

(2018) 09 P&H CK 0049

In the Punjab And Haryana At Chandigarh

Case No : First Appeal form Order No. 5427 of 2017 (O&M)

Matan Shiv Shakti Co. Op.Tpt, Society Limited and another	APPELLANT
Vs	
Cholamandalam MS General Insurance Co	RESPONDENT

Date of Decision : 11-09-2018

Acts Referred:

Indian Penal Code, 1860 — Section 279, 304A
Motor Vehicles Act, 1988 — Section 6

Citation : (2018) 09 P&H CK 0049

Hon'ble Judges : Harinder Singh Sidhu, J

Bench : Single Bench

Advocate : Lekh Raj Sharma, Rajneesh Malhotra

Final Decision : Allowed

Judgement

The owner and driver have filed the present appeal against the award dated 14.10.2016 of the Motor Accidents Claims Tribunal, Jhajjar (for short 'the Tribunal'), whereby, respondent No.1- the Insurance company has been absolved of liability to pay the compensation and the appellants have been held jointly and severely liable to pay the compensation.

The case set up in the claim petition was that on 16.11.2014, Krishan Kumar son of Mahavir Singh was on his way to attend his duties at PGIMS,

Rohtak on Motorcycle No.HR-12T-2071. His brother Chand Singh and one Manender son of Desh Raj resident of village Dhakla were following him

on their separate motorcycle. When they just crossed Govt. School, Hassanpur towards Jhajjar, a bus having Registration No.HR-14E-0777 (the

offending vehicle) which was being driven by appellant no.2 in a rash and negligent manner came from the side of Jhajjar and hit the motorcycle of

Krishan Kumar. As a result of the injuries sustained, Krishan Kumar died. FIR

No.795, dated 17.11.2014 under Section 279, 304-A, IPC, Police

Station Jhajjar was registered at the instance of Chand Singh.

On the basis of the evidence, the Ld. Tribunal concluded that the accident had been caused due to rash and negligent driving of the offending vehicle

by appellant no.2. The income of the deceased was assessed at Rs.6000/- per month. 30% increase was granted on account of future prospects.

Considering that the deceased had left behind five legal heirs, 1/4th of the monthly income was deducted for his personal expenses. Multiplier of 14

was applied. The total dependency was assessed at Rs.9,82,800/-. Rs.1 lac was awarded on account of 'loss of consortium'. Rs.25,000/- was awarded

on account of funeral expenses. Thus, a total compensation of Rs.11,07,800/- was awarded.

On the issue of liability, it was noticed that the offending vehicle was insured with respondent no.1-Insurance company w.e.f. 29.3.2014 to 28.3.2015.

The accident had taken place on 16.11.2014. Thus, it was concluded that at the time of accident the offending vehicle was insured.

The Tribunal noticed that at the time of his arrest, the driver - appellant no.2 had produced his driving licence, Ex.R-7 before the police. As per

information received under RTI, from the Licensing Authority, Hisar, it was revealed that the said licence had neither been issued by that Authority

nor renewed by it. Hence, it was found to be fake. Later on, the driver placed on record, a second driving licence, Ex.RW-2/B got issued from District

Transport Officer, Tuensang (Nagaland). The Tribunal held that as in terms of Section 6 of the Motor Vehicles Act, 1988, a person could not validly

hold two licences, hence, the owner and driver could not escape liability by introducing a second licence.

Assailing the aforesaid finding, Shri Lekh Raj Sharma, learned counsel for the appellant argued that RW-1 Mahavir Singh had deposed before the

Tribunal that the Appellant society had appointed appellant no.2 as driver for the offending vehicle after verification of his driving licence

No.25793/TSG/PROF/2010 which was valid upto 15.11.2017 for driving Motorcycle/LMV/HTV etc. The driver had applied for issuance of Smart

Card in lieu of his driving licence and in token of the same, the Authority had issued a temporary slip, Ex.R-8. He also produced information slip,

Ex.R-9 which clearly revealed that the driver had an effective driving licence on

the date of accident. Reliance was placed on a decision of Hon'ble the Supreme Court in Pepsu Road Transport Corporation vs. National Insurance Company, 2013(10) SCC 217. Mr. Sharma further argued that the Tribunal had specifically noted that driving licence Ex.RW-2/B had not been verified by the Insurance company and found to be fake. Hence, the same was to be presumed to be valid. He accordingly, contended that the finding of the Tribunal absolving the Insurance company of liability could not be sustained. He further contended that in view of the licence Ex.R-7 having been found to be fake, it could not be treated that the driver possessed two licences. Reliance was placed on the decision of Delhi High Court in Tara Sharma and another vs. New India Assurance Co. Ltd. 2014(9)R.C.R(Civil) 2573.

Learned counsel for the respondent on the other hand supported the findings of the Tribunal..

Heard learned counsel for the parties.

In Pepsu Road Transport Corporation case (supra), it has been held that even if it is proved that the licence produced by the driver is a fake one, the owner would not be liable if while hiring the driving, he has checked whether the driver had a valid driving licence and satisfied himself as to the competence of the driver, it was held that the owner could not be expected to go to the extent of verifying the genuineness of the driving licence from the Licensing Authority. The relevant observations are as under:

â??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.â??

