

**(2004) 11 NCDRC CK 0084**

**In the National Consumer Disputes Redressal Commission**

SALVADOR RODRIGUES MARGO

APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD.

RESPONDENT

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**Date of Decision :** 24-11-2004

**Acts Referred:**

**Citation :** 2005 1 CLT 204 : 2005 1 CPC 531 : 2005 1 CPJ 71 : 2005 1 CPR 30

**Hon'ble Judges :** S.N.Kapoor , B.K.Taimni J.

**Final Decision :** Appeal dismissed

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**Judgement**

1. APPELLANT was the complainant before the State Commission where he had filed a complaint alleging deficiency in service on the part of the respondent Insurance Company.

2. THE undisputed facts of the case are that the complainant's bus Ashok Leyland was covered by an insurance cover issued by the respondent and on the date the vehicle met with an accident i.e., on 15.6.1996, the policy was alive. Upon the accident when it was reported to the company it was repudiated on the ground that complainant has violated the terms of the policy. Thus aggrieved by his repudiation, a complaint was filed before the State Commission, Goa who after hearing the parties dismissed on the ground that the person who was driving the vehicle at the critical time on 15.6.1996 did not have a valid driving licence. Aggrieved by this order the appellant has filed this appeal before us. We heard the learned Counsel for the parties at length and perused the material on record. The only controversy involved in this case was whether the person who was driving bus at the time of accident held a licence or not? It is not disputed that he was not a regular driver who was driving the bus at that time. Admitted position is that the bus was being driven at that moment by Edwin Rodrigues who also happens to be the son of the complainant as the regular driver was feeling sleepy. What we have before us on record is the photo copy of the driving licence, original or which was shown to us during the time of arguments. There is not disputing the fact that the driver who was driving the bus at the relevant time namely Edwin Rodrigues held a licence to drive motor cycle without gear,

motor cycle with gear and light motor vehicle and this licence was valid from 7.3.1991 to 10.5.1993. The same copy of the driving licence also shows the date of birth of the said Edwin Rodrigues to be 23.9.1973 which clearly shows that he had not reached the age of 18 years when this licence was issued which is contrary to Section 4 of the Motor Vehicles Act wherein it is stated that- "No person under the age of 18 years shall drive a motor vehicle in any public place: Provided that (a motor cycle with engine capacity not exceeding 50 cc) may be driven in a public place by a person after attaining the age of 16 years."

The law is clear that the said Edwin Rodrigues could not have been issued the driving licence as he had not attained age of 18 years on the date when he got the driving licence. The learned Counsel for the appellant tried to take advantage of the proviso reproduced by us earlier but she is unable to satisfy us as to how a person below 18 years could be given a licence for light motor vehicle which is the condition in this case. Be that as it may, the same Mr. Edwin Rodrigues was issued a licence to drive a transport vehicle from 10.5.1993 to 9.5.1996. Section 4(2) of the Motor Vehicles Act reads as follows: "Subject to provisions of Section 18 no person under the age of 20 years shall drive a transport vehicle in any public place."

3. SECTION 18 deals with driving licence to drive motor vehicle belonging to the Central Government which is not a case here. Even here licence could not have been issued to Edwin Rodrigues to drive transport vehicle until he had attained the age of 20 years. As on 10.5.1993 he was below the age of 20 years yet the licence was issued. In our view this licence appears to us as nullity in the eyes of law. We will not like to conjecture and delve into the allegations of fraudulent issue of licence, etc. as alleged by respondent but there would be something more than what meets the eye. This licence also shows that the licence was further renewed from 4.7.1996 to 3.7.1999. In between there is an entry to the effect that the said Edwin Rodrigues is authorised to drive transport vehicle w.e.f. 29.5.1996 and some badge number is given. We are unable to appreciate like the State Commission and the learned Counsel for the appellant has failed to show us, as to what the badge number involved and under what provision of law or rules this badge number was issued and what does it mean? This endorsement does not bear any signature except the word "Sd/-". We are not inclined to entertain this input, in the absence of material to support this entry either shown to the State Commission or produced before us. Now we see two entries in the material produced before us. One is that there is a licence to drive transport vehicle from 10.5.1993 to 9.5.1996. The renewal of the licence is from 4.7.1996 to 3.7.1999. The gap between these two is almost two months. Section 15 of the Motor Vehicles Act deals with renewal of driving licence, according to which at best the licence should have been renewed within a period of 30 days, whereas as per record the gap is more than 30 days and the accident took place on 15.6.1996 i.e., more than 30 days after the expiry of the validity, however unlawful issue it was, on 9.5.1996. Thus stipulated period of 30 days had already expired leaving us with no option but to conclude that on that fateful day of

15.6.1996 i.e., the date of accident, the said Mr. Edwin Rodrigues had no valid licence.

4. LEARNED Counsel for the appellant brought to our notice two judgments of the Hon''ble Supreme Court and one of National Commission namely Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd., VII (1999) SLT 317=II (1999) ACC 463 (SC)=(1999) 6 SCC 620; National Insurance Co. Ltd. v. Swaran Singh and Others, I (2004) SLT 345=I (2004) ACC 1 (SC)=(2004) 3 SCC 297; and New India Assurance Co. v. Hements Handre, I (1998) CPJ 61 (NC), respectively. The facts of the cases cited above and the facts of the instant case are quite different. Present is not a question of fake licence but a licence which could not have been issued which would be a nullity in the eye of law because Edwin Rodrigues was disqualified to obtain a driving licence in view of the provisions of Sections 4(1) and 4(2) of the Motor Vehicles Act. In view of the fact of this case none of the citation would become applicable in the instant case. In the cited case (2004) 3 Supreme Court Cases 297, (supra) the Hon''ble Supreme Court had held that upon expiry of the licence it shall remain valid for a period of only 30 days after the expiry. In this case the licence had expired on 9.5.1996, further 30 days expired on 9.6.1996, accident took place on 15.6.1996 and it was renewed on 4.7.1996. Hence it is clear that on the date of accident this driver did not have a valid driving licence. Thus two things emerge. One that there was no validity of the licence as it was issued contrary to law. We are unable to accept that the complainant was not aware of it as the driver happens to be his son and secondly on the date of accident, as per law he had no valid licence. Learned Counsel for the appellant also tried to bring to our notice the orders passed in the Motor Accident Claims Tribunal, South Goa wherein a lenient view has been taken about the shortfall in age as per requirement under Law under Sections 4(1) and 4(2) of the Motor Vehicles Act. We will refrain from commenting on that as the facts as per material on record are too obvious to be ignored and have material bearing on the case.

5. IN view of the above we find that the appellant has failed to satisfy us about the validity of the driving licence of Edwin Rodrigues who was driving the vehicle when it met with an accident. Hence we see no merit in the appeal filed before us and is whereby dismissed. No orders as to cost. Appeal dismissed.