
(2017) 03 NCDRC CK 0090

In the National Consumer Disputes Redressal Commission

Case No : 2086 of 2016

**SHARDA BAI Vs MANAGER, LIBERTY VIDEOCON GENERAL INSURANCE
COMPANY LIMITED & 2 ORS.**

Date of Decision : 03-03-2017

Acts Referred:

[Motor Vehicles Act, 1988](#), [Section 15\(1\)](#),
[Section 15\(1\)](#) - Renewal of driving licences

Citation : 2017 1 CPR 593

Hon'ble Judges : V.K. Jain

Advocate : R.K. Bhawnani

Judgement

1. Late Gaur Singh Sahu, husband of the petitioner / complainant had an account with the respondent Jila Sahkari Kendriya Bank at Durg. The said bank had obtained a Group Personal Accident Policy for its account holders. The husband of the complainant being an agriculturist was using a tractor. On 7.5.2014, while driving the tractor for going to Mandi for sale of the Paddy, he met with an accident and later died. A claim was then submitted by the complainant for payment of benefit available under the group Insurance Policy taken by the bank. The claim having been repudiated on the ground that the deceased did not possess an effective and valid driving license on the date he met with an accident, the complainant approached the concerned District Forum by way of a consumer complaint.

2. The complaint was resisted by the insurer, primarily on the ground that the deceased was driving the tractor without a valid and effective driving license and thereby he violated condition No.3 (6) of the Insurance Policy.

3. The District Forum having dismissed the complaint, the petitioner approached the concerned State Commission by way of an appeal. The said appeal also having been dismissed, she is before this Commission by way of this revision petition.

4. Admittedly, no driving license of the deceased husband of the complainant was provided to the insurer. No driving license of the deceased was filed before the

District Forum. Had the deceased possessed a valid driving license on the date he met with an accident, the complainant could easily have obtained its particulars from the concerned Transport Authority even if it is assumed that neither the original driving license nor its copy was available with her. That having not been done, there is no escape from the conclusion that the deceased did not possess a valid and effective driving license on the date he met with an accident. It is not in dispute that driving a vehicle without a valid driving license constituted a breach of terms of the Group Insurance Policy taken by the bank.

5. In *National Insurance Co. Ltd. Vs. Laxmi Narain Dhut* (2007) 3 SCC 700, the Hon"ble Supreme Court noted as under: "24. In the background of the statutory provisions, one thing is crystal clear i.e. the statute is beneficial one qua the third party. But that benefit cannot be extended to the owner of the offending vehicle. The logic of fake licence has to be considered differently in respect of the third party and in respect of own damage claims.

36. The inevitable conclusion therefore is that the decision in *Swaran Singh* case has no application to own damage cases. The effect of fake licence has to be considered in the light of what has been stated by this Court in *New India Assurance Co. V. Kamla*. Once the licence is a fake one the renewal cannot take away the effect of fake licence. It was observed in *Kamla* case as follows: (SCC p. 347, para 12)

12. As a point of law we have no manner of doubt that a fake licence cannot get its forgery outfit stripped off merely on account of some officer renewing the same with or without knowing it to be forged. Section 15 of the Act only empowers any licensing authority to "renew a driving licence issued under the provisions of this Act with effect from the date of its expiry". No licencing authority has the power to renew a fake licence and, therefore, a renewal if at all made cannot transform a fake licence as genuine. Any counterfeit document showing that it contains a purported order of a statutory authority would ever remain counterfeit albeit the fact that other persons including some statutory authorities would have acted on the document unwittingly on the assumption that it is genuine".

37. As noted above, the conceptual difference between third-party right and own damage cases has to be kept in view. Initially, the burden is on the insurer to prove that the licence was a fake one. Once it is established the natural consequences have to flow.

38. In view of the above analysis the following situations emerge:

1. The decision in *Swaran Singh* case has no application to cases other than third-party risks.
2. Where originally the licence was a fake one, renewal cannot cure the inherent fatality.
3. In case of third-party risks the insurer has to indemnify the amount, and if so

advised, to recover the same from the insured.

4. The concept of purposive interpretation has no application to cases relatable to Section 149 of the Act.

The High Courts/Commission shall now consider the matter afresh in the light of the position in law as delineated above."

In National Insurance Co. Ltd. Vs. Om Prakash Jain Civil Appeal No. 6248 of 2009 decided on 14.09.2009, the Hon"ble Supreme Court referring to its earlier decision in Laxmi Narain Dhut (supra) and Swaran Singh (supra) specifically held as under:

"In National Insurance Company Limited Vs. Laxmi Narain Dhut [2007 (3) S.C.C. 700], it has been clearly laid down that the decision in the case of National Insurance Company Ltd. Vs. Swaran Singh & Anr. [2004 (3) S.C.C. 297] has no application to the cases other than third-party risks and where originally licence was a fake, renewal thereof cannot validate the same. In the present case, the complaint was filed for damage of the vehicle of the insured and not the third party risk. The District Forum and State Commission have concurrently held that the original licence of the driver was fake. This being the position, the District Forum was justified in dismissing the complaint and the State Commission committed an error by awarding compensation to the respondent".

