

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 29th February, 2012

Pronounced on: 5th March, 2012

+ **MAC.APP. 565/2008**

D.T.C. Appellant
Through: Mr. S.P.Gupta, Advocate
versus

JAGDISH KATARIA & ORS. Respondents
Through: Mr. Pradeep Gaur with
Mr.Amit Gaur and
Mr.Shashank Sharma,
Advocates for R-2.

+ **MAC.APP. 609/2008**

D.T.C. Appellant
Through: Mr.S.P.Gupta, Advocate
versus

LAKHAN LAL & ORS. Respondents
Through: Mr.V.C.Jha with Ms.Sonia
Sharma, Advocates.

+ **MAC.APP. 610/2008**

D.T.C. Appellant
Through: Mr.S.P.Gupta, Advocate
versus

ABHISHEK GUPTA & ORS. Respondents
Through: Mr.Manoj R.Sinha, Advocate.

+ **MAC.APP. 75/2009**

D.T.C. Appellant
Through: Mr.S.P.Gupta, Advocate

versus

THE NATIONAL INSURANCE CO.LTD. & ORS.

..... Respondents

Through: Mr. Pradeep Gaur with
Mr.Amit Gaur and
Mr.Shashank Sharma,
Advocates for R-1.

+ **MAC.APP. 97/2009**

DTC

..... Appellant

Through: Mr.S.P.Gupta, Advocate

versus

VIDYA DEVI & ORS.

..... Respondents

Through: Mr.Pradeep Gaur with Mr.Amit
Gaur and Mr.Shashank Sharma,
Advocates for R-2.

+ **MAC.APP. 258/2009**

DTC

..... Appellant

Through: Mr.S.P.Gupta, Advocate

versus

PAWAN KUMAR GAHLOT & ORS.

..... Respondents

Through: Mr.Pradeep Gaur with Mr.Amit
Gaur and Mr.Shashank Sharma,
Advocates for R-2.

+ **MAC.APP. 378/2009**

D.T.C.

..... Appellant

Through: Mr.S.P.Gupta, Advocate

versus

SUMANTRA DEVI & ORS

..... Respondent

Through: Mr.V.C.Jha and Ms.Sonia
Sharma, Advocates for R-8.

+ **MAC.APP. 474/2009**

DELHI TRANSPORT CORPORATION Appellant
Through: Mr.S.P.Gupta, Advocate

versus

KRISHAN LAL AND CO. Respondent
Through: Ms.Neerja Sachdeva, Advocate
for R-4.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. In these eight Appeals common question of law is involved;
“Whether the insured shall be guilty of breach of condition of policy read with section 149(2)(a)(ii) of the Motor Vehicles Act, if the driving licence of the driver had expired more than thirty days before the accident and it could not be renewed from the date of expiry under Section 15 of the Act”.
2. The Motor Accident Claims Tribunal (the Claims Tribunal) while awarding compensation in favour of the Claimants permitted the Insurer to recover the compensation from the Appellant Delhi Transport Corporation, a Public Sector Transport Undertaking (hereinafter referred to as ‘DTC’) as its drivers did not possess a valid and effective driving licence on the date of the accident.

3. It is an admitted case of the parties that the driving licence was not renewed within a period of 30 days of its expiry so as to relate back to the date of expiry.
4. It is urged on behalf of the DTC that as per provision of Section 149 (2) (a) (ii) of the Motor Vehicle Act, 1988 (the Act), the requirement is that the driver should have held a valid driving licence and should not be disqualified from holding such a driving licence. Thus, it is contended that if the driving licence has expired on the date of the accident and is renewed within a period of five years from the date of its expiry, the driver holding such driving licence shall be considered “*duly licensed*” unless he is disqualified from holding such a driving licence.
5. It is argued that under Section 146 of the Act, a person except as a passenger is debarred from using a motor vehicle in any public place, unless there is in force in relation to the use of the vehicle, by that person or any other person, a policy of insurance complying with the requirement of Chapter XI.
6. It is contended that the Insurer cannot include any condition in an Insurance Policy denying the benefit provided under the Act, but the policy can grant more benefits than the ones provided under the Act.
7. Learned counsel for the Appellant DTC places reliance on a Division Bench judgment of the Karnataka High Court in

K.G.Srinivasamurthy v. Habib Khathun & Ors., II (2002) ACC 510 (DB) and a judgment of this Court in *Ami Chand & Anr. v. Jai Prakash & Ors., FAO 488/1999* decided on 12.10.2011.

8. Before advertng to the case law cited by the Appellant, I would extract the provisions of Section 149 (2) (a) (ii) of the Act and the relevant Clause in the Insurance Policies placed and proved on record before the Claims Tribunal. I may mention that the condition entitling person/persons to drive is same in all the said Appeals; the relevant Clause therefore shall be extracted from MAC APP.565/2008.

