**(2007) 01 JH CK 0055**

**In the Jharkhand High Court**

**Case No :** Misc. Appeal No. 132 of 2006

The National Insurance Co. Limited — APPELLANT

Vs

Smt. Chotni Devi and Others — RESPONDENT

**Date of Decision :** 09-01-2007

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Motor Vehicles Act, 1988 — Section 149, 15, 16, 18, 19

**Citation :** (2007) 2 BLJR 1119

**Hon'ble Judges :** M.Y. Eqbal, J;D.K. Sinha, J

**Bench :** Division Bench

**Advocate :** Alok Lal, for the Appellant;

**Final Decision :** Dismissed

# Judgement

M.Y. Eqbal, J.—This application at the instance of the appellant- Insurance Company is directed against the judgment and award dated 4.2.2006 passed by the Additional District Judge, Motor Vehicle Claims Tribunal, Dhanbad in Title (M.V.) Suit No. 77 of 2001 whereby compensation of Rs. 2,40,000/- has been awarded to the claimants.

2. The claimants, who are the widow, four minor sons and daughters, filed the claim petition claiming compensation for the death of Jag Lal Kanu due to fatal road accident. The deceased Jag Lal Kanu was going to village Lokabad on foot with his trolley along with his brother-in-law for selling chat and golgappa. As soon as they reached at village Madaidih near a bridge, a truck bearing registration No. WB-11-3350 knocked him down from his back, as a result of which the deceased fell down towards right side of G.T. road. The deceased also sustained serious injuries from another truck which was coming from behind and knocked him down and crossed over his body as a result of which he died on the spot. The truck bearing registration No. WB-11-3350 was insured with the appellant-insurance company. The Tribunal after hearing the parties assessed the compensation at Rs. 2,40,000/-.

3. Mr. Alok Lal, learned Counsel appearing for the appellant, assailed the impugned award mainly on the ground that the driver of the offending vehicle was not having a valid driving licence on the date accident occurred and, therefore, the Insurance Company is not liable to pay the compensation amount.

4. The Tribunal while deciding issue No. 5 and 6, has categorically held that the driver of the offending vehicle was having a valid driving licence. Para.10 of the judgment is worth to be quoted herein below:

So far the valid driving licence of the driver of the offending truck bearing No. WB-11-3350 is concerned, it appears to me that claimant has brought Ext.7 i.e. the driving licence of the driver Shyam Sundar Pandey being the driver of offending vehicle WB-11-3350. It is settled law that onus of prove of valid driving licence is upon an Insurance Company if insurer counts itself to be absolved from the liabilities of indemnifying the owner in satisfying the award on the ground that the person driving the offending vehicle at the relevant time did not hold a valid driving licence. It is the settled law that the onus of proving such fact squarely rests upon the insurer and the only of discharging the onus is by the insurer lending positive evidence during the trial of the claim petition to the effect that person driving the vehicle did not in fact possess a driving licence.

In the present case, Insurance Company has brought only Ext.A to absolve the liabilities to pay any compensation. Ext.A is particulars alleged to be issued by the Licensing Officer, M.V. Department, Allahabad on a non-judicial stamp of Rs. 10/-. Apart from the aforesaid evidence, there is nothing brought by the Insurance Company to substantiate that the driver of the offending truck have got no valid driving licence. I find on perusal of the Ext.A that it was issued on 20.7.84 and again renewed on 5.5.2000 to 4.5.2003. Ext.7, driving licence of the driver, reveals that it was also issued on 20.7.84 but there is nothing on the record that whether at the time of occurrence he had not possessed the driving licence. Ext.A does not impress me to come in the conclusion that driver of the offending truck was not valid driving licence at the time of alleged accident. The insurer Company has not produced cogent evidence in this context. Accordingly, I held that Insurance Company has failed in establishing that driver of the offending truck has not possess valid driving licence at the time of accident, though onus of proving was upon his shoulder.

