(2014) 05 P&H CK 0604

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 57 of 1995

New India Assurance Co. Ltd. APPELLANT

Vs

Shanti Devi and Others RESPONDENT

Date of Decision : 20-05-2014

Acts Referred:

Citation : (2014) 05 P&H CK 0604

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Rajiv Dhawan, Advocate for the Appellant; Bhupesh Dogra, Advocate for Respondent Nos. 4 and 5, Advocate for the Respondent

Final Decision : Allowed

Judgement

K. Kannan, J.—The appeal is by the Insurance Company contesting the award passed by the tribunal without providing for a right of recovery for the violation of terms of policy. During the trial the Insurance Company attempted to secure proof from the DTO''s office which was alleged to have issued the driving license that no such license with the particulars as mentioned had been issued. The license had also been renewed subsequently and the renewal was found by the tribunal to be genuine. The tribunal therefore reasoned that since the renewal was genuine, the Insurance Company must take license to be valid and it shall provide full indemnity.

2. The law has changed since the decision of the Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, . A renewal of a driving license even if valid or a driving license whose original issue was fake must be taken to be fake driving license. However, this cannot dispose of the issue of liability. We have to still examine whether the owner had been in any way wanting his bona fides in employment offered to his driver and whether he had also known that the driver had fabricated the original issue of license. The Insurance Company can deny an indemnity if only the insured had been guilty of breach of terms of policy. It is likely that at the time when the trial was in progress, the owner was

led to believe by the state of law then prevailing that a valid renewal of a fake license is also valid. In view of the change of law, I deem it appropriate that the owner shall have a right to give evidence to disclose the circumstances under which he gave employment to his driver. This evidence will not require the presence of the claimants, for, it is essentially a dispute inter se between the insurer and the insured.

3. The issue of liability will therefore be considered by remitting the matter to the tribunal for affording to the owner and insurer an opportunity to give evidence on the circumstances under which the owner had given employment and whether he had knowledge of the fact that the driving license was not genuine.

4. To provide for such an opportunity the matter will be sent back to the tribunal and the Insurance Company will have a right to test the bona fides of the owner and the steps that the owner had taken at the time of granting employment to the driver.

5. The appeal is allowed and remanded only for the issue on adjudication of liability.