

CASE NO.:
Appeal (civil) 4883 of 2007

PETITIONER:
M/s. United India Insurance Co. Ltd

RESPONDENT:
Davinder Singh

DATE OF JUDGMENT: 12/10/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T
[Arising out of SLP (Civil) No. 1939 of 2007]

S.B. SINHA, J :

1. Leave granted.

2. Whether renewal of a licence granted to drive a motor vehicle which was originally found to be forged would lead to any liability on the part of the insurance company is the core question involved in this appeal which arises out of a judgment and order dated 9.10.2006 passed by National Consumer Disputes Redressal Commission, New Delhi in R.P. No. 2908 of 2006.

3. Respondent is the owner of the vehicle bearing No. HR-37A-5521. He got the said vehicle insured on 10.11.2003 for one year, i.e., upto 9.11.2004. It met with an accident on 20.04.2004 with a truck. The said vehicle was being driven by one Kulbir Singh. Upon investigation made in this behalf, it was found that the licence bearing No. 6604/R-91-92 held by Kulbir Singh was not issued by the Licensing Authority, Solan.

4. However, a complaint petition was filed under Section 12 of the Consumer Protection Act, 1986 before the District Consumer Disputes Redressal Forum complaining deficiency in service for not paying the amount of damages which was covered by the insurance policy, which the appellant was allegedly bound to pay. The said complaint petition was allowed awarding a sum of Rs. 1,23,412/- towards damages, as also a sum of Rs. 20,000/- towards other heads, besides interest at the rate of 9% per annum, holding :

\0238. A plea has been taken by the opposite parties that Kulbir Singh, driver was not possessing a valid driving licence at the time of driving the vehicle. However, when Mr. Rajesh Shori inspected the driving licence, he found that the driving licence had been issued by the DTO, Hoshiarpur on 23.11.1998. The original driving licence was issued by the Licencing Authority, Solan in 1991-92. Learned Counsel for the opposite parties stated that there is no evidence on the file to the effect that the original driving licence had been issued by the Licencing Authority at Solan (H.P.), however, a report has been received on the back of the summons to the effect that, the original driving licence No. 6604/R-91-92 in the name of Kulbir Singh son of Amrik Singh had not been issued by the Licencing Authority, Solan (H.P.) as mentioned in the report Ex.R-10. It has been clearly stated by the complainant in his

affidavit Ex. C-1 that, when he employed the driver Kulbir Singh, he was possessing a valid driving licence issued by the Licencing Authority, Hoshiarpur. He also verified this driving licence issued by Licencing Authority, Hosiarpur and also took his driving test and found that he was an efficient driver. There is no rebuttal evidence from the side of the opposite parties and hence we hold that the driver Kulbir Singh was possessing a valid driving licence when the accident took place and hence the opposite parties illegally repudiated the claim of the complainant. As the opposite parties failed to make payment of compensation and, therefore, it is a case of deficiency in service.\024

5. An appeal preferred thereagainst was also dismissed by the State Consumer Dispute Redressal Commission. A revision application filed before the National Commission met with the same result.

6. The learned counsel appearing on behalf of the appellant, inter alia, would submit :

- (i) that a fake licence cannot be renewed and that too by an Authority which did not originally grant the same;
- (ii) indisputably, the complainant was the owner of the vehicle in question;
- (iii) it was comprehensibly insured;
- (iv) the vehicle, however, was being driven by Kulbir Singh who did not have an effective driving licence and in that view of the matter, the respondent was not entitled to grant of any amount by way of compensation or otherwise.

7. The learned counsel appearing on behalf of the respondent, on the other hand, would submit that :

- (i) in terms of the insurance policy the owner was required to take only reasonable care to ascertain as to whether the driver had been possessing a valid licence or not ;
- (ii) it was not possible for him to ascertain from the original Licensing Authority as to whether any licence had been issued by it or not;
- (iii) the duty of the owner is merely to take reasonable care in the matter as it is not expected that he would make a detailed enquiry in this behalf.

8. The complainant is the owner of the vehicle. The Motor Vehicles Act, 1988 was enacted to meet the social obligation in regard to a third party as a result whereof taking a cover of insurance is mandatory.

9. In terms of Section 149 of the Motor Vehicles Act, however, taking of an insurance policy in relation to damages which may be suffered by the owner of the vehicle was not compulsorily insurable.

