Before Rajbir Sehrawat, J.

SANDEEP KUMAR AND ANOTHER—*Petitioner*

versus

ATTAM PARKASH AND OTHERS—*Respondents*

FAO No. 8627 of 2015

December 20, 2017

A*: Motor Vehicles Act 1988, Sections 147, 149 and 170 – Mere fake or invalidity of driving licence are not defences available to Insurance Company – Insurance Company required to prove that insured was guilty of negligence and failed to exercise reasonable care in fulfilling conditions of policy regarding use of vehicle by a duly licensed driver.*

Held that the bare perusal of the judgment of Hon'ble Supreme Court in *Swaran Singh'case (supra)* makes it clear that the Hon'ble Supreme Court has taken this case at a conceptual level to settle the proposition regarding the defences available toInsurance Company under Section 149 of the Motor Vehicles Act. This has been so candidly observed by the Hon'ble Supreme Court in the very first and opening para of the judgment. While interpreting Section 149 of the Motor Vehicles Act, in para 105 of the judgment, as reproduced above, the Hon'ble Supreme Court has categorically laid down that mere absence of license, mere fakeness of license, mere invalidity of the driving license or mere disqualification of the driver for driving at relevant time are themselves not the defences available to the Insurance Company, *per se*. Still further, this judgment clarifies that these factors shall not be available as a defence either against the owner or against the third party. To avail the benefit of Section 149, the Insurance Company would be required to prove that insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the conditions of the policy regarding use of the vehicle by a duly licensed driver. In other words, the Hon'ble Supreme Court has cast a duty upon the Insurance Company to prove on record that the owner had been negligent at the time of employing the driver or that he had not taken reasonable care to see that the driver possesses the valid and effective driving license. Owner is not required to verify from the Licensing Authority as to the validity of driving license of the driver. Still further, the Hon'ble Supreme Court has held that the onus to prove the negligence and lack of reasonable care on the part of the owner, would be upon the insurer. Although, the Hon'ble Supreme Court has clarified that it is not laying down any particular manner in which the burden of this proof shall be discharged by the Insurance

Company, however, the Hon'ble Supreme Court has further held that even if the insurer is able to prove the breach of policy conditions on the part of the insured regarding condition of holding of the valid driving license or disqualification of driver then also the insurer would not be allowed to avoid its liability towards the insured; unless the said breach is so fundamental as are found to have contributed to the cause of accident.However, the Hon'ble Supreme Court held that the question whether the owner has taken reasonable care to find out as to whether the driving license producedby the driver fulfills the requirement of law or not will have to be determined on the facts of each case.

(Para 14)

B: ***Motor Vehicles Act, 1988 – Persons entitled to claim compensation – It is not "dependants" upon deceased but legal representatives of deceased – Parents and wife entitled to compensation)***

Held that mere fact that the person is resident of Haryana and license is issued by the Government of Nagaland, per se, could not make the license to be invalid or fake. Even the fact that the person is not ordinarily residing in the area from where the license is issued; would not render the license to be fake and invalid because Section 9(2) provides another eventuality also that a person can get the license from the place from where he has obtained the training of driving or attended the driving school. In the present case, there is no such evidence, on record, to show that the said driver had not obtained the training from the Nagaland. On the contrary, he has deposed in examination-in-chief itself that he had been to Nagaland. The other argument of the learned counsel for respondents that the witness has admitted that he does not have proof of residence of Nagaland; is also irrelevant. The license is issued and is shown to have been issued by the competent authority. A particular address is also duly mentioned on the license, although, of the State of Haryana. The Insurance Company has not led any evidence as to how the address of Haryana is wrongly written on the driving license or that the same was not written by licensing authority purporting to issue it.

(Para 17)

Amit Kumar Jain, Advocate
for the respondent No. 1.

J.P.Jangra, Advocate
for the respondent No.2.

Rajnish Malhotra, Advocate
for the respondent No. 3.

RAJBIR SEHRAWAT, J. (ORAL)

(1) This decision shall dispose of two appeals i.e. FAO No. 8627 of 2015 and FAO No. 8628 of 2015.

(2) Both the appeals have been filed by the owner of the offending vehicle challenging the common award passed by the Motor Accident Claims Tribunal, Rewari to the extent that it had absolved the Insurance Company of the liability to make the payment of the amount awarded by it.

