

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC.APP. 236/2009

Date of Decision: 3rd December, 2009

THE NEW INDIA ASSURANCE CO. LTD. Appellant

Through : Mr. D.D. Singh, Adv.

versus

RAKESH AHUJA & ORS. Respondents

Through : Respondent No.1 in person.

Mr. Navneet Goyal and

Mr. Varun Kumar, Advs.

for R-3.

MAC.APP. 238/2009

THE NEW INDIA ASSURANCE CO. LTD. Appellant

Through : Mr. D.D. Singh, Adv.

versus

RAKESH AHUJA & ORS Respondents

Through : Respondent No.1 in person.

Mr. Navneet Goyal and

Mr. Varun Kumar, Advs.

for R-3 to 6.

CORAM :-

THE HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (Oral)

1. Issue fresh notice to respondent No.2 by ordinary process as well as registered AD post, returnable on 18th January, 2010.

2. The LCR be requisitioned before the next date of hearing.

3. The learned counsel for the petitioner submits that the driving licence held by respondent No.2 at the time of the accident was found to be fake by the Investigator.

4. Mr. D. D. Singh, learned counsel for the appellant submits that the offenders holding/driving with fake driving licence as well as the persons involved in fabricating/forging fake driving licence should be punished.

5. It has been noticed that there are large number of cases relating to fake driving licence and no action is taken against the fake driving licence holders as well as the persons who fabricate/forge the fake driving licences. Forging and holding a fake driving licence is a serious offence and the person holding a fake driving licence is a danger to the society inasmuch as he is not legally entitled to drive the motor vehicle and may not be knowing driving at all or his driving may have been suspended for involvement in some accident. The persons forging as well as holding fake driving licence are liable to be prosecuted under law.

6. Considering the importance of the issue involved, Ms. Rajdipa Behura, Advocate is appointed as amicus curiae to assist this Court in this matter. Mr. Vikas Pahwa, Additional Standing Counsel for Delhi Police and Standing Counsel for C.B.I. has also been requested to assist this Court.

7. Mr. Vikas Pahwa submits that the issuance of and holding/driving with fake driving licence is punishable under Sections 465, 468, 471 and 474 of the Indian Penal Code.

Mr. Pahwa submits that the information as to the fake driving licence is available with the Insurance Companies who detect the fake driving licence through their Investigator whereupon they contest their liability before the Claim Tribunal but they do not make any complaint to the police and, therefore, no action can be taken by the police in such matters. Mr. Pahwa further submits that the complaint of the fake driving licence has to be made to the police for prosecution of the offenders.

8. It is suggested by learned counsel for the appellant, learned amicus curiae and Mr. Vikas Pahwa that the Insurance Companies should make a written complaint to DCP (Crime Branch), Delhi Police giving all the relevant particulars such as name and address of the driver, FIR No., number of the fake

driving licence and the name of the authority by which it is alleged to have been issued along with the photocopy of the fake driving licence. It is suggested that in the first instance, Insurance Companies should be directed to file the complaint to the police relating to claims which were contested by them during the last three years on the ground that the driving licence was fake. The complaint be made by all the Insurance Companies within a period of four weeks.

9. Mr. Pahwa submits that in cases of pending investigation, the police can further investigate into the issue of fake driving licence and in cases of pending criminal trial, the police can file supplementary charge sheet. With respect to the cases where the trial has already completed, the matter needs further examination and the submissions shall be made in this regard on the next date of hearing.

10. Mr. Pahwa further submits that upon receipt of the complaint from the Insurance Companies, appropriate action shall be taken in accordance with law and the Delhi Police shall also consider appropriate measures to ensure that persons holding fake driving licence are not able to drive on the road to ensure safety to the road users in Delhi.

11. Mr. Arun Mohan, Senior Advocate, on being asked by this Court, has made following suggestions for consideration:-

- (i) Setting up a separate cell for fake driving licences with a separate e-mail address. Wherever the Insurance Companies have taken the defence of fake driving licence before the MACT in the last three years, the Insurance Companies should scan the document (the licence which they say is fake) along with particulars of the person who was carrying it while driving, the details of the accident and the details of the owner and e-mail

as an attachment to the aforesaid e-mail. The complaint can be in electronic form.

(ii) The following can be considered as format:-

"To

The DCP
Crime Branch
Delhi Police.

Subject : Complaint in respect of fake driving licence held by _____.

Sir,

1. Date, time and place of the accident:
2. Particulars of the deceased / injured:

Age / Date of Birth (DD.MM.YYYY)

Permanent Address

Present residential address

Occupation

3. Registration Number of the offending vehicle:
4. Particulars of the vehicle:

Model

Make

Colour

Year of manufacture

Other Description

5. Particulars of the person driving the vehicle at the time of the accident:

Name

Father's Name

Date of Birth (DD.MM.YYYY)
(or at least the year of birth)

Height

Permanent Address

Present Residential Address

Workplace address
(Name & Address of
employer/s in the past three years)

Mobile telephone numbers in use at the time of accident and used in the three years next preceding the accident Identification document/s as may be available

6. Particulars of the owner of the vehicle:

Name

Father's Name

Age / Date of Birth (DD.MM.YYYY)

Permanent Address

Present Residential Address

Mobile telephone numbers in use at the time of accident and used in the three years next preceding the accident Identification document/s as may be available.

