% 19.01.2006

Present: Mr. A.C. David for the appellant.
Mr. Ram N. Sharma for respondent-3.

18

+ **FAO No.11/2001**

1. The grievance of the appellant in the present Appeal is that the learned Tribunal has failed to notice that even in case of a fake driving licence, insurance company is liable to make payment to the third parties/claimants in view of the judgment of the Supreme Court in the case of National Insurance Company Ltd. Versus Swaran Singh repsorted in (2004) 3 SCC 297. Learned counsel for the appellant also relies upon the judgments in the case of Sohan Lal Passi versus P. Sesh Reddy and others reported in 1996 ACJ 1044 and New India Assurance Company Ltd versus Kamla and another reported in 2001 ACJ 843.

2. Learned Tribunal in the present case has come to the conclusion that the driver, namely, Mr. Man Mohan-respondent no.1 herein, was not holding a valid driving licence on the date of the accident i.e. 30.9.1994 as the driving licence produced by respondent no.1 was fake.

3. A similar question had come up for consideration before the Supreme Court in the case of Swaran Singh (supra)

19

and it was, inter alia, held as under:-

> 82.Proviso appended to sub-section (4) of Section 149 is referable only to sub-section (2) of Section 149 of the Act. It is an independent provision and must be read in the context of Section 96(4) of the Motor Vehicles Act, 1939. Furthermore, it is one thing to say that the insurer will be entitled to avoid its liability owing to breach of terms of a contract of insurance but it is another thing to say that the vehicle is not insured at all. If the submission of the learned counsel for the petitioner is accepted, the same would render the proviso to sub-section (4) as well as sub-section (5) of Section 149 of the Act otiose; nor can any effective meaning be attributed to the liability clause of the insurance company contained in sub-section (1) of Section 149. The decision in *Kamla case*[1] has to be read in the aforementioned context.
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> 83.Sub-section (5) of Section 149 which imposes a liability on the insurer must also be given its full effect. The insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does not mean that it did not have initial liability at all. Thus, if the insurance company is made liable to pay any amount, it can recover the entire amount paid to the third party on behalf of the assured. If this interpretation is not given to the beneficent provisions of the Act having regard to its purport and object, we fail to see a situation where beneficent provisions can be given effect to. Sub-section (7) of Section 149 of the Act, to which pointed attention of the Court has been drawn by the learned counsel for the petitioner, which is in negative language may now be noticed. The said provision must be read with sub-section (1) thereof. The right to avoid liability in terms of sub-section (2) of Section 149 is restricted as has been discussed hereinbefore. It is one thing to say that the insurance companies are entitled to raise a defence but it is another thing to say that despite the fact that its defence has been accepted having regard to the facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner. These two matters stand apart and require contextual reading.

4. In view of the above decision and the statutory

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1 (2001) 4 SCC 342

provisions, Insurance Company is liable to make payment of compensation to a third party/claimant and cannot avoid its liability on the ground that driving licence of the driver was fake or invalid.

5. In order to prove and establish that the driving licence was fake the respondent-Insurance Company had produced licence clerk, Licence Authority, Dehradun. The said witness in his examination-in-chief has stated that he has brought records relating to licence no.M 2568 in the name of Madan Mohan Lal Gupta s/o. Mithan Lal. He has further stated that he had checked up the records for the year 1988 and no licence bearing no. M 2568 was issued to anyone in the said year. However, in his cross-examination, the said witness has stated as under:-

> "**Q.** Can you produce the entire records showing the licence issued in the year 1988.
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> **Ans.** Yes. I can bring the same but the licence No.M 2568/98 has not been issued by our authority in the year 1988. I have not brought the record of 1988 today in the court."

6.The respondent no.1-Mr. Madan Mohan also appeared as a witness and in his examination-in-chief has stated that the

21

driving licence produced by him was issued by the Dehradun Authority. The said witness was not cross-examined by the Insurance Company. The Insurance Company also produced RW-3-Mr. Inderjit Chopra, Assistant Administrative Officer. In his statement, Mr Inderjit Chopra has merely stated that as per the terms of the insurance policy issued in favour of the insured, the driver of the vehicle should be holding a valid driving licence.

7. The question of recovery rights was also examined by the Supreme Court in the case of Swaran Singh (supra) and after referring to various provisions of the Motor Vehicles Act, 1988, it has been held that it was for the insurer to prove that the insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver. The Supreme Court clarified that even if a driving licence was held to be fake, the plea of default on the part of the owner to take adequate care and caution has to be established in each and every case. Concluding paragraph of the said judgment is reproduced below:-

> **110.** The summary of our findings to the various issues as raised in these petitions is as follows:
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> (i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this

99

paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii)An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(*a*)(*ii*) of the said Act.

(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.

(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.

(v)The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi)Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.

(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.

23

(viii)If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix)The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in sub-section (4) with the proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se

might delay the adjudication of the claims of the victims.

24

8. In view of the evidence led by the parties and available on record, I do not think it is a fit case in which the insurance company can be granted recovery rights in view of the said judgment.

9. Learned counsel for respondent no.3-insurance company thereafter submits that the multiplier of 18 has been applied in the present case and as per IInd Schedule, multiplier of 16 should have been applied as the age of the claimant was 20 years at the time of the accident. He further states that the learned Tribunal has erred in awarding interest @ 12% per annum from the date of filing of the Petition till final payment.

10. Learned counsel for the appellant very fairly concedes that the Trial Court Award be modified and the compensation may be computed by applying multiplier of 16 instead of 18 as held by the learned Tribunal. He further states that the appellant will be satisfied if interest @9% per annum is paid him from the date of the filing of the Petition till payment.

11. In view of the statement made by the learned counsel for the parties, as indicated above, the Award dated 7.8.2002 is

25

nodified to the extent that the compensation payable to the appellant will be calculated by applying multiplier of 16. Further, ellant will be entitled to interest @ 9% per annum from ead of @12% per

modified to the extent that the compensation payable to the appellant will be calculated by applying multiplier of 16. Further, the appellant will be entitled to interest @ 9% per annum from the date of filing of the petition till payment instead of @12% per annum as held by the learned Tribunal in the impugned Award. The Insurance Company shall make payment of the compensation in terms of the present Order within a period of four weeks from today. Payment once received shall be disbursed to the appellant in terms and as stipulated in the impugned Award.

12. Trial Court record be sent back.

SANJIV KHANNA, J

JANUARY 19, 2006
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