

(2008) 09 SC CK 0037

In the Supreme Court Of India

Case No : Civil Appeal No. 5721 of 2008 (Arising out of S.L.P. (C) No. 13174 of 2007)

National Insurance Co. Ltd.

APPELLANT

Vs

Vidhyadhar Mahariwala and Others

RESPONDENT

Date of Decision : 17-09-2008

Acts Referred:

Evidence Act, 1872 — Section 114

Motor Vehicles Act, 1988 — Section 10, 10(2), 14, 15, 173

Citation : (2008) ACJ 2860 : AIR 2009 SC 208 : (2008) 4 AWC 3820 Supp : (2008) 8 MLJ 206 : (2008) 152 PLR 746 : (2008) 12 SCALE 577 : (2008) 12 SCC 701

Hon'ble Judges : H. S. Bedi, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : Meera Agarwal, for the Appellant; Devashish Bharuka, Alok Sangwan, Jaya Bharuka and Hansa Bharuka, for the Respondent

Final Decision : Allowed

Judgement

Arijit Pasayat, J.—Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Rajasthan High Court at Jodhpur dismissing the appeal filed by the appellant u/s 173 of the Motor Vehicles Act, 1988 (in short the 'Act'). Challenge in the appeal was to the award made by the Motor Claims Appellate Tribunal, Ratangarh (Churu) (in short 'MACT') in Claim Case No. 89 of 2004. By the said award, a sum of Rs. 4,03,650/- was awarded to the claimant-respondent No. 1 in the appeal. The dispute related to the rejection of appellant's claim for exoneration on the ground of violation of policy condition. It was pointed out that the driving license of the driver of the offending vehicle was not in force on the date of accident.

3. Factual position in detail need not be indicated because the issue relates to the liability of the insurance company as the driving license was not valid on the date

of the accident.

4. In the instant case the date of accident was 11.6.2004. The driver's license was initially valid for the period from 15.12.1997 to 14.12.2000 and thereafter from 29.12.2000 to 14.12.2003. Thereafter, it was again renewed from 16.5.2005 to 15.5.2008. The appellant filed its objections before MACT taking the stand that since the driving license was not valid on the date of accident it had no liability. The MACT turned down the plea. According to it though on the date of accident the driving license was not valid, since the driver's license was renewed on 16.5.2005 for a further period of three years it cannot be said that during the intervening period the driver was incompetent or disqualified to driver the truck. With reference to Section 114 of the Indian Evidence Act, 1872 (in short the 'Evidence Act') it was held that at the time of accident driver was competent to drive the vehicle.

5. In appeal by the impugned judgment the High Court referred to three judgments of this Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, , National Insurance Co. Ltd. Vs. Kusum Rai and Others, and Oriental Insurance Co. Ltd. Vs. Shri Nanjappan and Others, and came to hold that the insurance company, the insurer was liable to indemnify the award. It was held that merely there was a gap in the renewal of driving license that cannot be a ground for exoneration.

6. In support of the appeal, placing reliance on the decision of this Court in Ishwar Chandra and Ors. v. Oriental Insurance Co. Ltd. and Ors. 2007 (10) SCC 650, it was contended that the High Court's view is unsustainable.

7. Learned Counsel for respondent No. 2 the owner of the vehicle on the other hand supported the judgment of MACT.

8. In Swaran Singh's case (supra) whereupon the respondent No. 2 relied, it was held as follows:

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.

9. In Kusum Rai's case (supra) it was held as follows:

14. This Court in Swaran Singh 2004 (3) SCC 297 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.

10. Nanjappan's case (supra) was referred to in Kusum Rai's case (supra).

11. In Ishwar Chandra's case (supra) the three decisions referred to by the High Court were considered and it was held that the insurance company would have

no liability in the case of this nature. We are in agreement with the view. The appeal deserves to be allowed which we direct. The impugned order of the High Court is set aside. It is open to the claimant to recover the amount from respondent No. 2.