

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal from Order No.295 of 2009

Oriental Insurance Co. Ltd. Appellant

Versus

Smt. Jayanti Devi & others Respondents

*Mr. Deepak Rawat, Advocate for the appellant.
Mr. B.S. Adhikari, Advocate for respondents no.1 to 6.
Mr. Ramji Srivasatava, Advocate for the respondent no.7.*

With

Appeal from Order No.311 of 2009

Kuldeep Singh Patni Appellant

Versus

Smt. Jayanti Devi & others Respondents

*Mr. Ramji Srivastava, Advocate for the appellant.
Mr. B.S. Adhikari, Advocate for respondents no.1, 2, 5 and 6.
Mr. Deepak Rawat, Advocate for respondent no.7/Oriental Insurance Company.*

Hon'ble Servesh Kumar Gupta, J.

Since, both the appeals pertain to the same accident and parties, nay, the judgment dated 5.6.2009 rendered by the Tribunal, hence are being taken up together for adjudication.

The accident occurred on 23.01.2009 by a truck owned by Mr. Kuldeep Singh Patni and driven by Mr. Mahesh Ram. In the accident, it is not disputed that a young man running in his thirties, namely, Mr. Dhirendra Singh, lost his life.

The insurance company contested the appeal on the ground that since the driver and the owner of the vehicle did not turn up before the court below, hence, there was no representation to advert the validity of the papers of such truck as well as the validity of the driving license.

Although, both the driver and owner have sufficiently served, but none appeared on their behalf before the court below, much less filing any written statement. Yet, the Tribunal, while passing the award, fastened the liability upon the insurance company with liberty to recover the same as per law.

Insurance company has come up before the Court by way of filing AO No.295 of 2009, while Mr. Patni has filed the AO no.311 of 2009, anticipating the apprehension of recovery from him at the hands of insurance company.

Mr. Patni had filed an application for additional evidence (CLMA 7723 of 2009) under Order 41 Rule 27 of the Code of Civil Procedure praying that the papers like driving license of the driver and the permit of truck be now taken on the record. The copy of such application along with the enclosed papers were got received by both the rival parties, but none has filed any objection thereagainst.

Looking to the outward appearance of both the papers, which seem to be original in nature, I allow this application. Both such papers are taken on the record. At the same time, I feel that since the matter is quite old, therefore, it would not be in the fitness of things to remand back this case for re-adjudication.

The driving license shows its renewal with effect from 28.10.2008 to 27.10.2011, which covers the date of accident. There may be doubt as regards the date, when the application for renewal was moved by the driver Mr. Mahesh Ram. That apart, the Licensing Authority of Motor Vehicles Department, Tanakpur, District Champawat (Uttarakhand), has not mentioned the date appending its

signature which makes the renewal of license as indicated above. In any case, it may be accepted that the license was completely valid up to 28.10.2008, while the date of accident was 23.01.2009. So, at the most, it can be argued that almost three months had elapsed from the date of having a valid driving license and the date of accident.

Learned counsel for the insurance company has vehemently relied upon a precedent of Hon'ble Apex Court rendered in the case of *Ishwar Chandra & others vs. Oriental Insurance Co. Ltd. & others*, reported in II (2007) ACC 63 (SC). In such case, the accident occurred on 28.4.1995 while the validity of driving license had been expired on 27.8.1994. So, giving reference of Section 14 and 15 of the Act, which envisage the moving of an application within one month from the date of expiry of such license, otherwise, treating such license as invalid has been dealt with by the Tribunal in such case, and yet it fastened the liability upon the insurer with liberty to initiate appropriate proceedings against the owner and driver. The appeal filed by the insurance company was dismissed and the review was also dismissed. The owner of the vehicle assailed the judgment in the Hon'ble Apex Court, whereupon it was held by the Hon'ble Supreme Court that a person whose license ordinarily renewed in terms of the Act and Rules, despite fact that during interregnum period, when accident took place and date of expiry of license, he did not have valid license, he could during prescribed period apply for renewal thereof. License remains valid for period of 30 days from the date of its expiry. If such an application for renewal filed after the expiry of 30 days, then the same would be renewed from

the date of its renewal, and the driver would be treated as if he was not having a valid license on the date of accident.

Learned counsel on behalf of the appellant herein has also drawn the attention of this Court that in Ishwar Chandra's Case, the Hon'ble Apex Court even considered the Swaran Singh's Case of the selfsame Court, but did not change its view.

