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**(2010) 05 P&H CK 0071**

**In the Punjab And Haryana At Chandigarh**

**Case No :** First Appeal from Order No. 477 of 1996 and Cross Objection No. 83-CII of 1997

National Insurance Company Limited

APPELLANT

Vs

Om Parkash and Others

RESPONDENT

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**Date of Decision :** 28-05-2010

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 149(2), 15, 16, 17, 4

**Citation :** (2010) 159 PLR 752

**Hon'ble Judges :** Kanwaljii Singh Ahluwalia, J

**Bench :** Single Bench

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## **Judgement**

Kanwaljii Singh Ahluwalia, J.—By this common judgment, first appeal bearing F.A.O. No. 477 of 1996, titled "National Insurance Company Limited v. Om Parkash and Ors." and Cross Objection No. 83-CII of 1997 filed by the claimants, against order dated 3.11.1995 passed by the Motor Accident Claims Tribunal, Hisar (hereinafter to be referred as, "the Tribunal") shall be decided together.

2. Before the issue raised in the appeal and the cross objections are dealt with, brief resume of the fact is required to be noticed: Anand Kumar, son of Om Parkash and Santra Devi, claimant-respondents No. 1 and 2 to the appeal, died in an accident on 3.11.1993.

Anand Kumar was travelling in truck bearing registration No. HR- 24-A- 5911 as its cleaner. The truck was loaded with oil cakes and was proceeding towards its destination, when near the temple of Village Chikanwas, it was parked on the left side of the road. Anand Kumar proceeded towards the Mandir to offer Parshad. While he was in the process of crossing the road, a Canter bearing registration No. HR-32-2133 (though it was described as Canter but it was Tata 807), driven by respondent Des Raj, had hit Anand Kumar from his back. As a result of the accident, Anand Kumar fell down and died at the spot. Death of Anand Kumar was attributed due to rash and negligent driving by Des Raj and it was also projected before the Tribunal that Anand Kumar was aged 18 years and

employed as cleaner on truck No. HR-24-A-5911 on a salary of Rs. 1,000/- P.M. along with daily allowances.

3. The Tribunal framed the following issues:

1. Whether the motor vehicle accident that took place on 3.11.1993 is an outcome of rash and negligent driving of canter No. HR 32/2133 by respondent No. 1? OPP.

2. Whether the petitioners are entitled to compensation on the death of Anand Kumar, if so, in what amount? OPP.

3. Whether respondent No. 3 is not liable to satisfy the award as alleged? OPR.

4. Relief.

4. The Tribunal returned a finding on issue No. 1 that accident had taken place due to rash and negligent driving of Des Raj respondent-driver of offending canter No. HR-32-2133. The Tribunal further held that age of Anand Kumar was 18 years and his monthly income was Rs. 1,000/-. The dependency of the parents was determined as Rs. 650/- P.M. and multiplier of 12 was applied taking into consideration, age of Om Parkash father as 45 years and mother Santra Devi as 43 years. Thus, annual dependency arrived at was Rs. 7800/- and the total compensation awarded was Rs. 94,000/-. Over and above the amount determined, interest at the rate of 12% per annum was awarded from the date of presentation of the petition till the date of realisation.

5. Mr. Harsh Aggarwal, Advocate appearing for appellant - National Insurance Company Limited has referred to Annexure R1, driving licence of Driver Des Raj. It is not disputed that Des Raj was issued a driving licence by the Licensing Authority, Bikaner (Rajasthan). Referring to the driving licence, Annexure R1, counsel has submitted that the driving licence was issued on 27.5.1986 and it was valid upto 26.5.1989. The licence was further renewed on 27.4.1989 for a period of three years till 26.5.1992. The licence was later renewed on 31.1.1994 till 30.1.1997. In other words, from 26.5.1992 to 31.1.1994, renewal of the licence was not applied. The accident in the present case had taken place on 3.11.1993.

6. Section 15 of the Motor Vehicles Act, 1988 (hereinafter to be referred as, "the Act") provides for renewal of the driving licences. Same 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 whether 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 further that where the application is for the renewal of a licence to drive

a transport vehicle or where in any other case the applicant has attained the age of forty years, the same shall be accompanied by a medical certificate in the same form and in the same manner as is referred to in Sub-section (3) of Section 8, and the provisions of Sub-section (4) of Section 8 shall, so far as may be, apply in relation to every such case as they apply in relation to a learner's licence.

(2) An application for the renewal of a driving licence shall be made in such form and accompanied by such documents as may be prescribed by the Central Government.

(3) Where an application for the renewal of a driving licence is made previous to, or not more than thirty days after the date of its expiry, the fee payable for such renewal shall be such as may be prescribed by the Central Government in this behalf.

(4) Where an application for the renewal of a driving licence is made more than thirty days after the date of its expiry, the fee payable for such renewal shall be such amount as may be prescribed by the Central Government. Provided that the fee referred to in Sub-section (3) may be accepted by the licensing authority in respect of an application for the renewal of a driving licence made under this sub-section if it is satisfied that the applicant was prevented by good and sufficient cause from applying within the time specified in Sub-section (3) Provided further that if the application is made more than five years after the driving licence has ceased to be effective, the licensing authority may refuse to renew the driving licence, unless the applicant undergoes and passes to its satisfaction the test of competence to drive referred to in Sub-section (3) of Section 9.

