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MA-999-2009

IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 5<sup>th</sup> OF JANUARY, 2026

MISC. APPEAL No. 999 of 2009

*KAMALKISHORE BAGHEL*

*Versus*

*UDAY SINGH AND OTHERS*

.....  
Appearance:

*Shri N.S.Pal - Advocate for the appellant.*

*Shri Kamal S.Rochlani- Advocate for the respondent/Insurance*

*Company.*

*Shri Rajeev Shrivastava - Advocate for respondent.*

.....  
WITH

MISC. APPEAL No. 1070 of 2009

*PANKAJ SHARMA*

*Versus*

*KAMAL KISHORE AND OTHERS*

.....  
Appearance:

*Shri Yogesh Chaturvedi with Shri Rajeev Shrivastava- Advocates for the appellant.*

*Shri N.S.Pal - Advocate for respondent.*

*Shri K.S.Rochlani- Advocate for the Insurance Company.*

.....  
ORDER

Both the appeals arise out of the common award dated 20.04.2009 passed by the Second Additional Member, Motor Accident Claims Tribunal, Gwalior (in short "the Claims Tribunal") in Claim Case No. 02/2006,



whereas MA No. 999/2009 has been preferred by claimant Kamal Kishore Baghel under Section 173 of the Motor Vehicles Act on the ground of inadequacy of compensation, seeking enhancement thereof, while MA No. 1070/2009 has been filed by appellant/owner under the same provision, seeking exoneration from the liability fastened upon him by the Claims Tribunal.

2. Since both the appeals challenge the same award, they were heard analogously and are being decided by this common order.

3. Necessary facts for adjudication of both the appeals in short are that in the intervening night of 8th and 9th August, 2004, the claimant was travelling in the dumper bearing Registration No. MP 07 G-5684, which was being driven by Udai Singh (driver). The said vehicle was being driven rashly and negligently, as a result of which it turned turtle, causing an accident. Due to the said accident, the claimant sustained injuries to his leg. After the occurrence of the accident, the driver of the offending vehicle absconded from the spot, leaving the vehicle at the place of occurrence. The injured claimant was thereafter taken to Civil Hospital, Etawah, where he was provided primary medical treatment and was subsequently admitted for further treatment. The matter was reported to Police Station Bakewar, District Etawah, and an offence bearing Crime No. 56/2004 was stated to have been registered. After investigation and other formalities, the police filed a charge sheet. Thereafter, the claimant filed a claim petition before the Claims Tribunal seeking compensation. Non-applicants therein filed their written statement and denied all averments. The Claims Tribunal framed



necessary issues and after considering the evidence of both parties, awarded compensation to the tune of Rs. 4,90,000/- in favour of the claimant.

4. Learned counsel appearing for the claimant contends that the Claims Tribunal has committed a grave error in awarding the amount of compensation. He further submitted that the compensation awarded by the Claims Tribunal is on the lower side, and hence, it is prayed that the compensation amount be enhanced and a just and reasonable amount of compensation may be awarded.

5. Learned counsel for the owner of the offending vehicle submits that the claimant has failed to establish the factum of the accident, and that he was injured in the said accident, as no police report or investigation report has been filed. On the contrary, the owner of the offending vehicle has specifically come forward with the allegation that the claimant did not sustain any injury in the turn down of the dumper, nor did he receive any injury in the road accident. Even otherwise, the Tribunal has awarded compensation which is not just and proper. The assessment of the income of the claimant made by the Claims Tribunal is also on the higher side and unreasonable. Hence, the award deserves to be modified. It is further contended that the Claims Tribunal has wrongly given a finding that the driver of the vehicle did not possess a genuine driving licence, while the said licence was renewed four times by R.T.O. Gwalior. Additionally, the statement of Bhagwan Singh (clerk of RTO Dholpur) is also suspicious, as he says that there was no issuance of driving licences from serial numbers 4100 to 4999, and ultimately, the next driving licence no. 5000 was issued.



However, there was no explanation as to why the said numbers of licences were not issued. The Claims Tribunal gave a finding that the driving licence is fake, which is not supported by law. Hence, the amount of compensation deserves to be shifted towards the insurance company. Witness Sajal Pandey, Clerk of RTO Gwalior, very specifically stated that the driving licence of driver Udai Singh is genuine and he endorsed the change of address in the licence. Thereafter, it was renewed from 22.1.1994 to 29.4.2007. Hence, it is prayed for the setting aside of the impugned award. It is further submitted that when the owner appointed the driver, he saw the driving licence, which was renewed by Gwalior. So, the owner of the offending vehicle/appellant has proved his duties. Therefore, the impugned award passed by the Claims Tribunal against the owner deserves to be set aside.

6. Learned counsel for the Insurance Company supported the impugned Award and submitted that no interference is warranted by this Court and there is no need to enhance the compensation amount. Hence, it is prayed for the dismissal of both the misc. appeals filed by the claimant as well as the owner of the offending vehicle.

7. Heard learned counsel for the parties and perused the entire record.

8. On perusal of the impugned record, it is found that claimant Kamal Kishore filed a claim petition and pleaded that the driver of the offending vehicle was driving the vehicle in a rash and negligent manner, and the vehicle overturned by which he sustained permanent disability. The owner of the offending vehicle has also filed his written statement and admitted that Udai Singh was the driver of the offending vehicle and that he appointed him



as a driver. He adduced evidence before the Claims Tribunal and stated that he appointed Udai Singh as the driver of the offending vehicle and that Udai Singh had a valid and effective driving licence (Ex.D-3), the particulars of the same are Ex.D-4. The driving licence of Udai Singh was regularly renewed by RTO, Gwalior.

