Before B.S. Walia, J.

SAHUN—*Appellant*

versus

SMT. JUBEDA AND OTHERS—*Respondents*

FAO No.5926 of 2015

September 17, 2018

Motor Vehicles Act, 1988—S.149(2)(a)(ii)—Liability of insured on hiring a driver—Recovery Rights granted to Insurance Company challenged—Held, owner to take reasonable care while employing qualified and competent driver—Not expected to verify genuineness of driving license before hiring driver—Insurance companies to establish failure on part of owner to take reasonable care—Mere raising vague plea in written statement not sufficient—Appeal dismissed.

Held, that Hon'ble the Supreme Court in National Insurance Co. Ltd. vs Laxmi Narain Dhut, 2007 (2) RCR (Civil) 345 held that fake or invalid driving licence of the driver at the relevant time was not in itself a defence available to the insurer against the insured or third parties and 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 conditions of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time and that it was always open to the insurer under Section 149 (2)(a)(ii) of the Act to take a defence that the driver of the vehicle involved in the accident was not duly licensed and on such defence being taken, the onus would be on the insurer but even after it was proved that the license possessed by the driver was a fake licence, the question would be whether there was a liability on the insured when he hires a driver. In respect thereto, it was held that as far as owner of the vehicle was concerned, when he hired a driver, he had to check whether the driver had a valid driving licence. Thereafter, he had to satisfy himself as to the competence of the driver and if satisfied in that regard also it can be said that the owner had taken reasonable care in employing a person who was qualified and competent to drive the vehicle and he could not be expected to go to the extent of verifying the genuineness of the driving licence with the Licensing Authority before hiring the services of the driver.

(Para 11)

Further held, that Hon'ble the Supreme Court in National Insurance Co. Ltd. vs Laxmi Narain Dhut, 2007 (2) RCR (Civil) 345 held that fake or invalid driving licence of the driver at the relevant time was not in itself a defence available to the insurer against the insured or third parties and 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 conditions of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time and that it was always open to the insurer under Section 149 (2)(a)(ii) of the Act to take a defence that the driver of the vehicle involved in the accident was not duly licensed and on such defence being taken, the onus would be on the insurer but even after it was proved that the license possessed by the driver was a fake licence, the question would be whether there was a liability on the insured when he hires a driver. In respect thereto, it was held that as far as owner of the vehicle was concerned, when he hired a driver, he had to check whether the driver had a valid driving licence. Thereafter, he had to satisfy himself as to the competence of the driver and if satisfied in that regard also it can be said that the owner had taken reasonable care in employing a person who was qualified and competent to drive the vehicle and he could not be expected to go to the extent of verifying the genuineness of the driving licence with the Licensing Authority before hiring the services of the driver.

(Para 16)

Aman Bansal, Advocate, *for the appellant.*

None for respondent Nos.1 to 3 and 5.

Sachin Ohri, Advocate, for respondent No.4-Insurance Company.

B.S. WALIA, J. (ORAL)

(1)This order shall decide FAO Nos.5926 and 5928 of 2015 as they arise from common award dated 13.11.2014, besides identical question is involved in both cases. However, facts have been taken from FAO No.5926 of 2015.

(2)Appeal has been filed by the owner Sahun against the recovery rights granted to respondent No.4-Insurance Company qua compensation of Rs.7,15,000/- awarded to the widow and two minor children of one Taleem who died in a motor vehicular accident along with Subhan Khan on 18.08.2012.

(3)The learned Motor Accidents Claims Tribunal, Mewat (hereinafter referred to as 'the Tribunal, Mewat') vide its award dated 13.11.2014 while granting compensation to the widow and two minor children of Taleem, granted recovery rights to the Insurance Company on the ground that the licence of the driver of the offending vehicle i.e. Fakru had been found to be fake on the basis of evidence led by the Insurance Company.

(4)Learned counsel for the appellant contended that two claim petitions had been filed before the learned Motor Accidents Claims Tribunal i.e. one on account of death of Taleem, out of which instant appeal arises and in respect of which award was passed on 13.11.2014 while the other claim petition was filed qua death of Subhan Khan before the learned Motor Accidents Claims Tribunal, Nuh (hereinafter referred to as 'the Tribunal, Nuh'). The learned Tribunal, Nuh vide its award dated 31.10.2013 found that respondent No.1 therein i.e. Fakru, driver was having a valid and effective driving licence on the date of accident and that counsel for the Insurance Company had failed to substantiate that the owner and driver had violated any terms and conditions of the Insurance Policy.

