IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

FRIDAY, THE 16TH DAY OF SEPTEMBER 2022 / 25TH BHADRA, 1944

MACA NO.1524 OF 2012

AGAINST THE ORDER/JUDGMENT IN OP (MV) No.202/2007 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, PERUMBAVOOR

APPELLANT/1ST RESPONDENT:

AISHA
W/O.ABDUL KHADER, HOUSE NO.50/250,
PARTHIKKAPARAMBU HOUSE, EDAPALLY P.O., KOCHI-682024.

BY ADV SRI.P.DEEPAK

RESPONDENTS/PETITIONER AND RESPONDENTS 2 TO 4:

1. XAVIER
S/O.LONAPPAN, NELLIKKUNNU HOUSE, CHUNGAMVELI, ALUVA.

2. SANTHOSH
S/O.ADIMA, PLAVIDAPARAMBIL HOUSE, MADATHAZHAM, NEAR AMBATTUKAVU RAIL, THAIKKATTUKARA, ALUVA.

3. NATIONAL INSURANCE COMPANY LIMITED
DIVISIONAL OFFICE, URUMBATH BUILDING, R.S.ROAD, PUMP JUNCTION, ALUVA.

BY ADV SRI.P.G.GANAPPAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 02.09.2022, THE COURT ON 16.09.2022 DELIVERED THE FOLLOWING:

C.R

SOPHY THOMAS, J.

M.A.C.A No.1524 of 2012

Dated this the 16th day of September, 2022

J U D G M E N T

Is the owner of the offending vehicle, who bonafide believed the driving licence of the driver as a genuine one, liable to restitute the compensation amount paid by the Insurance Company, is the question mooted in this appeal.

2. Above appeal has been preferred by the 1st respondent/owner in O.P (MV) No.202 of 2007 on the file of Motor Accidents Claims Tribunal, Perumbavoor, challenging the pay and recovery ordered by the Tribunal.

3. As per the impugned award, the learned Tribunal awarded compensation of Rs.5,66,061/- to the injured, and directed the Insurance Company to deposit the amount with interest. As the driving licence of the 2nd respondent was found fake, the Insurance Company was permitted to recover the compensation amount deposited by them from respondents 1 and

2 i.e. the owner and driver of the offending vehicle. That order is challenged by the 1st respondent/owner in this appeal.

4. Admittedly, KL-7/AL 5804 stage carriage was owned by the 1st respondent/appellant, and it was driven by the 2nd respondent. That vehicle was duly insured with the 3rd respondent-Insurance Company. It was proved before the Tribunal that, the accident occurred due to the rash and negligent driving of the offending bus by the 2nd respondent. He was charge-sheeted for an offence punishable under Section 3(1) read with Section 181 of the Motor Vehicles Act also, on the presumption that, he had no driving licence to drive the vehicle, as he failed to produce the driving licence for perusal of the Investigating Officer, in spite of service of notice.

5. In the written statement, the 3rd respondent/insurer contended that, the 2nd respondent had no valid and effective driving licence and since the 1st respondent/owner entrusted the vehicle to the 2nd respondent, he violated the terms and conditions of the policy, and so, the Company is not liable to indemnify the real owner.

6. In the written statement filed by respondents 1 and 2, it was specifically averred that, the 2nd respondent had driving

licence No.40/251/07 which was valid from 01.12.2006 upto 30.11.2009. The accident occurred on 22.12.2006. But, it was brought out before the Tribunal through the testimony of RWs 1 and 2 that, the driving licence and badge referred were not issued from the Regional Passport Officer, Red Hill, Chennai, Tamil Nadu and so, the renewal of that licence from Regional Transport Office, Perumbavoor will not make it genuine, as no licencing authority has the power to renew a fake licence.

7. Learned Tribunal relied on the decision of the Apex Court in **National Insurance Co. Ltd** vs. **Laxmi Narain Dhut** (2007 (2) KLT 470) to hold that, once the licence is found to be a fake one, the renewal cannot take away the effect of a fake licence.

8. The 2nd respondent did not adduce any evidence to show that, the licence he allegedly obtained from the Regional Passport Office, Red Hill, Chennai was a genuine one. So much so, renewal of that licence from RTO office, Perumbavoor will not convert that fake document into a genuine one. The 2nd respondent is not challenging the finding of the Tribunal, that his driving licence was a fake one.

9. Learned counsel Sri.P.G.Ganappan appearing for the 3rd respondent/insurer submitted that, since the driving licence of

the 2nd respondent was a fake one, and the owner permitted him to drive the offending vehicle without verifying the validity of the driving licence, the insurer has no liability to indemnify the insured.

10. In the appeal, the appellant/owner is not disputing the finding of the Tribunal that, the driving licence of the 2nd respondent was a fake one. But, according to her, since the driver produced driving licence, which was renewed from a local RTO, and she was satisfied with the competency of the driver to drive the vehicle properly, she did not enquire whether the original licence issued from the Regional Transport Office, Chennai was genuine or not, as there was nothing to doubt the genuineness of that document. Only when witnesses were summoned and they gave testimony before the Tribunal, she came to know that the driving licence of the 2nd respondent was not genuine.

