

(2017) 09 AHC CK 0001
In the Allahabad High Court
Case No : 92 of 2009

The Oriental Insurance Company Ltd.

APPELLANT

Vs

Ram Pal Singh And Others

RESPONDENT

Date of Decision : 05-09-2017

Acts Referred:

Motor Vehicles Act, 1988, Section 15, Section 15, Section 149(2), Section 149(2) - Renewal of driving licences - Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks

Citation : (2017) 09 AHC CK 0001

Hon'ble Judges : Saumitra Dayal Singh

Bench : Division Bench

Advocate : Nagendra Kumar Srivastava, Nripendra Mishra, A.P.Tiwari, R.S.Tripathi, S.S. Tripathi

Judgement

1. This appeal has been filed by the insurer against the award of Motor Accident Claims Tribunal, Budaun dated 18.10.2008 in Motor Accident Claim Petition No. 38 of 2007, arising from the death of one Smt. Laungshri Devi, who died upon injuries suffered by her in a road accident on 22.02.2007, when she was knocked down by a bus of the U.P.S.R.T.C. (hereinafter referred to as the corporation) bearing registration no. U.P. 25 Q- 9531, which was insured by the present appellant.

2. According to the claim case, the deceased Smt. Laungshri Devi had out to attend to call of nature when the aforesaid bus, being driven in a rash and negligent manner, at a high speed hit her from behind as she was walking by the road.

3. The occurrence of the accident, or the finding of the Tribunal as to the negligence of the driver of the bus or quantification of compensation awarded are not disputed. The solitary dispute raised in the present appeal by the insurer is that at the time of accident the driver of the offending bus namely Om Prakash

did not have a valid and effective driving licence.

4. In this regard, it is an admitted case between the parties that the driving licence of said Om Prakash was valid for the period 13.08.2002 to 12.08.2005 and that it was later on renewed from 01.03.2007 to 28.02.2010. However, again admittedly that licence was not renewed within time upon its expiry on 12.08.2005. Consequently that licence was not valid and effective on 22.02.2007 when the accident occurred.

5. In view of the above, the appellant insurer claimed before the Tribunal that there was a breach of terms and conditions of the contract of insurance and therefore, pleaded to be absolved of the liability in terms of Section 149 (2) (a) (ii) of the Motor Vehicles Act, 1988. For ready reference Section 149 (2) (a) (ii) are quoted herein below: 2. No sum shall be payable by an insurer under sub-Section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i).....

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(emphasis supplied)

6. The Tribunal has rejected the objection raised by the insurer appellant and has fastened the liability of compensation on the appellant by relying the ratio of the following judgments; National Insurance Company Limited Vs. Santro Devi 1998 ACJ 116 (SC); National Insurance Co. Ltd. Vs. Manni Singh 2003 ACJ 1317 (All.); National Insurance C. Ltd., Kanpur Vs. Yogendra Nath Verma 1983 ACJ 216; Oriental Insurance Co. Ltd. Vs. Mohammed Sab Ah Sab Kaladagi 2000 ACJ 1223 (Karnataka) and Divisional Manager, National Insurance Co. Ltd. Vs. Pramila Kar 2005 ACJ 08 (Orissa).

7. In short the Tribunal has reasoned that the driving licence of Om Prakash was valid and effective during the period prior to the accident and that the same was also renewed subsequently. The Tribunal has then reasoned that at no point of time was that licence declared invalid and at no point of time Om Prakash was declared disqualified to drive the vehicle. Therefore, according to the Tribunal the insurer could not escape the liability to discharge the insured for the amount of

compensation awarded by the Tribunal.

8. Assailing the finding recorded by the Tribunal, learned counsel for the appellant has relied on a judgment of the Supreme Court in the case of Ishwar Chandra Vs. Oriental Insurance Co. Ltd. 2007 (10) SCC 650 and a Division Bench judgement of this Court in the case of Oriental Insurance Co. Ltd. Vs. Manoj Kumar & others 2015 (5) ADJ 628 to contend that the renewal of the driving licence made effective much after the date of the accident, the insurer cannot be held liable to discharge the insured in respect of his liability towards compensation.