(5)Learned counsel contended that once the learned Tribunal, Nuh in its award dated 31.10.2013 had found the licence of the driver (i.e. Fakru) of the offending vehicle, to be genuine then a different finding could not have been given in respect thereto by the learned Tribunal, Mewat. Consequently, the finding of the learned Tribunal, Mewat giving recovery rights to the respondent-Insurance Company from the appellant were legally unsustainable and liable to be set aside.

(6)Per contra, learned counsel for respondent No.4-Insurance Company contended that in the claim petition before the learned Tribunal Nuh, evidence was not available with the respondent-Insurance Company of the licence being fake and it was only on the basis of efforts made in the case pertaining to Taleem before the learned Tribunal, Mewat that it was found from the office of the RTO, Mathura that the licence claimed to have been issued to Fakru was never issued to him but to some other person though the same had been renewed by the RTO, Gurgaon.

(7)Learned counsel for the appellant has relied upon paragraph No.11 of the decision of Hon'ble the Supreme Court in ***Ram***

Chandra Singh *versus* ***Rajaram and others*** [1]to contend that it is only if the owner was aware of the licence of the driver being fake and still permitted the driver to drive the vehicle, that the insurer would stand absolved of liability and the mere fact that the driving licence was fake per se would not absolve the insurer of liability. Relevant extract of the decision is reproduced as under:-

> "11. Suffice it to observe that it is well established that if the owner was aware of the fact that the license was fake and still permitted the4 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."

(8) Learned counsel further relied upon paragraph No.20 of the decision of Hon'ble the Supreme Court in ***United India Insurance Company Ltd.*** *versus* ***Lehru and others***[2] to contend that while hiring a driver if the driver produces a driving licence which on the face of its looks genuine then 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 and if he finds that the driver is competent to drive the vehicle, he will hire the driver. Relevant extract of the aforesaid decision is 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 its 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 RTO's, 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

[1] 2018 (3) Law Herald (SC) 2028
[2] 2003 (2) RCR (Civil) 278

> 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 had been laid down in Skandia's, Sohan Lal Passi's and Kamla's case. We are in full agreement with the view expressed therein and see no reason to take a different view."

(9) Learned counsel contends that in the circumstances, once it is the admitted position that the driving licence, be that it was fake, had been renewed by the RTO Office, Gurgaon, then in that situation the insurer could not absolve himself of liability to make payment of compensation to the claimant and claim recovery rights against the owner of the offending vehicle since the Insurance Company cannot take up the stand that there is violation of terms of the policy by the owner. Per contra, learned counsel for the Insurance Company contended that no doubt the Insurance Company is entitled to take a defence under Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) that the offending vehicle was driven by an unauthorized person or the person driving the vehicle did not have a valid driving licence. However, the onus would shift on the Insurance Company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorized by him to drive the vehicle and was having a valid driving licence at the relevant time and mere raising a vague plea in the written statement that the offending vehicle was being driven by a erson having valid driving licence would not suffice in the absence of disclosure of the name of the driver as well as his other details.

(10) Learned Counsel contended that in the absence of producing any evidence to substantiate the fact that copy of the driving licence produced in support was of a person who in fact was authorized to drive the vehicle at the relevant time, the owner of the vehicle cannot be said to be extricated from liability.

(11) I have considered the submissions of learned counsel for the parties. Admittedly, the accident took place on 18.08.2012. The

appellant herein i.e. respondent No.1 before the learned Tribunal, Mewat in paragraph No.23 of the written statement contended that he had full documents of the vehicle and that Fakru (respondent No.2) i.e. driver had valid licence at the time of accident of the alleged offending vehicle.

(12) Hon'ble the Supreme Court in ***National Insurance Co. Ltd.*** *versus* ***Laxmi Narain Dhut*** [3]held that fake or invalid driving licence of the driver at the relevant time was not in itself a defence available to the insurer against the insured or third parties and 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 conditions of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time and that it was always open to the insurer under Section 149 (2)(a)(ii) of the Act to take a defence that the driver of the vehicle involved in the accident was not duly licensed and on such defence being taken, the onus would be on the insurer but even after it was proved that the license possessed by the driver was a fake licence, the question would be whether there was a liability on the insured when he hires a driver. In respect thereto, it was held that as far as owner of the vehicle was concerned, when he hired a driver, he had to check whether the driver had a valid driving licence. Thereafter, he had to satisfy himself as to the competence of the driver and if satisfied in that regard also it can be said that the owner had taken reasonable care in employing a person who was qualified and competent to drive the vehicle and he could not be expected to go to the extent of verifying the genuineness of the driving licence with the Licensing Authority before hiring the services of the driver.