9. Section 149 (2) (a) (ii) of the Motor Vehicles Act, 1988 reads as under:-

“149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks-

(1)

(2) No sum shall be payable by an insurer under subsection (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment of 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) a condition excluding the use of the vehicle-

(a)

(b).....

(c)

(d)

(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..”

10. Condition in the Insurance Policies reads as under:-

“Persons or Classes of Persons entitled to drive:-

Any person including insured Provided that a person driving hold an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence.”

11. It would appropriate to notice the provisions contained in Section 14 and 15 of the Act. Section 14 talks about the currency of driving licence to drive motor vehicles. Its proviso says that every driving licence notwithstanding its expiry under Sub-section (2) would continue to be effective for a period of 30 days from the date of expiry.

12. Section 15 of the Act provides different fees for an application

for renewal of driving licence if made previous to or within 30 days of the expiry of the licence or when the same is made after the expiry of the earlier said period of 30 days. Second proviso appended to sub-Section (4) to Section 15 provides that if the application is made after a period of five years after the driving licence is ceased to be effective, the licencing authority may refuse to renew the driving licence, unless the applicant undergoes and passes the test of competence to drive. In other words, the Licencing Authority is under obligation to renew the licence, if an applicant makes an application for its renewal within a period of five years from the date when it ceased to be effective.

13. It is the contention of the learned counsel for the Appellant DTC that renewal of a driving licence within a period of five years and 30 days after its expiry is automatic, once the application for renewal is made by the applicant. Thus, the learned counsel argues that any person who has got his licence renewed within a period of five years from the time when the driving licence ceased to be effective, it shall be presumed that the person was duly licensed within the meaning of Section 149 (2) (a) (ii) of the Act.
14. First of all, I would advert to the judgments relied upon by the leaned counsel for the Appellant DTC.
15. In *K.G.Srinivasamurthy v. Habib Khathun & Ors., II (2002)*

ACC 510 (DB), the Division Bench of Karnataka High Court referred to Division Bench judgment of Madras High Court in *Oriental Insurance Company Ltd. v. Indirani & Ors.*, 1995 ACJ 703; *National Insurance Company Ltd. v. Thulasi*, (1994) 1 LW 567 and *Oriental Insurance Co. Ltd. v. Mohammed Sab Ali Sab Kaladagi, II* (1999) ACC 70 and held as under:-

“54..... The only contention raised by learned Counsel for the appellant is that the Insurance Company is not liable in this case to pay the compensation inasmuch as the driver of the vehicle, involved in the accident, did not have an effective licence on the date of accident. Accident had occurred on 28.9.1992. The licence which had expired on 26.6.1992. That was renewed only on 26.10.1992. In between the two dates, the accident had occurred. Hence, it is contended by the learned Counsel for the appellant that the exclusion clause in the policy will come into play.

In that case the relevant clause in the insurance policy read as follows:

“Provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence.”

x x x x x x x x x x x

The clause can be divided into three parts. The first part refers to a person holding an effective driving licence at the time of the accident. The second part refers to the disqualification of such person from holding it. Even after obtaining a licence, a person may get disqualified under the provisions of the Act from holding it and such a person will be governed by the second part. The third part refers to persons who are disqualified from

obtaining such a licence. The first part cannot go together with the third part. In other words, if a person is having an effective driving licence he cannot be said to be disqualified from obtaining such a licence. It means if there is an effective valid licence, it could be contended by the insurance company that he is subsequently disqualified from holding it, but it is not open to the company to contend that he was disqualified from obtaining that licence.

x x x x x x x x x x x

(3) A similar question arose in case of National Insurance Co. Ltd. v. Thulasi (1994) 1 LW 567. The clause in the insurance policy in that case was worded exactly in similar language. While considering that clause the Bench to which one of us (Srinivasan, J.) was a party referred to Section 96(2) (b) (ii) of the Motor Vehicles Act and said:

“There are two limbs to the section and the disjunctive 'or' is used. The first part deals with a case where the driver is not duly licensed. If a person had no licence at all prior to and at the time of the accident he will be covered by the first part. If the first part applies to a case, the second part will not apply. The second part will necessarily apply only to cases in which the driver had a licence sometime or other and at the time of the accident it is not subsisting. The latter part of the section cannot be interpreted as meaning that even if the driver had no licence at any time, he must be shown to be disqualified to hold or obtain a licence for the purpose of excluding the liability of the insurer.”