(5) Where the application for renewal has been rejected, the fee paid shall be refunded to such extent and in such manner as may be prescribed by the Central Government.

(6) Where the authority renewing the driving licence is not the authority which issued the driving licence it shall intimate the fact of renewal to the authority which issued the driving licence.

7. In the present case, the driving licence was renewed after the date of accident. Counsel appearing for the appellant-National Insurance Company Limited has contended that on the date of the accident, the appellant was not possessing a valid licence. The renewal of the licence later ipso facto will not cure the defect. Thus, the Insurance Company is not liable to pay the amount of compensation.

8. Mr. Ashok Verma, Advocate appearing for Des Raj, respondent No. 3, driver of the offending vehicle and Duni Chand, respondent No. 4, owner of vehicle Tata 807 has drawn my attention to following clause of the Insurance Policy:

Persons or Classes of Persons entitled to drive Any of the following

(a) the Insured

(b) any other person who is driving on the Insured's order or with his permission. Provided that the person driving holds or had held and has not been disqualified from holding an effective driving licence with all the required endorsement thereon as per the Motor Vehicles Act and the Rules made thereunder for the time being in force to drive the category of Motor Vehicle Insured hereunder.

9. Mr. Verma stated that when driving licence was renewed, driver of the vehicle was suffering from no disqualification and Section 15 of the Act recognises renewal of the licence even after a period of 30 days, if requisite fee to this effect is paid. Mr. Verma has referred to a Division Bench judgment of Gujarat High Court in *Chanchalben and Ors. v. Shailesh Kumar Pandurao Thakore and Ors.* 1974 A.C.J. 393, wherein this issue was considered and it was held as under:

24. Mr. Patel has next contended that the learner's driving licence issued to the Lambretta driver had already expired in October, 1967 and was not in force when the accident in question was committed. According to him, therefore, since the Lambretta driver did not hold on the date of the accident in question, an effective learner's driving licence, the insurer, opponent No. 3, cannot be made liable for the risk arising out of the accident committed by him. The examination of this contention takes us again to Clause (b) in the said term in the policy. To repeat, it states "that the person driving hold a licence to drive the Motor cycle or has held and is not disqualified for holding or obtaining such a licence." If opponent No. 1 had held sometime in the past a licence to drive a Motor cycle and was not disqualified for holding or obtaining it, he would be the person, who would be covered by the said proviso. The contention which Mr. Patel has raised is that the expression "has held" connotes that the opponent No. 1 had held a licence in the past and that it continued to be in force on the date of the accident. It is impossible for us to uphold that contention of his. If the Lambretta driver had held a licence in the past and if it was in force on the date of the accident" he would fall in the category of persons holding a licence. He cannot fall under the category of a person who can be said to have held a licence. The expression "has held", in our opinion, means a licence which was held by a person in the past and which was not effective on the date of the accident. If a person had held in the past a licence and was not disqualified for holding it or obtaining it at the date of the accident, such a person falls in the category of persons described by the proviso to Clause (b) in the aforesaid term and the risk arising out of the accident committed by such a person is underwritten by the insurance company. The disqualifications for holding a licence are those which are specified in Sections 15, 16 and 17 of the Act. The disqualification to obtain a licence appears to be one contemplated by Section 4 of the Act. If we are correct in our interpretation of the aforesaid proviso to Clause (b) in both the respects, it means that the insurer, opponent No. 3 has underwritten the risk arising out of the accident committed by the learner driver, opponent No. 1, who once upon a

time held a learner's driving licence and who did not have such an effective licence at the date of the accident.

25. Mr. Patel has invited our attention to the decision of the Madras High Court in *Motor Owners' Insurance Company Ltd. v. V. Daniel and Anr.* The learned Single Judge of the Madras High Court has held in the case that since the driver in that case had not a valid licence on the date of the accident, the liability of the insurance company was excluded. He has negated the contention raised on behalf of the insured in that case that it would be sufficient if the driver of the vehicle had held a licence at some anterior point of time and that the licence need not be in force at the time of the accident. The observation made in that decision is a pure ipse dixit. No reasons have been stated by the learned Judge in support of his observation. In view of the express language employed in the proviso to Clause (b) in the aforesaid term in the policy, "we are unable to agree with the observation made by the Madras High Court in that decision. The decision of the Queen's Bench Division in *Edwards v. Griffiths* has been cited before us. In that case, the driver passed in 1951 a driving test and was granted a driver's licence for 12 months. After the expiration of the licence, he applied for a new licence, which was refused to him. In February 1953, he drove a motor tractor belonging to his employer and was charged with driving a motor vehicle without a policy of insurance being in force. The certificate of insurance of his employer contained a proviso that the driver must hold a licence to drive the vehicle or that he must have held one and" not be disqualified for holding or obtaining such a licence. It was held in that case that the facts that the driver held a licence in the past and that he was not disqualified from obtaining one were sufficient to exonerate him from the offence with which he was charged. The next decision, which has been cited before us, is an unreported decision of D.A. Desai, J, in *(The Motor Owners Ins' Co. Ltd. v. Bai Dudhi Gopal)*. On examination of an identical term in the policy, with which he was concerned in that case, he has taken the view that an insurer is bound to make good the risk arising out of an accident committed by a driver, who once held licence, though he did not have an effective licence on the date of the accident and was not disqualified from holding or obtaining it.

