
(2003) 04 OHC CK 0031
In the Orissa High Court
Case No : Misc. Appeal No. 655 of 2001

Divisional Manager, National Insurance Company Ltd.	APPELLANT
Vs	
Pramila Kar and Others	RESPONDENT

Date of Decision : 24-04-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2005) ACJ 8 : (2003) 95 CLT 695 : (2003) 1 OLR 610

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : S.S. Rao, B.K. Mohanty and N.B. Patnaik, for the Appellant; L. Samantray, B. Samantray and B. Beura, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Das, J.—The National Insurance Company Limited has preferred this appeal u/s 173(1) of the Motor Vehicles Act, 1988 (in short "the Act") challenging the judgment passed by the 1 s.t. Addl. District Judge-cum-1st. Motor Accidents Claims Tribunal, Cuttack, in M.V. Misc. Case No. 1040 of 1996 awarding a sum of Rs. 2,84,180/- as compensation for the death of one Pradyumna Kar in a motor vehicular accident and saddling the liability of payment of compensation on the insurer of the vehicle, i.e., the present appellant.

2. Respondent Nos. 1 to 5, who are the parents, minor brother and sisters of the deceased-Pradyumnya Kar, filed an application u/s 166 of the Act before the Tribunal claiming a compensation of Rs. 5,00,000/- for the death of the deceased in a motor vehicular accident, which occurred in the forenoon of 12.10.1996 near Krushnadaspur Chhak, when a truck bearing registration number MP-23-DA-1282 came in a high speed being driven in a rash and negligent manner and dashed against the deceased, who was waiting there to return to his home. As a result of such accident, the deceased sustained severe bodily injuries and was immediately taken to Badachana P.H.C. from where he was shifted to the S. C, B. Medical College Hospital, Cuttack, where he succumbed to the injuries. The

claimants in their application stated that the deceased was working as a Primary School Teacher in Ballarpur U. P. School and was drawing a monthly salary of Rs. 3,200/- out of which he was contributing Rs. 2,500/- per month towards his family expenses.

3. The Tribunal on an analysis of the evidence on record found that accident occurred due to the rash and negligent driving of the driver of the truck and that a sum of Rs. 2,84,180/- was payable to the claimants as compensation. The Tribunal finding that the vehicle was duly insured with the present appellant and the driver had a valid driving licence, saddled the burden of satisfying the award on the insurer of the offending vehicle.

4. The insurer in this appeal has challenged the aforesaid award on the ground that the driver of the offending vehicle had no valid driving licence on the date of the accident, i.e., 12.10.1996, as the licence was valid only upto 13.9.1996. According to counsel for the appellant, though this question was raised before the Tribunal, the Tribunal did not decide the same in its proper perspective for which the same needs examination by this Court. According to learned counsel for the appellant, the driving licence of the driver was valid upto 13.9.1996 and the same was renewed from 24.10.1996 to 23.10.1999, i.e., after expiry of grace period of thirty days, and even if the accident occurred within the grace period of thirty days, but due to non-renewal of the licence within the grace period, the driving licence cannot be treated to be a valid one as per the provisions of the Act. Learned counsel for the appellant further submitted that in view of the provisions of Section 15 of the Act, the finding of the Tribunal that the grace period provided was thirty days, i.e., upto 13.10.1996, and as the accident occurred within the said grace period of thirty days, it will be construed that the driver was having a valid driving licence on the date of the accident, is wrong and, therefore, the award requires interference by this Court.

5. In this connection it would be worthwhile to look into the relevant provision in Section 15 of the Act, which is quoted hereunder :

" 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:

Provided

* * * * *

The Madras High Court in the case of The Public Prosecutor Vs. Krishnaswami for Sundaram Aiyangar, held that a person driving a motor vehicle after expiry of the term of his licence without renewing the same contravenes the provisions of Section 3 (1) of the M. V. Act, 1939 and is guilty of the offence u/s 112 thereof.

Subsequent renewal of the licence does not date back to the date of the expiry of the old licence so as to have the effect of cancelling the offence committed u/s 3(1).

