

PETITIONER:
NATIONAL INSURANCE CO. LTD.

Vs.

RESPONDENT:
SANTRO DEVI & ORS. ETC.

DATE OF JUDGMENT: 18/11/1997

BENCH:
M.M. PUNCHHI, M. SRINIVASAN

ACT:

HEADNOTE:

JUDGMENT:

THE 18TH DAY OF NOVEMBER, 1997

Present:

Hon'ble Mr. Justice M.M. Punchhi
Hon'ble Mr. Justice M. Srinivasan

P.P. Malhotra, Sr. Adv., Vineet Malhotra, Shalendra Sharma,
Naresh K. Sharma, Advs. with him for the appellant.

Prem Malhotra and Manoj Prasad, Advs. for the Respondents.

J U D G M E N T

The following Judgment of the Court was delivered:
(with SLP(C) No. 6262/97)
Leave granted.

This is an appeal against the judgment and order dated 17.10.96 passed by a full Bench of three Hon'ble judges of the High court of Punjab and Haryana in First Appeal From Order No. 75 of 1994.

The minimal facts giving rise to this appeal are these:

There was a motor accident which gave rise to a claim for compensation, duly set up by the claimants/respondents. One of the questions which was brought to the fore was whether the offending motor vehicle was being driven by a driver holding a valid driving licence. The matter was put to issue and the conclusion arrived at by the Tribunal was that the driver held a valid licence which had validly been renewed.

This finding stood affirmed in appeal before the High Court.

Yet it was taken by the High Court that a question of law arose as to whether a forged or a fake licence, if renewed would get validated or not so as to work out the liabilities under the Motor Vehicles Act. The question gathered momentum in as much as when the cause was before a Division Bench of the High Court, it referred the matter to a full Bench of three Hon'ble judges which in turn pronounced as follows:

"In view of the observations made above, I (M.S.Liberhan, J.) answer the questions posed as under:

(1) A forged driving licence though may be validly renewed, would not become a valid driving licence or a

duly issued driving licence in accordance with the Motor Vehicles Act.

(2) The insured bonafidely believing in the validity of a forged driving licence employing the holder of a fake driving licence renewed by a competent authority, would not or of the insurance policy. It would not be violating either conditions of indemnity or the any statutory provisions. Under these

circumstances, merely employing a driver with a forged driving licence would not absolve the insurer of its liability.

(3) In the absence of Mensrea or knowledge or intention to violate the terms of police or the provisions of the Act by the insured, the insurance company would not be discharged of its liability from indemnifying the insurer or of its statutory liability to third party.

(4) The insurance company cannot refuse to meet its liability quo third party for any act or omission bonafidely or otherwise committed by the insured or its liability inasmuch as third party for whose benefit the insurance has been provided, is not a privy to any breach as being not in control of the act or conduct of the insured or its employee or insurer. Thus, the insurance company cannot refuse to meet its liability quo third party.

(5) The insurer is duty bound and liable, statutorily as well as contractually to reimburse third party claim, for the tortuous act committed by the insured or his employee as well as the liability incurred by insured or his employee under the Motor Vehicles Act.

(6) the insurance company can neither refuse to indemnify nor is discharged from its liability to the insured or the claimants for an act of fraud committed by the third party quo the insured though it has a right to recover any loss suffered by it from the person, who committed the fraud or from any other authority, as permissible either under tort or any other statute; and

(7) The insurance company would be entitled to recover the amount, which it has paid to the claimant from the insured or his driver or employee who has perpetuated fraud

and the insurance company was made to reimburse third party who suffered loss because of the tortuous act of the insured or his employee. The insurer would not be left without remedy to reimburse tort in accordance with law for the failure or the State to discharge common duty care as well as the insured for not observing due care of an ordinary prudent person, expected from the insured, as a duty towards the insurer as well as the person who has committed the fraud. Remedy as available to the insurer is not a decision by this Court while dealing with the question, rather it is left open to be determined as and rather it is left open to be determined as and when a question arises in the facts and circumstances of a particular case."

We do not approve of the High Court having gone on to endeavour streamlining the law when its ratio on the fact situation was likely to be rendered totally obiter. As has been said above, there was concurrent finding recorded by the Tribunal as well by the High Court that the offending vehicle was driven by a driver who had held a valid licence and it stood renewed on the date of the accident. There was thus no occasion for the High Court to have ruled on suppositions to the contrary in order to interpret the law and that too on a fact situation not available to it. Thus, we are constrained to intervene and hold that the entire exercise of the High Court in that direction was obiter, not at all a binding precedent. In that sense, we strike off from the impugned order observations and findings pertaining thereto. Yet at the same time, we are required and do hereby affirm the substantive part of the order, in holding that the claimants/respondents had rightly been granted compensation on account of the motor accident, on the basis of the recorded finding of fact. We cannot help remarking that the High Court instead could have well have spent its time on other priorities.

The appeal thus would have to be and is hereby allowed in part to the extent and in the manner afore-indicated.

SLP (Civil) No.. 6262/97

This Special Leave Petition was tagged on with the above case on the assumption that the fate of the said case would govern the fate of this SLP. We find that the question as such was never raised before the High Court. The finding of fact recorded by the Motor Accidents' Claim Tribunal does not positively indicate that the licence of the driver of the offending vehicle was fake or forged. All the same, the licence was got renewed which reinforced the impression of the High Court that it was not proved substantially that the said licence to begin, was fake or forged. The Special Leave Petition is, therefore, dismissed.