

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 796 of 2015

1. Shri Ram General Insurance Company Limited Headquarter E-8, Epip, Riico, Industrial Area, Sitapura, Jaipur, Rajasthan

---- Appellant (Insurer)

Versus

1. Smt. Meera Devi W/o Rameshwar Prasad Gupta Aged About 42 Years
2. Rameshwar S/o Manrakhan Sao Aged About 46 Years
3. Ku. Savita D/o Rameshwar Aged About 22 Years
4. Dilip Kumar Gupta S/o Rameshwar Prasad Aged About 17 Years Minor Through Guardian Mother Smt. Meera Devi
All R/o Village Naya Kudur, Post- Baboli, Thana -Dhaurpur, District- Surguja, Chhattisgarh (Claimants)
5. Rajan Gond S/o Arjun Gond Aged About 36 Years R/o Village Amdi, Thana Dhaurpur, District- Surguja, Chhattisgarh (Driver)
6. Prakash Chand Rai S/o Gaya Ram Aged About 35 Years R/o Village Azad Ward No. 01, Navapara, Ambikapur, District- Surguja, Chhattisgarh (Owner)

---- Respondents

For Appellant : Shri Sachin Singh Rajput, Advocate
For Respondents- 1 to 4 : Shri Aman Upadhyay, Advocate on behalf of Shri Sushil Dubey, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

29.10.2020

1. Insurer of the offending vehicle JCB has preferred this appeal under Section 173 of the Motor Vehicle Act, 1988 challenging the impugned award dated 19.12.2014 passed by the Motor Accident Claims Tribunal, Surguja (Ambikapur) (for short, 'Claims Tribunal') in Claim Case No.173 of 2013 whereby learned Claims Tribunal allowed application under Section 166 of the Act of 1988 and awarded Rs.3,49,000/- as compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal are that on 30.09.2013 Deepak Kumar while driving the Tractor bearing No.CG15 AE-9248 was

carrying water tanker attached to it. While so, when he reached near village Karra on the steep road, the Tractor suffered some mechanical fault and stopped on the mid-way. The offending vehicle JCB bearing No.CG15 AE 2564 (for short, 'offending JCB') while pushing the Tractor, has pushed it hard, on account of which, the engine of the Tractor turned upside down and met with an accident. In the said accident, Deepak Kumar, driver of the Tractor came in between the steering and water tank, suffered grievous injuries over his head, chest and other parts of the body. He died on the spot. Incident was reported to concerned Police Station, based upon which crime was registered against NA1 and after conclusion of the investigation, Final Report was submitted before the Court of competent jurisdiction.

3. Claimants, who are mother, father and siblings of the deceased have filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.24,07,000/- mentioning therein that on the date of accident, deceased was working as driver of Tractor and earning Rs.12,000/- per month.

4. NA1, driver and NA2 owner of offending JCB submitted reply to the claim application denying pleadings made therein. It was further pleaded that accident was not a result of negligence on the part of NA1, amount claimed is highly exaggerated, deceased was working as labourer in crusher plant and earning Rs.3,000/- per month. On the date of accident, offending JCB was insured with NA3. Liability, if any, to satisfy the amount of compensation is upon NA3, Insurance Company.

5. Appellant/Insurance Company submitted reply to claim application, admitted the insurance of offending JCB with it. It was further pleaded that the accident was not a result of negligence on the part of NA1, but it is on account of rash and negligent driving of deceased himself. The amount of compensation is highly exaggerated and there was contributory negligence on the part of deceased. NA1 was not possessed with valid and effective driving license on the date of accident, as such, there was breach of policy conditions, the Insurance Company is not liable to pay the amount of compensation.

6. Learned Claims Tribunal upon appreciation of pleadings and evidence placed on record by the respective parties, held that late Deepak Kumar died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending JCB, negligence on the part of deceased and breach of policy conditions were not found to be proved, awarded Rs.3,49,000/- as compensation. Liability to satisfy the amount of compensation was fastened upon NA1, NA2 and NA3/appellant jointly and severally.