(13) Paragraph Nos.7 to 10 of the decision passed by Hon'ble the Supreme Court in ***Pepsu Road Transport Corporation*** *versus* ***National Insurance Company***[4] are reproduced as under:-

> "**7**. Swaran Singh's case (supra) was subsequently considered by a two- Judge Bench of this Court in **National Insurance Company Limited v. Laxmi Narain Dhut, 2007 (2) RCR (Civil) 345 : 2007 (1) Recent Apex Judgments (RAJ) 956 : (2007) 3 SCC 700**. It was explained that:

[3] 2007 (2) RCR (Civil) 345
[4] 2014 (1) SCC (L&S) 750

"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.
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> 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.

(14) Learned counsel for the appellant has also relied upon the decision of Hon'ble the Supreme Court in ***National Insurance Co. Ltd.*** *versus* ***Swaran Singh and others***[5] to contend on the basis of paragraph No.110 that breach of policy condition has to be proved to have been committed by the insured for avoiding liability by the insurer and 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 and 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 licensed driver or one who was not disqualified to drive at the relevant time. Relevant extract of paragraph No.110 (iii), (iv) and (vii) is reproduced as under:-

> "110. The summary of our findings to the various issues as raised in these petitions is as follows:-
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> (iii) The breach of policy condition e.g. disqualification of

[5] 2004 (3) SCC 297

the driver or invalid driving licence of the driver, as contained in sub- section (2)(a)(ii) of Section 149, has 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 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 licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance Companies, 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.

(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.

(15) Per contra, learned counsel for respondent No.4-Insurance Company relied upon the decision of Hon'ble the Supreme Court in ***Singh Ram*** *versus* ***Nirmala and others***[6] to contend that in the absence of the owner not having deposed in evidence and stayed away from the witness box it could not be said that the owner had taken reasonable care with regard to proposition (vii) in Swaran Singh's case (supra).

(16) I have considered the submissions of learned counsel for the parties and am of the view that the matter is no longer *res integra* in view of decision of Hon'ble the Supreme Court in ***Pappu and others*** *versus* ***Vinod Kumar Lamba and another***[7]**.** As per the aforementioned decision, no doubt the Insurance Company is entitled to take a defence under Section 149(2)(a)(ii) of the Act that the offending vehicle was driven by an unauthorized person or the person driving the vehicle did

[6] 2018 (3) SCC 800
[7] 2018 (3) SCC 208

not have a valid driving licence. However, the onus would shift on the Insurance Company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorized by him to drive the vehicle and was having a valid driving licence at the relevant time and mere raising a vague plea in the written statement that the offending vehicle was being driven by a person having valid driving licence would not suffice in the absence of disclosure of the name of the driver as well as his other details.

(17) The aforementioned decision holds that in the absence of the owner entering the witness-box or examining any witness in support of the aforementioned plea and the Insurance Company having refuted the plea as also asserted that the offending vehicle was not driven by an authorized person nor was such driver having a valid driving licence nor the owner of the offending vehicle having produced any evidence except driving licence without any specific stand in the pleadings or in the evidence that the driver was in fact authorized to drive the vehicle in question at the relevant time, bonus would not shift on the Insurance Company requiring it to rebut such evidence and to produce other evidence to substantiate its defence and it is only after the basic facts are pleaded and established by the owner of the offending vehicle that it was driven by an authorized person having a valid driving licence that the onus would shift on to the Insurance Company.

(18) Accordingly, Hon'ble the Supreme Court held that without disclosing the name of the driver in the written statement or producing any evidence to substantiate the fact that the copy of the driving licence produced in support was of a person who in fact was authorized to drive the vehicle at the relevant time, the owner of the vehicle cannot be said to be extricated from liability. Paragraph No.11 which is relevant for the purposes of this case is reproduced as under:-

