

AMAR SINGH v. NEW INDIA ASSURANCE CO. LTD. & 2 ORS.

AMAR SINGH

...Appellant

NEW INDIA ASSURANCE CO. LTD. & 2 ORS.

...Respondent

Case No: REVISION PETITION NO. 2830 OF 2016

Date of Judgement: 07 December 2023

Judges:

BINOY KUMAR

PRESIDING MEMBER

For Appellant: MR. PRAVEER SINGH, MR. MANAV BHALLA, ADVOCATES

For Respondent: MR. RAKESH KUMAR, ADVOCATE

Facts:

Amar Singh had taken an insurance policy from New India Insurance Co. Ltd for his vehicle. The vehicle met with an accident on 12.02.2012 and was totally damaged. FIR was lodged. Amar Singh gave intimation to insurance company and submitted relevant documents but the claim was not settled. Amar Singh filed a complaint in District Forum seeking direction to insurance company to settle the claim along with interest. District Forum allowed the complaint and directed payment.

Insurance Company's Appeal in State Commission:

Insurance company filed appeal in State Commission stating that claim was correctly repudiated as driving license was found to be fake. State Commission allowed the appeal and set aside District Forum order.

Present Revision Petition:

Revision petition filed against State Commission order seeking to set it aside and restore District Forum order.

Arguments by Petitioner:

Owner is not expected to verify genuineness of driving license with RT0 if license looks genuine on face of it as per Supreme Court rulings in United India Insurance Co. Ltd. v. Lehru and National Insurance Co. Ltd. v. Swaran Singh. Insurance company failed to prove willful negligence on part of insured in employing driver with fake license. Surveyor's report crucial for assessing loss. District Forum order justified.

Arguments by Insurance Company:

Driving license was forged so repudiation was justified. State Commission order proper in dismissing the complaint.

Court's Elaborate Opinions:

Onus is on insurance company to prove willful breach of policy conditions by insured as held in Supreme Court rulings in Nirmala Kothari v. United India Insurance and Rishi Pal Singh v. New India Insurance. Owner expected to check competence of driver and not run around checking genuineness of license as per ruling in Iffco Tokio v. Geeta Devi. Surveyor's report crucial and needs to be given weightage. State Commission order illegal and against Supreme Court's settled position of law regarding alleged fake licenses. District Forum order restoring claim payment justified.

Referred Laws and Sections:

Section 21(b) of Consumer Protection Act, 1986. Referred to rulings in United India Insurance v. Lehru, National Insurance v. Swaran Singh, Nirmala Kothari v. UIIC, Rishi Pal Singh v. NIAC and Iffco Tokio v. Geeta Devi.

Case Laws Referred:

No case laws were referred in the order.

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Court

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Full Text of Judgment:

1. Aggrieved by the Order dated 01.08.2016 of the State Consumer Disputes Redressal Commission, Punjab (hereinafter referred to as the 'State Commission'), the Petitioner/Complainant through his legal heirs has filed this Revision Petition under Section 21(b) of the Consumer Protection Act, 1986 (for short 'the Act') against M/s New India Insurance Co.Ltd. & Ors. (hereinafter referred to Respondents/ Opposite Parties/ Insurance Company) with prayer to set aside the Order of State Commission, which had set aside the Order of the District Consumer Disputes Redressal Forum, Gurdaspur (hereinafter referred to as the 'District Forum') dated 18.02.2014 which had allowed the Complaint. I will not go into the details of the Complaint as it has been adequately covered in the Orders of the District Forum and the State Commission.

2. The brief fact of the case as narrated in the Complaint is that the Complainant took an Insurance Policy from the Insurance Company for his vehicle vide Policy Cover Note No.3616023111010000073 for period from 12.04.2011 to 11.04.2012. The Insured Declared Value (IDV) of the vehicle was Rs. 14,50,015 /-. The vehicle met with an accident on 12.02.2012 at Village – Chiplun, District- Ratnagiri, State – Maharashtra and was totally damaged. An FIR was lodged in the Police Station on 13.02.2012. The Complainant had stated that Rs. 5,00,000 /- was spent on repair of the vehicle. He gave intimation of the loss to the Insurance Company and submitted all the relevant document. However, the claim was not settled. Aggrieved by this the Complainant filed a Complaint in the District Forum with prayer to direct the Insurance Company to make payment of Insurance Claim along with interest and other reliefs.

3. The District Forum allowed the Complaint and held as under: "11. So, we have come to the conclusion, the opposite party has wrongly

repudiated the claim of the complainant on the basis of fake driving licence. As such, the complaint is partly allowed and direct the opposite party to pay the amount of Rs.198706/- as assessed by the surveyor vide report ex. OP8. Opposite Party is directed to pay compensation of Rs. 3000/- to the complainant along with litigation expenses of Rs. 2000/-. Compliance of the orders be made within one month from the date of receipt of copy of orders; failing which opposite party shall be liable to pay interest at the rate of 9% p.a. from the date of filing of complaint till the payment is paid.”

4. Aggrieved by the Order of the District Forum, the Insurance Company filed an Appeal before the State Commission. The State Commission allowed the Appeal, set aside the award given by the District Forum and dismissed the Complaint.

