

(2011) 04 P&H CK 0359

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO No. 3086 of 2011

National Insurance Company
Ltd., Chandigarh

APPELLANT

Vs

Pranay Seth and Others

RESPONDENT

Date of Decision: April 20, 2011

Citation: (2012) 1 ILR (P&H) 713

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Paul S. Saini, for the Appellant;

Final Decision: Dismissed

Judgement

K. Kannan, J.

The appeal by the insurance company is against the liability cast on the insurer in spite of the fact that the insurance company was able to establish through a verification report that the driving licence was not genuine. The Tribunal found that the burden of proof was on the insurer to establish that the licence was not genuine and no witness from the Licensing Authority had been examined. Learned counsel appearing for the appellant states that the insurance company did not have any adequate opportunity to examine witness from the licensing authority since the document itself was filed before the Tribunal only on the last hearing date on 05.10.2010 and soon after the document was produced, they were able to secure the verification report through the licensing authority and therefore, the reasoning of the Tribunal was not appropriate.

2. Even if the contention of the insurance company were to be accepted that the driving licence was really a fake one and that could be covered by the fact that even the driver had admitted to the fact that he had not gone Nagaland at any time to secure the driving licence and it had been secured through an agent, I will not find this to afford to the insurance company a right to contend that the insured is not entitled to indemnity. The owner himself was examined as RW-1 and he stated in the

cross-examination thus :-

My vehicle is insured vide insurance policy Ex. R4. While appointing the driver Bijender Singh, I checked his driving licence, it was a valid driving licence for heavy goods vehicle. He was working with me since 2004 when I purchased this truck. Many times, I travelled with him. His licence was checked by the traffic police at many Nakas.

3. He has stated that he travelled along with him and that there were also occasions when the licence was checked by police at many nakas and the inference, therefore, was that no one ever suspected the genuineness of the licence. When we are allowing for an insurer to take a defence of violation of terms of policy, we normally test it on the light of whether there had been any breach of violation of terms of policy by the insured himself. It is the bona fides of the owner that is material and he ought to have some reason to suspect the genuineness of the same. The case has still to be held against the insurer for the fact that there was evidence of the owner about the bona fides of belief that the driving licence was genuine. The award is confirmed and the appeal is dismissed. The amount of Rs. 25,000/- which has been deposited before this Court at the time of preferring the appeal, is ordered to be transmitted to the Tribunal for part satisfaction of the award.