Ram Chandra Singh vs Rajaram on 14 August, 2018

Equivalent citations: AIR 2018 SUPREME COURT 3789, 2018 (8) SCC 799, 2018 AAC 1843 (SC), 2018 (6) ALJ 396, (2018) 2 WLC(SC)CVL 340, (2019) 73 OCR 352, (2019) 1 RAJ LW 301, 2018 (3) SCC (CRI) 606, (2018) 9 SCALE 618, (2019) 2 CIVLJ 91, (2018) 4 ACJ 2703, (2018) 3 PAT LJR 392, (2018) 5 ANDHLD 205, (2018) 6 BOM CR 257, (2018) 6 ALL WC 6080, (2018) 4 JCR 143 (SC), (2018) 4 TAC 28, (2018) 3 JLJR 371, (2018) 72 OCR 182, AIRONLINE 2018 SC 155

Author: A.M. Khanwilkar

Bench: Chief Justice, A.M. Khanwilkar, D.Y. Chandrachud

REPORTABL

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8145 OF 2018
(Arising out of SLP(C) No.6760/2017)

Ram Chandra Singh ….Appellant(s)

:Versus:

Rajaram and Ors. ....Respondent(s

JUDGMENT

A.M. Khanwilkar, J.

1. The singular question involved in this appeal against the judgment and order dated 28th November, 2016 passed by the High Court of Judicature at Allahabad in First Appeal From Order No.3290 of 2016, is whether the Motor Accident Claims Tribunal, Firozabad, was right in holding that the insurer was not liable as the driver had a fake licence.

2. Shorn of unnecessary details, the respondent Nos.1 to 5 filed a motor accident claim before the Motor Accident Claims Tribunal, Firozabad, bearing M.A.C.P. No.169 of 2012, consequent to the

death of Sanoj Kumar on account of motor accident which occurred on 10th May, 2012 at 6.30 A.M., when he was going for his morning walk towards Mustafabad Chauraha. At that time, the driver of Bolero loader bearing registration No.UP-71/0084 while driving the vehicle in a high speed and in rash and negligent manner, hit the deceased from behind. The Tribunal partly allowed the claim petition and awarded compensation amount of Rs.6,27,000/-, but absolved the Oriental Insurance Company Ltd. (for short, "the insurer") on the finding that the offending vehicle was driven by one Shivgyani (respondent No.6) who did not have a valid driving licence. The Tribunal, however, directed the insurer to pay the compensation amount as determined in terms of the award dated 24th August, 2016, with liberty to recover the same from the vehicle owner (appellant herein) and the driver (respondent No.6) jointly and severally.

3. The appellant, being the vehicle owner, alone filed an appeal before the High Court of Judicature at Allahabad which was dismissed on the finding that the counsel for the appellant did not dispute that the driving licence was found to be fake and no evidence was adduced before the Court to show that the driving licence was genuine. This concurrent view is the subject matter of challenge in the present appeal.

4. It is contended by the appellant that even if the finding of the Tribunal, that the driving licence relied upon by the owner of the vehicle and driver was fake, is maintained as it is, even then the Tribunal could not have absolved the insurer and made the owner of the vehicle liable, in the absence of a clear finding that the owner of the vehicle was aware about the factum of fake licence and despite the same, he made no attempt to take corrective measures, including to verify the genuineness thereof. In absence of such a finding, the insurer cannot be straightaway absolved. In support of this proposition, reliance was placed on PEPSU Road Transport Corporation Vs. National Insurance Company1, and Premkumari and Ors. Vs. Prahlad Dev and Ors.2. (2013) 10 SCC 217 (2008) 3 SCC 193

5. The counsel for the insurer submits that the appellant having admitted the fact that the driving licence was fake and failing to produce any other evidence to prove otherwise, cannot be heard to make any grievance about the finding recorded by the Tribunal and affirmed by the High Court absolving the insurer from the liability to pay the compensation amount.

6. We have heard Mr. S.R. Singh, learned senior counsel appearing for the appellant and Mr. Abhishek Gola, learned counsel appearing for the respondents.

7. We have perused the entire pleadings and the evidence on record as also the judgments of the Tribunal and the High Court. It is noticed that the insurer had taken a specific plea in the written statement filed before the Tribunal, that the driving licence of the driver was not a valid licence. In the alternative, it was asserted that the owner of the vehicle must produce the driving licence so that it can be verified from the licencing authority. Additionally, the insurer placed on record an investigation report, verification report and photocopy of the driving licence to establish the fact that the driving licence relied upon by the owner and the driver was fake and not valid. For, it was authenticated that no such driving licence was issued by the authority concerned.