x x x x x x x x x x x

56. In Oriental Insurance Co. Ltd. v. Mohammed Sab Ali Sab Kaladagi, II (1999) ACC 70, the period of driving

licence had expired on 9.6.1988 and it was renewed on 3.11.1992 and in the meanwhile the accident had occurred on 13.10.1992 and the question was as to whether the insurer will be liable if the driving licence of the driver of the offending vehicle had not been renewed on the date of the accident, learned single Judge of this Court held as follows:

(5) The wording used as 'or' assumes much importance in this case. According to the construction of this section, the Insurance Company can succeed only if the person was not duly licensed or he was disqualified from holding or obtaining the driving licence during the period of disqualification. According to the construction of the language either of the conditions has to be duly fulfilled. But in the policy issued the word 'and' is used as conjunction. By the use of word 'and' it goes to show that the Insurance Company has to prove that the driver was not only not duly licensed but was also disqualified for holding the licence. The word 'or' and the word 'and' used in the policy assumes much importance. There cannot be compromise between the word 'or' and 'and'. The plain language as it is read has to be understood. In this direction, Mr. B.S. Patil, learned Counsel for the respondents relied upon the observation as how the construction of the statute be understood. On page 96 of the Interpretation of Statutes by Maxwell it is stated as follows:

“To suppress the mischief and advance the remedy.- It is said to be the duty of the Judge to make such construction of a statute as shall suppress the mischief and advance the remedy.”

x x x x x x x x x x x

60. We are in respectful agreement with the above said decisions. It is clear that mere fact that the driver of the offending vehicle had not got his driving licence renewed on the date of the accident and got it renewed subsequently would not amount to breach of condition of the policy as it cannot be said that there was violation of the condition of the exclusion clause.”

16. Thus, the Karnataka High Court took the view that where the driver of an offending vehicle had got renewed his driving licence subsequently even beyond the period of 30 days, it could not be said that there was violation of condition of the exclusion Clause.
17. This Court in *Ami Chand & Anr. v. Jai Prakash & Ors.*, *FAO 488/1999* decided on 12.10.2011 took the similar view as was taken by the Karnataka High Court.
18. At this juncture, I would like to refer to the use of different terminology for a valid driving licence in Section 3 and Section 149 (2) (a) (ii) of the Act.
19. Section 3 prohibits a person to drive a motor vehicle in any public place unless he holds “*an effective driving licence issued to him authorizing him to drive the vehicle.*” On the other hand, Section 149 (2) (a) (ii) lays down that the Insurance Company is permitted to defend an award given by the Claims Tribunal if there has been a breach to satisfy condition of policy and one of such condition is “*a condition excluding driving by a named person or persons or by any person who is not **duly licensed***”.

20. The use of the words ‘duly licensed’ used in Section 149, in my view would mean to convey that the driver of the offending vehicle should not only have a licence which is valid on the date of accident, but also should be for the class of vehicle which the driver was driving. The counsel for the Appellants relied on Swaran Singh’s case (*supra*) to point out that the word ‘duly licensed’ has been used in the past tense, and therefore the driving licence, even though had expired the driver would still be duly licenced, until a period of 5 years from the date of expiry, this argument is liable to be rejected. The Supreme Court in *Swaran Singh’s case (supra)*, meant that the word ‘duly licensed’ would also include the period of one month after the expiry of driving licence of a driver, which has been unequivocally specified under Section 14 of the Act. Therefore, it was in that context did the Supreme Court conclude that the word ‘duly licensed’ is used in the past tense.
21. A similar condition in the Insurance Policy was analyzed by the Supreme Court in *National Insurance Company Limited v. Jarnail Singh & Ors.*, (2007) 15 SCC 28, and in *New India Assurance Company Ltd. v. Suresh Chandra Aggarwal*, (2009) 15 SCC 761. In both these reports of the Supreme Court, it was held that, if the driving licence is renewed after a period of 30 days of the expiry of the driving licence, it would be effective only from the date of its renewal and the driver of the vehicle shall be deemed to be without a driving licence in the

interregnum and the Insured would be guilty of breach of the condition of policy as envisaged under Section 149 (2) (a) (ii) of the Act.

22. In *Jarnail Singh & Ors. (supra)* the accident took place on 20.10.1994. The driving licence had expired on 18.05.1994 and it was renewed w.e.f. 28.10.1996. After referring to Section 15 (1) of the Act that since the Insurance Policy stipulated the condition that the vehicle would not be driven by a person without a valid driving licence, the Insured would be guilty of the violation of the condition of the policy.
23. In *Suresh Chandra Aggarwal (supra)* it was held that since the driver did not have an effective and valid driving licence on the date of the accident, the Insurance Company could avoid the liability to pay the compensation. Para 15 to 23 of the report are extracted hereunder:-

“15. 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.

16. 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.” (emphasis supplied)

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.

17. 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 25.10.1991 i.e. four months prior to the date of accident on 29.02.1992 and it was renewed with effect from 23.03.1992. 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 23.03.1992.

