

**SUPREME COURT OF INDIA**

Ram Babu Tiwari

Vs.

United Indian Insurance Co.Ltd.

C.A.No.4749 of 2008

(S.B. Sinha and Cyriac Joseph JJ.)

01.08.2008

**JUDGMENT**

**S.B. Sinha, J.**

1. Leave granted.

2. Appellant is aggrieved by and dissatisfied with the judgment and order dated 28.11.2005 passed by the High Court of Madhya Pradesh at Gwalior in Misc. Appeal No.5/2000 whereby and whereunder the appeals preferred by the respondent herein against an award dated 6.10.1999 passed by the Additional Motor Accident Claims Tribunal, Vidisha, in Claim Case Nos.57 of 1998 and 52 of 1998 were allowed opining that the respondent-insurance company was not liable to indemnify the insured.

3. Bereft of all unnecessary details, the fact of the matter is that on 27.1.1996 the deceased Rajendra Singh and Balaram along with others were travelling by a truck bearing registration No.MP-06/E/0129 with their buffalos on 27.1.1996 from Agra to Vidisha. It met with an accident having been hit by a tractor trolley bearing registration No.MP -6/J/7506. Rajendra Singh died on the spot whereas Balaram was seriously injured in the said accident. He was admitted in a hospital at Gwalior where he succumbed to his injuries.

4. A First Information Report was also lodged with regard to the said incident.

5. Having been served with a notice in the proceedings claiming compensation by the dependents of the said deceased in terms of Section 166 of the Motor Vehicles Act, 1988, the respondent, in his written statement, inter alia, raised a contention that the driver of the tractor, the respondent No.6, did not have any valid and effective driving licence to drive the said vehicle on the said date of accident.

6. The learned Tribunal, having regard to the pleadings of the parties, inter alia, framed the following issue:

	Issues	Findings
1 to 5	....	...
6.	Whether the terms of the insurance policy has been violated in this case?	No

7. By reason of an award dated 6.10.1999, the learned Tribunal held that the driver Ram Prakash was having valid licence only for the period 11.2.1990 and 10.2.1993 and again from 7.2.1996 to 7.2.1999. Indisputably, therefore, the driver Ram Prakash did not hold any licence during the period 11.2.1993 to 6.2.1996.

The learned Tribunal held:

"Therefore, in *United India Insurance Co. v. Sherali* [1999 (1) MPW N. 90], it was laid down that if the driver was having driving license but the same was not got renewed at the time of the accident, then insurance company can not be exonerated from its liability. In this case as well, non-applicant No.1 was having license and for this reason driving of the tractor in violation of the terms of the insurance policy is not proved and non-applicant no.2 cannot escape from its liability. Therefore, issue No.6 is being decided negatively."

8. In the appeals preferred by the respondents herein in terms of Section 173 of the Motor Vehicles Act, the High Court, on the other hand, held:

"Learned Counsel for the appellant drew my attention to the decision of the Apex Court in the case of *New India Assurance Co. Ltd. vs. Mandar Madhav Tambe and others*<sup>1</sup>. In which it has been held that the insurance company would be liable only if the vehicle was being driven by a person holding a valid driving licence or a permanent driving licence other than learners licence and if the driver was holding no licence on the date of accident than the insurance company is not liable to indemnify the insured. In the case of *Manoj Vs. Samundar Singh and others*<sup>2</sup> the Division Bench of this Court has held that if the driver of the offending vehicle has no licence on the date of accident then the insurance company is not liable to indemnify the insured as the vehicle was being driven in contravention of the terms and conditions of the insurance policy. In the case of *National Insurance Co. Ltd. Vs. Swaran Singh and others*<sup>3</sup> the Apex Court has held that the owner of the motor vehicle in terms of Section 5 of the Act has a responsibility to see that no vehicle is driven except by a person who does not satisfy the provisions of Section 3 or 4 of the Act. In a case, therefore, where the driver of the vehicle admittedly did not hold any licence and the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in its defence and avoid liability. The Apex Court further held that the breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in sub- section 2(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding the liability by the insurer. The insurer has to prove that the

insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was disqualified to driver at relevant time.

