2025 INSC 1204

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos.12442-12446 of 2024

Hind Samachar Ltd. (Delhi Unit)

...Appellant

Versus

National Insurance Company Ltd. & Ors.

...Respondents

With

Civil Appeal Nos.12449-12451 of 2024

Civil Appeal Nos.12460-12462 of 2024

Civil Appeal Nos.12463-12464 of 2024

Civil Appeal Nos.12455-12457 of 2024

Civil Appeal Nos.12465-12467 of 2024

Civil Appeal Nos.12458-12459 of 2024

Civil Appeal Nos.12447-12448 of 2024

Civil Appeal Nos.12452-12454 of 2024

J U D G E M E N T

K. VINOD CHANDRAN, J.

1. The appellant is the owner of a truck, involved in an accident in which nine persons lost their lives and two

sustained injuries; passengers in another vehicle, a Matador van. The appeal is against the ''pay and recovery'' directions granted to the insurance company which had insured the truck. The breach complained of and found in favour of the insurance company by the High Court was of the driver of the offending vehicle having produced a fake driving licence. The High Court was considering also the quantum appeals in which some modifications were made, with which we are not concerned. The insurance companies; both of the truck and the Matador van; found to be compositely negligent, apportioned at the rate of 75:25, had paid the compensation to the claimants.

2. Mr.Gopal Shankaranarayan, learned Senior Counsel appearing for the appellant contended that the Tribunal despite having noticed the two driving licences produced directed the insurance company to indemnify the owner of the vehicle, which is perfectly in order looking at the binding precedents. The High Court has gone on surmises and conjectures in presuming that the owner of the vehicle, the appellant herein, had colluded with its driver to obtain a fake

licence based on a register produced from the office of the District Transport Officer, Gurdaspur, which by reason of many interpolations made therein could not have been relied upon. The testimony of the witness, a Clerk from the office of DTO was against the certificate issued by the very same office, which had also indicated that the driving licence issued was later renewed.

3. The High Court had also observed that the driving licence seized from the driver of the vehicle, at the accident spot, was a different one and also proved to have been not issued from the office of RTO, Alwar. The same was produced by the Clerk of the record room in Tis Hazari Court, Delhi with the specific statement in the deposition that it was seized by them. The Tribunal had specifically noticed that the Clerk of the record room or the Court staff could not have made any such seizure. The learned Senior Counsel relied upon the decisions of this Court in ***United India Insurance Company v. Lehru and Ors.***[1]***, National Insurance Co. Ltd. v. Swaran***

[1] (2003) 3 SCC 338

Singh[2] and ***PEPSU RTC v. National Insurance Co. Ltd.***[3] and ***IFFCO Tokio General Insurance Co. Ltd. v. Geeta Devi***[4].

4. Dr. Manish Singhvi, learned Senior Counsel appearing for the respondent-insurance company pointed out that both the licences produced; by the police and that produced by the owner, were found to be fake. The registered owner of the truck, hence, can be safely found to have been negligent while entrusting the vehicle to the driver. It is vehemently contended that unlike the usual practice of the driver producing the driving licence, here, the owner's representative had produced it before the Tribunal which clearly indicates a collusion. The driver was not examined before the Tribunal. The Clerks of both DTO Gurdaspur and RTO Alwar had deposed that the licences said to have been issued from their office respectively R1W1/1 and A2 were not actually issued from the said offices. There is absolutely no reason to interfere with the finding of the High Court, and the

[2] (2004) 3 SCC 297
[3] (2013) 10 SCC 217
[4] 2023 SCC OnLine SC 1398

insurance company is definitely entitled to recover the amounts from the appellant-owner of the truck.

5. Suffice it to notice that the accident occurred on 26.01.1993 at 02:00 am at an intersection when the two vehicles, a truck and the Matador van carrying ten passengers collided. The claim petitions filed before the Tribunal were all of the passengers in the Matador van, including the driver. Nine petitions were filed for compensation for death occasioned and two, for the injuries sustained as also one petition for the damage caused to the Matador van. Before the Tribunal, the first respondent-the driver of the truck, the second respondent-its owner and the third respondent-the insurer, were impleaded, as originally filed. On objection being raised by the insurer, alleging negligence on the Matador van driver also, the owner and the insurer of the van were impleaded subsequently as the 4th and 5th respondents.

