(2012) 03 P&H CK 0502

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 913 of 2010

New India Assurance Company Ltd — APPELLANT

Vs

Jagrup Singh and others — RESPONDENT

Date of Decision : 21-03-2012

Acts Referred:

Citation : (2013) ACJ 1688 : (2012) 166 PLR 813

Hon'ble Judges : Jitendra Chauhan, J

Bench : Single Bench

Advocate : Suman Jain, for the Appellant; Vikas Singh, for respondent No 3, for the Respondent

Final Decision : Allowed

Judgement

Jitendra Chauhan, J.—The Insurance Company has preferred the present appeal, for setting aside the impugned Award dated 16.11.2009, passed by the learned Motor Accident Claims Tribunal, Patiala (for short ''the Tribunal''), whereby the claim petition of respondent Nos. 1 and 2 was allowed and a sum of Rs. 2,64,000/-was awarded as compensation to be paid by the appellant as well as respondent No. 3 jointly and severally. The brief facts of the case are that on 18.5.2007, Lakhwinder Singh, son of respondent Nos. 1 and 2, sustained multiple grievous injuries due to fall from tempo bearing registration no. PB 13N-6921 He was rushed to Rajindra Hospital, Patiala but due to serious condition, he was referred to PGI, Chandigarh. He died on the way. The claimant-respondent Nos. 1 and 2- parents, being the legal heirs, filed the claim petition. Upon notice, the driver-cum-owner as well as the Insurance Company (herein appellant) filed their written statements by denying the accident.

2. From the pleadings of the parties, the following issues were framed by the learned Tribunal :-

1. Whether on 18.5.2007, Lakhwinder Singh died in a Motor Vehicle Accident caused due to rash and negligent driving of offending vehicle by respondent No.

1? OPP

2. Whether claimants are the legal heirs of the deceased and are entitled to the compensation and from whom? OPP

3. Whether respondent No. 1 was not holding a valid driving licence at the time of accident? OPR-3

4. Whether the claim petition is not maintainable? OPR

5. Whether claim petition is bad for non-joinder and mis-joinder of parties? OPR

6. Relief.

3. After analysing the evidence led by the parties and hearing the learned counsel for the parties, the learned Tribunal decided the issues as under:-

4. After relying upon the deposition of Jagrup Singh, which stands corroborated by Darshan Singh in his affidavit Ex. RW 1/A, decided issue No. 1 in favour of the claimants and against the respondents.

5. The claimants being the parents are the legal heirs. The learned Tribunal decided issue No. 2 decided in favour of the claimants and awarded a sum of Rs. 264,000/- as compensation to the claimants.

6. The driving licence, held by the driver was found to be valid. Accordingly, issue No. 3 was decided in favour of the driver and against the Insurance Company.

7. Issue Nos. 4 and 5, were decided in favour of the claimants and against the respondents.

8. Being dissatisfied with the same, the appellant-Insurance Company filed the present appeal.

9. Learned counsel for the appellants contends that the learned Tribunal erred in law while deciding the issue of liability. The driving licence held by the driver Darshan Singh was fake one. In his deposition, Sampuran Singh, Clerk, DTO Office, Patiala has categorically stated that the driving licence against Entry No. 53900/C/DTO/C/104 dated 21.1.2004, as mentioned in Ex. RW5, is issued in the name of Punit Kumar son of Raj Kumar Kapoor. As such, there was a breach of the terms and conditions of the Insurance Policy.

10. On the other hand, the learned counsel for respondent No. 3 - the Driver-cum-owner of the offending vehicle has contended that the vehicle was insured with the appellant. The driving licence held by the driver was valid and effective at the time of the accident. The same was renewed by the competent authority. There is no breach of the terms and conditions of the Insurance Policy.

