

SUPREME COURT OF INDIA

New India Assurance Co. Ltd.

Vs.

Suresh Chandra Aggarwal

C.A.No.44 of 2003

(D.K. Jain and B. Sudershan Reddy JJ.)

10.07.2009

JUDGMENT

D.K. Jain, J.

1. This appeal, by special leave, is directed against order dated 3rd April, 2002, passed by the National Consumer Disputes Redressal Commission at New Delhi (for short "the National Commission"), whereby the Revision Petition filed by the appellant--The New India Assurance Company Ltd., has been dismissed and order passed by the District Consumer Redressal Forum, Betul (for short "the District Forum"), directing payment of compensation to the respondent (hereinafter referred to as "the claimant") as affirmed by the Madhya Pradesh State Consumer Disputes Redressal Commission at Bhopal (for short "the State Commission") has been upheld.

2. Briefly stated, the material facts giving rise to the appeal are: On 31st May, 1991 the claimant, the sole respondent in this appeal, obtained from the appellant, a comprehensive insurance policy in respect of his Maruti Saloon 800 car. The policy was valid from 31st May, 1991 to 30th May, 1992. Unfortunately, on 29th February, 1992, the insured vehicle met with an accident resulting in the death of the driver and extensive damage to the car. On 3rd March, 1992, the claimant lodged a claim of Rs.1,00,000/- with the appellant for total loss of the vehicle.

3. The appellant appointed a surveyor to assess the damage caused to the car. On the recommendation of the surveyor, the driving licence of the deceased driver was got verified from the office of the Regional Transport Authority (Licensing), Bhopal. The certificate issued by the said authority showed that the driving licence of the deceased driver was valid from 26th October, 1988 to 25th October, 1991 and then from 23rd March, 1992 to 22nd March, 1995. On receipt of the said verification report, the appellant repudiated the claim of the claimant on the ground that the driver of the vehicle was not holding an effective driving licence at the time of accident as his licence was valid only up to 25th October, 1991, which had been renewed by the licensing authority only with effect from 23rd March, 1992 whereas the accident took place on 29th February, 1992.

4. Being aggrieved by the said decision of the appellant, the claimant filed a complaint before the District Forum, Betul claiming a compensation of Rs.1,00,000/-. The claim was contested by the appellant on the ground that there was a breach of one of the conditions in the insurance policy inasmuch as the accidental vehicle was being driven by a person who, at the time of accident, did not hold an effective driving licence. The District Forum, upon consideration of the rival contentions of the parties, accepted the complaint and directed the appellant to pay Rs.1,00,000/- to the claimant as compensation for damage to the car, besides costs.

5. Aggrieved by the order passed by the District Forum, the appellant as well as the claimant preferred appeals to the State Commission. The stand of the appellant was that they were not liable to pay any compensation because the vehicle was being driven by a person who did not have an effective licence at the time of accident whereas the grievance of the claimant was with regard to the inadequacy of the compensation awarded. The State Commission found that although the licence of the deceased driver was valid up to 25th October, 1991 but the same had been renewed subsequently and, therefore, since he had not been disqualified to hold such a licence, the claim of the claimant could not be rejected on the ground that the licence had not been renewed on time. The compensation awarded was also held to be adequate. Accordingly, both the appeals were dismissed.

6. Not being satisfied with the approach of the State Commission, the appellant preferred a Revision Petition before the National Commission. Following the decision of this Court in *Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd.*¹, the National Commission, as noted above, dismissed the Revision Petition. It is this order which is under challenge in this appeal.

