IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4919 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 24933 OF 2019)

RISHI PAL SINGH .....APPELLANT(S)

VERSUS

NEW INDIA ASSURANCE CO. LTD & ORS. .....RESPONDENT(S)

O R D E R

HEMANT GUPTA, J.

Leave granted.

1. The owner of the truck is in appeal before this Court challenging the order passed by the Motor Accident Claims Tribunal[1] on 15.01.2019, affirmed by the High Court vide the order impugned in the present appeal and granting liberty to the Insurance Company to recover the awarded amount from the appellant along with up-to-date interest by way of appropriate proceedings.

2. The brief facts are that the truck owned by the appellant met with an accident on 27.04.2015. The appellant appeared as R2W1. He deposed in his affidavit Ex. R2W1/A that before employing the driver, he had taken his driving test and that he was driving the vehicle satisfactorily. In cross-examination, he stated that the driver was employed with him for 3 years before the date of the accident. He reaffirmed in the cross-examination

1 For short, the 'Tribunal'

that he had taken driving test of the driver before his employment. He produced his driving license as Ex. R2W1/3. Though he deposed that the driving license was obtained from the driver and it was issued from Nagaland, but no such license was produced on record. Both the Courts have held that the owner has alleged that the driver had a driving license from Nagaland but the same was not produced and therefore, the Insurance Company is entitled to recover the awarded amount from the owner.

3. Before this Court, learned counsel for the appellant relied upon ***United India Insurance Co. Ltd*** v. ***Lehru & Ors***.[2] as also three-Judge Bench judgment reported as ***National Insurance Co. Ltd.*** v. ***Swaran Singh and Others***[3] that the owner has no mean to verify the genuineness of driving license produced before him, provided that the owner finds the driver is competent to drive the vehicle. Hence, once the appellant has deposed that he had taken test of the driver before employing him, he has taken sufficient precaution before employment. Therefore, there could not be any direction to recover the amount from the appellant.

4. The record of the Tribunal was requisitioned. A perusal thereof shows that the claimants have produced a driving licence of the driver before the Tribunal. The said driving licence is available at page 502 of the paper book. The genuineness of the said licence was investigated and in the report Ex. R3W2/D, the same was found to be not issued by the Licensing Authority Mandi in the State of Himachal Pradesh.

5. Thus, it was the claimant alone who relied upon the license issued by Licensing Authority Mandi. The same was not found to be genuine. The

2 (2003) 3 SCC 338
3 (2004) 3 SCC 297

statement of the owner, that the license was from Nagaland is without any supporting documents and is thus meaning less. The fact remains, having appointing driver after taking test, the appellant was not expected to make enquiries from the licensing authority as to whether driving license shown to him is valid or not.

6. If the owner has stated that driver had produced the driving license from Nagaland but no such license was produced on record, it is obviously a mistake on the part of the owner. However, such aspect cannot be used to grant liberty to the Insurance Company to recover the amount from the owner when the driving license actually produced by the claimant themselves was from Una, Himachal Pradesh. It may be stated that *falsus in uno, falsus in omnibus* is not the principle applicable in India. Therefore, even if a part of the statement that the driver has produced the license from Nagaland is not correct, it is wholly inconsequential.

7. To appreciate the contention of the appellant, the observations of this Court in ***Lehru (supra)*** have been reproduced as under:

> "20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(*a*)(*ii*). The insurance company would not then be absolved of liability. If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly, even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in *Skandia* [(1987) 2 SCC

654] , *Sohan Lal Passi* [(1996) 5 SCC 21 : 1996 SCC (Cri) 871] and *Kamla* [(2001) 4 SCC 342 : 2001 SCC (Cri) 701] *cases*. We are in full agreement with the views expressed therein and see no reason to take a different view."

8. The issue has been examined by a larger Bench in ***Swaran Singh (supra)*** wherein it was argued that the observations in ***Lehru*** were in conflict with the earlier judgment in ***New India Assurance Co. v. Kamla and Ors.***[4]. This Court held as under:

> "92. It may be true as has been contended on behalf of the petitioner that a fake or forged 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 wilful breach of the conditions of the insurance policy or the contract of insurance. In Lehru case [(2003) 3 SCC 338 : 2003 SCC (Cri) 614] 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 wilful 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.
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> 99. So far as the purported conflict in the judgments of Kamla [(2001) 4 SCC 342 : 2001 SCC (Cri) 701] and Lehru [(2003) 3 SCC 338 : 2003 SCC (Cri) 614] is concerned, we may wish to point out that the defence to the effect that the licence held by the person driving the vehicle was a fake one, would be available to the insurance companies, but whether despite the same, the plea of default on the part of the owner has been established or not would be a question which will have to be determined in each case.
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> 100. This Court, however, in Lehru [(2003) 3 SCC 338 : 2003 SCC (Cri) 614] must not be read to mean that an owner of a vehicle can under no circumstances have any duty to make any enquiry in this respect. The same, however, would again be a question which would arise for consideration in each individual case."