7. Shri Sachin Singh Rajput, learned counsel for the appellant/Insurance Company submits that learned Claims Tribunal erred in arriving at a finding that there was no breach of policy conditions. He contended that admittedly as per document placed on record, driving license issued in the name of NA1, authorising him to drive LMV was for the period from 17.05.2007 till 16.05.2012, for a period of five years. He further contended that offending JCB is not in the category of 'LMV' but it is a Transport Vehicle and there is no endorsement in the license of NA1

to drive Transport vehicle. He further contended that date of accident was of 30.09.2013, whereas the license of NA1 expired much prior to the accident, 16.05.2012. As such, on the date of accident, NA1 was not possessed with valid and effective driving license and it is a case of 'No license' on the date of accident. Tribunal on the basis of presumption, arrived at a finding that due to some clerical error, license issued in favour of NA1 authorising him to drive LMV is only for a period of five years. Learned Claims Tribunal has only considered the age of NA1 to be 25 years and has presumed that the license issued in his favour to be treated as issued for a period of 20 years. Tribunal has not considered the provision of Section 15 of the Act of 1988 in its true perspective and arrived at a finding that the license which has been issued having its validity period up to 16.05.2012 and the application for its correction has been filed only on 07.11.2013. He further pointed out that even if the license to be treated to have been issued for a period of twenty years, then also, NA1 on the date of accident was not authorised to drive offending JCB. He referred Section 10(2)(j) in support of his contention.

8. Shri Aman Upadhyay, learned counsel for the claimants, respondents-1 to 4 submits that the Tribunal upon due consideration of the facts and relevant provisions of law, has arrived at a correct finding that on the date of accident, NA1 is possessed with a valid and effective driving license. He further contended that learned Tribunal has rightly taken note of the fact that on the date of accident, NA1 is aged about 25 years, hence, the license is required to be issued in favour of NA1, authorising him to drive LMV for 20 years.

9. No one appeared on behalf of respondents- 5 and 6.

10. I have heard learned counsel for the parties and also perused record of claim case.

11. To appreciate the submission made by learned counsel for the appellant/Insurance Company that NA1 with license authorising him to drive LMV was not capable to drive offending JCB, Section 10(2) as referred by learned counsel for the appellant is reproduced herein below for ready reference:

Section 10(2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:—

[\(a\)](#) motor cycle without gear;

[\(b\)](#) motor cycle with gear;

[\(c\)](#) invalid carriage;

[\(d\)](#) light motor vehicle;

(e) transport vehicle;

(i) road-roller;

[\(j\)](#) motor vehicle of a specified description.

12. Upon perusal of aforementioned provision under the Act of 1988, it would show that there is no mention of vehicle 'JCB Machine' but in 10(2) (j), it is mentioned as 'Motor Vehicle of specified description'.

13. The Central Motor Vehicle Rules, 1989 (1994) defines the 'Construction Equipment Vehicle' under Rule 2 (cab), which reads as under:

“construction equipment vehicle” means rubber tyred, (including pneumatic tyred), rubber padded or steel drum wheel mounted, self-propelled, excavator, loader, backhoe, compactor roller, dumper, motor grader, mobile crane, dozer, fork lift truck, self-loading concrete mixer or any other construction equipment vehicle or combination thereof designed for off-highway operations in mining, industrial undertaking, irrigation and general construction but modified and manufactured with “on or off” or “on and off” highway capabilities.

Explanation- A construction equipment vehicle shall be a non-transport vehicle the driving on the road of which is incidental to the main off-highway function and for a short duration at a speed not exceeding 50 kms per hour, but such vehicle does not include other purely off-highway construction equipment vehicle designed and adopted for use in any enclosed premises, factory or mine other than road network, not equipped to travel on public roads on their own power;]

14. Perusal of aforementioned Rule would show that the vehicle excavator, loader, backhoe, dumper, dozer etc., have been defined as 'Construction Equipment Vehicle'. Under the Explanation, it has been very specifically mentioned that the Construction Equipment Vehicle shall be a non-transport vehicle.

15. In the case at hand, vehicle involved is JCB Machine. The normal work of JCB Machine is to excavate and load the material. It is specifically covered under Rule 2(cab) of the Central Rules to be a 'Motor Vehicle' but under the head of 'Construction Equipment Vehicle'. Copy of registration certificate of offending JCB is available on record along with un-exhibited documents at page 74. Perusal of the same would show its class of vehicle as 'Excavator' and type of body as 'Loader'. Laden weight is mentioned as 7460 kg. Section 2(28) of the Act of 1988 defines Motor

Vehicle and Section 2(21) defines 'Light Motor Vehicle'. Motor vehicle not exceeding 7500 kg has been defined to be a 'Light Motor Vehicle'.