For the reasons stated in our judgment, we are in complete agreement with the conclusion recorded by the learned judge in that case. In view of our finding that a person who holds or has held a learner's driving licence is covered by the proviso to Clause (b) and since the Lambretta driver had held a learner's driving licence prior to the date of the accident and indisputably he was not disqualified from holding or obtaining it, the opponent No. 3 is liable to make good the risk which has arisen out of the accident committed by opponent No. 1, the lambretta driver. That opponent No. 1 was not disqualified from holding or obtaining a learner's driving licence is proved by the fact that, two days after the occurrence of the accident in question, on 19th January, 1968, his learner's driving licence was renewed for a further period of three months. In view of the finding recorded by us, we are of the opinion that opponent No. 3, The Commonwealth Insurance

Co. Ltd. is liable to satisfy the judgment which we have pronounced against the opponents Nos. 1 and 2. The risk which the opponent No. 3 has underwritten under the policy is unlimited. Therefore, the said insurer is liable to satisfy the entire judgment with interest and costs.

10. If ratio of the above-said observations is applied in the present case, it can be safely said that case of the driver of the offending vehicle is covered under proviso to Clause (b). The driver of the vehicle was not disqualified from holding or obtaining a driving licence. The driver will fall under the proviso that the person holds or had held and has not been disqualified from holding an driving licence. Therefore, I am in agreement with the observations made by a Division Bench of Gujarat High Court in Chanchalben's case (supra). This view was further reiterated by a Division Bench of Madras High Court in Srinivasa Roadways, Mvdrai v. Saroja and Ors. 1975 A.C.J. 265. It was held by the Madras High Court that in case the policy positively undertakes to cover the liability in respect of an accident caused by a person who was not having an effective licence at the time of accident, has not been disqualified to hold a licence, the Company cannot escape from the liability. This view was further reiterated by a subsequent judgment of Madras High Court in Oriental Insurance Co. Ltd. v. Indirani and Ors. 1995 A.C.J. 703, wherein it was held as under:

7. We have no doubt that the burden is on the insurance company to prove that the driver of the vehicle is disqualified from holding or obtaining a licence. Admittedly, on the facts of the case, it is seen that the driver had renewed the driving licence on 26.10.1992. That itself shows that he was not disqualified. If in respect of the licence, the insurance company contends that the driver was disqualified from obtaining licence, it should have let in sufficient evidence in that regard. That burden has not been discharged by the insurance company in this case.

12. The view taken by the Division Benches of Gujarat and Madras High Courts, which I have followed, is further fortified by the following observations of the Hon"ble Apex Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, :

110. (i) to (v) xx xx xx xx

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer u/s 149(2) of the Act.

13. Thus, there is no merit in the plea raised by the Insurance Company and no

interference is warranted. Consequently, the present appeal fails and the same is dismissed.

14. Cross Objections In the cross objections filed, parents of the deceased have expressed their dissatisfaction regarding the amount of compensation awarded in their favour. It is stated that deceased was 18 years old. The age of father and mother of the deceased was 45 years and 43 years respectively. Therefore, application of multiplier of 12 was not justifiable. Relying upon a judgment of Hon'ble Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , it is stated that multiplier as per the Schedule should be of 16. However, this Court cannot become oblivious of the fact that parents of the deceased were between 43 years to 45 years. Therefore, multiplier of 14 ought to be applied in the present case. Further more, compensation for loss of consortium has not been paid by the Tribunal. The same is assessed at Rs. 5,000/-. Funeral expenses and costs of transportation of dead body have also not been taken into consideration. In the present case, the accident had taken place in the year 1993. Therefore, Rs. 5,000/- towards funeral expenses and transportation of dead body can be awarded in favour of the claimants/cross objectors.

15. As a sequel of the above discussion, without disturbing the annual dependency determined by the Tribunal which has been assessed at Rs. 7800/-, multiplier of 14 is ordered to be applied instead of 12, which comes to Rs. 1,09,200/- and the same is rounded off to Rs. 1,10,000/- along with Rs. 5,000/- towards loss of consortium and Rs. 5,000/- as funeral expenses and costs of transportation of the dead body. Thus, the claimants will be entitled to Rs. 1,20,000/- instead of Rs. 94,000/- as determined by the Tribunal. On the enhanced amount, after deducting the amount already paid, the claimants shall be entitled to interest at the rate of 12% per annum as was then awarded by the Tribunal, from the date of filing of the claim petition till realisation of the amount.

With the aforesaid observations, the cross objections are disposed of.