(3) The brief facts as claimed in the petitions by the claimants before the Motor Accidents Claim Tribunal are that on 08.08.2013, when the claimants were going to their Village Karnawas on motor cycle bearing registration No. HR-36-H/3996, this motor cycle was hit by the Indica Car bearing registration No. HR-47-B/6322, being driven in a rash and negligent manner by the respondent No. 1 (in the claim petition). In the accident, the claimants were injured and they were immediately removed to Government Hospital, Rewari. From there, injured Rakesh was shifted to Dr. Amandeep Hospital and Trauma Centre, Rewari and Atam Prakash was taken to Medanta, the Medicity Hospital, Gurgaon. On account of this, two separate claim petitions were filed by the injured claimants.

(4) In the claim petition, respondent No. 1 had filed written statement denying the factum of the accident involving his vehicle bearing registration No. HR-47-B/6322. Respondent No. 3-Insurance Company filed separate written statement denying the accident for want of knowledge. It was further pleaded that the driver of the offending vehicle was not holding a valid and effective driving license at the time of accident in question. Other defences, provided under Sections 147, 149, 157 and Section 170 of the Motor Vehicle Act, were also taken.

(5) After hearing learned counsel for the parties and perusing the record, the Tribunal awarded an amount of Rs. 20,88,400/- in the claim petition filed by Atam Parkash from which FAO-8627-2015 has emerged. Likewise, an amount of Rs. 1,10,600/- was awarded in another claim petition filed by Rakesh Kumar from which FAO-8628-2015 has arisen.

(6) However, while dealing with the liability to make the payment of the awarded amount, the Tribunal held that the bare perusal of driving license, Ex.R-4, which is issued from Nagaland, shows that it is fabricated document and hence, the Insurance Company of the offending vehicle is absolved of liability to make the payment. Liability to make the payment was fixed upon the owner of the vehicle.

(7) While arguing the case, learned counsel for the appellants has submitted that the driving license of the driver has been proved to be a genuine document. It is submitted by him that the driver of the vehicle has been called as a witness by the Insurance company themselves. The driver has produced the license, Ex.R4 on record. Mere fact that the driving license is issued from Nagaland does not prove that it is a fake license. It is submitted that the driver has deposed that he happened to have visited Nagaland. Still further, the driver has deposed that he was having driving license and he produced the copy of the same on the record. Still further, it is submitted by the learned counsel for the appellants that the driving license has not been proved to be fabricated or as not issued by the competent authority; because no person has been examined from the authority, who issued this driving license. Nor any other evidence has been led by the Insurance Company to show that this document was not issued by the competent authority or that the same is a fake document.

(8) Still further, it is submitted by the learned counsel for the appellants that even if assuming for the sake of argument, that it is a fake document, still as per the judgment of the Hon'ble Supreme Court reported in titled as ***National Insurance Company Limited*** versus ***Swaran Singh and others***[1]; it is not a defence available to the Insurance Company either against the third party or against the insured/owner. To avoid the statutory liability under Section 149, the insurer has to prove that the owner was negligent and had not taken reasonable care while employing the driver to see that the driver is having a valid license. It is submitted that the Insurance Company has not led any evidence to show that the appellant had not taken due care at the time of employing the respondent No. 1 as driver or that the appellant has been negligent at the time of employing the respondent No. 1 as the driver.

(9) On the other hand, learned counsel for the respondent-Insurance Company has submitted that the Insurance Company has examined the driver of the offending vehicle. Although, he has produced and proved the license, Ex. R4, however, his deposition shows that this licence, is, in all likelihood, a fake document. Learned counsel for the respondent has impressed for drawing this inference from the fact that this witness has admitted that he does not know where the office of the licensing authority of Nagaland is situated. He has admitted that he went to Nagaland in 2014, whereas the license is shown to have been issued in 2010. Still further, learned counsel submits that the driver has admitted that he does not have

[1] 2004 (2) RCR (Civil) 114

any proof of permanent residence in Nagaland. Still further, learned counsel submitted that the license has been issued at the residence of Haryana whereas under the provisions of the statute, license is required to be obtained from area where person is ordinarily residing.

(10) To buttress his argument, learned counsel submits that the judgment of Hon'ble Supreme Court rendered in ***Swaran Singhs'*** case (supra) has been considered in several subsequent judgments of the Hon'ble Supreme Court. However, he basically relies upon the judgment of the Hon'ble Supreme Court rendered in the case of ***National Insurance Company Limited*** versus ***Luxmi Narain Dutt***; [2]. It is his submission that this judgment clarifies that if the license is fake one; renewal cannot validate it subsequently. Still further, this judgment has clarified that in case of third party risk, the Insurance Company has to pay the amount in the first instance but, it can recover the same from owner, if so advised. Still further, learned counsel submits that the owner had not appeared in the case to state that he had taken due and reasonable care at the time of employing the respondent No. 1. Therefore, the Insurance Company is not required to prove the negligence or lack of care on his part at the time of employing the respondent No. 1.

