

NATIONAL INSURANCE CO. LTD.

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v

SANTRO DEVI AND ORS. ETC.

NOVEMBER 18, 1997

[M.M. PUNCHHI AND M. SRINIVASAN, JJ.]

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Motor Vehicles Act, 1988: accident—Compensation claimed—Tribunal held that driver was holding valid licence—Held, claimants were rightly granted compensation—Observations and findings of High Court on a presumed question of law regarding renewal of a forged driving licence struck down.

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A motor accident took place and a claim for compensation was raised by the respondent. Before the Tribunal a question was raised whether the driver of the motor vehicle was holding a valid driving licence. The Tribunal held that the licence was valid and had been validly renewed. On appeal, the High Court affirmed the findings of the Tribunal. Before the Division Bench of the High court a question arose as to whether a forged or a fake licence, if renewed, would get validated or not for the purpose of liabilities under the Motor Vehicles Act, 1989 and the matter was referred to a full Bench of the High Court. The Insurance Company filed the present appeal, challenging the observations and findings recorded by full Bench in answer to the question referred to it.

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Allowing the appeal in part, this Court

HELD : 1.1. The claimants/respondents had rightly been granted compensation on account of the motor accident. [220-D]

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1.2. The observations and findings of the High Court on the question whether a forged or a fake licence if renewed would get validated under the Motor Vehicles Act is struck down because there was a concurrent finding recorded by the Tribunal as well as by the High Court that the offending vehicle was driven by a driver who had held a valid licence and it stood renewed on the date of the accident. There was thus no occasion for the High Court to have ruled on suppositions to the contrary in order to interpret the law and that too on a fact situation not available to it. Thus the entire exercise

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A of the High Court was obiter, not a binding precedent. [220-B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7749 of 1997
Etc.

B From the Judgment and Order dated 17.10.96 of the Punjab & Haryana
High Court in F.A.F. O. No. 725 of 1994.

P.P. Malhotra, Vineet Malhotra, Shailendra Sharma and Naresh K. Sharma
for the Appellant.

Prem Malhotra and Manoj Prasad for the Respondents.

C The Judgment of the Court was delivered

Leave granted. This is an appeal against the judgment and order dated
17.10.96 passed by a full Bench of three Hon'ble Judges of the High Court
of Punjab and Haryana in First Appeal from order No. 75 of 1994.

D The minimal facts giving rise to this appeal are these :

There was a motor accident which gave rise to a claim for compensation,
duly set up the claimants/respondents. One of the questions which was
brought to the fore was whether the offending motor vehicle was being driven
E by a driver holding a valid driving licence. The matter was put to issue and
the conclusion arrived at by the Tribunal was that the driver held a valid
licence which had validly been renewed. This finding stood affirmed in appeal
before the High Court. Yet it was taken by the High Court that a question of
law arose as to whether a forged or a fake licence, if renewed would get
validated or not so as to work out the liabilities under the Motor Vehicles Act.
F The question gathered momentum in as much as when the cause was before
a Division Bench of the High Court, it referred the matter to full Bench of three
Hon'ble Judges which in turn pronounced as follows :

G "In view of the observations made above, I (M. S. Liberhan, J.)
answer the questions posed as under :

(1) A forged driving licence though may be validly renewed, would
not become a valid driving licence or a duly issued driving licence in
accordance with the Motor Vehicles Act.

H (2) The insured bonafidely believing in the validity of a forged driving
licence employing the holder of a fake driving licence renewed by a

competent authority, would not amount to violation of the conditions of contract or of the insurance policy. It would not be violating either conditions of indemnity or the insurance policy or the contract or violation of any statutory provisions. Under these circumstances, merely employing a driver with a forged driving licence would not absolve the insurer of its liability.

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(3) In the absence of mens rea or knowledge or intention to violate the terms of policy or the provisions of the Act by the insured, the insurance company would not be discharged of its liability from indemnifying the insurer or of its statutory liability to third party.

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(4) The insurance company cannot refuse to meet its liability qua third party for any act or omission bonafidely or otherwise committed by the insured or its liability inasmuch as third party for whose benefit the insurance had been provided is not a privity to any breach as being not in control of the act or conduct of the insured or its employee or insurer. Thus, the insurance company cannot refuse to meet its liability quo third party.

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(5) The insurer is duty bound and liable, statutorily as well as contractually to reimburse third party claim, for the tortious act committed by the insured or his employee as well as the liability incurred by insured or his employee under the Motor Vehicles Act.

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(6) The insurance company can neither refuse to indemnify nor is discharged from its liability to the insured or the claimants for an act of fraud committed by the third party qua the insured though it has a right to recover any loss suffered by it from the person, who committed the fraud or from any other authority, as permissible either under tort or any other statute; and

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(7) The insurance company would be entitled to recover the amount, which it has paid to the claimant from the insured or his driver or employee who has perpetuated fraud and the insurance company was made to reimburse third party who suffered loss because of the tortious act of the insured or his employee. The insurer would not be left without remedy to reimburse itself. It would be at liberty to approach under tort in accordance with law for the failure or the state to discharge common duty care as well as the insured for not observing due care of an ordinary prudent person, expected from the insured, as a duty towards the insurer as well as the person who has committed

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A the fraud. Remedy as available to the insurer is not a decision by this Court while dealing with the question, rather it is left open to be determined as and when a question arises in the facts and circumstances of a particular case.”

B We do not approve of the High Court having gone on to endeavour streamlining the law when its ratio on the fact situation was likely to be rendered totally obiter. As has been said above, there was a concurrent finding recorded by the Tribunal as well by the High Court that the offending vehicle was driven by a driver who had held a valid licence and it stood renewed on the date of the accident. There was thus no occasion for the High Court to have ruled on suppositions to the contrary in order to interpret the law and that too on a fact situation not available to it. Thus, we are constrained to intervene and hold that the entire exercise of the High Court in that direction was obiter, not at all a binding precedent. In that sense, we strike off from the impugned order observations and findings pertaining thereto. Yet at the same time, we are required and do hereby affirm the substantive part of the order, in holding that the claimants/respondents had rightly been granted compensation on account of the motor accident, on the basis of the recorded finding of fact. We cannot help remarking that the High Court instead could have well spent its time on other priorities.

E The appeal thus would have to be and is hereby allowed in part to the extent and in the manner afore-indicated.

SLP (Civil) No. 6262/97

F This special Leave Petition was tagged on with the above case on the assumption that the fate of the said case would govern the fate of this SLP. We find that the question as such was never raised before the High Court. The finding of fact recorded by the Motor Accidents' claim Tribunal does not positively indicate that the licence of the driver of the offending vehicle was fake or forged. All the same, the licence was got renewed which reinforced the impression of the High Court that it was not proved substantially that the said licence to begin, was fake or forged. The special Leave Petition is, therefore, dismissed.

S.V.K.I.

Appeal allowed/Petition dismissed.