

(2007) 01 MP CK 0053
In the Madhya Pradesh High Court

Keshav Prasad Sahu

APPELLANT

Vs

Smt. Mamta Bai and Others

RESPONDENT

Date of Decision : 03-01-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 149

Citation : (2007) 2 MPHT 247

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Arun Mishra, J.—This appeal has been preferred by the owner on the short ground that insurer ought not to have been exonerated from making payment of compensation and right to recover the compensation from owner in case it is recovered from insurer.

2. The factum of accident death of Hukum Singh, negligence of driver and factum of insurance of the vehicle are not in dispute.

3. The only question agitated at Bar is with respect to liability of insurer on the ground that though driver held licence but it had expired as on the date on which accident took place, i.e., on 13-10-2003. Driver was issued the licence to drive the kind of a vehicle which he was driving in the year 29-2-1984. Licence was issued to drive Light Motor Vehicle. Licence was renewed on the next very day of accident, i.e., on 14-10-2003 for further period of 4-1-2015. Licence was valid upto 1-1-2003. There was no renewal from 1-1-2003 to 13-10-2003. On 13-10-2003 accident has taken place. There is no evidence on record that driver has incurred any disability in the meantime.

4. I have the learned Counsel for the parties and gone through the record. The aforesaid dates are not in dispute.

5. A Division Bench of this Court in Oriental Insurance Co. Ltd. v. Smt. Hira

Tripathi and Ors. 2001 (1) M.P.H.T. 221, has considered the aforesaid question thus:

7. Firstly; we are not satisfied by mere production of certificate of Regional Transport Officer that the insurer has discharged its burden to prove that the driver's licence expired on the date of accident. Document No. 2 filed with the appeal indicates the date of issue of licence to Shri Attar Singh, Driver as March 30, 1989 and date of expiry as November, 2001. Thereafter in the bottom there are certain entries of the different period without mentioning anything further. Those periods are 20-3-1989 to 29-3-1992, 25-5-1996 to 24-5-1998 and 20-4-1998 to 19-11-2001. The entry No. 5 of this certificate shows the date of issue to be March 30, 1989 and date of expiry to be November 19, 2001, which goes to show that the licence of the driver was issued on March 30, and has been validated till November 19, 2001. No witness has been examined on behalf of the insurer to show that any dis-qualification was incurred by the driver. On the contrary, the certificate goes to show that he has been found fit to drive the vehicle from the year 1989 till the year 2001. The Apex Court in case of Sohan Lal Passi Vs. P. Sesh Reddy and others, has held that "under Section 96(corresponding to new Section 149) Section 96(2)(b)(ii) should not be interpreted in a technical manner. Sub-section (2) of Section 96 only enables the insurance company to defend itself in respect of the liability to pay compensation on any of the grounds mentioned in Sub-section (2) including that there has been a contravention of the condition excluding the Vehicle being driven by any person who was not duly licensed. This bar on face of it operates on the person insured. If the person who has got the Vehicle insured has allowed the vehicle to be driven by a person who is not duly licensed then only that clause shall be attracted. In a case where the person who has got insured the vehicle with the insurance company, has appointed a duly licensed driver and if the accident takes place when the vehicle is being driven by a person not duly licensed on the basis of the authority of the driver duly authorised to drive the vehicle whether the insurance company in that event shall be absolved from its liability ? The Apex Court held that the insurance company will have to establish that the insured was guilty of an infringement or violation of promise. The insurer has also to satisfy the Tribunal or the Court that such violation or infringement on the part of the insured was wilful. If the insured has taken all precautions by appointing a duly licensed driver to drive the vehicle in question and it has not been established that it was the insured who allowed the vehicle to be driven by a person not duly licensed, then the insurance company cannot repudiate its statutory liability under Sub-section (1) of Section 96. In the facts of Sohan Lal Passi's case Apex Court had found that the owner has engaged a licensed driver and had placed the vehicle in his charge. The Apex Court has further observed that while interpreting the contract of insurance, the Tribunals and Courts have to be conscious of the fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds. Unless it is established on the materials of the record that it was the

insured who had wilfully violated the condition of the policy by allowing a person not duly licensed to drive the vehicle when the accident took place, the insurer shall be deemed to be a judgment-debtor in respect of the liability in view of Sub-section (1) of Section 96 of the Act. The Apex Court also took note of decision in another case; Kashiram Yadav and Another Vs. Oriental Fire and General Insurance Co. and Others, . It has been observed in Para 13 as under:

