

# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No.86 of 2005.

Reserved on: 26.02.2009.

Date of decision: February 28, 2009.

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National Insurance Co.

... Appellant.

*Versus*

Smt.Satya Verma & Ors.

... Respondents.

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*Coram*

**The Hon'ble Mr. Justice Kuldip Singh, Judge.**

*Whether approved for reporting?* Yes

For the Appellant : Ms.Devyani Sharma, Advocate.

For the respondents : Mr.Romesh Verma, Advocate for respondents No.1 to 5.

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**Kuldip Singh, Judge.**

The insurer is in appeal against the award dated 25.4.2003 passed by learned Motor Accident Claims Tribunal (II), Shimla, in MAC No.32-S/2 of 1997 awarding Rs.6,93,040 along with interest at the rate of 9% from the date of filing of the petition till realization to respondents No.1 to 5 as per their shares mentioned in the award.

**2.** The facts, in brief, are that respondents No.1 to 5, who are widow, son and daughters of deceased Nand Lal

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes

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Verma filed petition claiming Rs.10 lac compensation on account of death of Nand Lal Verma who died in an accident on 5.12.1996 and another amount of Rs.40,000 on account of loss of properties at the time of accident, involving scooter No.HP-51-0265 and truck No.HR-38-2065. The deceased was driving the scooter. It has been alleged that respondent No.6 was the owner and respondent No.7 was driving the truck rashly and negligently at the time of accident. The deceased was 49 years old and was working as Senior Assistant in the Office of H.P. General Industries Corporation at the time of accident and was drawing salary Rs.7090/- per month. In addition, he was earning Rs.60,000 per annum from agriculture.

**3.** The petition was contested. The respondent No.6, owner of the truck, filed reply. He admitted the accident but denied rest of the contents of the petition for want of knowledge. He denied that truck in question was being driven in a rash and negligent manner at the time of accident. The respondent No.7, driver of the truck, in his reply admitted the accident but he denied rash or negligent act on his part for causing the accident. He pleaded that accident took place due to rash and negligent driving on the part of the deceased. He has also pleaded that accident took

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place due to mechanical failure. The objection of maintainability of the petition was also taken. The appellant Insurance Company contested the claim of respondents No.1 to 5 and pleaded breach of terms and conditions of the Insurance Policy. The person, who was driving the truck at the time of accident, was not holding valid and effective driving licence. The deceased himself was responsible for the accident who was driving the scooter in a rash and negligent manner. The insurer also questioned the maintainability of the petition and denied the claim of respondents No.1 to 5. In rejoinder, respondents No.1 to 5 reiterated their case and denied the defence put forward by owner, driver and insurer. The following issues were framed:

- (1) Whether the accident leading to the death of Shri Nand Lal had taken place because of the rash and negligent driving on the part of respondent No.2? OPP*
- (2) If issue No.1 is held in affirmative to what amount of compensation the petitioners entitled and from whom? OPP*
- (3) Whether the petition is bad for mis-joinder of necessary parties? OPR-3*

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*(4) Whether the respondent No.2 was not having the valid driving licence at the time of accident? OPR*

*(5) Relief.*

The issue No.3 was answered in negative. The issue No.1 was decided in favour of respondents No.1 to 5. The learned Tribunal decided issue No.4 and held that the driver was not holding valid licence at the time of accident but while deciding issue No.2 has held that the owner had no knowledge that the driver of the truck possessed a fake licence. Therefore, the insurer would not be absolved from its liability to pay the amount of compensation in a claim put by third party. In these circumstances, the amount of compensation shall be paid by the insurer.

**4.** I have heard Ms. Devyani Sharma, learned counsel for the appellant and Mr. Romesh Verma, learned counsel for respondents No.1 to 5 and gone through the record, none appeared for other respondents. On behalf of the appellant, it has been submitted that owner in his own statement-in-chief, has not stated that he took precautions before employing respondent No.7 as driver on the truck. He has not stated that he verified the particulars of the licence of respondent No.7 before his engagement. The issue No.4

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has been specifically decided by holding that driver of the truck was not holding valid licence, therefore, the Tribunal has erred in directing the insurer to pay the compensation. The learned counsel for the appellant has submitted that on its face, driving licence Ext.RW-3/A dated 14.05.1996 is fake and is in violation of Section 14(2) of the Motor Vehicles Act, 1988 (for short 'the Act'). The learned counsel for respondents No.1 to 5 has supported the impugned award and has submitted that it has been proved on record that owner of the truck was vigilant enough to verify the particulars of the driving licence. There was no patent illegality in the driving licence and the owner of the truck at the time of engagement of respondent No.1 as driver was not aware that respondent No.7 was not holding a valid and effective driving licence to drive heavy goods vehicle and the licence Ext.RW-3/A is fake.