9. Learned counsel for the corporation has also placed reliance on the judgments relied upon by the Tribunal and has submitted Om Prakash was an employee of the corporation, who had requisite training and experience and also had a driving licence authorizing him to drive the offending bus. According to him, there was no defect in the driving licence of Om Prakash as had been originally issued to him and merely because there was some delay in renewal of that licence, it did not make him disqualified to drive the bus. Further, in view of the fact that the driving licence of Om Prakash was renewed subsequently, according to him, the defect, if any, stood cured and the insurer cannot escape the liability.

10. In the case of Ishwar Chandra Vs. Oriental Insurance Co. Ltd. (supra) the accident had occurred on 01.05.1995. Though the driving licence of the driver of the offending vehicle had expired earlier on 27.08.1994, the said licence was renewed subsequently after the date of accident.

11. The Supreme Court then considered the provisions of Section 15 of the Motor Vehicles Act providing for renewal to be applied for within thirty days from the date of expiry. It was found, in case renewal is applied for within thirty days from the date of its expiry, the license would be renewed from the date of its expiry but if the renewal is applied for after lapse of thirty days, it would be renewed with effect from the date of its renewal. Thus, to maintain continuity of validity of a driving license, without any break, the renewal must be applied for latest within thirty days of its lapse.

12. Then in the case of Oriental Insurance Co. Ltd. Vs. Manoj Kumar & others a division bench of this Court applied and followed the ratio of the Supreme Court in the case of Ishwar Chandra (supra). In that case the accident had occurred on 3.9.1997, whereas the licence of the driver had expired earlier on 09.09.1996. It was renewed subsequently with effect from 08.10.1997. Present case is similar. The division bench then held as below:- "12. This view came up for consideration before the Hon"ble Apex Court in the case of Ishwar Chandra & Ors Vs. Oriental Insurance Co. Ltd & Ors. 2007 2 TAC 393 (SC). After considering the provisions of the Act, the Hon"ble Apex Court has observed as under.

"From a bare perusal of the said provision, it would appear that the licence is renewed in terms of the said Act and the rules framed thereunder. The proviso appended to Section 15(1) of the Act in no uncertain terms states that whereas

the original licence granted despite expiry remains valid for a period of 30 days from the date of expiry, if any application for renewal thereof is filed thereafter, the same would be renewed from the date of its renewal. The accident took place on 28.4.1995. As on the date, the renewal application had not been filed, the driver, did not have a valid licence on the date when the vehicle met with the accident."

13. Learned counsel for the respondent no.4, owner relying upon the judgment of the Hon''ble Apex Court in the case of United India Insurance Co. Ltd. Vs. Lehu & Ors. 2003 3 SCC 338, contended that once the driver had a valid driving licence and he was driving competently, it cannot be said that there was a breach of Section 149 (2) (a) (ii) of the Act and the insurer would not be absolved from liability and the Tribunal rightly fastened the liability of paying the compensation on the insurance company.

14. The case of before the Hon''ble Apex Court was one where the driving licence of the driver of the offending vehicle was found to be fake. Keeping that factor in consideration, the Hon''ble Apex Court in paragraph 20 observed as under.

"When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that Insurance Company expect owners to make enquiries with RTO's, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(ii). The Insurance Company would not then be absolved of liability. If it ultimately turns out that the licence was fake the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured."

15. We see no reason as to how the said judgment is of any help to the respondent no.4 or comes to his rescue. It was a case where the licence was fake and, thus, the Hon''ble Apex Court held that the owner of the vehicle is not expected to verify the driving licence, which on the face of it, looks to be genuine. However, in the case in hand, the owner is supported to be aware that the driving licence of the driver is to expire and it was his duty to have ensured that the driver gets the licence renewed within the time.