16. For the foregoing reasons, and the relevant provisions of law, I am of the view that the person holding the license authorising him to drive 'LMV' can drive offending JCB.

17. So far as the submission made by learned counsel for the appellant that on the date of accident NA1 was not possessed with valid and effective driving license is concerned, there is no dispute of fact that initially, driving license issued in favour of NA1 was for a period of five years ie from 17.05.2007 till 16.05.2012. Whatsoever be the reason, the license was issued for a period of five years. It was originally issued in favour of NA1 on 17.05.2007, its validity period completed on 16.05.2012, whereas, accident took place on 30.09.2013. The case of the driver and owner of the offending JCB is that it was amended and the validity period got corrected.

18. In view of undisputed factual aspect with regard to life of license originally issued in favour of NA1 was not effective on the date of accident, NA1 was not possessed with any license. Employee of RTO Department, namely, Pawan Kumar Sahu, Assistant Gr-III was examined as NAW3. He in his evidence, very categorically stated that the Birth Certificate is not supplied with the application of license, hence, license was issued only for a period of five years. He further stated that as per Ex.D1 record, NA1 has submitted Birth Certificate on 07.11.2013 and requested for supply of second copy of license and in that license, validity period has been

mentioned as 06.11.2033. He admitted that in Ex.D1, there is no counter sign of any of the party but further clarified that in the computer record, validity period of license issued to NA1 is mentioned as 06.11.2033, which is placed on record as Ex.D2c.

19. From evidence of NAW1, it is amply clear that NA1 has submitted his Birth Certificate for the first time only on 07.11.2013, ie after happening of accident on 30.09.2013.

20. Now, the question arises for consideration of this Court is, whether if the license of which validity period expired on 16.05.2012 and further the period has been extended based on the application with relevant document on 07.11.2013 will automatically have the effect of valid license on 30.09.2013 or not and the driver of offending JCB was holding effective driving license on the date of accident.

21. Section 15 of the Act of 1988 envisaged for renewal of Driving license, which is relevant for the issue to be decided in this case is excerpted below for ready reference:

“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.

(2) An application for the renewal of a driving licence shall be made in such form and accompanied by such documents as may be prescribed by the Central Government.

(3) Where an application for the renewal of a driving licence is made previous to, or not more than thirty days after the date of its expiry, the fee payable for such renewal shall be such as may be prescribed by the Central Government in this behalf.

(4) Where an application for the renewal of a driving licence is made more than thirty 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:

Provided that the fee referred to in sub-section (3) may be accepted by the licensing authority in respect of an application for the renewal of a driving licence made under this sub-section if it is satisfied that the applicant was prevented by good and sufficient cause from applying within the time specified in such-section (3):

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.

(5) Where the application for renewal has been rejected, the fee paid shall be refunded to such extent and in such manner as may be prescribed by the Central Government.

(6) Where the authority renewing the driving licence is not the authority which issued the driving licence it shall intimate the fact of renewal to the authority which issued the driving licence.”

22. Section 15(1) has two provisos. From bare perusal of the 1st Proviso it would show that if the application for renewal of license is made more than 30 days after its expiry, Driving license shall be renewed with

effect from the date of its renewal. Aforementioned provision is applicable to the facts of the case as the license issued in favour of NA1 by the competent authority on 17.05.2007 expired on 16.05.2012, accident took place on 30.09.2013 and the application for correction of date of validity period of license based on the Birth Certificate as per case of NA1 and 2 is made only on 07.11.2013 and the license validity period has been extended up till 06.11.2033.

23. The licensing authority has not continued the period of license from 17.05.2007 but from the period mentioned in the license it can be culled out that the license was renewed by the competent authority for a period of 20 years from 07.11.2013 to 06.11.2033.

24. The validity period of license/currency of the license to drive the motor vehicle has been provided under Section 14 of the Act of 1988. Under Section 14(2)(b) it is provided that except the period / currency of the license of any other vehicle, except the Transport vehicle has been shown to be effective for a period of 20 years from the date of such issue or renewal if the applicant has not attained the age of 50 years or for a period only the date on which such person attains the age of 50 years.

25. The issue with regard to the renewal of license has been considered by Hon'ble Supreme Court in case of **Ishwar Chandra and Others v. Oriental Insurance Company Limited and Others**¹, in which, Hon'ble Supreme Court held as under:-

¹ 2007 (2) T.A.C. 393 (S.C.)