9. Sajal Pandey (NAW-2), clerk of RTO, Gwalior, admitted that the original record of the licence is Ex.D-3, and the photocopy of the document is Ex.D-6. According to Ex.D-6, the original licence of driver Udai Singh bearing No. 4817/1989, dated 05.02.1989, was issued by Dholpur, Rajasthan, for heavy goods vehicle and was renewed by Gwalior RTO. So, considering the evidence of the owner of the offending vehicle and the evidence of Sajal Pandey, it is clear that when the owner of the offending vehicle appointed the driver, he saw the driving licence, which was regularly renewed by RTO, Gwalior.

10. So far as the contention of the Insurance Company is concerned that in the absence of a valid and effective driving licence of the driver, there was a fundamental breach of the terms and conditions of the Insurance Policy in question, hence, the claim made by the claimant was not payable by the Insurance Company. It is argued by the owner that at the time of employing the driver, documents like the driving licence, etc. were checked, but no one usually verifies the genuineness of the same. Breach of conditions under Section 149(2)(a) of the Motor Vehicles Act, 1988 absolves the insurer of its liability to the insured. Section 149(2)(a)(ii) deals with the conditions regarding driving licences. In case the vehicle at the time of the



accident is driven by a person who is not duly licensed or by a person who has been disqualified from holding or obtaining a driving licence during the period of disqualification, the insurer is not liable for compensation. In the instant case, it is a matter of fact that no record of licence bearing No. 4817/1989 exists.

11. In the case of **Nirmala Vs. United India Insurance Company** reported in 2020 (4) MPLJ 250, Hon'ble Supreme Court in Paras 8, 9,10 and 11 held as under:-

8. Having set forth the facts of the present case, the question of law that arises for consideration is what is the extent of care/diligence expected of the employer/insured while employing a driver? To answer this question, we shall advert to the legal position regarding the liability of the Insurance Company when the driver of the offending vehicle possessed an invalid/fake driving licence. In the case of **United India Insurance Co. Ltd. vs. Lehu & Ors.**<sup>1</sup> a two Judge Bench of this court has taken the view that the Insurance Company cannot be permitted to avoid its liability on the ground that the person driving the vehicle at the time of the accident was not duly licenced. It was further held that the willful breach of the conditions of the policy should be established. The law with this respect has been discussed in detail in the case of **Pepsu RTC vs. National Insurance Co.**<sup>2</sup> We may extract the relevant paragraph from the Judgment: (Pepsu case, SCC pp. 223-24, para10)

“In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied



in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation."

9. While the insurer can certainly take the defence that the licence of the driver of the car at the time of accident was invalid/fake however the onus of proving that the insured did not take adequate care and caution to verify the genuineness of the licence or was guilty of willful breach of the conditions of the insurance policy or the contract of insurance lies on the insurer.

10. The view taken by the National Commission that the law as settled in the Pepsu case (Supra) is not applicable in the present matter as it related to third-party claim is erroneous. It has been categorically held in the case of National Insurance Co. Ltd. vs. Swaran Singh & Ors.<sup>3</sup> (SCC pp.341, para 110) that,

"110. (iii)...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 licenced driver or one who was not disqualified to drive at the relevant time.”

11. While hiring a driver the employer is expected to verify if the driver has a driving licence. If the driver produces a licence which on the face of it looks genuine, the employer is not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise. If the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving licence there would be no breach of Section 149(2)(a)(ii) and the Insurance Company would be liable under the policy. It would be unreasonable to place such a high onus on the insured to make enquiries with RTOs all over the country to ascertain the veracity of the driving licence. However, if the Insurance Company is able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive, the insurance company would no longer continue to be liable.

12. The facts of the present case revolve around the Pankaj Sharma, the owner of the offending vehicle, who had employed the driver, Udai Singh. The driver was hired after the owner checked his driving licence, which was purported to have been issued by the licensing authority and regularly renewed by the Gwalior RTO four times. This fact was proven by Sajal Pandey, the Clerk of RTO, through his evidence. Furthermore, it was not the contention of the Insurance Company that the owner was guilty of willful negligence while employing the driver. There is also no evidence to suggest that the driver failed to drive competently, and there was no reason for the owner to doubt the veracity of the driver's driving licence.

13. In view of the above facts and circumstances of the case, the impugned award is not liable to be sustained and is accordingly set aside. The Miscellaneous Appeal (MA No. 1070/2009) filed by the owner is hereby **allowed**. The Insurance Company is liable to indemnify the claimant, and the





owner of the offending vehicle is exonerated from liability.

14. The alleged accident occurred on 08.08.2004, and the Claims Tribunal assessed the income of the claimant as Rs. 2,000/- per month, which is just and proper. There is no need for any interference in this regard. Upon reviewing the impugned award, it is found that the Tribunal awarded a fair and just amount of compensation. Therefore, there is no need to alter the amount. Accordingly, the Miscellaneous Appeal (MA No. 999/2009) filed by the claimant is hereby **dismissed**.

15. Let a copy of this order be kept in connected MA No.1070/2009.

**(HIRDESH)**  
**JUDGE**

\*AVI\*