

Before Ritu Bahri, J.

RUSTAM KHAN—Appellant

versus

**FUTURE GENERALI INDIA INSURANCE COMPANY LTD.
AND OTHERS—Respondents**

FAO No.1662 of 2013

July 23, 2019

Motor Vehicles Act, 1988—S. 166—Driver of offending vehicle produced two driving licences—Insurer verified only the one that was fake and not the other valid licence—Insurance company cannot be absolved of liability—No liability of driver.

Held that, even this judgment cannot be applicable to the facts of the present case as in the present case the driver had produced two driving licences and the insurance company verified only one licence which was found to be fake, another licence which was found to be proper and was valid on the date of accident, the insurance company did not verify the same. The Division Bench in United India Insurance Company Limited's case (supra) held that insurance company had failed to prove that driver was not having any valid driving licence and insurance company was rightly held liable to make compensation.

(Para 7)

Rajesh Lamba, Advocate
for the appellant.

Vishal Aggarwal, Advocate
for respondent No. 1.

RITU BAHRI, J. oral

(1) The present appeal has been filed by Rustam Khan who was the owner of the offending vehicle, against the award of the Tribunal dated 22.09.2012 whereby while allowing the compensation of Rs. 13,52,200/- to the claimants, the owner and driver have been held jointly and severally liable to pay compensation and the claim petition was dismissed qua the insurance company.

(2) The brief facts of the case are that on 19.01.2011, Sudeep Chakraborty husband of claimant No. 1 was going on feet towards his office from Silokhra village and reached near World SPA, Sector-30,

Gurgaon, a dumper bearing registration No. HR-27J/1248 being driven by its driver/respondent No. 1 in a rash and negligent manner hit him. As a result of the impact, he sustained multiple grievous injuries. He was rushed to Medanta, the Medicity Hospital, Gurgaon by Dinkar Kumar, Field Officer, World SPA, Sector 30 who was eye witness to this occurrence. Sudeep Chakraborty succumbed to his injuries in the hospital on the same day. An FIR No. 118 dated 19.01.2011 under Sections 279/304A IPC was registered in Police Station Sector-40, Gurgaon (Ex. P4). The post mortem report of the deceased is Ex P4/K, PW 4 Additional Ahlmad from the Court of Ms. Narinder Kaur, Ld. JMJC, Gurgaon has also proved that after registration of FIR, challan was also filed in the Court of learned Area Magistrate against the driver Anish Khan and eye witness Dinkar appeared as PW 5/A had reiterated the version given in the FIR. In view of the above said evidence, the finding on issue No. 1 has been rightly given in favour of the claimants.

(3) Learned counsel for the appellant has argued that finding on issue No. 1 has been rightly given in favour of the claimants. However findings on issue Nos. 2 to 5 have been wrongly given that the driver and owner are liable. PW 4 Additional Ahlmad appeared and placed copies of driving licence No. 800/08 issued by licencing authority Mathura Ex. P2 and insurance policy as Ex. P3. However, the verification report Ex.PY read with letter Ex. PZ shows that the said licence was found to be fake. As per the report no driving licence of the above said number has ever been issued in the name of respondent No. 1 and keeping in view the judgment passed in *National Insurance Company* versus *Vidhya Dhar*¹ the insurance company was exonerated from its liability to make compensation.

(4) Learned counsel for the appellant has argued that the report Ex. R-1 was produced before the Tribunal which had been issued by Licencing Authority M.V. Fatehgarh, Farukhabad (U.P.) to show that the driver was having valid driving licence but this report Ex. R-1 has been wrongly not considered by the Tribunal as the driver cannot have two driving licences and reference has been made to a judgment passed in *Bharat Kharbanda* versus *New India Assurance Company Ltd.*²

(5) Learned counsel for the appellant has referred to a Division Bench judgment passed in *United India Insurance Company Limited*

¹ AIR 2009 SC 208

² 2009(2) PLR 635

versus **Raj Rani**³ wherein it has been held that if a driver is having two licences and the insurance company verifies only one which is found to be forged and at the same time if another driving licence was properly issued and was valid at the time of accident, the insurance company is liable to make payment of compensation. The Division Bench judgment has been followed thereafter by this Court in **Ved Kaur and others** versus **Ramphal and others**⁴ and in **National Insurance Company Ltd.** versus **Balraj and others**⁵

(6) Learned counsel for the Insurance Company has also referred to the judgments passed by Coordinate Bench of this Court in **Shri Ram General Insurance Co. Ltd** versus **Asha and others**⁶ and **Paramjit Kaur and others** versus **Nahar Singh and others**⁷

