
National Insurance Co. Ltd. Vs Smt. Gomti Devi and Others

MAC APP 86.2007

Court: Delhi High Court

Date of Decision: Aug. 25, 2008

Acts Referred:

Motor Vehicles Act, 1988 " Section 10, 10(2), 14, 149(2), 15

Citation: (2009) ACJ 2827

Hon'ble Judges: Kailash Gambhir, J

Bench: Single Bench

Advocate: Neeraja Sachdeva, for the Appellant; Madan Lal Sharma and B.D. Kaushik for R-1-7 and R.K. Sharma, for R-8, for the Respondent

Final Decision: Allowed

Judgement

Kailash Gambhir, J.

Present appeal is preferred by the appellant insurance company against the award dated 28/10/2006 of the learned

Motor Accident Claims Tribunal.

2. The main grievance of the appellant is that the tribunal passed the impugned award contrary to the law and the facts of the case and has erred in

holding the appellant liable to pay the compensation to the claimants; therefore, the impugned award should be set aside.

3. To appreciate the controversy raised, a brief reference needs to be made to the facts of the present case, which are as follows:

On 3.9.1992 the deceased Sh. Satya Narain Bharadwaj was sitting in his car near Raj Hotel, NTPC Gate No.2 for getting the air filled in the tyres

of his car bearing registration no. DBD 1335. Suddenly, a bang occurred in the high tension electric line which was passing through the said place,

therefore, people started running helter skelter causing chaos. Mr. Bharadwaj also ran towards the gap in verge and suddenly Sh. Nand Lal

appeared at the said place driving a Haryana Roadways vehicle bearing registration No. HR 08 5363, being driven in a rash and negligent manner

and at a high speed. The said vehicle of Haryana Roadways hit Sh. Bharadwaj and due to the forceful impact Sh. Bharadwaj was thrown on the

road and the driver fled away. He was removed to the NTPC dispensary and then to AIIMS hospital but he ultimately died on 13.9.1992. Ms.

Neerja Sachdeva, counsel for the appellant contended that the tribunal erred in not appreciating the fact that in the instant case the driver of the

alleged offending vehicle appeared as RW1 and also tendered his affidavit on behalf of respondent Nos. 8 to 11 as Ex. R2W1/1 and also

exhibited his driving licence as Ex. R2W1/2. He further deposed that the said licence was issued by MLO, Kotdwara on 11/7/1979 and was

renewed upto 3/11/1991 and thereafter, this licence was renewed only on 10/6/1993 but in the intervening period, licence was not renewed. In his

cross examination, the said witness R2W1 admitted that at the time of the accident he was not holding any valid driving licence. The counsel also

submitted that while passing the impugned award the trial court gravely erred in not accepting the plea of the appellant that the respondent Nos. 9

to 11 made a willful breach of the terms and conditions of the policy by allowing the driver to drive the offending vehicle without having a valid

driving licence. The counsel urged that the tribunal erred in ignoring the deposition of RW5 Asstt. Admn. Officer of the Appellant Company who

stated that notice under Order 12 Rule 8 was duly served through Regd. AD Post, the proof regarding the same being Ex. RW5/1/3 to RW5/1/6,

upon the driver and the owner of the alleged offending vehicle to produce the Original Insurance Policy as well as the original driving licence of the

driver valid on the date of the accident i.e., 3/9/1992. However, the said respondent remained negligent and therefore, due to such lapse on the

part of the insured the appellant could not have been held liable to pay any compensation to the claimants in view of the provisions of Section

149(2)(a)(ii) of the Motor Vehicles Act, 1988. The counsel avowed that the tribunal erred in not appreciating that the appellant filed the

verification report, Ex. RW5/1/7, regarding the driving licence No. 8120/KTW/79 of Sh. Nand Lal and according to which the said licence was

issued on 11/7/1979 for HMV only and was valid upto 10/7/1982 as per the Kotdwara Licensing Authority, meaning thereby that on the date of

the accident, i.e. 3/9/1992, the driver of the offending vehicle was not having a valid driving licence, thus, the appellant cannot be held liable to pay

the compensation amount to the claimants. The counsel further stated that the driver himself admitted that the said licence was not renewed from

3/11/1991 to 10/6/1993. Placing reliance on various decisions of the Hon"ble Apex Court, the counsel submitted that if the driving licence is not

renewed within 30 days from the date of its expiry then the renewal has to be reconed from the date of the renewal application and not from the

date of expiry of the license. Based on these submissions, the counsel pleaded recovery rights from the insured. Counsel for the appellant relied on

the following judgments of the Apex Court supporting her contentions:

1. Malla Prakasarao Vs. Malla Janaki and Others, ; and

2. Ishwar Chandra and Others Vs. The Oriental Insurance Co. Ltd. and Others, .

4. Per contra Mr. Madan Lal Sharma counsel for respondent Nos. 1 to 7 and Mr. R.K. Sharma for respondent No. 8 vehemently refuted the said

submissions of counsel for the appellant. Counsel contended that the award made by the tribunal is just and fair and required no further interference

by this Court. The counsel also submitted that the appellant failed to prove that the insured owner of the offending vehicle was having the

knowledge about the expiry of the driving licence of the driver Sh. Nand Lal, thus, the tribunal rightly held the appellant insurer liable for payment

of the impugned award.