> "11. The question is: whether the fact that the offending vehicle bearing No.DIL-5955 was duly insured by respondent No.2 Insurance Company would per se make the Insurance Company liable? This Court in the case of National Insurance Co. Ltd. (supra), has noticed the defences available to the Insurance Company under Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988. The Insurance Company is entitled to take a defence that the offending vehicle was driven by an unauthorised person or the person driving the vehicle did not have a valid driving

licence. The onus would shift on the Insurance Company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorised by him to drive the vehicle and was having a valid driving licence at the relevant time. In the present case, the respondent No.1 owner of the offending vehicle merely raised a vague plea in the Written Statement that the offending vehicle DIL-5955 was being driven by a person having valid driving licence. He did not disclose the name of the driver and his other details. Besides, the respondent No.1 did not enter the witness box or examine any witness in support of this plea. The respondent No.2 Insurance Company in the Written Statement has plainly refuted that plea and also asserted that the offending vehicle was not driven by an authorised person and having valid driving licence. The respondent No.1 owner of the offending vehicle did not produce any evidence except a driving licence of one Joginder Singh, without any specific stand taken in the pleadings or in the evidence that the same Joginder Singh was, in fact, authorised to drive the vehicle in question at the relevant time. Only then would onus shift, requiring the respondent No.2 Insurance Company to rebut such evidence and to produce other evidence to substantiate its defence. Merely producing a valid insurance certificate in respect of the offending Truck was not enough for the respondent No.1 to make the Insurance Company liable to discharge his liability arising from rash and negligent driving by the driver of his vehicle. The Insurance Company can be fastened with the liability on the basis of a valid insurance policy only after the basic facts are pleaded and established by the owner of the offending vehicle - that the vehicle was not only duly insured but also that it was driven by an authorised person having a valid driving licence. Without disclosing the name of the driver in the Written Statement or producing any evidence to substantiate the fact that the copy of the driving licence produced in support was of a person who, in fact, was authorised to drive the offending vehicle at the relevant time, the owner of the vehicle cannot be said to have extricated himself from his liability. The Insurance Company would become liable only after such

foundational facts are pleaded and proved by the owner of the offending vehicle."

(19) In the instant case, in paragraph No.23 of the written statement, the appellant took up the stand that he had full documents of the offending vehicle and that respondent No.2 i.e. driver of the offending vehicle had valid driving licence at the time of false involvement of the alleged offending vehicle and the same was fully insured with the Insurance Company, therefore, the Insurance Company was liable to pay compensation to the petitioner. However, neither it was mentioned in the written statement by the owner that the driver of the offending vehicle was authorized by him to drive the vehicle nor did the appellant owner step into the witness box to prove that the driver of the offending vehicle was authorized by him to drive the vehicle and was having a valid driving licence at the relevant time except for raising a vague plea in the written statement that the offending vehicle was being driven by respondent No.2 who had a valid driving licence. No witness was examined by the appellant in support of the aforementioned plea whereas as per learned counsel for the Insurance Company, the Insurance Company has categorically stated that the offending vehicle was not driven by a person having a valid driving licence as is evident from paragraph No.6 of the award. There is no specific stand in the pleading or in the evidence in respect thereto that respondent No.2 i.e. Fakru was in fact authorized to drive the vehicle in question at the relevant time nor has anything been said either in the written statement nor was any evidence produced in respect thereto of the appellant having perused the renewed driving licence and after examining the competence of respondent No.2-Fakru i.e. driver to drive the vehicle, permitted him to drive the vehicle.

(20) In the circumstances, in the light of the decision of Hon'ble the Supreme Court in Ram Chandra Singh's case (supra), it cannot be said that the appellant had perused the renewed driving licence and had after satisfying himself with regard to the competence of respondent No.2 to drive the vehicle, permitted him to drive the vehicle and further that he had not seen the original driving licence . The mere fact that the learned Tribunal, Nuh in connected award in the absence of any evidence led by the Insurance Company held the driving licence of respondent No.2- Fakru to be valid would not confer any right on the appellant in the instant case who was party therein also as owner of the vehicle to claim that the evidence led by the Insurance Company in the claim petition before the learned Tribunal, Mewat be ignored orbrushed

aside and the finding of the learned Tribunal, Nuh with regard to the validity of the driving licence of respondent No.2-Fakru be upheld.

(21) In the instant case, the Insurance Company categorically led evidence that the driving licence issued by the RTO, Mathura in favour of respondent No.2-Fakru had been established to be fake. The appellant has neither claimed in the written statement nor led any evidence that he had not seen the original driving licence but only renewed driving licence and further that he had employed respondent No.2-Fakru after satisfying himself with regard to his competence to drive the vehicle.

(22) In the circumstances, no fault can be found with the award passed by the learned Tribunal, Mewat granting recovery rights in favour of the Insurance Company nor would the absence of challenge to the award given by the learned Tribunal, Nuh confer any right on the appellant to claim that the finding given by the learned Tribunal, Nuh in its award, be followed in the instant case.

(23) In the light of the position as noted above, the appeal being bereft of merit is dismissed. No order as to costs.

Sumati Jund