

Before M. Jeyapaul, J.

JASBIR SINGH—Appellant

versus

NEELAM @ NIRMALA AND OTHERS—Respondents

FAO No. 3173 OF 2011

July 3, 2012

Motor Vehicles Act, 1988 - S.149(2)a(ii) - Owner of vehicle held liable to pay compensation jointly with driver as driver held a fake license - Challenge to award by owner alleging he is not liable to pay compensation - Held, no breach of Section 149(2)a(ii) if owner has satisfied himself that driver is competent and has a license - Driver with owner for over 20 years - It is only the insurance company who is liable to verify the genuineness of the driving license - Insurance company has to prove that owner was aware that driver held fake license to escape liability - Appeal allowed - Insurance Company is liable to pay compensation.

Held, that in United India Insurance Company Ltd. Vs. Leheru and Ors., JT 2003 (2) SC 595, the Hon'ble Supreme Court of India has made an observation that it is not the owner who is expected to verify the genuine of driving license produced by the driver seeking the assistance of the

competent authority in the entire country. The insurance company is liable to establish that the owner of the vehicle was very much aware of the fake driving licensee possessed by his driver in order to get away from the liability.

(Para 8)

Further held. That the decision arrived at by the Tribunal that the appellant and his driver were jointly and severally liable to pay the compensation awarded to the claimants is set aside and Respondent No.6-United India Insurance Company Ltd. is held liable to pay the compensation.

(Para 11)

G.S. Punia, Advocate, *for the appellant.*

Harsh Aggarwal, Advocate, *for respondent No. 6.*

M. JEYAPPAUL, J.

(1) The owner of the vehicle Jasbir Singh aggrieved by the award passed by the Tribunal holding him liable to pay the compensation to the claimants has preferred the present appeal.

(2) The Tribunal having adverted to Ex.R6 and R8 issued by the Regional Transport Officer and Licencing Authority, Motor Vehicles Department, Cuttack informing thereby that the driving licence alleged to have been issued in the name of Ghansham was fake chose to fasten the liability on the driver and owner of the vehicle.

(3) Learned counsel appearing for the appellant who is the owner of the vehicle in the background of the decisions of the Hon'ble Supreme Court would submit that it is only the insurance company who is liable to verify the genuineness of the driving licence and project a case of violation of the terms and conditions of the policy. It is his further submission that in the instant case the appellant had employed Ghansham for the past 20 long years prior to the accident. There was no record to show that he was handin- glove with the driver and that he deliberately permitted the driver who had a fake licence to ply the vehicle. Therefore, it is his submission that the insurance company which has not discharged its burden of proving the violation of terms and conditions of the insurance policy is liable to answer the claim.

(4) *Per contra*, learned counsel appearing for the respondent-insurance company would submit that there is nothing on record to show that the appellant made some enquiry to verify whether the driving licence produced by Ghansham was a genuine one. He had not spoken to the fact that he tested the capability of Ghansham before appointing him as a driver. Therefore, the decisions cited by learned counsel appearing for the appellant would not apply to the facts of this case, he contends.

(5) On a careful perusal of the entire records, it is found that the insurance company, namely, respondent No.6 has got a report from the Regional Transport Officer and Licencing Authority, Motor Vehicles Department, Cuttack and produced the same as Ex.R6 before the Tribunal. The Tribunal also summoned a report from the said authority and exhibited the same as Ex.R8. The said report issued by the Regional Transport Officer and Licencing Authority, Motor Vehicles Department, Cuttack (Orissa) would go to show that the original driving licence issued in the name of Ghansham was a fake one. The above facts and circumstances would establish that Ghansham, driver of the offending vehicle who possessed only a fake driving licence was employed by the appellant herein.

(6) Now the point that arises for determination is whether the insurance company could be absolved of its liability in such a factual scenario. The appellant has given evidence to the effect that driver Ghansham had been employed for 20 long years prior to the occurrence. He had also verified the subsequent renewals of licence produced by Ghansham. The fact that Ghansham had been employed for 20 long years by the appellant would go to show that Ghansham had fully satisfied the owner of the vehicle, namely, the appellant herein as regards his capability to drive the offending vehicle. As rightly pointed out by learned counsel appearing for the appellant, nothing has been produced by the insurance company to show even remotely that the appellant having known full well that Ghansham had a fake driving licence employed him to drive the vehicle.

(7) In this context, it is very relevant to refer to the decisions of the Hon'ble Supreme Court cited by learned counsel for the appellant. In *United India Insurance Company Ltd. versus Lehu and Ors. (1)*, the Hon'ble Supreme Court has observed as follows:-

"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 driver 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 license 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 b e able to recover from the insured. This is the law which has been laid down in **Skandia's Sohan Lal Passi's and Kamla's case**. We are in full agreement with the views expressed therein and seen no reason to take a different view."*

(8) In the above decision the Hon'ble Supreme Court has made an observation that it is not the owner who is expected to verify the genuineness of the driving licence produced by the driver seeking the assistance of the competent authority in the entire country. The insurance company is liable to establish that the owner of the vehicle was very much aware of the fake driving licence possessed by his driver in order to get away from the liability.

(9) The Hon'ble Supreme Court has also held in **National Insurance Co. Ltd. versus Swaran Singh & Ors. (2)**, as follows:-

"108 (iii). The breach of policy condition e.g. disqualification of driver of 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 of 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 licenced driver or one who was not disqualified to driver at the relevant time."

The ratio laid down in the earlier decision has been reiterated in above decision of the Hon'ble Supreme Court.

(10) In view of the above legal position, in the special facts and circumstances of this case, I find that the Tribunal has erred in holding the owner of the vehicle liable to indemnify the claimants. Respondent No.6-insurance company is liable to pay compensation to the claimants.

(11) Therefore, the decision arrived at by the Tribunal that the appellant and his driver were jointly and severally liable to pay the compensation awarded to the claimants is set aside and respondent No.6- United India Insurance Company Ltd. is held liable to pay the compensation.

(12) Accordingly, the appeal is allowed. There is no order as to costs.

(13) A sum of Rs. 25,000/- deposited by the appellant at the time of preferring the appeal is directed to be returned to him.