9. Similar question again came up for consideration before a three-Judge Bench in a judgment reported as ***Pappu and Ors.*** v. ***Vinod Kumar***

4 (2001) 4 SCC 342

Lamba and Anr.[5] wherein it was held that the onus would shift on the Insurance Company after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorized by him to drive the vehicle and was having a valid driving license at the relevant time. The valid driving license is the license which is produced before the owner. This Court held as under:

> "12. This Court in National Insurance Co. Ltd. [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] has noticed the defences available to the insurance company under Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988. The insurance company is entitled to take a defence that the offending vehicle was driven by an unauthorised person or the person driving the vehicle did not have a valid driving licence. The onus would shift on the insurance company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorised by him to drive the vehicle and was having a valid driving licence at the relevant time.
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> xxx xxx xxx
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> 17. This issue has been answered in National Insurance Co. Ltd. [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] In that case, it was contended by the insurance company that once the defence taken by the insurer is accepted by the Tribunal, it is bound to discharge the insurer and fix the liability only on the owner and/or the driver of the vehicle. However, this Court held that even if the insurer succeeds in establishing its defence, the Tribunal or the court can direct the insurance company to pay the award amount to the claimant(s) and, in turn, recover the same from the owner of the vehicle. The three-Judge Bench, after analysing the earlier decisions on the point, held that there was no reason to deviate from the said well-settled principle. In para 107, the Court then observed thus: (SCC p. 340)
> "107. We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued, despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of Section 149 of the Act, the insurance

5 (2018) 3 SCC 208

> company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given an opportunity to defend at all. Such a course of action may also be resorted to when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage."

10. 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 license 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 license issued to the driver.

11. In view of the said finding, the order passed by the High Court affirming the order of the Tribunal is set aside. Hence, liberty given to the Insurance Company to recover the amount from the appellant is also set aside. Consequently, the appeal is allowed.

.....J.
(HEMANT GUPTA)

.....J.
(VIKRAM NATH)

NEW DELHI;
JULY 26, 2022.

ITEM NO.9 COURT NO.9 SECTION XIV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).24933/2019

(Arising out of impugned final judgment and order dated 18-09-2019 in MACA No. 790/2019 passed by the High Court Of Delhi At New Delhi)

RISHI PAL SINGH Appellant(s)

VERSUS

NEW INDIA ASSURANCE CO LTD & ORS. Respondent(s)

(IA No. 160199/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 26-07-2022 This matter was called on for hearing on 26.07.2022 and the reasoned order is being uploaded on 30.07.2022.

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE VIKRAM NATH

For Appellant(s) Mr. R. C. Kaushik, AOR

For Respondent(s) Mr. J.P.N. Shahi, Adv.
Mr. Rameshwar Prasad Goyal, AOR

UPON hearing the counsel the Court made the following
O R D E R

On 26.07.2022, the following order was passed :-

"Heard the learned counsel for the parties.

Leave granted.

The appeal is allowed.

Reasons to follow."

The reasoned order is being uploaded today i.e. on 30.07.2022.

Pending interlocutory application(s), if any, is/are disposed of.

(JAYANT KUMAR ARORA) (RENU BALA GAMBHIR)
ASST-REGISTRAR-cum-PS COURT MASTER

(Signed order is placed on the file)

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For Appellant(s) Mr. R. C. Kaushik, AOR

For Respondent(s) Mr. J.P.N. Shahi, Adv.
Mr. Rameshwar Prasad Goyal, AOR

UPON hearing the counsel the Court made the following
O R D E R

Heard the learned counsel for the parties.

Leave granted.

The appeal is allowed.

Reasons to follow.

(JAYANT KUMAR ARORA)
ASST-REGISTRAR-cum-PS

(RENU BALA GAMBHIR)
COURT MASTER