10. It is, thus, axiomatic that whereas an insurance company may be held to be liable to indemnify the owner for the purpose of meeting the object and purport of the provisions of the Motor Vehicles Act, the same may not be necessary in a case where an insurance company may refuse to compensate the owner of the vehicle towards his own loss. A distinction must be borne in mind as regard the statutory liability of the insurer vis-à-vis the purport and object sought to be achieved by a beneficent legislation before a forum constituted under the Motor Vehicles Act and enforcement of a contract qua contract before a Consumer Forum.

11. In National Insurance Co. Ltd. v. Swaran Singh and Others [(2004) 3 SCC 297], whereupon strong reliance has been placed by the learned counsel appearing on behalf of the respondent, this Court was dealing with a question in regard to the claim of a third party vis-à-vis the role of an insurance company. It is in that context, this Court opined:

\02489. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section (2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are: (a) motorcycle without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller, and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10. They are \023goods carriage\024, \023heavy goods vehicle\024, \023heavy passenger motor vehicle\024, \023invalid carriage\024, \023light motor vehicle\024, \023maxi-cab\024, \023medium goods vehicle\024, \023medium passenger motor vehicle\024, \023motor-cab\024, \023motorcycle\024, \023omnibus\024, \023private service vehicle\024, \023semi-trailer\024, \023tourist vehicle\024, \023tractor\024, \023trailer\024 and \023transport vehicle\005

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 hereinbefore, 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 5 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 whereof 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.

110. (iii) The breach of policy condition e.g. disqualification of 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.\024

12. The said decision has been distinguished by a Bench of this Court in National Insurance Co. Ltd. v. Laxmi Narain Dhut [(2007) 3 SCC 700] in the following terms:

\02436. The inevitable conclusion therefore is that the decision in Swaran Singh case 1 has no application to own damage cases. The effect of fake licence has to be considered in the light of what has been stated by this Court in New India Assurance Co. v. Kamla. Once the licence is a fake one the renewal cannot take away the effect of fake licence. It was observed in Kamla case as follows: (SCC p. 347, para 12)

\023 12 . As a point of law we have no manner of doubt that a fake licence cannot get its forgery outfit stripped off merely on account of some officer renewing the same with or without knowing it to be forged. Section 15 of the Act only empowers any licensing authority to \021renew a driving licence issued under the provisions of this Act with effect from the date of its expiry\022. No licensing authority has the power to renew a fake licence and, therefore, a renewal if at all made cannot transform a fake licence as genuine. Any counterfeit document showing that it contains a purported order of a statutory authority would ever remain counterfeit albeit the fact that other persons including some statutory authorities would have acted on the document unwittingly on the assumption that it is genuine.\022 \024

13. Laxmi Narain Dhut (supra) has since been followed by this Court in The Oriental Insurance Company Limited v. Meena Variyal and Ors. [2007 (5) SCALE 269] wherein this Court referring to Swarn Singh (supra) held:

\023It is difficult to apply the ratio of this decision to a case not involving a third party. The whole protection provided by Chapter XI of the Act is against third party risk. Therefore, in a case where a person is not a third party within the meaning of the Act, the insurance company cannot be made automatically liable merely by resorting to the Swaran Singh (supra) ratio. This appears to be the position. This position was expounded recently by this Court in National Insurance Co. Ltd. v. Laxmi Narain Dhut 2007 (4) SCALE 36. This Court after referring to Swarn Singh (supra) and discussing the law summed up the position thus:
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 licence 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.\024

[See also Oriental Insurance Co. Ltd. v. Brij Mohan and Ors., 2007 (7) SCALE 753].

14. The decisions of this Court in Laxmi Narain Dhut (supra) as also Meena Variyal (supra) being directly on the point, we are bound thereby.

15. In view of the aforementioned authoritative pronouncements, we are of the opinion that the court below committed an error in holding the appellant liable to indemnify the owner of the vehicle in regard to losses sustained by him.

16. Different considerations would arise in a case of this nature, as the consumer forum established under the Consumer Protection Act, 1986 was concerned only with a question as to whether there was deficiency of service on the part of the appellant or not. A right on the part of the Insurance Company not to pay the amount of insurance would depend upon the facts and circumstances of each case. It in certain situation may be bound to pay the claim made by the third party; if the same is filed before a forum created under the Motor Vehicles Act. But defence may be held to be justified before a different forum where the question raised is required to be considered in a different manner.

17. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.