But the question for determination in this case is whether the insurer can be absolved of its liability to satisfy the award, so far as the third parties are concerned, on the plea of invalid driving licence as at the time of accident the vehicle was being driven by a person whose licence had expired and renewal was made after the expiry of the grace period of thirty days.

In this regard, I may refer to a decision of the Karnataka High Court reported in *The Oriental Insurance Company Vs. Mohammed Sab Ali Sab Kaladagi and Others*, , in paragraph 6 of which it was held as follows :

"The another golden rule that is to be remembered is that the statute is capable of being interpreted in two ways. In the case on hand the claimants shall become the victims in the event the insurance company is exonerated. The very purpose of issuing the policy is to protect the third party risk. If the insurance company is allowed to go scot-free on this ground, great hardship would be caused to the claimants. Hence, in view of the impending danger that is likely to arise in the case of claimants, the beneficial interpretation has to come to the claimants. It is oft-quoted that the duty is to provide the light and not to generate heat. Unless the insurance company can place any of the materials covered by Sections 19, 20, 130, 134 and 185, it can never be said that there was any disqualification to hold the licence. It goes without saying that when the specific contention of disqualification is taken by the insurance company, the burden is also on the insurance company to adduce the evidence that the driver was not duly licensed and was disqualified. No material evidence is adduced in this direction."

In the case of *Kalyan Singh and Another Vs. Sadarani and Another*, the Madhya Pradesh High Court held in Paragraph 6 as follows :

"... It is clear that the appellant No. 2 was earlier holding an effective driving licence with all the required endorsements thereon under the Motor Vehicles Act and the Rules made there under for the time being in force to drive a tractor insured. Subsequently, this licence was renewed showing that the appellant No. 2 was not disqualified from holding the licence. The only lacuna was that the licence was left unrenewed for some time but this would not be taken into consideration in exonerating the insurance company because the insurance company itself says that it will be liable if the person concerned had held the licence.

In the case of *K.G. Srinivasamurthy Vs. Habib Khathun and Others*, the Karnatak High Court after referring to a catena of decisions held as follows :

"51. The question is as to whether the proof of the fact that on the date of accident in both the cases the drivers who were holding valid driving licence which had expired had not got renewed their driving licence on the date of

accident and got it renewed subsequently can be said to be proving that the vehicles were driven by persons who did not possess effective driving licences. In the present cases, the drivers who had not got their licences renewed on the date of accident do not stand on the same footing as the persons who did not have any licence at all or the persons who had driving licence which had expired and had never got it renewed. Nor are they who held licences but were disqualified from obtaining or holding driving licence. The very fact that the licence has been renewed subsequent to the date of the accident by the drivers in both the cases would show that they were not disqualified from obtaining driving licence and it is not the case of the Insurance Company that they had incurred any disqualification for holding the licence"

The Court further agreeing with the decision of the Patna High Court reported in *National Insurance Co. Ltd. Vs. Abha Sinha and Others*, held in paragraph 60 as follows :

"We are in respectful agreement with the above said decisions. It is clear that mere fact that the driver of the offending vehicle had not got his driving licence renewed on the date of the accident and got it renewed subsequently would not amount to breach of condition of the policy as it cannot be said that there was violation of the condition of the exclusion clause."

Law is also well settled by the Apex Court in the case of *New India Assurance Co., Shimla Vs. Kamla and Others* etc. etc., wherein it was held thus :

"22. To repeat, the effect of the above provisions is this : When a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured."

6. This being the position and in this case as there is nothing to indicate that the insurer had taken a specific stand regarding the disqualification of the driver to hold the licence and there is no evidence to that effect even, I am of the view that the Tribunal is justified in fastening the liability with the insurance company. While dismissing the appeal, I keep it open to the insurer that if any material is there that the driver was disqualified to hold the licence, the same may be raised before the Tribunal by filing an application to that effect in which event it would be open to the, insurer as well as the insured to adduce evidence; and if it is ultimately found by the Tribunal that the driver was disqualified to hold the driving licence, then the amount compensation paid by the insurer to third parties shall be recovered from the owner of the vehicle. Let the awarded amount along with the interest accrued thereon be released in favour of the claimants in terms of the directions given by the Tribunal in the impugned judgment.

7. The appeal is accordingly dismissed with the observations made above. There shall be no order as to cost.