

(2013) 03 MP CK 0031

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 5078 of 2007

New India Assurance Co. Ltd

APPELLANT

Vs

Smt. Bebi Chakravorty and Others

RESPONDENT

Date of Decision : 25-03-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 10, 14, 141, 145, 147(3)

Citation : (2013) 3 MPHT 401 : (2013) 4 MPLJ 49

Hon'ble Judges : M.C. Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.C. Garg, J.—This appeal shall also govern disposal of M.A. No. 5079/2007, M.A. No. 5118/2007, M.A. No. 5117/2007 and M.A. No. 1597/2007. In all these cases, the only issue involved is as to whether the Insurance Co. namely the New India Assurance Company, which was the insurer of the vehicle involved in the accident, has to be given a right to recover the compensation from the owner/driver after making the payment of compensation to the claimants. In these cases, by a common award delivered by IV MACT, Sagar in Claim Case No. 9/04, 40/04, 41/04, 42/04, 47/04, 1/05 and 31/05, dated 20-1-2007, while awarding compensation to the claimants, the Insurance Co. has been burdened to pay that compensation, without giving any opportunity to the Insurance Co. to recover it from the owner/driver.

2. By the appeals filed before us, the prayer made on behalf of the Insurance Co. is that since in this matter, the driver admittedly was not having valid driving license as on the date of accident, they are entitled to recover the compensation amount from the owner/driver, after making payment of compensation to the claimants. In this regard, the appellant has also relied upon the ex parte order passed in Civil Revision No. 309/2007, whereby it has been directed that the appellant-insurer shall be free to realise the said amount from the driver and owner of the offending vehicle. It is also observed that in Civil Revision No.

397/2007 the amount of award was very small. Be that as it may, the question raised by the Insurance Co. regarding recovery has been seriously contested by the learned Counsel appearing for the owner/driver.

3. In this regard, the appellant has relied upon the judgment reported in *Ishwar Chandra and Others Vs. The Oriental Insurance Co. Ltd. and Others*, wherein it has been held that if the driver was not having a license, at the relevant time and the renewal application was not made within 30 days of the expiry, then, the driver will not be entitled to hold that he was holding a valid driving license and, therefore, it will be presumed that vehicle in question was being driven without a valid driving license and, therefore, considering the judgment of Hon''ble Supreme Court in *Swaran Singh's* case, the Insurance Co. shall be entitled to recover the amount from the owner and driver.

4. Shri Anoop Nair, learned Counsel for the Insurance Co. relied upon the judgment in the case of *Ishwar Chandra and others (supra)*, the relevant discussion appears in Paras 4, 8 and 11 of this judgment, which is reproduced hereunder:--

4. Respondent No. 1, however, preferred an appeal thereagainst, which was dismissed by an order dated 24-1-2005, stating:--

We, therefore, while dismissing the aforesaid appeal give liberty to the appellant to initiate appropriate proceedings against the owner and driver of the vehicle for realisation of the amount, which is to be paid by the Insurance Co. in terms of the award to the third party-claimant subject to establishing its case before the Tribunal.

We further provide that the amount, which is in deposit before this Court as well as before the Tribunal shall be allowed to be withdrawn by the claimants/respondents. The balance amount shall be deposited by the Insurance Co. within two months from today before the Tribunal. On deposit so being made, the claimants/respondents shall be allowed to withdraw the same also without furnishing any security.

It will, however, be open to the Insurance Co. to recover the amount in question from the insured. For the purpose of recovering the same from the insured owner of the vehicle, the insurer shall not be required to file a suit. It may initiate a proceedings before the Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. It is further directed that before releasing the amount, the insured owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount, which the insurer will pay to the claimants. This observation is in consonance with the view taken by the Apex Court in case of *Oriental Insurance Co. Ltd. Vs. Shri Nanjappan and Others*,

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.