**5.** The point in controversy is very narrow in the present appeal. The accident took place on 5.12.1996. Ext.RW-3/A is the copy of driving licence dated 14.5.1996 in the name of Suraj Mal for driving HTV. There is another copy of driving licence Ext.RW-1/A dated 25.9.2003 issued in the name of Suraj Mal for driving HTV. In view of the date of accident, the relevant driving licence is Ext.RW-

3/A and not Ext.RW-1/A. It has been contended on behalf of the appellant that Rajinder Kumar (RW-2), owner of the truck, in his statement has nowhere stated that he had engaged driver after verification of his driving licence and he was not aware of the fact that Suraj Mal respondent No.7 was not holding a valid driving licence to drive a truck when he was engaged. This contention has no force inasmuch as the burden of proof that the owner had the knowledge of the fake licence and despite that he engaged the driver is on the insurer. After noticing various judgments of the Supreme Court, including **National Insurance Co. Ltd. versus Swaran Singh and others**, 2004 ACJ 1, in **Sukhbir Singh versus National Insurance Co. Ltd.**, Latest HLJ 2006 (HP) 1337, in Paragraph-16, it has been held as follows:-

**"The law is now well settled as well as it is absolutely clear. It is that the Insurance Company cannot absolve its liability to pay the insured unless it is established that the insured was guilty of breach of a policy condition. The onus to establish this fact, as per the consistent view of the Supreme Court in all the aforesaid judgments is upon the insurer. The Insurer must prove that the insured was guilty of breach of policy condition, viz., that he was aware and had knowledge of the fact that the driver engaged by him to drive the vehicle did not possess a valid driving licence and despite**

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**having this knowledge and despite such awareness, he had allowed such a driver to drive the vehicle.”**

**6.** Rajinder Kumar, in his cross examination conducted on behalf of Insurance Company, has stated that he had himself seen the driving licence of respondent No.7. He was holding driving licence to drive heavy motor vehicle. He had also sent his clerk to the licencing authority, who told that the driving licence is valid. He denied the suggestion that he did not verify the driving licence. The statement of the witness is to be read as a whole. Therefore, it cannot be said that owner prior to engagement of the driver did not verify the particulars of driving licence of the driver. The statement of owner of the truck indicates that before engaging respondent No.7 as driver on the truck he verified the driving licence of respondent No.7 earnestly. The learned counsel for the appellant has also submitted that the perusal of statement of RW-1 Suraj Mal, driver, also indicates that the licence Ext.RW-3/A is not a legal document. The case of the insurer is that licence Ext.RW-3/A is fake and in presence of this stand of the insurance company as far as Insurance Company is concerned, licence Ext.RW-3/A is fake. But this is not the end of the matter. The Insurance Company is required to prove that respondent No.6, owner

of the truck, was aware that licence Ext.RW-3/A was fake and despite that he engaged respondent 7 on the truck. RW-4 Arun Ahluwalia, Administrative Officer, National Insurance Company, has stated that truck No.HR-38-2065 was insured vide policy Ext.RW-4/A. The driving licence of Suraj Mal was got verified and it was revealed that driving licence Ext.RW-3/A was not issued by RTO Rohtak nor it was renewed. The owner was having knowledge of fake licence and, therefore, there is a violation of the policy. RW-4 made a bald statement that owner was aware of the fake licence of the driver. It has not been elaborated by the Insurance Company how respondent No.6 owner of the truck was aware that respondent No.7 was holding fake licence and on what basis RW-4 has said that owner was aware of fake licence of respondent No.7 before his engagement. It is not believable that ordinarily an owner would engage a driver on the truck knowing fully well that the driver is holding a fake licence. It can be reasonably inferred that owner knows the consequences of engaging a driver on a truck having fake licence in claim cases. In these circumstances, it cannot be said that owner was aware that licence of respondent No.7 to drive the truck was fake when



respondent No.6 engaged respondent No.7 as driver on the truck.

**7.** The learned counsel for the appellant has submitted that licence Ext.RW-3/A is *ex-facie* fake inasmuch as this licence has been issued for unlimited period whereas as per Section 14(2) of the Act a licence to drive a transport vehicle is effective for a period of three years only. This contention has also no force. Section 14(2)(a) of the Act provides that licence to drive a transport vehicle is effective for a period of three years. It means in case no period is mentioned on the licence then the effective period of licence of transport vehicle is three years and no more. The licence Ext.RW-3/A has date of issue 14.5.1996, therefore, it was effective till 14.5.1999 as per Section 14(2)(a) of the Act. The accident took place on 5.12.1996 within three years from the date 14.5.1996 mentioned in licence Ext.RW-3/A. The Insurance Company cannot take help from the fact simply because no period was mentioned in licence Ext.RW-3/A showing its effectiveness, therefore, it was invalid. The learned Tribunal has appreciated the material on record properly. The Insurance Company can question the award on limited grounds. In the facts and circumstances of the case, no fault can be found with the impugned award.

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**8.** No other point was urged.

**9.** The result of the above discussion, appeal fails and accordingly dismissed with no order as to costs.

**February 28, 2009**<sub>(soni)</sub>

**( Kuldip Singh )  
Judge.**