9. In the present case it is duly proved that on the date of accident i.e. 27.1.1996 the driver was not having valid driving licence for the period from 11.2.1993 to 6.2.1996 and his licence had expired and tractor driver was not having valid driving licence insurer cannot be absolved of its liability to indemnify the insured. The learned Claims Tribunal committed an error in holding that the insurance company is liable to indemnify the insured. In view of the law laid down by the Apex Court in the case of Swaran Singh (supra), I hold that the amount of compensation shall be paid by the appellant/insurance company and the same shall be recovered from the driver and the owner of the vehicle. The Claims Tribunal has erred in not giving the direction that insurer can recover the amount of compensation paid to the claimants from the insured."

8. Mr. Anish Kumar Gupta, learned counsel appearing on behalf of the appellant, would submit that although the driver of the tractor did not hold any licence for the period 11.2.1993 to 6.2.1996, but having regard to the provisions contained in Section 15 of the Motor Vehicles Act, 1988 and in particular the second proviso appended to sub-section (4) thereof, it must be held that the renewal of licence would take effect from a retrospective date. It was furthermore contended that in any view of the matter in view of the decision of this Court in *National Insurance Co. Ltd. v. Swaran Singh & Ors.*<sup>4</sup> the respondent cannot escape its liability so far as a third party is concerned in view of Sections 147 and 149 of the Act.

9. Mr. Vishnu Mehra, learned counsel appearing on behalf of the respondent, on the other hand, would support the impugned judgment.

10. Section 147 of the Act mandates obtaining of compulsory insurance in relation to a third party by the owners of the motor vehicles. Section 149 imposes a duty on the insurer to satisfy the judgments and awards against the insured in respect of third party risks. Sub-section (2) of Section 149 however postulates that insurance company would have a right to defend the action, inter alia, on a ground that there has been a breach of specified condition of the policy as specified in various sub- clauses; clause (ii) thereof being as under :

"(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"

11. In view of the aforementioned provisions, in the event a defence on the part of the insurance company that the vehicle involved in the accident was not being driven by a driver having a valid driving licence would be a valid one.

The question as to what would constitute a breach of conditions of the contract of insurance came up for consideration before this Court in Swaran Singh (supra). Our

attention has been drawn to paragraph 39 to 44 of the said decision which read as under:

"39. The question as to whether an insurer can avoid its liability in the event it raises a defence as envisaged in sub-section (2) of Section 149 of the Act corresponding to sub-section (2) of Section 96 of the *Motor Vehicles Act, 1939* had been the subject-matter of decisions in a large number of cases.

40. It is beyond any doubt or dispute that under Section 149(2) of the Act, an insurer, to whom notice of the bringing of any proceeding for compensation has been given, can defend the action on any of the grounds mentioned therein.

41. 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.

42. 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 regards third-party risks.

43. A provision of a statute which is penal in nature vis-à-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.

44. 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 the past tense."

12. This Court, no doubt, laid down general principles in the aforementioned paragraphs but a bare perusal of the said judgment would clearly show that the court considered the effect of various fact situations therein separately. While considering the question as regards the liability of the insurer when, admittedly, no licence was obtained by a driver, it was held:

"84. We have analysed the relevant provisions of the said Act in terms whereof a motor vehicle must be driven by a person having a driving licence. The owner of a motor vehicle in terms of Section 5 of the Act has a responsibility to see that no vehicle is driven except by a person who does not satisfy the provisions of Section 3 or 4 of the Act. In a case, therefore, where the driver of the vehicle, admittedly, did

not hold any licence and the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in its defence and avoid liability. The matter, however, may be different where a disputed question of fact arises as to whether the driver had a valid licence or where the owner of the vehicle committed a breach of the terms of the contract of insurance as also the provisions of the Act by consciously allowing any person to drive a vehicle who did not have a valid driving licence. In a given case, the driver of the vehicle may not have any hand in it at all e.g. a case where an accident takes place owing to a mechanical fault or vis major. (See Jitendra Kumar.)"