In the present case, RW-1 Mahavir Singh had deposed before the Tribunal that the appellant society had appointed appellant No.2 as driver for the offending vehicle after verification of his driving licence No.25793/TSG/PROF/2010 which was valid upto 15.11.2017 for driving Motorcycle/LMV/HTV etc. The driver had applied for issuance of Smart Card in lieu of his driving licence and in token of the same, the Authority had issued a temporary slip, Ex.R-8. As the owner had taken reasonable care before employing the driver, the liability could not have been fastened on him.

Secondly, the Ld. Tribunal has itself noticed that the driving licence Ex.RW2/B had not been verified by respondent Insurance Company and found to be fake. Hence, the same was to be presumed to be valid.

It is well settled that the onus to prove that a driving licence is invalid is on the insurer. Even when the first license produced before the police was found to be fake, the insurer was bound to make verification and lead evidence to show that the second license produced before the Tribunal was also fake. On its failure to do so, it cannot escape its liability.

In Parveen Kumar v. Sumitra Devi 2015(47) R.C.R.(Civil) 780 it was held as under:

â??2. The only point falls for consideration is whether the Driving Licence produced by the driver was genuine to secure the benefit of a full indemnity from the insurer. At the trial, two licences were produced, one, said to

have been secured by the police on the basis of which a verification and evidence was given and it revealed that it was fake. Yet another licence produced at the trial by the driver was with the verification that it was a genuine one. The Court rejected the licence verified to be genuine produced by the driver and preferred the verification obtained by the insurer as regards the licence secured by the police.

3. It is not clearly comprehensible as to how the same person possessed two sets of licences, one fake and another genuine. However, I reckon that the issue of breach of terms of policy invariably shall be cast on the insurer and hence, even if they had secured verification for copy of the licence produced by the police, they were bound to make verification and offer evidence against the licence produced by the driver at the time of the trial. It would appear that for damage to the vehicle, the Insurance Company had entertained an Own Damage claim from the owner which would not have been possible without verification about the genuineness of the licence of the driver. The Tribunal ought to have duly considered the effect of the satisfaction of the OD claim. The lack of evidence on the document brought by the driver that the licence produced at the time of the trial was not genuine by the Insurance Company by examination of any witness from DTO Office, ought to give place for an inference that the insurer did not discharge the onus of proving breach of policy terms.

4. In a situation of conflict of evidence between the two licences, the burden was heavy on the insurer to dislodge by appropriate evidence by examination of a witness from the DTO Office that the licence produced by the driver was not genuine. Such a course was not adopted.

5. While confirming the award assessing the amount as done by the Tribunal, I modify the issue of liability and cast the insurer as fully liable for the entire amount as assessed.

6. The right of recoveries for the claimants will avail against the insurer. The award stands modified as regards the liability and the appeal is allowed to the above extent. It is stated that there is an appeal for enhancement.â??

Further, as one licence was held to be fake it could not be said that the driver possessed two licenses in violation of Section 6 of the Motor Vehicles Act, 1988. It has been so held in Tara Sharma's case (supra) as under:

11. Thus, the Insurance Company failed to prove any willful or conscious breach of the terms and conditions of the policy. It may also be noted

that Section 6 of the Act puts restrictions on a person holding a second driving licence while he holds any driving licence which is in force. A fake

driving licence cannot be said to be a driving licence for the time being in force. Thus, even if it is assumed that the owner was aware of the driving

licence issued by the Licensing Officer, Pune if the same was found to be fake then the said driving licence shall be deemed to be not in force.

Therefore, the Claims Tribunal's order making the Insurance Company liable to pay the compensation cannot be faulted.

Still further, though in terms of Section 6 of the Motor Vehicles Act, there is restriction on holding more than one licence, but no provision was pointed

as per which all the licences of a person holding more than one licence are to be treated as invalid.

Section 6 of the Act is reproduced below:

6. Restrictions on the holding of driving licences.

1. No person shall, while he holds any driving licence for the time being in force, hold any other driving licence except a learner's licence or a driving

licence issued in accordance with the provisions of section 18 or a document authorising, in accordance with the rules made under section 139 the

person specified therein to drive a motor vehicle.

2. No holder of a driving licence or a learner's licence shall permit it to be used by any other person.

3. Nothing in this section shall prevent a licensing authority having the jurisdiction referred to in sub-section (1) of section 9 from adding to the classes

of vehicles which the driving licence authorises the holder to drive.

It appears that violation of provisions of Section 6 of the Motor Vehicles Act, may entail punishment under Section 177 of the Act which is as under:

177. General provision for punishment of offences.

Whoever contravenes any provision of this Act or of any rule, regulation or notification made thereunder shall, if no penalty is provided for the offence

is punishable for the first offence with fine which may extend to one hundred rupees, and for any second or subsequent offence with fine which may

extend to three hundred rupees.

But in the absence of any specific provision to that effect it may not be possible to take a view that where a person holds more than one licence, all of them have to be treated as invalid.

However, this situation does not arise in the present case, as one of the licences was found to be fake and it could not be considered to be a case of a person holding more than one licence.

In view of the above, this appeal is allowed. The finding of the Tribunal absolving respondent No.1 Insurance Company from its liability to pay the compensation determined by the Tribunal, is set aside. It is held that respondent No.1 Insurance Company is liable to satisfy the Award.