

(2014) 06 J&K CK 0039

In the Jammu And Kashmir High Court

Case No : CIMA No. 02 Of 2013 and CMA No. 02 Of 2013

Parmveer Singh

APPELLANT

Vs

Ashwani Sharma and Others

RESPONDENT

Date of Decision : 06-06-2014

Acts Referred:

Citation : (2015) 1 JKJ 121

Hon'ble Judges : Janak Raj Kotwal, J.

Bench : Single Bench

Advocate : Meharban Singh, Advocate, for the Appellant; Suneel Malhotra, for the Respondent

Final Decision : Disposed off

Judgement

Janak Raj Kotwal, J.â?"In a bunch of claim petitions, with file No. 696/Claim, titled, Ashwani Sharma v. Shikar Singh and ors. as the lead case,

disposed of by the learned Motor Accident Claims Tribunal, Jammu (for short the Tribunal) vide its judgment dated 27.04.2011, one of the issues

framed was:

whether at the time of accident driver of offending vehicle was not holding a valid and effective driving license and drove the vehicle in violation of

terms and conditions of insurance policy?

Onus of this issue was placed upon the respondent-Insurance Company, herein respondent No. 4 Learned Tribunal decided this issue in favour of

the Insurance Company. Nonetheless, learned Tribunal held the Insurance Company liable to indemnify the owner giving it liberty to recover the

award amount from the owner of the offending vehicle in accordance with law. The owner, herein appellant, feeling aggrieved by the liberty given

to the Insurance Company to recover the award amount from him has filed this writ petition.

2. Heard. I have perused the record.

3. Mr. Meharban Singh, learned counsel for the appellant would say that there was no breach of condition of the Insurance Policy on the part of

the appellant (owner) inasmuch as before engaging the driver, herein respondent No. 5, he had taken care to examine his license. The license was

found to have been duly issued and was carrying PSV endorsement too so he engaged the said driver and cannot be said to have breached the

condition of Insurance Policy.

4. Per contra, Mr. Malhotra, learned counsel for the respondent No. 4, would say that mere examining the license was not sufficient discharge of

his duty by the owner as he was supposed to verify the license from the authority, which purportedly had issued the same.

5. It is seen on perusal of the impugned judgment and award that the Insurance Company in proof of the above issue had produced the owner of

the offending vehicle, herein appellant, as its witness before the learned Tribunal. The appellant in his capacity as the Insurance Company's witness

has deposed that the Driver, Shikar Singh, was possessing a valid and effective driving license bearing PSV endorsement. In cross-examination he

reiterated that he had checked the license of the driver at the time of entrusting the vehicle to him. The said license was valid from 05.11.2006 to

04.11.2026 and the PSV endorsement was valid till 17.11.2010. Insurance Company also produced clerk of the office of the ARTO, Udhampur,

as its witness, who rendered evidence to show that the said license had not been issued from that office. Learned Tribunal on appraisal of the

evidence concluded that driver was holding a fake driving license and even if the license bears PSV endorsement, the same is of no use. Learned

Tribunal, therefore, decided issue No. 3 in favour of the Insurance Company.

6. In foisting the liability on the Insurance Company to indemnify the owner by paying the awarded compensation to the claimant, learned Tribunal

took the view, which needs to be reproduced verbatim:

...Going by what has been narrated by respondent-owner of the vehicle who has stepped into the witness box and has been cross-examined by

insurance company as well but he has withstood the test of cross-examination.

He was not expected to have conducted a roving inquiry as to the validity of the license or to have enquired from Registering Authority/the validity of the license. Once he was shown the license by the erring driver which bore seal of Licensing Authority besides endorsement of PSV, the layman would be swayed to believe that such document is genuine.

Respondent Paramveer Singh has been given detailed statement of account which cannot be brushed aside. Nowhere the insurance company has been able to sow the seeds of suspicion into the testimony of RW Paramveer Singh to mean that he deliberately gave away vehicle to erring driver for use fully knowing that he did not carry valid and effective DL. In absence of any material to that effect, owner is not expected to hold an inquiry before engaging a driver as to whether or not the DL was fake. Hence, respondent insurance company is liable to indemnify the 3rd party claims but given the fact that license has been found to be fake, it is at liberty to recover the same from owner in accordance with law.

7. Section 149/(2) of the Act provides for the legal defences available to the insurer. The insurer can defend the action and may succeed in escaping liability to indemnify the owner of the insured vehicle/person insured on any of the grounds mentioned therein. One of these grounds provided under clause (a)(ii) is the breach of a specified condition of the policy excluding driving of the vehicle by any person who is not 'duly licensed'. If the policy of insurance issued by the Insurance Company contains a condition that the vehicle shall not be driven by a person who is not 'duly licensed' and if the Company succeeds in proving breach in this regard on the part of the insured, the Company would not be liable to indemnify the insured and satisfy the award of the Tribunal. The Insurance Company with a view to escape its liability, is not only required to show that the condition excluding driving of the insured vehicle by a person who is not 'duly licensed' has been breached but is further required to establish that there had been breach on the part of the insured. The Insurance Company is, thus, required to prove, not only that the driver was not 'duly licensed' but also that the owner of the vehicle had entrusted the vehicle for driving to the said driver knowing well that he was not 'duly licensed'. (Ref: National Insurance Co. Ltd. v. Swarn Singh (2004) 2 SCC 279).

8. A plain look at the finding recorded by the learned Tribunal (supra) would

show that even though the driver of the offending vehicle/respondent

No. 5 possessed a driving license, which was fake, there had been no breach on the part of the owner of the vehicle. He did not entrust the vehicle

to the said driver knowing that his license was fake. Rather he took sufficient care to ascertain whether the driver was possessing a valid and

effective driving license and the learned Tribunal was correct in holding that owner was not expected to hold an inquiry before engaging the driver

as to whether or not his DL was fake.

9. As the Insurance Company had failed in proving the breach on the part of the Insured (owner), it cannot escape liability to indemnify the insurer.

Breach on the part of insured having not been proved, question of recovering the award amount from the insured does not arise. An order for pay

and recover, which is rarely passed, can in no case be passed if breach of condition of insurance policy on the part of insured is not proved.

10. For aforementioned, I would hold that the learned Tribunal fell into error by giving liberty to the Insurance Company to recover the award

amount from the insured (owner) even after holding that there had been no breach on his part. This aspect of the impugned judgment and award

therefore, does not sustain and is set aside. Disposed of accordingly.