

# **Nirmala Kothari vs United India Insurance Co.Ltd. on 4 March, 2020**

**Equivalent citations: AIR 2020 SUPREME COURT 1193, AIR ONLINE 2020 SC 285**

**Author: Krishna Murari**

**Bench: N.V. Ramana, Sanjiv Khanna, Krishna Murari**

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1999-2000 OF 2020  
(ARISING OUT OF SPECIAL LEAVE PETITION (C) NOS. 14739-14740 OF 2018)

NIRMALA KOTHARI

....

APPELLANT(S)

VERSUS

UNITED INDIA INSURANCE CO. LTD.

....

RESPONDENT(S)

JUDGMENT

KRISHNA MURARI, J.

Leave granted.

2. The Appellant/Complainant, Nirmala Kothari's husband, Vinod GEETA AHUJA Ray Kothari was owner of a Hyundai Elantra vehicle, registration no. RJ36CA 0111, which was insured with the Insurance Company for a sum of Rs.5,00,000/- .

3. The said vehicle met with an accident with a tractor bearing no. HR38K 3216, on 06.06.2010 as a result of which the Appellant's husband, Vinod Ray Kothari, who was the owner of the car, and his daughter died and the vehicle was damaged. The driver of the vehicle, Dharmendra Singh Chauhan

got an FIR registered with the police. The Respondent/ Insurance Company, on intimation having been given to them, appointed a spot surveyor, and also a regular surveyor to carry out survey in the matter, but the claim was rejected by them vide their letter dated 28.03.2011. The Respondent/ Insurance Company stated in the repudiation letter that the driver Dharmendra Singh Chauhan did not have a proper driving licence at the time of the accident. The licence produced by him, alleged to have been procured from the office of the licencing authority, Sheikh Sarai, Delhi could not be verified, as the concerned officer of the transport department returned their letter with the endorsement that the record pertaining to the said licence was not available. Alleging deficiency on the part of the Respondent/ Insurance Company, the complainant filed a consumer complaint, seeking directions to the Respondent/Insurance Company to pay the Insured declared value (IDV) i.e. a sum of Rs. 5,00,000/- alongwith interest @ 9% per annum from the date of filing the complaint till payment and also to pay a sum of Rs. 50,000/- as compensation for mental agony and Rs. 11,000/- as litigation cost. The District Forum vide their order dated 30.05.2012, allowed the said consumer complaint and directed payment of an amount of Rs. 3,57,500/- to the complainant, as assessed by the surveyor alongwith interest @ 9% p.a. and cost of litigation of Rs. 2,500/-. Being aggrieved against the said order of the District Forum, the Respondent/ Insurance Company challenged the same by way of appeal before the State Commission, but the said appeal having been dismissed vide impugned order dated 18.09.2015, the Respondent/ Insurance Company came before National Commission by way of the Revision Petition No. 2835/2015.

4. The complaint no. 227/2012 had been filed by the same complainant Nirmala Kothari, against the Respondent/ Insurance Company, requesting for compensation of Rs. 2,00,000/- as accident claim with interest @ 9% per annum and compensation of Rs. 20,000/- for mental agony and Rs. 11,000/- for cost of litigation. The Respondent/ Insurance Company repudiated the said claim also vide their letter dated 14.02.2012 on the same ground that Dharmendra Singh Chauhan, the driver of the vehicle did not possess a valid and effective driving licence at the time of the accident in question.

5. The consumer complaint no. 227/2012 was also allowed by the District Forum, vide order dated 28.02.2013 and the Respondent/Insurance Company was directed to pay an amount of Rs. 2,00,000/- for personal accident claim along with interest @ 9% per annum from the date of filing the complaint and the cost of litigation of Rs. 2,500/-. Being aggrieved against the said order of the District Forum, the Respondent/ Insurance Company challenged the same by way of appeal no. 366/2013 before the State Commission. The said appeal having been dismissed vide impugned order dated 01.08.2016, the Respondent/ Insurance Company came before the National Commission by way of the Revision Petition No. 3053/2016. The National Commission absolved the Respondent/ Insurance Company of its liability since no record of the licence of the Driver was found with the licencing authority. Thus, aggrieved the Appellant/Complainant has come up in appeal.