13. This Court in the case of Kashiram Yadav and Another Vs. Oriental Fire and General Insurance Co. and Others, reiterated the view expressed in Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan AIR 1987 SC 1184 (supra). While referring to that case it was said : at pp. 2003-2004 of AIR

...There the facts found were quite different. The vehicle concerned in that case was undisputedly entrusted to the driver who had a valid licence. In transit the driver stopped the vehicle and went to fetch some snacks from the opposite shop leaving the engine on. The ignition key was at the ignition lock and not in the cabin of the truck. The driver had asked the cleaner to take care of the truck. In fact the driver had left the truck in care of the cleaner. The cleaner meddled with the vehicle and caused the accident. The question arose whether the insured (owner) had committed a breach of the condition incorporated in certificate of insurance since the cleaner operated the vehicle on the fatal occasion without driving licence. This Court expressed the view that it is only when the insured himself entrusted the vehicle to a person who does not hold a driving licence, he could be said to have committed breach of the condition of the policy. It must be established by the Insurance Company that the breach is the part of the insured. Unless the insured is at fault and is guilty of a breach of the condition, the insurer cannot escape from the obligation to indemnify the insured. It was also observed that when the insured has done everything within his power inasmuch as he has engaged the licensed driver and has placed the vehicle in his charge with the express or implied mandate to driver himself, it cannot be said that the insured is guilty of any breach. We affirm and reiterate the statement of law laid down in the above case. We may also state that without the knowledge of the insured, if by driver's acts or omission others meddle with the vehicle and cause an accident, the insurer would be liable to indemnify the insured. The insurer in such a case cannot take the defence of a breach of the condition in the certificate of insurance.

We are in respectful agreement with the view expressed in the case of Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan (supra).

8. Thus, each and every violation or infringement on the part of the insured cannot absolve the insurer from the liability. In the present case, in the facts and circumstances we find that the driver was having licence from the year 1989, it was renewed time and again and after the date of accident also it has been renewed. Thus, it is not the case of the insurer that the non-renewal of the driving licence of the driver was to the knowledge of insured. In the instant case, on facts we find that the insured had taken the care to appoint a duly licensed

driver for driving the vehicle. Thus, the insurer cannot escape the liability particularly when driver has not been disqualified as licence has been renewed.

9. A Division Bench of Karnataka High Court in *Mrs. Elizabeth Leema v. T. Narayan Rao and Ors.* ILR 1979 Kar 1013, where licensed driver L. D'Souza had held a licence which expired on 22nd January, 1972 and was not disqualified to obtain a renewal of the said licence on the date of the incident, in fact his licence was renewed on 2nd March, 1972 within a few days of the incident, it was held that the insurer is liable to pay and cannot escape its liability. In the present case also within a few days of the accident, licence was renewed.

6. In view of the aforesaid discussion made by the Division Bench of this Court, it is clear that as the driver has not incurred any disability, he was holding licence, owner had taken care to engage the driver who was having valid and effective driving licence. Non-renewal of licence for few months, cannot be said to be substantial breach on the part of the owner so as to exonerate the insurer from making the payment of compensation. In *United India Insurance Company Ltd. Vs. Lehu and Others*, , the Apex Court has held that the breach on the part of the owner has to be proved. There was no breach on the part of the owner. He has taken the care to engaged a duly licenced driver. In the facts and circumstances of the case it cannot be said that there was substantial breach on the part of the owner. Thus Insurer cannot escape the liability to make the payment of compensation.

7. Consequently, appeal is allowed. Liability is held to be joint and several of driver, owner and insurer. Parties to bear their own costs as incurred.