11. This aspect of the matter is now covered by a decision of this Court in National Insurance Co. Ltd. Vs. Kusum Rai and Others, wherein this Court referring to Swaran Singh (supra), opined:--

12. This Court in Swaran Singh clearly laid down that the liability of the Insurance Co., vis-?-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-?-vis the driver being not possessed of a valid licence was considered in Swaran Singh stating:--

82. 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". [See: Oriental Insurance Co. Ltd. Vs. Shri Nanjappan and Others,

5. On the other hand, the Counsel appearing for the owner submits that in the present case, even though, at the relevant time, the driver was not holding the driving license but he had applied for the renewal and the license was renewed in his favour. It is submitted that this aspect has been taken note of by the Tribunal in Para 15 of the award which reads as under:--

6. Learned Counsel for the owner has also referred a judgment of the Hon'ble Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, , the relevant discussion appears in Paras 36 to 44 of the judgment, which reads as under:--

36. However, clause (a) opens with the words "that there has been a breach of a specified condition of the policy", implying that the insurer's defence of the action would depend upon the terms of the policy. The said sub-clause contains three conditions of disjunctive character, namely, the insurer can get away from the liability when (a) a named person drives the vehicle; (b) it was being driven by a person who did not have a duly granted licence; and (c) driver is a person disqualified for holding or obtaining a driving licence.

37. We may also take note of the fact that whereas in Section 3 the words used are "effective licence", it has been differently worded in Section 149(2), i.e., "duly licensed". If a person does not hold an effective licence as on the date of the accident, he may be liable for prosecution in terms of Section 141 of the Act but Section 149 pertains to insurance as regard third party risks.

38. A provision of a statute which is penal in nature vis-?-vis a provision which is beneficent to a third party must be interpreted differently. It is also well known that the provisions contained in different expressions are ordinarily construed differently.

39. The words "effective licence" used in Section 3, therefore, in our opinion cannot be imported for sub-section (2) of Section 149 of the Motor Vehicles Act. We must also notice that the words "duly licensed" used in sub-section (2) of Section 149 are used in past tense.

40. Thus, a person whose license 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.

41. 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.

42. If a person has been given a licence for a particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle which is of the same category but of different type. As for example, when a person is granted a licence for driving a light motor vehicle he can drive either a car or a jeep and it is not necessary that he must have driving licence both for car and jeep separately.

43. Furthermore, the Insurance Co. with a view to avoid its liabilities is not only required to show that the conditions laid down u/s 149(2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. By reason of the provisions contained in the 1988 Act, a more extensive remedy has been conferred upon those who have obtained judgment against the user of a vehicle and after a certificate of insurance is delivered in terms of Section 147(3) a third party has obtained a judgment against any person insured by the policy in respect of a liability required to be covered by Section 145, the same must be satisfied by the insurer, notwithstanding that the insurer may be entitled to avoid or to cancel the policy or may in fact have done so. The same obligation applies in respect of a judgment against a person not insured by the policy in respect of such a liability, but who would have been covered if the policy had covered the liability of all persons, except that in respect of liability for death or bodily injury.

44. Such a breach on the part of the insured must be established by the insurer to show that not only the insured used or caused or permitted to be used the vehicle in breach of the Act but also that the damage he suffered flowed from the breach.

7. The relevant clause of Section 149(2)(a), (b) and (c) clearly establishes that if the driver was eligible to have a driving license inasmuch as, he had license and thereafter he applied for the renewal thereof and the license was renewed in his favour, then it cannot be said that the driver was driving the vehicle, without having a license. As already observed that in this case the license was renewed, there is nothing on record to show that the application for renewal was not filed by the driver within the time prescribed or that he made himself ineligible to produce the license. This defence ought to have been produced by the Insurance Co, in these circumstances, it is held that in all these cases, the driver having got the license renewed, it cannot be said that Insurance Co. was not liable to pay compensation. Accordingly, all the appeals filed by the appellant/Insurance Co. are dismissed.

8. In the case before us, one special fact needs to be taken note of is that the observation made by the Tribunal in Para 15 of the award. A bare reading of that paragraph shows that even though on the date of accident, the driver was not having valid licence and his licence was renewed subsequently, i.e., few days of the accident. It is also a matter of record that nothing has come in evidence on behalf of Insurance Co. that the application of renewal was not filed within 30 days, as has been discussed in the judgment of Ishwar Chandra (*supra*). In this case, the Motor Vehicles Act being a socially beneficial legislation, the submission of the learned Counsel for the appellant, cannot be accepted. It is held that appellants are not entitled to recover the compensation from the owner/driver. Consequently, these appeals are dismissed. No order as to costs.