“8. 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 28.04.1995. 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.”

26. Further, in the matter of **Ram Babu Tiwrai v. United India Insurance Company Limited and Others**², Hon'ble Supreme Court held as under:-

“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.* [(2006) 4 SCC 250] holding :

² 2008 AIR SCW 6512

“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 herein before, 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 *National Insurance Co. Ltd. v. Swaran Singh and Others* [(2004) 3 SCC 29] clearly laid down that the liability of the Insurance Company vis-a-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.* [(2007) 10 SCC 650], 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 on 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.”

27. Hon'ble Supreme Court in the aforementioned case laws has very specifically held that, as there is no application for its renewal on the date of accident despite expiry of license for more than 30 days, the renewal of the same would be from the date of its renewal and not from the date of expiry of the license as mentioned in it.

28. If facts of the present case are considered in light of aforementioned law laid down by Hon'ble Supreme Court, license expired on 16.05.2012 for which an application has been made on 07.11.2013 and it was renewed with effect from that date of application ie 07.11.2013, till 06.11.2033. From 16.05.2012 to 06.11.2013, NA1 was not having valid and effective driving license with him to drive motor vehicle. Copy of license available on record at page-79 also mentions the period for which license was not valid ie 17.05.2012 to 06.11.2013. Hence, in the opinion of this Court, it is a case of 'NO LICENSE' on the date of accident.

29. For the foregoing reasons, learned Claims Tribunal erred in arriving at a finding that there was no breach of policy conditions. The said finding being contrary to law, is not sustainable, and it is hereby set aside. I hold that on the date of accident, NA1, driver of offending JCB was not possessed with valid and effective driving license with him, there was breach of Policy conditions.

30. In view of above, appellant/Insurance Company is exonerated from its liability. Now, the Non-Applicants Driver and Owner of offending vehicle shall be liable to satisfy the amount of compensation.

31. At this stage, Shri Upadhyay, learned counsel for respondents- 1 to 4/Claimants submits that the claimants will not be able to reap the fruits of the award passed in their favour and will face extreme difficulty to recover the amount of compensation from Owner and Driver within time, hence, a direction be issued to the appellant/Insurance Company to first satisfy the amount of compensation and thereafter, to recover the same from NA1 and NA2 ie Owner and Driver of offending vehicle.

32. The submission made by learned counsel for respondents-1 to 4 is covered by the judgment passed by the Hon'ble Supreme Court in case of **Shamanna and Another v. Divisional Manager, Oriental Insurance Company Limited and Others**³. In the aforementioned ruling, Hon'ble Supreme Court has held thus:

“6. As per the decision in Swaran Singh case, onus is always upon the insurance company to prove that the driver had no valid driving licence and that there was breach of policy conditions. Where the driver did not possess the valid driving licence and there are breach of policy conditions, “pay and recover” can be ordered in case of third party risks.

13. Since the reference to the larger bench in Parvathneni case has been disposed of by keeping the questions of law open to be decided in an appropriate case, presently the decision in Swaran Singh case followed in Laxmi Narain Dhut and other cases hold the field. The award passed by the Tribunal directing the insurance company to pay the compensation amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question, is in accordance with the judgment passed by this Court in Swaran Singh and Laxmi Narain Dhut cases. While so, in our view, the High Court ought not to have interfered with the award passed by the Tribunal directing the first respondent to pay and recover from the owner of the vehicle. The impugned judgment of the High Court exonerating the insurance company from its liability and

³ (2018) 9 SCC 650

directing the claimants to recover the compensation from the owner of the vehicle is set aside and the award passed by the Tribunal is restored.”

33. Taking support of the aforementioned ruling of the Hon'ble Supreme Court I direct the appellant/Insurance Company to first satisfy the entire amount of compensation along with interest and thereafter, to recover the same from NA1 and NA2, driver and owner of the offending JCB, as held by Hon'ble Supreme Court in case of **Oriental Insurance Company Limited Vs Nanjappan and Others** reported in (2004) 13 SCC 224, wherein it is held thus:

“8. xxxxxx For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a assistance of the Regional Transport Authority concerned. The executing court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. xxxxx”

34. In the result, appeal is allowed in part and the impugned award is modified as indicated above.

Sd/-
(Parth Prateem Sahu)
JUDGE