(7) After hearing learned counsel for the parties, the present appeal deserves to be allowed. At the outset reference can be made to a first judgment given by learned counsel for the insurance company in **Shri Ram General Insurance Co. Ltd.** versus **Asha and others**. The facts in this case was that on the date of accident, the driving licence of the driver was a forged document. However, he got a valid driving licence after the accident and on the basis of that licence, he should be discharged from payment of compensation by the insurance co. the offending driver in that case was the son of the owner of the vehicle and he was carrying a forged driving licence. Even if subsequently he got a valid driving licence but on the date of accident, he was having fake driving licence, his appeal was dismissed. The facts of this case are not applicable to the facts of the present case as in this case, report of the second driving licence issued by Licencing Authority M.V. Fatehgarh, Farrukhabad (U.P.) has been placed on record by the appellant as Annexure A-1 and as per this report which is dated 07.05.2012 shows that the driver was having a valid driving licence from 27.06.2008 to 26.06.2011 and the accident in the present case took place on 19.01.2011 and he was having valid driving licence. The second judgment in the case of **Paramjit Kaur and others** versus **Nahar Singh and others**, the offending driver was having two driving licences. The first driving licence with the driver on the date of accident

³ 1996(2) RRR 266

⁴ 2016(3) Law Herald (P&H) 2455

⁵ 2012(1) R.C.R. (Civil) 898

⁶ 2015 ACJ 1005

⁷ 2017(1) Law Herald 619

did not allow him to drive Tata Sumo and this licence was rightly rejected and the second licence had been managed from a different area where the driver never stayed. Even this judgment cannot be applicable to the facts of the present case as in the present case the driver had produced two driving licences and the insurance company verified only one licence which was found to be fake, another licence which was found to be proper and was valid on the date of accident, the insurance company did not verify the same. The Division Bench in ***United India Insurance Company Limited's*** case (supra) held that insurance company had failed to prove that driver was not having any valid driving licence and insurance company was rightly held liable to make compensation. In para 10, the Division Bench has observed as under:-

“10. In our considered view, the Claim Tribunal has rightly held that the insurance company has failed to prove that driving licence Exhibit R-1 was a forged or fabricated document. It was duly issued and renewed by the District Transport Officer, Patiala, till October 8, 1996 covering the period of accident. The Insurance Company got verified licence Mark R-1 through its surveyor. Hence the Tribunal rightly held that on the date of accident the driver was having a valid driving licence.”

(8) This judgment has thereafter been followed in ***Ved Kaur and others*** versus ***Ramphal and others*** where also driver was having two driving licences and it was held that having two driving licences would not amount breach of terms and conditions of insurance policy and insurance company cannot absolve of its liability. Para No. 23 has been reproduced as under:-

“23. another point vehemently argued by learned counsel for the insurance company that there is a breach of terms and conditions of the policy with the driver holding two licences, being illegal and impermissible under the Motor Vehicles Act is not tenable. It has been held by Division Bench of this Court in ***United India Insurance Company Limited versus Raj Rani*** 1996(2) PLR 495 that when two driving licences are produced by the driver, it is for the insurance company to verify both the licences. The question whether there is a violation of Motor Vehicles Act by holding two driving licences would be addressed by the authorities and it cannot be said that the same would amount

for breach of terms and conditions of the insurance policy absolving the insurance company of its liability.

(9) Similarly in *National Insurance Company Ltd.* versus *Balraj and others*⁸ the driver had two driving licences and one licence was verified which was found to be fake. However the insurance company did not proceed to get verified the second licence on the ground that one driver cannot have two driving licences and while dismissing the appeal filed by the insurance co. it was held that the onus to prove that driving licence of the offending vehicle was fake is on the insurance company. This onus was not discharged and hence the judgment passed by Coordinate bench of this Court in the case of *Bharat Kharbanda* (supra) could not be of any help to the insurance company. The appeal of the insurance company was dismissed. In the present case, the appellant had placed on record report issued by Licencing Authority M.V. Fatehgarh, Farukhabad (U.P.) as Ex. R-1 before the Tribunal which has now been placed on record by way of CM-11956-CII-2014 as Annexure A-1. A perusal of the report shows that on the date of accident, the driver was having valid driving licence and it is the insurance company who did not verify this report.

(10) Keeping in view the above, this appeal is allowed. Award dated 22.09.2012 is being modified and the appellant is absolved of his liability to make payment of compensation. The insurance company is held liable to make payment of compensation.

Tejinderbir Singh

⁸ 2012(1) R.C.R. (Civil) 898