(11) Having heard learned counsel for the parties and perused the record with able assistance of the learned counsel for the parties, this Court is of the considered opinion that the arguments of learned counsel for the appellants deserve to be sustained. To appreciate the controversy, it is appropriate to have a reference to the law laid down in ***Swaran Singh'*** case (supra) and its subsequent explanation in case of ***Luxmi Narain Dutt's*** case (supra). The Hon'ble Supreme Court in ***Swaran Singh'*** case (supra) held as under:-

> "105. The summary of our findings to the various issues as raised in these petitions are as follows:
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> i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

[2] 2007(2) RCR (Civil) 345

ii)Insurer is entitled to raise a defence in a claim petition filed under Section 163 A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.

iii)The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. 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 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.

iv)The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

v) he court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.

vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under section 149(2) of the Act.

vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfil the

requirements of law or not will have to be determined in each case.

viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

ix) The claims tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.

xi)The provisions contained in sub-section (4) with proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims."

(12) On the other hand the Hon'ble Supreme Court in ***Luxmi Narain Dutt'*** case (supra) held as under:-

"In view of the above analysis the following situations emerge:

1. The decision in Swaran Singh's case (supra) has no application to cases other than third party risks.

2. Where originally the license was a fake one, renewal cannot cure the inherent fatality.

3. In case of third party risks the insurer has to indemnify the amount and if so advised to recover the same from the insured.

4. The concept of purposive interpretation has no application to cases relatable to Section 149 of the Act."

(13) This is also relevant to see that the judgment in case of ***Swaran Singh'*** case (supra) was delivered by a Bench comprising of three Hon'ble Judges of the Hon'ble Supreme Court whereas the judgment in case of ***Luxmi Narain Dutt'*** case (supra) was delivered by the Bench comprising of two Hon'ble Judges.

(14) The bare perusal of the judgment of Hon'ble Supreme Court in ***Swaran Singh'*** case (supra***)*** makes it clear that the Hon'ble Supreme Court has taken this case at a conceptual level to settle the proposition regarding the defences available to Insurance Company under Section 149 of the Motor Vehicles Act. This has been so candidly observed by the Hon'ble Supreme Court in the very first and opening para of the judgment. While interpreting Section 149 of the Motor Vehicles Act, in para 105 of the judgment, as reproduced above, the Hon'ble Supreme Court has categorically laid down that mere absence of license, mere fakeness of license, mere invalidity of the driving license or mere disqualification of the driver for driving at relevant time are themselves not the defences available to the Insurance Company, *per se*. Still further, this judgment clarifies that

these factors shall not be available as a defence either against the owner or against the third party. To avail the benefit of Section 149, the Insurance Company would be required to prove that insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the conditions of the policy regarding use of the vehicle by a duly licensed driver. In other words, the Hon'ble Supreme Court has cast a duty upon the Insurance Company to prove on record that the owner had been negligent at the time of employing the driver or that he had not taken reasonable care to see that the driver possesses the valid and effective driving license. Owner is not required to verify from the Licensing Authority as to the validity of driving license of the driver. Still further, the Hon'ble Supreme Court has held that the onus to prove the negligence and lack of reasonable care on the part of the owner, would be upon the insurer. Although, the Hon'ble Supreme Court has clarified that it is not laying down any particular manner in which the burden of this proof shall be discharged by the Insurance Company, however, the Hon'ble Supreme Court has further held that even if the insurer is able to prove the breach of policy conditions on the part of the insured regarding condition of holding of the valid driving license or disqualification of driver then also the insurer would not be allowed to avoid its liability towards the insured; unless the said breach is so fundamental as are found to have contributed to the cause of accident. However, the Hon'ble Supreme Court held that the question whether the owner has taken reasonable care to find out as to whether the driving license produced by the driver fulfills the requirement of law or not will have to be determined on the facts of each case.

(15) On the other hand, the judgment of Hon'ble Supreme Court rendered in ***Luxmi Narain Dutt's*** case (supra) has held that ***Swaran Singh's*** case (supra) has no application in cases other than third party risk. Still further, the Hon'ble Supreme Court has laid down in this case that in case of third party, insurer has to indemnify the amount and if so advised to recover the the same from the insured. Still further, the Hon'ble Supreme Court has laid down that if the original license was fake one; renewal of the same cannot validate it subsequently.