7. Ms. Kiran Suri, learned counsel appearing on behalf of the appellant, submitted that all the three Fora committed a manifest error of law in holding that there was deficiency in service by the appellant and it was liable to pay compensation to the claimant. It was argued that the National Commission has failed to appreciate that on the date of accident, the vehicle in question was being driven by a person who was not holding an effective driving licence. Merely because the driving licence, which had expired on 25th October, 1991 i.e., four months prior to the date of accident, was renewed subsequently with effect from 23rd March, 1992, it could not be said that on the date of accident, the driver was holding an effective driving licence as stipulated in special condition No.5 of the cover note issued on 31 st May, 1991. It was also contended that the ratio of the decision of this Court in the case of Ashok Gangadhar (supra), relied upon by the National Commission, was not applicable on the facts of the present case. It was pointed out that the issue arising in this appeal is no longer res-integra and stands concluded in favour of the appellant by the decision of this Court in *National Insurance Co. Ltd. Vs. Jarnail Singh & Ors.*². In support of the proposition that the issue involved in the case of Ashok Gangadhar (supra) was entirely different and as a matter of fact the decision in that case was rendered on its own peculiar facts, the learned counsel placed reliance on the decision of this Court in *New India Assurance Company Ltd. Vs. Prabhu Lal*³. Learned counsel pleaded that since the claimant had failed to comply with a

specific condition incorporated in the policy, the appellant was within its rights to reject his claim and therefore the question of any deficiency in service by the appellant did not arise.

8. Learned counsel appearing on behalf of the respondent, on the other hand, supporting the impugned order, submitted that in view of the fact that the complainant "had held" and "had not been disqualified from holding a licence" by the licensing authority under Section 19 of the Act, there was no breach of special condition No.5 in the cover note as alleged by the appellant. Learned counsel pleaded for dismissal of the appeal.

9. Before we deal with the rival contentions, it would be appropriate to briefly refer to the relevant provisions of the *Motor Vehicles Act, 1988* (for short "the Act").

10. Section 3(1) of the Act inter alia stipulates that no person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorizing him to drive the vehicle.

11. Section 5 declares that no owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of Section 3 of the Act, to drive the vehicle.

12. Section 15 which provides for renewal of driving licence, insofar as it is relevant for our purpose, reads as follows:

“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: The Section empowers a licensing authority to renew a driving licence issued under the provisions of the Act with effect from the date of its expiry. However, proviso to the said provision clearly provides that where an application for renewal of a licence is made more than 30 days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal.”

13. Section 19, relied upon by learned counsel for the claimant, authorizes the licensing authority to disqualify any person from holding a driving licence or revoke such a licence if the licensing authority is satisfied that the holder of the driving licence is indulging in any of the acts, detailed in sub-section (1) of Section 19 of the Act. Indubitably, no such order had been passed against the driver of the vehicle involved in the accident.

14. Having noted the relevant Statutory provisions, we may now advert to the facts at hand. As noticed above, the stand of the appellant is that the claim preferred by the claimant could not be processed and had to be repudiated because special condition No. 5 of the insurance policy had been violated inasmuch as the driver of the insured vehicle did not have an effective driving licence at the time of the accident. Special condition No. 5 reads as follows:

"5. Persons or classes of persons entitled to drive

(a) The insured

(b) Any other person who is driving on the insured's order or with his permission.

Provided that the person driving holds or had held and has not been disqualified from holding an effective driving licence with all the required endorsements thereon as per the Motor Vehicles Act and the Rules made thereunder for the time being in force to drive the category of Motor Vehicle insured hereunder."

15. It is manifest that the said condition contemplates that apart from the insured, any other person, authorised by the insured, could also drive the vehicle provided the person driving the vehicle "holds or had held and has not been disqualified" from holding an effective driving licence.