I have read the whole judgment of Ishwar Chandra's Case and the ratio laid down by the Hon'ble Apex Court in such case. I feel that the Constitutional Bench judgment rendered in Swaran Singh Case, reported in (2004) 3 SCC 297, was not fully considered at all in such case because in Ishwar Chandra Case, the paragraphs 45 and 46 of Swaran Singh's Case have only been reproduced, which deal with Sections 14 and 15 of the Motor Vehicles Act. Nothing has been considered/appreciated as regards the ratio laid down in Swaran Singh's Case depicted in paragraphs no.42, 44 and 50, and in such paragraphs the Hon'ble Apex Court has very transparently made the distinction between the phrase "effective license" as envisaged under Section 3 of the Act and the phrase "duly licensed" as contemplated under Section 149 of the Act, which pertains to the insurance as regards the third party risk. It can again significantly be noted that lack of possessing the "effective license" as pondered in Section 3 of the Act makes a person liable to be prosecuted under Section 141 of the Act, while lack of possessing the "duly licensed", as adumbrated under Section 149(2) of the Act, has no concern with Section 141 of the Act. The status of lacking in "duly licensed" is wholly concerned to determine the liability under Section 149 of the Act. All these intricacies have nowhere been dealt with by the Hon'ble

Apex court in the judgment indicated above, as relied by the learned counsel for the insurer.

In Swaran Singh's Case, the Hon'ble Apex Court, in so many words, while drawing the distinction of aforementioned two phrases, has observed as under:-

"Under the Act holding of a valid driving license is one of the conditions of the contract of insurance. Driving of a vehicle without a valid license is an offence. Whereas in Section 3 the words used are "effective license", it has been differently worded in Section 149(2) i.e. "duly licensed". If a person does not hold an effective license 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. 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 expressions contained in different provisions are ordinarily construed differently. The words "effective license" used in Section 3, therefore cannot be imported into Section 149(2) of the Act. Moreover, the words "duly licensed" used in Section 149(2) are used in the past tense."

Another judgment relied by the learned Counsel of the insurance company was rendered by the Hon. Apex Court in *National Insurance Co. Ltd. V. Parvathneni & Anr.*, reported in 2009 (4) T.A.C. 382 (S.C.). He has submitted that the view, fastening the liability upon the insurer with a right of recovery under Article 142, has not been endorsed again by the Division Bench of Hon'ble Apex Court and the

reference was made to the Chief Justice of India to constitute the Larger Bench to decide this question.

In this regard, it can be submitted that this controversy has been dealt with by the Hon'ble Apex Court again in the same Swaran Singh's Case in paragraph 104 of such judgment. Concluding the judgment in Swaran Singh's Case, the Hon'ble Apex Court held that it is evident from the discussion made hereinbefore that the liability of insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time and, apart from the reasons stated hereinbefore, the doctrine of stare decisis persuades us not to deviate from the said principle.

Therefore, merely for the reason that the matter was once referred by the Division Bench to the Chief Justice of India for constituting a Larger Bench, it is difficult for this Court to desist from the norms and the ratio as have been holding the field at the strength of Swaran Singh's Case.

The third precedent relied by the learned counsel for the insurer was rendered by the Hon'ble Apex Court in the case of *United India Insurance Co. Ltd. Through its Divisional Manager v. Sujata Arora & Others*, reported in 2013 (3) T.A.C. 29 (S.C.). This precedent has no applicability in the present controversy because such precedent is based on the eventuality when the driver was having no license or a fake license.

It was next argued that the interest of 8% per annum, as awarded by the Tribunal, is in the higher side. I accept this contention of learned Counsel for the insurance

company and reduce the interest from 8% to 6%, simple, per annum.

Since the papers of the vehicle were complete, hence the insurance company will have no recovery rights against the owner or the driver of the vehicle.

No other point was argued before the Court. So, I dispose of the appeal of insurance company (AO No. 295/2009) with the modifications as indicated hereinabove. Appeal of the owner (AO No. 311/2009) stands allowed.

Compulsory statutory amount deposited by the insurance company shall be remitted back to the Tribunal concerned and such amount, deposited by Kuldeep Singh Patni in AO No. 311/2009, shall be returned back. Let the lower court record be sent back.

(Servesesh Kumar Gupta, J.)
30.06.2016