7. Particulars of the case before the MACT:

Cause Title

No.

Court

Sd/-

For Insurance Company

Note : As much information as is possible to give will be filled-up in this form and the e-filing of the form shall not be withheld on the ground that any information for any one or more of the columns is missing."

(iii) The driving licence that is produced or recovered (and is alleged to be fake) be electronically scanned in high

resolution mode and saved as a JPEG file. This (JPEG)

image file as also the personal particulars (as a regular document file) be e-mailed as an attachment by the Insurance company to the police (Control Cell).

- (iv) Whenever the police registers an FIR against a person for driving with a fake licence, particulars of that FIR be entered (by the Control Cell) in the entry against the information received.
- (v) The Control Cell for fake driving licences shall maintain the information received from the Insurance Companies in their computer database, in a form that can be accessed and sorted from several parameters.
- (vi) The Control Cell shall prepare a tabulated chart for the information received and look for any 'patterns' within it.

It shall take such action according to law against those concerned as it considers proper.
- (vii) Driving without a licence is an offence, but putting

forward a driver's licence that is found to be fake is worse, i.e., it is a more serious offence. The police shall consider the feasibility of placing the information of those cases where the person causes an accident and the Driving Licence produced was found to be fake on a website so that the Transport Authorities in other States can access it and be armed with this information before issuing a Driving Licence for such a person in that State.

(viii) The Delhi Police shall maintain a record of the e-mails received by them as aforesaid whereupon they shall process the same and then initiate appropriate action.

The Delhi Police shall also record the statement of the owner of the vehicle as to how he allowed the vehicle to be driven by the person who was not holding a valid driving licence and take such action as is permissible in law. In the meantime, whenever a defence of fake

licence is raised in a pending matter before the MACT, the MACT shall ensure the personal presence of the driver and the owner to record their statements with respect to the veracity of the licence and the owner permitting a person without a valid driving licence to have driven the vehicle which was involved in the accident. The presence of the owner and driver shall be ensured by the learned Tribunal through the Investigating Officer of the Delhi Police.

- (ix) In appropriate cases, the learned Tribunal may also consider ensuring the presence of the owner and driver by issuingailable/non-ailable warrants in accordance with law. The monthly statement of the complaints submitted by the Insurance companies and the action taken by the police be placed before this Court to examine whether this menace has been controlled.

12. The suggestions of Mr. Arun Mohan, Senior Advocate are very useful. The Committee is constituted to draw up a mechanism for prosecution of the fake driving licence holders/forgers and to make Delhi roads safe by ensuring that the fake driving licence holders do not drive freely on Delhi roads any more. The Committee shall comprise of Mr. Arun Mohan, Senior Advocate, Ms. Rajdipa Behura, Advocate, Joint Commissioner of Police (Northern Range), Delhi Police, Mr. Vikas Pahwa, Additional Standing Counsel of Delhi Police and Mr. Atul Nanda, Standing Counsel for Union of India. The Joint Commissioner of Police (Northern Range) shall convene a meeting of the Committee with all the Insurance Companies at Delhi Police Head Quarters on 14th December, 2009 at 4:30 p.m. The report of the Committee be placed before this Court for consideration on 16th December, 2009.

13. Notice be also issued to the Ministry of Road Transport

and Highways through Mr. Atul Nanda, Standing Counsel for considering the above suggestions and providing the inputs of the Ministry of Road Transport and Highways in the aforesaid meeting.

14. At this stage, Ms. Rajdipa Behura, Advocate accepts notice on behalf of National Insurance Company Limited and Oriental Insurance Company Limited for seeking appropriate instructions from the said two companies.

15. Mr. D.D. Singh and Mr. Kanwal Chaudhary, nominated counsel accept notice on behalf of New India Assurance Company Limited for seeking appropriate instructions from New India Assurance Company Limited.

16. The copy of this judgment be given 'Dasti' to learned counsel for the parties and all Insurance Companies, Mr. Arun Mohan, Sr. Advocate, learned amicus curiae, Ms. Rajdipa Behura, Advocate and Mr. Vikas Pahwa, Additional Standing

Counsel for Delhi Police and Standing Counsel for C.B.I. under signature of Court Master and Mr. Atul Nanda, Standing Counsel for Union of India. Copy of this judgment be also sent to Mr. S. Sundar, Chairman, Expert Committee constituted by the Ministry of Road Transport and Highways for considering the aforesaid suggestions.

17. List for further directions on 16th December, 2009.

J.R. MIDHA, J

DECEMBER 03, 2009