6. The Tribunal looked at the FIR, analysed the deposition of PW-3, an injured in the accident who was travelling in the Matador, and examined the site plan to find composite

negligence on the driver of both vehicles at the rate of 75:25. The compensation was determined and appeals were filed by both the insurance company and the owners of the vehicle, challenging respectively the liability and the quantum. As we noticed, we are only concerned with the "pay and recover" directions issued by the High Court in favour of the insurer and against the insured owner of the truck.

7. ***Lehru*** (supra) was a case in which though an allegation of the driving licence produced being fake was raised, the same was not proved before the Tribunal. The trite law was noticed that even if the licence is fake, the insurance company is liable to pay compensation, if they fail to prove that the insured had deliberately committed breach in entrusting the vehicle to a driver who had a fake licence. ***New India Assurance Co. v. Kamla***[5] wherein despite finding breach, the insurer was directed to pay compensation to the third parties, but, enabled recovery from the insured was noticed. It was categorically held that whether the insured would be protected by such an order was left open to be

[5] (2001) 4 SCC 342

considered on the facts of each case. It was held in ***Lehru and Ors.*** (supra) that: -

> *"**18**……we are thus in agreement with what is laid down in the aforementioned cases viz. that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The Insurance Company must establish that the breach was on the part of the insured."*

8. In ***Swaran Singh*** (supra), a three Judge Bench of this Court, considered the purported conflict in ***Kamla*** (supra) and ***Lehru and Ors.*** (supra) to hold as under: -

> ***"99.** So far as the purported conflict in the judgments of Kamla (2001) 4 SCC 342 and Lehru (2003) 3 SCC 338 is concerned, we may wish to point out that the defence to the effect that the licence held by the person driving the vehicle was a fake one, would be available to the insurance companies, but whether despite the same, the plea of default on the part of the owner has been established or not would be a question which will have to be determined in each case."*

9. In ***PEPSU RTC*** (supra) it was held so on the facts arising in the said case, as under: -

> *"**11**. 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."*

10. In ***Geeta Devi*** (supra) this Court deprecated the practice of the insurance companies blithely claiming that the deceased vehicle owner did not conduct due diligence while employing a driver; which is not a condition prescribed either in the statute or in the insurance policy, despite the

wealth of precedents. It was held so in paragraph 15, as under: -

> ***"15.*** *Applying the afore-stated edicts to the case on hand, it may be noted that the petitioner-insurance company did not even raise the plea that the owner of the vehicle allowed Ujay Pal to drive the vehicle knowing that his licence was fake. Its stand was that the accident had occurred due to the negligence of the victim himself. Further, the insurance policy did not require the vehicle owner to undertake verification of the driving licence of the driver of the vehicle by getting the same confirmed with the RTO. Therefore, the claim of the petitioner-insurance company that it has the right to recover the compensation from the owners of the vehicle, owing to a willful breach of the condition of the insurance policy, viz., to ensure that the vehicle was driven by a licenced driver, is without pleading and proof."*

11. Now, coming to the facts of this case, A2 was produced by R3W1, a Clerk of the record room in Tis Hazari Court as was pointed out by the appellant. While referring to his deposition, the Tribunal had in paragraph 179 specifically stated that neither the Clerk nor the Court could have seized

the driving licence at the time of accident. It is also stated in paragraph 184 that: *'Interestingly, the police had seized the driving licence A2 from the driver of the Tempo issued from Alwar, renewed on 18.04.1990 till 17.04.1993'*. We would, for the moment, assume that it is a typographical error and the statement is that A2 was seized from the driver of the truck itself. Even then, there is no evidence to substantiate the seizure having been made, nor even the seizure mahazar produced, which the police would have recorded if such seizure had been made at the accident spot or from the driver, later on.