6. It is the case of the Respondent/ Insurance Company that in the absence of a valid and effective driving licence with the driver, there was fundamental breach of the terms and conditions of the insurance policy in question and hence, the claim made by the Appellant/ Complainant was not payable. Whereas, it is argued by the Appellant/ Complainant that at the time of employing the

driver, the documents like driving licence etc. are generally checked but no one usually verifies the genuineness of the same.

7. Breach of conditions under Section 149(2)(a) of the Motor Vehicles Act, 1988 absolves the insurer of its liability to the insured. Section 149(2)(a)(ii) deals with the conditions regarding driving licence. In case the vehicle at the time of accident is driven by a person who is not duly licenced or by a person who has been disqualified from holding or obtaining a driving licence during the period of disqualification, the insurer is not liable for compensation. In the instant case it is a matter of fact that no record of the licence bearing no. P03041288753070 was found with the licensing authority.

8. Having set forth the facts of the present case, the question of law that arises for consideration is what is the extent of care/diligence expected of the employer/insured while employing a driver? To answer this question, we shall advert to the legal position regarding the liability of the Insurance Company when the driver of the offending vehicle possessed an invalid/fake driving licence. In the case of United India Insurance Co. Ltd. vs. Lehu & Ors. 1 a two Judge Bench of this court has taken the view that the Insurance Company cannot be permitted to avoid its liability on the ground that the person driving the vehicle at the time of the accident was not duly licenced. It was further held that the willful breach of the conditions of the policy should be established. The law with this respect has been discussed in detail in the case of Pepsu RTC vs. National Insurance Co. 2 We may extract the relevant paragraph from the Judgment: (Pepsu case, SCC pp. 223-24, para10) 1 (2003) 3 SCC 338 : 2003 SCC (Cri) 641 2 (2013) 10 SCC 217 “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.”

9. While the insurer can certainly take the defence that the licence of the driver of the car at the time of accident was invalid/fake however the onus of proving that the insured did not take adequate care and caution to verify the genuineness of the licence or was guilty of willful breach of the conditions of the insurance policy or the contract of insurance lies on the insurer.

10. The view taken by the National Commission that the law as settled in the Pepsu case (Supra) is not applicable in the present matter as it related to third-party claim is erroneous. It has been categorically held in the case of National Insurance Co. Ltd. vs. Swaran Singh & Ors. 3 (SCC pp.341, para 110) that, “110. (iii)...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 licenced driver or one who was not disqualified to drive at the relevant time.” 3 (2004) 3 SCC 297 : 2004 SCC (Cri) 733

11. While hiring a driver the employer is expected to verify if the driver has a driving licence. If the driver produces a licence which on the face of it looks genuine, the employer is not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise. If the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving licence there would be no breach of Section 149(2)(a)(ii) and the Insurance Company would be liable under the policy. It would be unreasonable to place such a high onus on the insured to make enquiries with RTOs all over the country to ascertain the veracity of the driving licence. However, if the Insurance Company is able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive, the insurance company would no longer continue to be liable.

12. On facts, in the instant case, the Appellant/Complainant had employed the Driver, Dharmendra Singh as driver after checking his driving licence. The driving licence was purported to have been issued by the licencing authority, Sheikh Sarai, Delhi, however, the same could not be verified as the concerned officer of the licencing authority deposed that the record of the licence was not available with them. It is not the contention of the Respondent/ Insurance Company that the Appellant/complainant is guilty of willful negligence while employing the driver. The driver had been driving competently and there was no reason for the Appellant/Complainant to doubt the veracity of the driver's licence. In view of above facts and circumstances, the impugned judgment is not liable to be sustained and is hereby set aside. The appeals accordingly stand allowed. The respondent/ Insurance Company is held liable to indemnify the appellant.

..... J.

(Navin Sinha) ..... J.

(Krishna Murari) NEW DELHI;

04TH MARCH, 2020