

Pepsu Road Transport Corp vs National Insurance Co on 26 August, 2013

Equivalent citations: (2013) 4 TAC 16, AIR 2014 SUPREME COURT 305, 2013 AIR SCW 6505, 2014 AAC 151 (SC), 2014 (1) AJR 137, (2014) 2 ACC 18, (2013) 130 ALLINDCAS 119 (SC), 2013 (10) SCALE 663, 2013 (10) SCC 217, (2013) 4 JCR 221 (SC), 2013 (130) ALLINDCAS 119, (2013) 5 ALLMR 924 (SC), (2013) 8 ADJ 39 (SC), AIR 2014 SC (CIVIL) 409, 2013 (4) KER LT 18 SN, (2013) 3 ACC 871, (2013) 100 ALL LR 647, (2013) 2 WLC(SC)CVL 470, (2013) 4 ACJ 2440, (2013) 6 MAH LJ 913, (2013) 4 RAJ LW 3237, (2013) 4 CPR 601, (2014) 1 ANDHLD 78, (2013) 4 RECCIVR 273, (2013) 10 SCALE 663, (2013) 6 ALL WC 5736, (2013) 4 MPLJ 581, (2013) 4 PUN LR 750, (2013) 4 CPJ 84, (2013) 6 BOM CR 292

Bench: Kurian Joseph, Gyan Sudha Misra

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8276 OF 2009

Pepsu Road Transport Corporation ... Appellant (s)

Versus

National Insurance Company ... Respondent (s)

J U D G M E N T

KURIAN, J.:

1. 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 licensed 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 the compensation. In the instant case, we are called upon to deal with a situation where the driver allegedly possessing only a fake driving licence.

2. Widow and two minor sons of late Gurjinder Singh Modi are claimants before the Motor Accidents Claims Tribunal, Chandigarh in M.A.C.T. No. 63/481 filed in the year 2002. The allegation was that Gurjinder Singh Modi died out of a motor accident on 04.10.2001 on account of the negligent driving of bus no. PB-11-K-8512 of the Pepsu Road Transport Corporation (for short, 'PRTC'), Patiala, the appellant herein. Rs.30,00,000/- was claimed as compensation. Negligence was proved. The Tribunal awarded Rs.11,03,404/- as compensation. However, the insurance company was absolved of its liability since the licence issued to the driver was found to be fake. The insurance company took the Local Commissioner to licensing authority, Darjeeling, West-Bengal and, on verification of the available records, it was reported that no such licence as possessed by the driver has been issued by the said licensing Authority at Darjeeling. Thus, aggrieved, the owner of the vehicle, viz., PRTC, Patiala has come up in appeal.

3. It is the contention of the appellant that they had appointed the third respondent - Nirmal Singh as driver with PRTC in 1994, he was given proper training from the driving school at Patiala and, thus, having taken reasonable steps in verifying the driving licence and, thereafter, having trained the driver by the employer himself, it cannot be said that the insurance company is not liable. There is no breach of any conditions by the insured. In other words, it is contended that even if the licence is fake, the owner having taken all reasonable steps, the insurer is liable. The other contention on merits is that the insurer had not established before the Tribunal that the licence issued to Nirmal Singh was fake. In this context, our reference has been invited to Annexure-2-evidence of the licensing authority before the Tribunal. It is stated that as per the available office records, no driving licence was issued to Nirmal Singh on 12.06.1985 with no.12385 of 1985. Licence numbers of 1985 as per record start from 22579 of 1985. Photocopy of the register maintained for issuing the licences was marked as R-1. However, it was also stated that: -

"...It can be possible that other licence register pertaining to year 1985 are not available today as it might be misplaced during the shifting of our office..." Still further, it was stated:

"... It is possible that the registers which are misplaced might contain the name of Nirmal Singh."

4. Though the appellant is entitled to succeed on the ground that the insurer had not proved beyond doubt that driver Nirmal Singh did not possess a valid driving licence, we shall also advert to the legal position regarding the liability of the insurance company when the driver of the offending vehicle possessed a fake driving licence.