In the aforesaid case, the complaint was filed by the insured himself seeking compensation for the damage caused to his vehicle, which had met with an accident. It was found that the driving licence possessed by the driver of the vehicle was a fake licence. The National Commission having decided in favour of the complainant, the matter was taken by the insurance company to the Apex Court.

In United India Insurance Co. Ltd. Vs. Davinder Singh (2007) 8 SCC 698, the respondent owned a vehicle which he had got insured from the appellant United India Insurance Co. Ltd. The said vehicle met an accident with a truck. It was being driven by a person, who did not possess a valid licence. The owner of the vehicle filed a complaint before the District Forum, seeking compensation for the damages caused to his vehicle. This Commission have ruled in his favour.

The matter was taken to the Hon"ble Supreme Court by way of an appeal. Allowing the appeal filed by the insurance company, the Apex Court inter-alia held that the fora below had committed an error in holding the insurance company liable to indemnify the owner of the vehicle with regard to the losses sustained by him. During the course of the judgment, the Hon"ble Supreme Court, inter-alia observed as under:

"10. It is, thus, axiomatic that whereas an insurance company may be held to be liable to indemnify the owner for the purpose of meeting the object and purport of the provisions of the Motor Vehicles Act, the same may not be necessary in a case where an insurance company may refuse to compensate the owner of the

vehicle towards his own loss. A distinction must be borne in mind as regards the statutory liability of the insurer vis-à-vis the purport and object sought to be achieved by a beneficent legislation before a forum constituted under the Motor Vehicles Act and enforcement of a contract qua contract before a Consumer Forum".

In *Oriental Insurance Co. Ltd. V. Meena Variyal* (2007) 5 SCC 428, the Hon'ble Supreme Court referring to its earlier decision in *Swaran Singh*, 2004(3) SCC 297 held as under:

"It is difficult to apply the ratio of this decision to a case not involving a third party. The whole protection provided by Chapter XI of the Act is against third-party risk. Therefore, in a case where a person is not a third party within the meaning of the Act, the insurance company cannot be made automatically liable merely by resorting to *Swaran Singh* ratio. This appears to be the position. This position was expounded recently by this Court in *Naitonal Insurance Co. Ltd. Vs. Laxmi Narain Dhut*. This Court after referring to *Swaran Singh* and discussing the law summed up the position thus : (*Laxmi Narain Dhut* case, SCC p. 719 para 38)

The legal proposition emerges from the above referred decisions of the Hon'ble Supreme Court is that though the insurance company is liable to a third-party even if the vehicle, at the time it meets with an accident is being driven by a person who does not possess a valid driving licence, the position would be different in a case where compensation is sought by the insured himself, for the damage caused to his vehicle. Wherever, the insured himself is the claimant, the insurance company is not liable to reimburse him for the damage caused to the vehicle, if it is found that the driver of the vehicle did not possess a valid licence at the time the vehicle met with an accident."

6. In "*National Insurance Co. Ltd. vs. Jarnail Singh & Ors.*" [JT 2001 (Supp. 2) SC 218], the driving licence of the driver, who drove the vehicle had expired on 16.05.94. The vehicle met with an accident on 20.10.94 and the driving licence was renewed only with effect from 28.10.96. It was held that the proviso of subsection (1) of section 15 became applicable to the case and since the driver had no effective licence to drive the vehicle on the date of the accident, the policy condition was violated and the insurance company was not liable to pay any amount to the insured. The aforesaid decision was quoted and applied by the Hon'ble Supreme Court in "*New India Assurance Co. Ltd. vs. Suresh Chandra Aggarwal*" [AIR 2009 SC 2987]. In *Suresh Chandra Aggarwal* (supra), the driver of the vehicle was not holding an effective licence at the time it met with an accident since the said licence had already expired on 25.10.91, whereas the accident took place on 29.02.92. The policy condition applicable in that case required that the person entitled to drive the vehicle should hold or should have held a driving licence and should not be disqualified from holding an effective driving licence. It was noted that though the driving licence had expired on 25.10.91, 4 months prior to the accident it was got renewed only with effect from 23.03.1992 and the driver had not applied for the renewal of the licence

within 30 days of its expiry. Referring to the proviso of section 15 sub-section (1) of the Motor Vehicles Act, it was held that in such a case, the licence could be renewed only from the date of its renewal and in the interregnum period between expiry of the licence and the date of its renewal, there was no effective licence in existence. The decision of this Commission holding the Insurance Company liable was, therefore, set aside by the Hon"ble Supreme Court.

7. For the reasons stated hereinabove, I find no good reason to interfere with the concurrent view taken by the fora below. The revision petition, being devoid of any merit, is hereby dismissed, with no order as to costs.