13. The question as to whether the owner of a vehicle had taken care to inform himself as to whether the driver entrusted to drive the vehicle was having a licence or not is essentially a question fact. However, in this case, it stands admitted that as on the date of accident, namely, on 27.1.1996, the driver did not hold any licence. Furthermore, it is beyond dispute that he had a licence only for one year and for about 3 years thereafter, he failed and neglected to renew his licence. His licence was renewed only on and from 7.2.1996.

14. What would be the effect of not having a licence for such a long period is the question.

15. Section 15 of the Motor Vehicles Act provides for renewal of a driving licence. Sub-section (1) of Section 15 and the first proviso appended thereto read as under:

"Section 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:

Provided further that where the application is for the renewal of a licence to drive a transport vehicle or where in any other case the applicant has attained the age of forty years, the same shall be accompanied by a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8, and the provisions of sub-section (4) of section 8 shall, so far as may be, apply in relation to every such case as they apply in relation to a learner's licence."

16. Sub-section (4) of Section 15 of the Act provides that where an application for the renewal of a driving licence is made more than 30 days after the date of its expiry, the fee payable for such renewal shall be such amount as may be prescribed by the Central Government. The second proviso appended thereto whereupon strong reliance has been placed by Mr. Gupta reads as under:

"Provided further that if the application is made more than five years after the driving licence has ceased to be effective the licensing authority may refuse to renew the

driving licence unless the applicant undergoes and passes to its satisfaction the test of competence to drive referred to in sub-section (3) of section 9."

18. It is beyond any doubt or dispute that only in the event an application for renewal of licence is filed within a period 30 days from the date of expiry thereof, the same would be renewed automatically which means that even if an accident had taken place within the aforementioned period, the driver may be held to be possessing a valid licence. The proviso appended to sub-section (1) of Section 15, however, clearly states that the driving licence shall be renewed with effect from the date of its renewal in the event the application for renewal of a licence is made more than 30 days after the date of its expiry. It is, therefore, evident that as, on renewal of the licence on such terms, the driver of the vehicle cannot be said to be holding a valid licence, the insurer would not be liable to indemnify the insured.

The second proviso appended to sub-section (4) of Section 15 is of no assistance to the appellant. It merely enables the licensing authority to take a further test of competent driving and passing thereof to its satisfaction within the meaning of Sub-section (3) of Section 9. It does not say that the renewal would be automatic. It is, therefore, a case where a breach of the contract of insurance is established. This aspect of the matter has been considered by this Court in *National Insurance Co. Ltd. v. Kusum Rai & Ors.*<sup>5</sup> holding:

"11. It has not been disputed before us that the vehicle was being used as a taxi. It was, therefore, a commercial vehicle. The driver of the said vehicle, thus, was required to hold an appropriate licence therefor. Ram Lal who allegedly was driving the said vehicle at the relevant time, as noticed hereinbefore, was holder of a licence to drive a light motor vehicle only. He did not possess any licence to drive a commercial vehicle. Evidently, therefore, there was a breach of condition of the contract of insurance. The appellant, therefore, could raise the said defence."

It was furthermore held:

"14. This Court in Swaran Singh<sup>4</sup> clearly laid down that the liability of the Insurance Company vis-à-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."

It was opined:

"16. In a case of this nature, therefore, the owner of a vehicle cannot contend that he has no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or not."

19. The principle laid down in *Kusum Rai (supra)* has been reiterated in *Ishwar Chandra & Ors. V. Oriental Insurance Co. Ltd. & Ors.*<sup>6</sup>, referring to sub-section (1) of Section 15 of the Act, this Court stated the law, thus:

"9. 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 28-4-1995. As on the said 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."

20. For the reasons aforementioned, there is no infirmity in the impugned judgment. The appeals are, therefore, dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

<sup>1</sup>1996 ACJ 253

<sup>2</sup>2005 ACJ 520

<sup>3</sup>AIR 2004 SC1531

<sup>4</sup>(2004) 3 SCC 297

<sup>5</sup>(2006) 4 SCC 250

<sup>6</sup>(2007) 10 SCC 650