5. In *United India Insurance Company Limited vs. Leheru and Others*[1], a two-Judge Bench of this Court has taken the view that the insurance company cannot be permitted to avoid its liability only on the ground that the person driving the vehicle

at the time of accident was not duly licensed. It was further held that the wilful breach of the conditions of the policy should be established. Still further it was held that it was not expected of the employer to verify the genuineness of a driving licence from the issuing authority at the time of employment. The employer needs to only test the capacity of the driver and if after such test, he has been appointed, there cannot be any liability on the employer. The situation would be different when the employer was told that the driving licence of its employee is fake or false and yet the employer not taking appropriate action to get the same duly verified from the issuing authority. We may extract the relevant paragraphs from the judgment:

“18. Now let us consider Section 149(2). Reliance has been placed on Section 149(2)(a)(ii). As seen in order to avoid liability under this provision it must be shown that there is a "breach". As held in *Skandia* and *Sohan Lal Passi* cases the breach must be on part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief is caught and it is ascertained that he had no licence. Can the Insurance Company disown liability? The answer has to be an emphatic "No". To hold otherwise would be to negate the very purpose of compulsory insurance. The injured or relatives of the person killed in the accident may find that the decree obtained by them is only a paper decree as the owner is a man of straw. The owner himself would be an innocent sufferer. It is for this reason that the Legislature, in its wisdom, has made insurance, at least third party insurance, compulsory. The aim and purpose being that an insurance company would be available to pay. The business of the company is insurance. In all businesses there is an element of risk. All persons carrying on business must take risks associated with that business. Thus it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time innocent parties must not be made to suffer or loss. These provisions meet these requirements. We are thus in agreement with what is laid down in aforementioned cases viz that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The insurance company must establish that the breach was on the part of the insured.” “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, Sohan Lal Passi and Kamla cases. We are in full agreement with the views expressed therein and see no reason to take a different view.”

6. The matter was subsequently considered by a three-Judge Bench of this Court in National Insurance Company Limited vs. Swaran Singh and Others[2]. The said Bench was of the view that in case the insured did not take reasonable and adequate care and caution to verify the genuineness or otherwise of the licence, the liability would still be open-ended and will have to be determined on the basis of facts of each case. The relevant discussions are available at paragraphs 92, 99, 100 and 101, which are extracted below:

“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 Lehu 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 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.” “99. So far as the purported conflict in the judgments of Kamla and Lehu 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 Lehu 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.” “101. The submission of Mr. Salve that in Lehu case, this Court has, for all intent and purport, taken away the right of 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.”

7. Swaran Singh’s case (supra) was subsequently considered by a two-

Judge Bench of this Court in National Insurance Company Limited vs. Laxmi Narain Dhut[3]. It was explained that:

“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 duly licensed driver or one who was not disqualified to drive at the relevant time...”

8. 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. On facts, in the instant case, the appellant employer had employed the third respondent Nirmal Singh as driver in 1994. In the process of employment, he had been put to a driving test and he had been imparted training also. The accident took place only after six years of his service in PRTC as driver. In such circumstances, it cannot be said that the insured is at fault in having employed a person whose licence has been proved to be fake by the insurance company before the Tribunal. As we have already noted above, on scanning the evidence of the licensing authority before the Tribunal, it cannot also be absolutely held that the licence to the driver had not been issued by the said authority and that the licence was fake. Though the appellant had also taken a contention that the compensation is on the higher side, no serious attempt has been made and according to us justifiably, to canvas that position.

10. In the above circumstances, the appeal is allowed. The fourth respondent - insurance company is liable to indemnify the appellant and, hence, there can be no recovery of the compensation already paid to the claimants.

11. There is no order as to costs.

.....J. (GYAN SUDHA MISRA)J. (KURIAN JOSEPH) New
Delhi;

August 26, 2013.

[1] (2003) 3 SCC 338
[2] (2004) 3 SCC 297
[3] (2007) 3 SCC 700

REPORTABLE