11. Learned Tribunal directed the insurer to deposit the compensation amount and permitted them to recover the same from the owner and driver. The appellant/owner would say that, she bonafide believed the driving licence of the 2nd respondent as genuine, and she tested his competency as a driver. As an owner, she was not expected to go beyond that. Since the accident

occurred due to the rash and negligent driving of the 2nd respondent, and he suppressed the fact that his driving licence was a fake one, he is the person liable to compensate the injured.

12. Learned counsel for the insured submitted that, if the owner verified the competency of the driver and genuineness of his driving licence at the time of appointing him as a driver, she could have realised then and there, that his driving licence was a fake one. But, there is no such contention in their written statement. According to the appellant, as a reasonable and prudent man, she tested the competency of the driver and verified the driving licence which was renewed from a local RTO, and she never knew that the original licence alleged to have been issued from the Regional Transport Office, Chennai was a fake one.

13. In **Rishi Pal Singh** vs. **New India Assurance Co. Ltd. and others** (2022 ACJ 1868), the Apex Court held that, the owner of the vehicle is expected to verify the driving skills of the driver before appointing him, and once he is satisfied that driver is competent to drive, he is not expected to verify the genuineness of his driving licence. The owner has no means to verify the genuineness of driving licence produced before him, provided the owner finds the driver competent to drive the vehicle. When an

owner hires a driver, and the driver produces a driving licence, which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. Insurance Companies cannot expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving licence shown to them is valid or not. So, when the owner is satisfied that the driver has a licence and is driving competently, there would be no breach of Section 149(2)(a)(ii) of the Motor Vehicles Act. The Insurance Company then would not be absolved from their liability to compensate the victim. Ultimately, if it is found that the licence was fake, the Insurance Company will continue to remain liable, unless they prove that the owner-insured was aware or had noticed that the licence was fake and still permitted that person to drive. Even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured.

14. As per Section 15 (6) of the Motor Vehciles Act, 1988, where the authority renewing the driving licence is not the authority which issued the driving licence, it shall intimate the fact of renewal to the authority which issued the driving licence.

Learned counsel Sri.P.Deepak appearing for the appellant contended that, if Section 15(6) was duly complied with by the renewing authority, the fake licence in the name of the 2nd respondent could have been brought to light. So, according to him, the appellant may not be found fault with, for not enquiring into the genuineness of the licence, allegedly issued from the Chennai RTO office, which was subsequently renewed from RTO Office, Perumbavoor. According to him, there was no scope for any enquiry, as the driving licence produced before the appellant, was one renewed from a local authority.

15. In the case on hand, even the insurer does not have a case that the owner was aware of the fact that the driving licence of the 2nd respondent was a fake one. From the available evidence, there is every reason to think that the owner believed the renewed licence of the 2nd respondent as a genuine one, as it was from a local RTO. She was not expected to enquire into the genuineness of that document from the original place of its issuance. So, this Court is inclined to accept the submission of the appellant that she bonafide believed the renewed licence of the 2nd respondent as a genuine one and there would be no breach of Section 150(2)(a)(ii) of the amended Act 32 of 2019.

So, the Insurance Company cannot be absolved of its liability towards an innocent third party, as the offending vehicle was duly insured with them.

16. Since the appellant/owner was not aware of the fact that the 2nd respondent was having a fake driving licence, she cannot be mulcted with the liability to restitute the Insurance Company. According to her, the accident itself was caused due to the rash and negligent driving of the offending vehicle by the 2nd respondent, and he is the person primarily responsible to compensate the victim.

17. Learned counsel for the insurer submitted that, there is no privity of contract between the insurer and the driver and so, they cannot recover the amount from the driver. In **Oriental Insurance Company Ltd.** vs. **Sivan** (2014 (1) KLT 1), a Division Bench of this Court held that, when the driver of a vehicle commits a fraudulent and criminal act by driving the vehicle with a forged licence without the knowledge of the owner, such driver cannot escape the liability towards the Insurance Company on account of breach of contract. The driver is not a stranger to the contract of insurance between the Insurance Company and the owner of the vehicle and there is a quasi contract between the

driver and the insurer. The person liable in the first instance is the driver himself. The owner becomes liable for the negligence on the part of the driver by applying the principles of vicarious liability in an action for tort. The Insurance Company becomes liable to indemnify the owner of the vehicle because of the contract of insurance entered into between the owner of the vehicle and the Insurance Company. In fact, ultimately what the Insurance Company takes upon themselves by virtue of the contract of insurance is the primary liability of the driver for paying compensation for his negligent act to the party, who suffered because of his negligence. Therefore, it cannot be said that the driver is not a stranger to the contract of insurance between the Insurance Company and the owner of the vehicle. So, the contention put forward by the learned counsel for the insurer that they cannot recover the amount from the driver, as there was no contract between the insurer with the driver is not acceptable. Since the owner was not aware of the fact that the driving licence produced by the driver was a fake one, she is not liable to compensate the victim and so, the insurer cannot proceed against the owner. But, since the accident occurred due to the negligence of the driver and he was aware of the fact that

his driving licence was a fake one, he is the person liable to compensate the victim. Since the offending vehicle was duly insured with the 3rd respondent/insurer, as far as an innocent third party is concerned, primarily, the insurer has to compensate him and they can recover the sum from the driver, as there is quasi contract between the driver and the insurer.

In the result, the appeal is allowed setting aside the impugned award to the extent it permitted recovery of the compensation amount from the appellant/1st respondent-owner. No order as to costs.

Sd/-

SOPHY THOMAS
JUDGE

smp