11. I have heard the learned counsel for the parties and perused the record carefully.

12. Respondent No. 3 exhibited his driving licence bearing No. 52900/C/DTO/

C/104 dated 21.1.2004 as Ex. RW5. In this regarding Sampuran Singh, Clerk, DTO Office, Patiala, who brought the record of the aforesaid driving licence, was examined as RW3. The statement of Sampuran Singh is reproduced as under:-

I have brought the driving licence record issuing of original driving licence. Against entry no. 53900/C/DTO/C/104 dated 21.1.2004 valid for Motorcycle, Motor car only w.e.f. 21.1.2004 to 20.1.2024 in the name of Punit Kumar again said Punit Kapoor son of Raj Kumar Kapoor r/o Village Alipur Road, Jhil Road Sirhind Road, Patiala as per record brought by me it was not issued in the name of Darshan Singh. I have brought the original register and photocopy of the same is Ex. RW3/A. I have seen the copy of driving licence Ex. RW3/B, the word LMV only added, which is not according to the official record brought by me. Again said the said driving licence has not been issued by our office, copy of which is Ex. RW3/B.

13. From the above statement, it is clear that the driving licence held by Darshan Singh, the driver, is fake. Once the original licence is fake the subsequent renewal cannot make the driving licence to be genuine

14. Dealing with somewhat similar question of law, the Hon''ble Apex Court in the case of United India Insurance Co. Ltd. v. Davinder Singh,1 (2008-1)149 PLR 309 (SC) : (2007) 8 Supreme Court Cases 698, observed as under-

11. Paras 89 to 91

XX XX XX

92. It may be true as has been contended on behalf of the petitioner that a fake or forged driving licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of the willful breach of the conditions of the insurance policy or the contract of insurance. In Lehru case the matter has been considered in some detail. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of the law in terms whereof the insurer is to establish willful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or for the owners to be absolved from any liability whatsoever. We would be dealing in some detail with this aspect of the matter a little later.

111.(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2) (a) (ii) of Section 149 has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

15. The said decision has been distinguished by a Bench of this Court in National Insurance Co. Ltd. v. Laxmi Narain Dhut (2007-2) 146 PLR 510 (SC), in the following terms:-

36 The inevitable conclusion therefore is that the decision in Swaran Singh case (2004-1)136 PLR 510 has no application to own damage cases. The effect of fake licence has to be considered in the light of what has been stated by this Court in New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., . Once the licence is a fake one the renewal cannot take away with effect of fake licence. It was observed in Kamla case as follows: (SCC P. 347, Para 12]

16. As a point of law, we have no manner of doubt 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 Act only empowers any licensing authority to ''renew a driving licence issued under the provisions of this Act with effect from the date of its expiry''. No licensing authority has he power to renew a fake licence and, therefore, a renewal if at all made cannot transform a fake licence as genuine. Any counterfeit document showing that it contains a purported order of a statutory authority would ever remain counterfeit albeit the fact that other persons including some statutory authorities would have acted on the document unwittingly on the assumption that it is genuine.''

17. Laxmi Narain Dhut (2007-3)147 PLR 501 (SC) has since been followed by this Court in Oriental Insurance Co. Ltd v. Meena Variyal, wherein this Court referring to Swaran Singh held:

(Oriental Insurance Co. Ltd. case (SCC p. 441 para 17)

17. It is difficult to apply the ratio of this decision to a case not involving a third party. The whole protection provided by Chapter XI of the Act is against third-party risk. Therefore, in a case where a person is not a third party within the meaning of the Act, the insurance company cannot be made automatically liable merely by resorting to Swaran Singh (supra) ratio. This appears to be the position. This position was expounded recently by this Court in National Insurance Co. Ltd v. Laxmi Narain Dhut (2007-2)146 PLR 510 (SC). This Court after referring to Swaran Singh and discussing the law summed up the position thus : (Laxmi Narain Dhut case, SCC p. 719, para 38)

38. In view of the above analysis the following situations emerge:

1. The decision in Swaran Singh case has no application to cases other than third-party risk

2. Where originally the licence was a fake one, renewal cannot cure the inherent fatality.

3. In case of third party risks the insurer has to indemnify the amount and if so advised, to recover the same from the insured.

4. The concept of purposive interpretation has no application to cases relatable to Section 149 of the Act....

18. In view of the above discussion, this Court is of the opinion that the driving licence of Darshan Singh was forged one and its subsequent renewal cannot be termed it as genuine. The arguments raised by the learned counsel for the appellant are without any basis and are rejected. Accordingly, the present appeal is allowed, the Insurance Company is exonerated from its liability to indemnify the award. In case the amount awarded is already paid, the Insurance Company is given rights to recover the amount from the Driver-cum-owner of the offending vehicle.