16. Thus, the reliance placed by respondent no.4 in the case of Lehu is misplaced and, as such, the judgment is of no avail to him. Since the driver of the offending vehicle was not having a valid driving licence on the date of

accident, the vehicle was being driven in a breach of the condition of the policy requiring the vehicle to be driven by a person, who is duly licenced.

17. The offending vehicle was clearly being driven in breach of Section 149(2) (a) (ii) of the Act and, thus, the insurance company cannot be held liable to pay the compensation. The insurance company has already been directed to make payment of the amount to the claimant respondents. The insurance company shall be liable to recover the same from the owner of the offending vehicle, namely, respondent no.4"

13. Insofar as the decision relied upon by the Tribunal, which have also been relied upon by learned counsel for the corporation are concerned, it is seen that the judgment in the case of National Insurance Company Limited Vs. Santro Devi (supra) was a case where the Supreme Court found that the offending vehicle was being driven by a person who held a valid licence, which also stood renewed on the date of accident. It is therefore, clearly distinguishable and not applicable in the present case.

14. Then the judgment in the case of the National Insurance Co. Ltd. Vs. Manni Singh is again distinguishable because that appeal came to be decided on an interpretation made to the clause in the insurance policy which allowed a person competent to hold a driving licence to drive the vehicle. Clearly this is not a case here as no such pleading or evidence as existed in that case exist in the instant case.

15. The judgment in the case of National Insurance C. Ltd., Kanpur Vs. Yogendra Nath Verma (supra) is also not applicable to the present case as in that case the court found there was no assertion and it was never proved by means of any evidence before the Tribunal that the driver involved in the accident did not have a driving licence.

16. The judgment of the Karnataka High Court in the case of Oriental Insurance Co. Ltd. Vs. Mohammed Sab Ah Sab Kaladagi (supra) is again based on an interpretation made to the particular language used in the terms and conditions of contract of insurance policy. Such an argument does not arise in the present case and no such plea was raised either before the Tribunal or before this Court.

17. Lastly, the judgment of the Supreme Court in the case Divisional Manager, National Insurance Co. Ltd. Vs. Pramila Kar (supra) considered the issue from another prospective and that Court reached a conclusion that the interpretation as has been made by the Division Bench of this Court would be prejudicial to the interest of the claimant and therefore, for that reason and other reason given in the judgment the Orissa High Court, it reached the conclusion the insurer continued to be bound to discharge the insured in respect of liability arising from the use of motor accident even if the insured was being driven by a person who did not have the driving licence renewed at the time of accident.

18. In view of categorical decision of the Division Bench of this Court in the case

of Oriental Insurance Co. Ltd. Vs. Manoj Kumar & others (supra) as has been discussed above contrary view taken by the the Orissa High Court in the case of Divisional Manager, National Insurance Co. Ltd. Vs. Pramila Kar (supra) loses persuasive value. However, in view of the categorical pronouncement of the Division Bench of this Court, there is no room to consider or apply the ratio of the Orissa High Court to the facts of the present case.

19. Accordingly, the appeal of the insurer appellant deserves to be allowed to the extent indicated below. The award dated 18.10.2008 is modified. It is provided that the compensation amount as awarded by the Tribunal shall in the first place be payable by the insurer to the claimants. Thereupon the insurer shall have right to recover an equal amount from the corporation. To that effect it is noticed, entire decretal amount was deposited by the appellant before the Tribunal. Rs. 75,000/- of that amount would have been released in favour of the claimantrespondents. The balance amount of compensation shall now be released in favour of the claimant-respondents within a period of one month from today.

20. It is further provided that the corporation shall deposit an amount equal to the amount deposited by the insurer appellant in compliance of the interim order passed in this appeal before the Tribunal within two months from today. Upon such an amount being deposited, the same shall be released in favour of the insurer. The appeal is allowed. No order as to costs.