

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

+ **MAC.APP.No.259/2007**

% Date of decision : 15th February, 2013

NATIONAL INSURANCE CO. LTD. Appellant
Through None.

versus

ASHA AND ORS. Respondents
Through Mr. Jyotindra Kumar, Adv.
for R-6.

CORAM :-

THE HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT(ORAL)

1. The appellant is seeking recovery rights against respondent no.6 on the ground that the driver of the DTC bus was not holding a valid driving licence at the time of the accident.
2. The accident dated 1st July, 2001 resulted in death of Rakesh Kumar who was survived by his widow and three minor children who filed the claim petition. The appellant contested the claim petition on the ground that the driver of the offending vehicle was not holding a valid driving licence at the time of the accident. The Claims Tribunal passed an award of Rs.4,27,600/- against the appellant. However, the Claims Tribunal declined to grant the recovery rights to the appellant to recover the award amount from respondent no.6.

3. Respondent no.6 itself examined the Assistant Traffic Inspector of DTC as R2W1 who produced the original register maintained by DTC according to which driving licence no.C98070292 valid up to 8th July, 2001 was renewed up to 4th October, 2005. However, the witness did not prove the date of renewal of the licence. R2W3, Record Clerk, Motor Licensing Office, Delhi deposed that the driver had a HTV license valid from 5th October, 2002 to 4th October, 2005. R2W5, Assistant Traffic Inspector of DTC deposed as per the entries made in the register that the old license no. C-8072539 was valid up to 13th March, 1998 and the new license no. C-98070292 was valid upto 8th July, 2001.

4. The appellant summoned the Record Clerk from Road Transport Office, Mall Road, Delhi who appeared as R3W1 and produced the relevant records relating to the aforesaid driving licence which expired on 13th March, 1998 and was renewed on 5th October, 2002.

5. From the testimony of R3W1, it is clear that the driving licence of the driver expired on 13th March, 1998. The renewal dated 5th October, 2002 would be from the date of renewal under Section 15(4) of the Motor Vehicles Act. The statement of R2W1 and R2W5 on the basis of the DTC register is contrary to the testimony of R3W1 and R2W3 who produced the original record of the Licencing Authority. The statement of R2W1 and R2W5 is therefore, not credible. In that view of the matter, it is held that the

driver was not holding a valid effective driving licence on the date of the accident i.e. 1st July, 2001.

6. In *New India Assurance Company Limited v. Suresh Chandra Aggarwal*, (2009) 15 SCC 761, the Supreme Court held that the renewal of a licence within 30 days of its expiry under Section 15(4) of the Motor Vehicles Act is effective and valid from the date of its expiry whereas the renewal of a licence after more than 30 days of its expiry is effective from the date of the renewal meaning thereby that there is no effective licence in existence from the date of the expiry till the date of its renewal. The relevant findings of the Supreme Court are reproduced hereunder:

“12. 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”). Section 3(1) of the Act inter alia stipulates that:

“3. *Necessity for driving licence.*—(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle;”

13. 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. 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.*”

(emphasis supplied)

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, the 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*.

14. Section 19, relied upon by learned counsel for the claimant, authorises 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.

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 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 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 29-2-1992 and it was renewed with effect from 23-3-1992. 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 23-3-1992.

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 the 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 22-3-1992, 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. 29-2-1992.

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.”

7. This case is squarely covered by the aforesaid judgment. Following the aforesaid judgment, it is held that the appellant is entitled to the recovery rights as driver was not holding a valid and effective licence on the date of the accident.

8. For the reasons as aforesaid, the appeal is allowed and the appellant is granted recovery rights to recover the award amount from respondent no.6.

J.R. MIDHA, J

FEBRUARY 15, 2013

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