18. 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, the 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.

19. 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.

20. 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 26.10.1991 to 22.03.1992, 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. 29.02.1992.

21. 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.

22. 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. 23.03.1992 after

the death of the licence-holder on 29.02.1992. 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.

23. We are fortified in our view by the decision of this Court in 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 16.05.1994. The accident took place more than five months thereafter i.e. on 20.10.1994 and the driving licence was renewed only with effect from 28.10.1996. 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."

24. Thus the Supreme Court held that the person holding an expired licence would be guilty for the offence of driving the vehicle without licence and the insurer for committing the breach of the policy. It was held that the Insurance Company would not be liable to pay any amount.
25. In view of the authoritative pronouncement of the Supreme Court in *Suresh Chandra Aggarwal (supra)*, where the terms of the policy as extracted in Para 16 of the report were much wider, still the driver was held to be not holding a valid driving licence as the licence had expired and had not been renewed within a period of 30 days of its expiry; it was held to be breach of a condition of policy, entitling Insurance Company to avoid the policy. The report in *K.G. Srinivasamuthy (Supra)* of

Karantaka High Court and a judgment of this Court in *Ami Chand (Supra)* and the argument that the driving licence could be renewed without taking any test within a period of five years of the time it has ceased to be effective, are of no help to the DTC.

26. Since these Appeals relate to the Claim in respect of injury to third party, the Insurance Company was asked to pay the compensation on account of its statutory liability with a right to recover the same from the Insured i.e. DTC.
27. It goes without saying that the onus is on the Insurer to establish that there is willful breach of the terms of policy. I would refer to each of the eight cases except the condition of policy which has been extracted earlier in Para 8 of the judgment.

MAC APP.565/2008

1.	Date of Accident	29.07.2005
2.	Date of Expiry of the driving Licence	03.11.1999
3.	Date of renewal of the driving licence	17.08.2005

MAC.APP. 609/2008

1.	Date of Accident	20.11.2003
2.	Date of Expiry of the driving Licence	11.02.2002

3.	Date of renewal of the driving licence	28.11.2003
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MAC.APP. 610/2008

1.	Date of Accident	20.01.2005
2.	Date of Expiry of the driving Licence	04.11.2004
3.	Date of renewal of the driving licence	06.02.2005

MAC.APP. 75/2009

1.	Date of Accident	03.03.2004
2.	Date of Expiry of the driving Licence	19.09.2002
3.	Date of renewal of the driving licence	22.03.2004

MAC.APP. 97/2009

1.	Date of Accident	30.08.2001
2.	Date of Expiry of the driving Licence	30.04.2001
3.	Date of renewal of the driving licence	01.07.2002

MAC.APP. 258/2009

1.	Date of Accident	02.02.2003
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2.	Date of Expiry of the driving Licence	24.05.2002
3.	Date of renewal of the driving licence	17.03.2003

MAC.APP. 378/2009

1.	Date of Accident	31.05.2002
2.	Date of issue of driving Licence	14.09.2004*
3.	Date of Expiry of the driving licence	13.09.2007

* The driver Randhir Singh (R2W1) in his examination-in-chief admitted that on the date of the accident his licence had expired and he got it renewed on 14.09.2004.

MAC.APP. 474/2009

1.	Date of Accident	02.07.2005
2.	Date of Expiry of the driving Licence	14.04.2005
3.	Date of renewal of the driving licence	13.07.2005

28. The DTC does not dispute that it was aware that the driving licence of its driver had expired. The DTC is a Public Sector Transport Company and is expected to take a test and see the driving licence of the driver at the time he is employed or is engaged to drive its bus. The case of expired driving licence is

different from a case of fake driving licence because owner of the vehicle may not be able to distinguish between a fake and a genuine driving licence. Once, it was established that the driver held an expired driving licence it was for the Appellant DTC to explain the circumstances under which it permitted the driver to drive the vehicle, which has not been done. Therefore, the DTC shall be presumed to be guilty of the willful breach of the condition of the policy read with Section 149 (2) (a) (ii) of the Act.

29. The Claims Tribunal by impugned judgment directed the Insurance Company to satisfy the claim of the third party with a right to recover the same from the DTC.
30. Since the Insurance Company was entitled to defend the action in case of the driver of the vehicle was not duly licensed, the Insurance Company was rightly granted an option to recover the compensation paid from the DTC, the insured of the vehicle in the respective Appeals by the impugned order.
31. The conclusion reached by the Claims Tribunal cannot be faulted.
32. No other contention has been raised by the Appellant.
33. The Appeals are devoid of any merit. The same are accordingly dismissed. No costs.

(G.P. MITTAL)
JUDGE

MARCH 05, 2012/vk