relief.*

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation of Rs.1,75,000/-, along with interest @ 7% per annum and respondent No.4-Insurance Company was directed to pay the amount of compensation with liberty to recover the same from appellant herein i.e. owner of the offending vehicle. Hence, the appellant/owner of the offending vehicle filed the present appeal.

**SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES**

6. The learned counsel for the appellant contends that the appellant himself appeared in the witness box as RW-1 and deposed that he had employed Ram Adhar i.e. respondent No.3 herein on his truck bearing registration No.PUQ-7687 as driver after having verified his driving licence. He further contends that the appellant also took the driving skill test and satisfied that Ram Adhar (driver) was fully competent and conversant with the driving. Since, he verified the licence of respondent No.3-Ram Adhar, therefore, the Tribunal has wrongly granted the recovery rights to the respondent No.4-Insurance Company.

7. *Per contra*, learned counsel for the respondent No.4-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 of the offending vehicle. Since, the Insurance Company proved in its evidence by producing Ex.R4 i.e. the report of Motor Vehicle Department, Siliguri, who intimated that driving license was never issued in favour of the driver-Ram Adhar and the licence was fake, therefore, the Insurance Company cannot made liable to pay the compensation. 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. The relevant portion of the award dated 24.07.2007 is reproduced as under:-



“12. The counsel for two sides have advances arguments at much length on issues No.2 and 3 on behalf of respondents No.1 & 2 and their counsel cited 2006 (3) APEX COURT JUDGMENTS 170 (S.C) titled as Lal Chand Vs. Oriental Insurance Co. Ltd., and on behalf of respondent No.3, their counsel relied upon 2007-1 Vol. CXLV. The Punjab Law Reporter 797 titled as Maharashtra State Road Transport Corpn. Vs. Lalnipuii, III (2006) ACC 24 Madhya Pradesh High Court, titled as Ramesh Khatic 1& Anr. Vs. Raju & ANR. And I (1996) ACC 210 Delhi High Court Roop Rani & Anr. Vs. Ramesh Chander & Ors., to impress upon the court that it is the age of the claimant which is material for determination of this claim and on behalf of the claimants Shri S.K.Sidana, Advocate, has cited 2005 ACJ 99, in case Manju Devi and another Vs. Musafir Paswan and another. It needs to be reiterated here that on the application of respondent No.3, the court has ordered report from Motor Vehicle Department Siliguri, regarding the licence of respondent No.1 and the report has been proved on the record is Ex. R4, which establishes the fact that the driving licence was not issued by the quarter concerned. Though on behalf of respondents No. 1 & 2, their counsel has highlighted the contents of Ex. R2 the driving licence subsequently renewed from Licensing Authority Azamgarh. However, none of the counsel representing the respondents could displace the position of law laid down in New India Assurance Company Ltd., Simla Vs. Kamla and others, reported in 2001 (1) PLR 830 (S.C.), where it has been held that a fake driving licence which is renewed by statutory authority, does not subsequently becomes valid and has been held that what is initially fake cannot be sanctified and the report of the official issuing authority of Ex.R4 shows that the same was never issued by Addl. R.T.O. of Siliguri and thus the driving licence of respondent No. 1 established to be fake and invalid. The stand of the owner, who has examined himself as RW1 Ram Milan through his affidavit Ex.R1 shows that it has been detailed by him that he has taken driving test of respondent No.1 before taking him and his licence was genuine is a stand which was never taken in the pleadings and the written reply is totally bereft of this stand and thus is a belated stand and, therefore, in view of the settled position of law that no amount of evidence beyond the pleadings can be gone into together with what has been replied in the cross-examination of this witness that the truck was still with the owner on which respondent No.1 is still the driver together with the fact the own admission of the owner in the cross-examination that he never verified the antecedents of the driving licence of respondent No.1 negates his stand. Therefore, it is



held that driving licence of respondent No. 1 was fake, invalid and ineffective and the law laid down in Lal Chand's case ibid does not help the case of the respondents No.1 and 2, therefore, issue No.3 is decided against respondents No.1 & 2 and in favour of Respdt. No.3."

10. A perusal of the record shows that the appellant-Ram Milan appeared as RW-1 and stated that he had employed Ram Adhar-respondent No.3 as driver for his truck after duly verifying his driving licence and conducting a driving skill test. A perusal of the award further shows that appellant has taken due care and made appropriate inquiry regarding the validity of the driver's license of the driver-Ram Adhar.

11. This Court in **FAO-1796-2006** titled as **Pawan Kumar Vs. Nasib Kaur and others** decided on 27.09.2024 has already dealt with the similar issue and held that the owner of vehicle is expected to verify the driving skills and not run to the Licensing Authority to verify the genuineness of the driver's license before appointing a driver. The relevant extracts of the same is reproduced as under:-

*"11. 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.*

*12. 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."

13. On the touchstone of hearing above discussed findings and judicial precedent, the award dated 17.11.2001 passed by Ld. Tribunal, Mansa stands vitiated by a complete absence of judicial application of mind to the extent that the respondents No.1 to 3 were held liable to pay the compensation."

12. In view of the above, the present appeal is allowed and the award dated 24.07.2007 passed by learned Tribunal is modified to the extent that respondent No.4-Insurance Company shall be solely liable to pay the amount of compensation.



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13. Respondent No.4-Insurance Company is hereby directed to disburse the current scheduled fee to Mr. Paul S. Saini, Advocate, pursuant to the order dated 18.07.2024 passed in FAO-1682-2007 within a period of 20 days from the date of receipt of the copy of this judgment.

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

(SUDEEPTI SHARMA)
JUDGE

23.01.2025

Virrendra

Whether speaking/non-speaking : Yes

Whether reportable : Yes/No