16. In the instant case, as noted above, as per the certificate issued by the licensing authority, the driving licence of the deceased driver had expired on 25th October, 1991 i.e. four months prior to the date of accident on 29th February, 1992 and it was renewed with effect from 23rd March, 1992. It is not the case of the claimant that the driver had applied for renewal of the licence within 30 days of the date of its expiry. On the contrary, it is the specific case of the appellant that the driving licence was renewed only with effect from 23rd March, 1992. From a plain reading of Section 15 of the Act, it is clear that if an application for renewal of licence is made within 30 days of the date of its expiry, the licence continues to be effective and valid without a break as the renewal dates back to the date of its expiry. Whereas, when an application for renewal is filed after more than 30 days after the date of its expiry, proviso to sub-section (1) of Section 15 of the Act, gets attracted and the licence is renewed only with effect from the date of its renewal, meaning thereby that in the interregnum between the date of expiry of the licence and the date of its renewal, there is no effective licence in existence. The provision is clear and admits of no ambiguity. However, the stand of the claimant before the District and State Fora as also before us was that since the deceased driver was holding a valid licence and had not been disqualified from holding an effective licence, the stipulation in the afore-extracted condition was not infringed. In our view, the argument is stated to be rejected. Admittedly, having failed to apply for renewal of the driving licence within 30 days from the date of its expiry in terms of Section 15 of the Act, the licence could not be renewed with effect from the date of its expiry and therefore, between the period from 26th October, 1991 to 22nd March, 1992, the deceased driver had no valid and effective driving licence as contemplated under Section 3 of the Act. We are convinced that during this period, he did not hold at all an effective driving licence, as required in the terms and conditions governing the policy on the date of accident i.e. 29th February, 1992.

17. As a matter of fact, in view of the clear mandate of Section 3 of the Act, the deceased driver was not even permitted to drive the insured vehicle in a public place. Furthermore, the claimant not only committed breach of the terms of the policy, he also violated the provisions

of Section 5 of the Act by entrusting the vehicle to a person who did not hold a valid licence on the date of the accident. Although it was not pleaded by learned counsel for the appellant, but we fail to understand as to how the licence was and could be renewed w.e.f. 23rd March, 1992 after the death of the licence-holder on 29th February, 1992. In our opinion, therefore, the appellant was not liable to indemnify the claimant for the loss suffered by him in the accident of the insured vehicle.

18. We are fortified in our view by the decision of this Court in the case of Jarnail Singh (supra). In that case also, the driving licence of the driver, who drove the vehicle which got involved in the accident, had expired on 16th May, 1994. The accident took place more than five months thereafter i.e. on 20th October, 1994 and the driving licence was renewed only with effect from 28th October, 1996. On these facts, it was held that proviso to sub-section (1) of Section 15 applied; the driver had no licence to drive the vehicle on the date of accident; the condition in the policy identical to the one in the present case was violated and therefore, the Insurance Company was not liable to pay any amount to the insured.

19. We are also of the opinion that Section 19 of the Act does not come to the aid of the claimant. Having found that between the period 26th October, 1991 and 22nd March, 1992, the driver of the insured vehicle had no valid licence, the latter part of the afore-extracted special condition did not come into play.

20. We also find force in the contention of learned counsel for the appellant that the ratio of the decision of this Court in Ashok Gangadhar's case (supra), relied upon by the National Commission, does not apply to the case at hand. In that case, the appellant was the owner of a Light Motor Vehicle, which was insured with the Insurance Company. The vehicle met with an accident and a claim was lodged by the complainant before the Consumer Commission. It was contended by the Insurance Company that the truck was a "goods carriage" or a "transport vehicle" and since the driver of the truck was holding a driving licence to drive only "Light Motor Vehicle", he was not authorized to drive transport vehicle without an endorsement on his driving licence authorizing him to drive such transport vehicle. The claim of the insured having been rejected by the Insurance Company which was upheld by the National Commission, the complainant approached this Court. Allowing the appeal, it was held that the driver of the vehicle was holding a valid driving licence for driving a Light Motor Vehicle and there was no material on record to show that he was disqualified from holding an effective and valid driving licence at the time of accident. On those facts, the Court held that the policy, which was not even placed on record, did not insist on the driver to have a licence to drive a transport vehicle by obtaining a specific endorsement and therefore, the Insurance Company was not justified in rejecting the claim by the insured. It was observed that the Insurance Company had neither pleaded nor proved that the vehicle was a transport vehicle. The permit issued by the transport authority had not been placed on record. In the present case, it stands proved that the driver did not have an effective and valid driving licence on the date of accident.

21. For the aforesaid reasons, in our opinion, the decision of the National Commission cannot be sustained. Accordingly, the appeal is allowed and the impugned order is set aside. There will, however, be no order as to costs.

¹(1999) 6 SCC 620

²JT 2001 (Suppl.2) SC 218

³(2008) 1 SCC 696