(16) The view of above expounded law, on the facts of the present case, there is nothing in evidence led by the Insurance Company to show that the owner had not been reasonably diligent or that the owner had been negligent at the time of when he employed the respondent No. 1 as a driver. The reliance of the appellant is only upon the statement of the driver of the vehicle. However, the driver has himself stated that he had the license. The moment, driver deposes the fact that he had the license; that shows, at least,

that the owner had not been negligent and he has not failed in exercising due care at the time of employing such a person; who before the Court also admitted that he had a driving license at the time of his employment. Otherwise also, a complete perusal of the testimony of this witness shows that the Insurance Company has not been able to prove even the fact that this driving license is fake. Learned counsel for the appellant is right in submitting that fakeness of the license, if any, could have been proved by the Insurance Company by examining the person or by proving some report from the authority who issued this license. Any other inference based on any other fact would be only an inference drawn without any basis; as to the fact, whether the license in question was, in fact, issued by the competent authority or not. In the present case, since nobody from the licensing authority has been examined nor any report from licensing authority is proved, therefore, fakeness of the license has not been proved by the Insurance Company.

(17) So far as the inferences drawn by the Tribunal from the testimony of respondent No. 1, as to the fakeness of certificate; are concerned; those are not sustainable in law. Mere fact that the person is resident of Haryana and license is issued by the Government of Nagaland, per se, could not make the license to be invalid or fake. Even the fact that the person is not ordinarily residing in the area from where the license is issued; would not render the license to be fake and invalid because Section 9(2) provides another eventuality also that a person can get the license from the place from where he has obtained the training of driving or attended the driving school. In the present case, there is no such evidence, on record, to show that the said driver had not obtained the training from the Nagaland. On the contrary, he has deposed in examination-in-chief itself that he had been to Nagaland. The other argument of the learned counsel for respondents that the witness has admitted that he does not have proof of residence of Nagaland; is also irrelevant. The license is issued and is shown to have been issued by the competent authority. A particular address is also duly mentioned on the license, although, of the State of Haryana. The Insurance Company has not led any evidence as to how the address of Haryana is wrongly written on the driving license or that the same was not written by licensing authority purporting to issue it.

(18) Learned counsel for the respondent-Insurance Company has submitted that the Insurance Company was not required to prove the negligence or lack of reasonable care on the part of the owner unless the owner himself has stepped into witness box and first deposed that he had exercised the due care at the time of employing the driver. However, this

submission of the learned counsel does not find support from any part of judgment of the Hon'ble Supreme Court rendered in case of ***Swaran Singh's*** case (supra)**.** Rather ***Swaran Singh's*** case (supra) holds that it is the sole responsibility of the Insurance Company to prove the negligence or lack of reasonable care on the part of the owner at the time of employing the driver whose license is found to be fake. Of course, the Insurance Company would have been at liberty to adopt any appropriate method to show that the owner was negligent or did not take reasonable care at the time of employing the driver.

(19) So far as, the judgments of the Hon'ble Supreme Court are concerned, the law on the topic is exhaustively and exclusively laid down by the Hon'ble Supreme Court in ***Swaran Singh's*** case (supra).

(20) So far as judgments rendered in ***Luxmi Narain Dutt's*** case (supra) is concerned, the same is expressly saying that the judgment of ***Swaran Singh's*** case (supra) would govern the cases relating to risk of third party claims and it would not be applicable in cases of own damage claims. Therefore, this judgment does not support the appellant to succeed in his argument. The observation of the Hon'ble Supreme Court in the case of ***Luxmi Narain Dutt's*** case (supra) that subsequent renewal of fake license would not be sustainable in law; is also not relevant in the present case, because in the present case it is not the case of any party that the fake license was renewed subsequently. Still further, learned counsel submits that this judgment has said that the insurer would be having recovery rights after making the payment to the third party. However, this Court does not find any substance in this argument also. The judgment of the Hon'ble Supreme Court in the case of ***Swaran Singh's*** case (supra) has laid down categorically that mere fakeness, invalidity or disqualification of the driver to drive the vehicle is not even a defence available to the Insurance Company; either against the insured or against the third party. Therefore, if mere fakeness of driving license is not even a defence available to the respondent-Insurance Company in the present case, then there is absolutely no question of granting any recovery of rights to the Insurance Company on the ground of fakeness of license. The judgment of Hon'ble Supreme Court in ***Luxmi Narain Dutt's*** case (supra) has been held as applicable, in cases of own damages and not in the cases of third party right.

(21) No further argument was raised.

(22) n view of the above, the award passed by the Motor Accidents Claim Tribunal to the extent of absolving the Insurance Company is set

aside. The Insurance Company is held liable to make the payment of the awarded amount. The appeals filed by the owner are allowed.

(23) In view of the above, both the appeals are allowed in the aforesaid terms.

Angel Sharma