5. Mr. Lal, learned Counsel for the appellant, has also disputed the fact that the driver of the offending vehicle was having a valid driving licence. The submission of the learned Counsel is that the validity period of the driving licence expired, but the driver did not get it renewed before the date of accident. The licence was renewed only on 5.5.2000 and the accident took place on 18.4.2000.

6. Chapter II of the Motor Vehicles Act, 1988 laid down the provision with regard to licensing of the driver of the motor vehicles. Section 3 prohibits a person from driving a motor vehicle unless he holds a driving licence. Section 4 provides that no person under the age of 18 years can drive the motor vehicle. For better

 

appreciation, Section 4 of the Act is reproduced herein below:

4. Age limit in connection with driving of motor vehicles. - (1) No person under the age of eighteen 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 sixteen years.

(2) Subject to the provisions of Section 18, no person under the age of twenty years shall drive a transport vehicle in any public place.

(3) No learner''s licence or driving licence shall be issued to any person to drive a vehicle of the class to which he has made an application unless he is eligible to drive that class of vehicle under this section.

7. From perusal of the aforesaid provision, it is manifestly clear that a person is not qualified for holding a driving licence if he is below 18 years of age. Section 7 provides procedure for grant of driving licence. Section 15 of the Act speaks about renewal of licence which is worth to be quoted herein below.

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.

8. Section 16 provides for the revocation of driving licence. Section 19 of the Act confers power upon the Licensing Authority to disqualify a person from holding a driving licence or revoke the licence if the Licensing Authority is satisfied, after holding an inquiry, that the said person is a habitual criminal or a habitual drunkard, or is a habitual addict to any narcotic drug or psychotropic substance or is using the motor vehicle for offence of cognizable offence or that his driving is likely to be attended with danger to the public, etc. Section 20 of the Act confers power upon the Court to disqualify a person from holding a licence.

9. From reading the provisions, referred to herein above, it is crystal clear that a person can be disqualified from holding a driving licence if he comes within the mischief of Section 4 and the Licensing Authority, after following the procedure provided in Section 19 of the Act, declares him disqualified or unfit to hold driving licence or if the court disqualifies a person as contemplated u/s 20 of the Act from holding a licence. Merely because a valid driving licence issued in favour of a person expires, that does not disqualify him from holding a driving licence.

10. Admittedly, in the instant case, driver of the offending vehicle was holding a valid driving licence which was issued on 20.7.1984. The said licence was renewed on 5.5.2000. The Tribunal has recorded a definite finding that there is nothing on record to show that at the time of occurrence, the driver had not possessed the driving licence.

 

11. Be that as it may, it is not the case of the appellant Insurance Company that the driver of the offending vehicle was disqualified by the Licensing Authority or by the Court from holding a driving licence. It is also not the case of the appellant that on the date of accident, the driver of the offending vehicle was not qualified or in any way, not competent for the renewal of the licence.

12. A similar question came for consideration before this Bench, in the case of National Insurance Co. Ltd. v. Abha Sinha and Ors. 1998 (2) PLJR 337. In that case, at the appellate stage, the Insurance Company wanted to bring on record, by way of additional evidence under Order 41 Rule 27 CPC, a document to show that the driving licence of the driver had already expired and he was having no driving licence on the date of accident. This Court observed:

First of all, I will take up the first point raised by Mr. Chaterjee learned Counsel for the appellant that the person driving the vehicle had no driving licence on the date of accident as the period of licence already expired and therefore, Insurance Company has no liability. I do not find any force in the submission of the learned Counsel. From perusal of the written statement filed by the Insurance Company in the claim case before the court below it does not appear that any specific defence was taken that the person driving the vehicle had no valid driving licence. No evidence to that effect was led by the appellant before the Claims Tribunal. From the petition filed under Order 41 Rule 27 CPC a plea was taken that driving licence of the driver was valid upto 7.10.89 while accident took place on 3.1.90. In support of that a copy of the permanent licence has been filed and annexed as Annexure-A to the said petition. From perusal of Annexure-A, it is evident that by the said licence the driver was authorized to drive the transport vehicles and the licence was valid from 8.10.86 to 7.10.89. There is endorsement of renewal of the licence made by the District Transport officer, Hazaribagh whereby the licence was renewed upto July, 1992. The defence sought to be taken by the appellant by relying on driving licence would not, in my opinion, improve the case of the appellant. It is not the case of the appellant that the person who was driving the vehicle had no valid driving licence at any point of time or the said person was not authorized to drive the vehicle. Admittedly, the driver who was driving vehicle on the date of accident was holding a valid driving licence duly granted by licensing authority in 1986 and the licence was valid upto 7.10.89. The driver was, therefore, authorized to drive transport vehicles and he was a licensed driver. Although there is an endorsement of renewal of the licence also as appearing in the licence but even assuming that there is no renewal endorsement, it cannot be said that the person driving the vehicle was not a licensed driver. It is not a case where the insured entrusted the vehicle to a person who does not hold a driving licence rather admittedly the driver to whom the vehicle was entrusted by the insured was having a valid driving licence duly granted by transport authority. Merely because of expiry of the period of licence and omission of the driver to get the licence renewed it cannot be said at any stretch of imagination that there is breach of condition of policy for which Insurance Company can be exonerated from the liability. As stated above, the driver was authorized to drive the transport vehicles and the vehicle was entrusted by the insured to the licensed driver and therefore, in my considered opinion, this plea of the Insurance Company to absolve itself from the liability cannot be sustained in law.

13. Recently a Division Bench of this Court (of which I am a party), also considered a similar question in the case of Dilip Singh Vs. Mosomat Dulari and Another, This Court observed:

Be that as it may, the deceased was not aware of the fact that the driver by whose negligence he will be crushed had no valid driving licence. In that view of the matter the Insurance Company cannot disown the liability for payment of compensation on the technical grounds that the driver had no valid driving licence. In this connection reference may be made to the decision of the House of Lords in the case of White v. White and Anr. 2001 All ER 43. The law in this regard has also been well settled by the Supreme Court in catena of decisions and the controversy set at rest by laying down the law that when the owner has not deliberately entrusted the vehicle to a person who has no valid driving licence then in that case the Insurance Company cannot dis-own its liability and that too when the said fact is not proved by cogent evidence. Besides the above even assuming that the driver had no valid driving licence to drive heavy Motor vehicles, the Insurance Company is bound to pay the amount and proceed against the owner of the vehicle for the recovery of the amount. In that view of the matter, in our opinion the Tribunal has committed grave error of law in holding that the driver had no valid driving licence at all and the licence was granted only in the year 1999. The finding recorded by the Tribunal therefore, cannot be sustained in law. We, therefore, hold that the respondent Insurance Company cannot dis-own its liability for payment of compensation so awarded by the Tribunal.

14. As noticed above, the Tribunal has come to a finding that the driver was having a valid driving licence on the date of accident. Although the Insurance Company pleaded that the driving licence of the driver had expired and it was renewed after the date of accident, but there is nothing on record to show that the valid driving licence of the driver expired on a particular date. Even assuming that the period of driving licence of the driver had expired, that does not mean that he became disentitled of disqualified from holding a valid driving licence. In terms of the contract of the insurance policy, the vehicle is to be driven by a person holding a driving licence or authorized to hold a driving licence. In our considered opinion, therefore, there is no violation of the condition of the insurance policy or any of the conditions as contemplated u/s 149 of the Motor Vehicles Act.

15. Having considered the entire facts and circumstances of the case and also the law discussed heroin above, the judgment and award passed by the Tribunal is held to be perfectly justified and in accordance with law. The instant appeal, therefore, fails and is, accordingly, dismissed.

 