8. It is also noticed that in the oral evidence, the appellant had stated that he had seen the photocopy of the driving licence of Shivgyani and was also satisfied about his driving skills, before employing him as the driver for driving the vehicle. In his cross-examination by the insurer, the appellant stated thus:

> "……I have not sold the vehicle. Driver Shiv Gyani was working with me from February 2012. He was permanent resident of District – Fatehpur. I never got verified the driving licence of Shiv Gyani. ……. This was not in my knowledge that he has no driving licence. This is incorrect to say that I provided my vehicle to him to drive despite I was aware that he has bogus licence. I am aware of this that licence is issued on the address one resides. ……This is incorrect to say that I am giving false evidence to save my skin."

9. The Tribunal while answering issue No.3, however, made no attempt to analyse the pleadings and evidence on record to ascertain whether the appellant (owner) was aware of the fake driving licence possessed by the driver (respondent No.6). The Tribunal merely adverted to the investigation and verification report and found that the stated driving licence was invalid. The High Court also made no attempt to enquire into the relevant aspect, as has been consistently expounded by this Court and restated in PEPSU Road Transport Corporation (supra). Even in the case of Premkumari (supra), the Court after considering the judicial precedents opined as follows:

> "It is clear from the above decision when the owner after verification satisfied himself that the driver has a valid licence and was driving the vehicle in question competently at the time of the accident there would be no breach of Section 149(2)(a)(ii), in that event, the insurance company would not then be absolved of liability. It is also clear that even in the case that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner was aware or noticed that the licence was fake and still permitted him to drive."

10. The decision in PEPSU Road Transport Corporation (supra) was relied upon by the appellant before the High Court which, however, distinguished the same by observing that it was on the facts of that case, where the Court opined that there was no evidence to prove that the driving licence produced by the authorities was fake. That approach, in our opinion, is manifestly wrong. Whereas, even in that case, the Court was called upon to deal with the similar question as is involved in this appeal. In that case, the Court first adverted to the decision in United India Insurance Co. Ltd. Vs. Lehru and Ors.3, and then to the three-Judge Bench decision in National Insurance Co. Ltd. Vs. Swaran Singh & Ors.4. Paragraphs 99-101 of Swaran Singh (supra) have been extracted, which read thus:

> "99. So far as the purported conflict in the judgments of Kamla and Lehru 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.
>
> 100. This Court, however, in Lehru 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.
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> 101. The submission of Mr Salve that in Lehru case, this Court has, for all intent and purport, taken away the right of an insurer to raise a defence that the licence is fake does not appear to be correct. Such defence can certainly be raised but it will be for the insurer to prove that the insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver." (2003) 3 SCC 338 (2004) 3 SCC 297 The Court then went on to advert to a two-Judge Bench decision of this Court in National Insurance Co. Ltd. Vs. Laxmi Narain Dhut,5 before dealing with the facts of the case before it.

11. Suffice it to observe that it is well established that if the owner was aware of the fact that the licence was fake and still permitted the driver to drive the vehicle, then the insurer would stand absolved. However, the mere fact that the driving licence is fake, per se, would not absolve the insurer. Indubitably, the High Court noted that the counsel for the appellant did not dispute that the driving licence was found to be fake, but that concession by itself was not sufficient to absolve the insurer.

12. As aforementioned, in the present case, neither the Tribunal nor the High Court has bothered to analyse the pleadings and evidence adduced by the parties on the crucial matter. Be that as it may, in this appeal, the limited grievance (2007) 3 SCC 700 of the appellant-owner of the vehicle is about unjustly absolving the insurer merely on the finding that the driving licence of the driver (respondent No.6) was fake. No other aspect has been raised by the appellant nor do we intend to analyse or consider the same.

13. We, therefore, deem it appropriate to relegate the parties before the High Court for fresh consideration of the appeal filed by the appellant (owner) only on the question of liability of the owner or of the insurer (respondent No.7) to pay the compensation amount.

14. We make it clear that the High Court shall not examine any other issue in the remand proceedings. For, the compensation amount, as determined and directed by the Tribunal, has already been made over to the claimants.

15. Accordingly, we set aside the impugned judgment and order passed by the High Court of Judicature at Allahabad and restore the First Appeal From Order No.3290 of 2016, to the file of the High Court to its original number for being decided afresh, on the limited question of whether the liability to pay compensation amount, is cast upon the appellant (owner of the vehicle) or respondent No.7 (insurer). That aspect be decided on its own merits in accordance with law. We may not be understood to have expressed any opinion, either way, on the efficacy of the pleadings

and the evidence produced by the parties adverted to in this judgment or in any other evidence on record. All questions in that behalf are left open.

16. The appeal is allowed in the aforementioned terms with no order as to costs.

.....CJI.

(Dipak Misra) .....J. (A.M. Khanwilkar) New Delhi;

August 14, 2018.