5. I have heard learned Counsel for the parties and perused the award. On perusal of the record it is manifest that according to the verification

report, Ex. RW5/1/7, regarding the driving licence No. 8120/KTW/79 of Sh. Nand Lal, the said licence was issued on 11/7/1979 for HMV only

and was valid upto 10/7/1982 as per the Kotdwara Licensing Authority, meaning thereby that on the date of the accident, i.e. 3/9/1992, the driver

of the offending vehicle was not having a valid driving licence. The said fact has been supported by the driver of the offending vehicle Sh. Nand

Lal, who in his deposition stated that the said licence was issued by MLO Kotdwara on 11/7/1979 and it was further renewed upto 3/11/1991

and thereafter this licence was renewed only on 10/6/1993 and in the interregnum period, licence was not renewed. Also, according to the driving

licence brought on record by the driver himself, duly exhibited as Ex. R2W1/2, the licence was issued on 11/7/1979 and was valid upto

10/7/1982. Thereafter it was renewed on 4/11/1988 to 3/11/1991, and then renewed on 10/6/1993 upto 9/6/1996 and lastly it was renewed from

8/12/1999 to 7/12/2002.

6. The tribunal cannot burden insurance company when in the face of the facts, circumstances and the documents duly proved on record, the only

possible answer is that the driver of the offending vehicle was not holding a valid driving licence on the date of the accident. Once the breach of

policy terms is established on the part of the insured, the insurance company cannot be fastened with the liability to pay the award amount.

7. It is no more res integra that only in that case where the renewal has been sought within 30 days as prescribed u/s 15(1) of the Motor Vehicles

Act, the insurance company can be made liable to pay the amount and not in a case where the renewal is not sought within the said prescribed

period of 30 days.

8. In this regard, the Hon"ble Apex Court observed in Ishwar Chandra and Others Vs. The Oriental Insurance Co. Ltd. and Others, , as under:

8. Section 15(1) of the Act and the first proviso appended thereto reads as under:

15. Renewal of driving licences.-(1) Any licensing authority may, on application made to it, renew a driving licence issued under the provisions of

this Act with effect from the date of its expiry:

Provided that in any case where the application for the renewal of a licence is made more than thirty days after the date of its expiry, the driving

licence shall be renewed with effect from the date of its renewal:

9. From a bare perusal of the said provision, it would appear that the licence is renewed in terms of the said Act and the rules framed thereunder.

The proviso appended to Section 15(1) of the Act in no uncertain terms states that whereas the original licence granted despite expiry remains

valid for a period of 30 days from the date of expiry, if any application for renewal thereof is filed thereafter, the same would be renewed from the

date of its renewal. The accident took place 28-4-1995. As on the said date, the renewal application had not been filed, the driver did not have a

valid licence on the date when the vehicle met with the accident.

10. In *Swaran Singh*², whereupon the learned Counsel appearing on behalf of the appellants relied upon, it is stated: (SCC p. 324, paras 45-46)

45. Thus, a person whose licence is ordinarily renewed in terms of the Motor Vehicles Act and the Rules framed thereunder, despite the fact that

during the interregnum period, namely, when the accident took place and the date of expiry of the licence, he did not have a valid licence, he could

during the prescribed period apply for renewal thereof and could obtain the same automatically without undergoing any further test or without

having been declared unqualified therefor. Proviso appended to Section 14 in unequivocal terms states that the licence remains valid for a period of

thirty days from the day of its expiry.

46. Section 15 of the Act does not empower the authorities to reject an application for renewal only on the ground that there is a break in validity

or tenure of the driving licence has lapsed, as in the meantime the provisions for disqualification of the driver contained in Sections 19, 20, 21, 22,

23 and 24 will not be attracted, would indisputably confer a right upon the person to get his driving licence renewed. In that view of the matter, he

cannot be said to be delicensed and the same shall remain valid for a period of thirty days after its expiry.

11. This aspect of the matter is now covered by a decision of this Court in *National Insurance Co. Ltd. v. Kusum Rai* wherein this Court referring

to *Swaran Singh* opined: (SCC pp. 255-56, para 14)

14. This Court in *Swaran Singh*² clearly laid down that the liability of the Insurance Company vis-à-vis the owner would depend upon several

factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on

the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle. The question as regards the

liability of the owner vis-à-vis the driver being not possessed of a valid licence was considered in Swaran Singh stating: (SCC pp. 336-37, para

89)

89. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section

10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in Sub-section (2)

of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are: (a) motorcycle

without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller, and (g) motor vehicle of

other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types

mentioned in Sub-section (2) of Section 10. They are "goods carriage", "heavy goods vehicle", "heavy passenger motor vehicle", "invalid

carriage", "light motor vehicle", "maxi-cab", "medium goods vehicle", "medium passenger motor vehicle", "motor-cab", "motorcycle", "omnibus",

"private service vehicle", "semi-trailer", "tourist vehicle", "tractor", "trailer" and "transport vehicle". In claims for compensation for accidents,

various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a

driving licence for "motorcycle without gear", [sic may be driving a vehicle] for which he has no licence. Cases may also arise where a holder of

driving licence for "light motor vehicle" is found to be driving a "maxi-cab", "motor-cab" or "omnibus" for which he has no licence. In each case,

on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found

driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because

of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing

requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.

12. In view of the above discussion and after taking into consideration the decisions of the Supreme Court cases relied upon by the appellant, I am

of the view that similar directions can be given to the insurance company, appellant herein, to pay the award amount to the claimants i.e. the

appellant herein along with up to date interest as accrued thereupon and then recover the same from the owner and driver of the offending vehicle.

13. In view of the foregoing discussion, the appellant insurance company is directed to satisfy the award amount with upto date interest in terms of

the impugned award. After payment of the award amount the appellant shall have the right to recover the amount from the driver and the owner of

the offending vehicle.

14. With these directions, the appeal is allowed.