5. I have heard the Learned Counsel for both the parties and perused the material available on record.

6. The Learned Counsel of the Petitioner/ Complainant argued that the claim of the Complainant was repudiated on the ground of fake license of the driver. The Petitioner had checked the driving license of the driver at the time of employing him. He relied on two Orders of the Hon'ble Supreme Court in United India Insurance Co. Ltd. v. Lehu, (2003) 3SCC 338, decided on 28.02.2003 and National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297, decided on 05.01.2004, wherein the Insurance Company was held liable even after it was found that the license was fake. He argued that the Order of the District Forum is well reasoned and justified and therefore must be upheld.

7. The Learned Counsel of the Insurance Company argued that the driving license was forged and therefore the Insurance Company was justified in repudiating the claim vide letter dated 21.12.2012. The State Commission has not erred in dismissing the Complaint and thus the Revision Petition must be dismissed.

8. After going through the Orders of the State Commission, District Forum and the grounds, arguments raised in the present Revision

Petition. I am of the view that the central issue revolves around whether the Insurance Company was justified in repudiating the claim of the Petitioner/ Complainant on the ground of fake driving license and whether there was willful negligence on the part of the Petitioner/ Complainant at the time of employing the Driver in not finding out the veracity of the licence. The State Commission in para 9 of its Order on the basis of the affidavit filed by the Complainant concluded that Complainant had not looked into the genuineness of the license of the driver at the time of employing him. Further, the driving license of the driver was found to be fake after verification done at the office of DTO, Hoshiarpur. I disagree with the observation made by the State Commission on the basis of the Affidavit of the Complainant as the Complainant in its affidavit had stated that the driving license is genuine which means he believed that the driving license of the driver was not fake in the first instance at the time of employing him. The Hon'ble Supreme Court in United India Insurance Co. Ltd. v. Lehu (supra) had held that the owner of a vehicle when he hires a driver, he has to check the driving license and if it looks genuine on the face of it then the owner is not expected to find out whether the license in fact has been issued by a competent authority. The relevant portion of the Order reads as under:

"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.”

9. Further, the issue of whether there was wilful negligence on the part of the Insured needs to be looked into. The Insurance Company had failed to prove that the Insured had wilfully employed the driver with fake license. In this regard, I would like to rely on the recent Order of this Commission in Oriental Insurance Co. Ltd. & Anr. Vs. Surya Konwar in FA No. 630 of 2017, decided on 30.05.2023 wherein fact and circumstances were similar. The relevant portion of the Order reads as under: “15. In this regard, I am placing reliance on the Order of the Hon’ble Supreme Court in Nirmala Kothari Vs. United India Insurance Co. Ltd. decided on 04.03.2020, wherein it was held that the Insurance Company unless it proves that there was wilful negligence on the part of the Insured while employing the driver on the issue of veracity of Driving License is liable to indemnify the Insured. It would be proper to quote as under the relevant portion of the Order as the issue discussed therein is similar to the one being dealt with in the present Appeal:- 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. 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. We may extract the relevant paragraph from

the Judgment: (Pepsu case, SCC pp. 223-24, para10) "In a claim for compensation, it is certainly open to the insurer under Section149(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.(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." 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. 16. The Hon'ble

Supreme Court in a recent Order in Rishi Pal Singh Vs. New India Assurance Co. Ltd. (Civil Appeal No.4919 of 2022) decided on 26.07.2022 has held as under:-

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 herein before, 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 where of 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) 4SCC 342 : 2001 SCC (Cri) 701] and Lehu [(2003) 3 SCC 338 : 2003SCC (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. 100. This Court, however, in Lehu [(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."

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. In the instance case, the Insurance Company has not established that there was a wilful breach of the conditions of the Insurance Policy. 10. I would also like to rely on the recent Order of the Hon'ble Supreme Court in Iffco Tokio General Insurance Co. Ltd. v. Geeta Devi, 2023 SCC On Line SC 1398, decided on 30.10.2023. The relevant portion of the Order reads as under: " 16. As already pointed out supra, once a seemingly valid driving licence is produced by a person employed to drive a vehicle, unless such licence is demonstrably fake on the face of it, warranting

any sensible employer to make inquiries as to its genuineness, or when the period of the licence has already expired, or there is some other reason to entertain a genuine doubt as to its validity, the burden is upon the insurance company to prove that there was a failure on the part of the vehicle owner in carrying out due diligence apropos such driving licence before employing that person to drive the vehicle. Presently, no evidence has been placed on record whereby an inference could be drawn that the deceased vehicle owner ought to have gotten verified Ujay Pal's driving licence. Therefore, it was for the petitioner-insurance company to prove willful breach on the part of the said vehicle owner. As no such exercise was undertaken, the petitioner-insurance company would have no right to recover the compensation amount from the present owners of the vehicle. The impugned order passed by the Delhi High Court holding to that effect, therefore, does not brook interference either on facts or in law. 17. These legal propositions being so well settled, it is indeed shocking that insurance companies deem it appropriate to raise such pleas as a matter of course, without reference to the facts of the given case and/or the evidence available therein, and also consider it necessary to carry such matters in appeal till the last forum, unmindful of the wastage of valuable curial time and effort!"

11. In view of the discussion above, I am of the view that the Order of the District Forum is well reasoned and justified. It has relied on the Surveyor's Report, which assessed the loss as Rs. 1,98,706/- for the repairs. The Surveyor's Report is crucial in any insurance claim and needs to be given due weightage. The Order of the State Commission, in view of discussion above is illegal and irregular as it does not take into account the law laid down by the Hon'ble Supreme Court in matter relating to alleged fake licence. Accordingly, it needs to be set aside.

12. In view of the aforesaid discussion, the Revision Petition is allowed and the Order of the State Commission is set aside. The Order of the District Forum is upheld.