12. We do not find any substance in the argument of the respondent-insurer that a collusion can be validly inferred since the driving licence was produced by the owner. In fact, the owner of the truck is not an individual and is a company, as we see from the cause title. Undisputedly, even if the tort-feasor is the driver, the liability for any negligence of the driver rests on the owner of the vehicle, vicariously. There can be no suspicion raised merely because the owner had produced the driving licence before Court. It only indicates

that the owner had been diligent enough to procure the driving licence from the driver and produce it before the Tribunal, so as to validly raise a case for indemnification by the insurer.

13. The office of the DTO, Gurdaspur had also issued a certificate indicating that the driving licence No.5288 issued in the name of the first respondent was so issued on 05.04.1991 valid from 05.04.1991 to 04.04.1994 and, thereafter renewed from 11.08.1994 to 10.08.1997 vide entry No.2903 dated 11.08.1994, produced along with the additional documents by the appellant and marked before the Tribunal as R-1.

14. The driving licence issued from the office of DTO Gurdaspur was produced as R1W1/1 and R3W3 was a Clerk from the office of DTO Gurdaspur who claimed that Exhibit R1W1/1 was not issued from their office and no amount was deposited in the name of R1 towards driving licence fees in their office on 21.08.1990. Immediately, we have to notice that the date 21.08.1990 has no nexus with the date of issuance of

R1W1/1, which was first issued on 05.04.1991 and the renewal effected on 11.08.1994.

15. Further, it is to be noticed that the DL register produced from the office of DTO Gurdaspur was full of interpolations. A colour photograph of 1st respondent was found in the register but the name shown was different. In cross examination, it has come out that there were interpolations and deletions made as against other entries too. Also on the ground of there being no possibility of a colour photograph in the year 1990, the High Court found collusion between the owner and the driver. The collusion at best can be only alleged for the production of the licence and not with respect to the entrustment of the vehicle.

16. As has been noticed in ***Geeta Devi*** (supra) there is no pleading or substantiation of due diligence having not been employed at the time of entrustment. R1W1 was the Advertising In-charge of the appellant who produced the licence before the Court as Exhibit R1W1/1. The certificate issued by the RTO Gurdaspur was also marked as R1 which we referred to from the additional documents. In cross

examination, there was only a bland suggestion made to the witness that the Directors of R2 knew that R1 possessed only a fake driving licence. There were no questions put to the witness, who was examined on behalf of the owner, as to the actual entrustment of the vehicle or whether R1 was employed regularly or temporarily and when such employment commenced, which are crucial insofar as proving or disproving due diligence by the owner at the time of engagement of the driver and the entrustment of the vehicle. As has been rightly held by the precedents above noticed, the owner of a vehicle employing a driver can only look at the licence produced by the person seeking employment and is not expected to verify from the licence issuing authority whether the licence is fake or not.

17. The insurance company from the totality of the circumstances has to bring out the absence of due diligence in the employment of the driver or the entrustment of the vehicle, to prove breach by the insured, which is totally absent in the present case. The High Court had erred in finding that there was collusion between the employer and

the employee merely for reason of the driving licence having been produced by the employer and the driver having not contested the claim. The driver, as has been noticed in a number of decisions of this Court, would have kept himself away from the box, for fear of incriminating himself; since a prosecution was pending against him. In any event, the vicarious liability to satisfy the damages caused by the negligence of the employee is on the employer, the later of whom has to contest the matter. Not only was the driving licence, as issued to the driver produced, but, a certificate showing its further renewal was also produced. In fact, we specifically notice that the renewal made is not an automatic renewal which has to be carried out within 30 days of the expiry of a driving licence, as per the Motor Vehicles Act and the Rules made thereunder. Herein the validity period of the licence, originally issued expired on 04.04.1994 and the renewal was on 11.08.1994.

18. We find absolutely no reason to sustain the order of the High Court, mulcting the liability on the owner of the truck. We set aside the order of the High Court, insofar as the rights

of recovery of the award amounts granted to the insurer. The other directions, as issued by the Tribunal and modified by the High Court, including determination of the award amounts would stand undisturbed.

19. The appeals stand allowed.

20. Pending application, if any, shall stand disposed of.

..... J.
(K. VINOD CHANDRAN)

..... J.
(N. V. ANJARIA)

NEW DELHI;
OCTOBER 08, 2025.