

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

+ MAC.APP.No.939/2005

% Date of decision : 15th February, 2013

M/S. NATIONAL INSURANCE CO. LTD. Appellant
Through Mr. V.C. Jha and Ms. Sonia
Sharma, Adv.
versus

S.M. ILYAS AND ORS. Respondents
Through Mr. O.P. Mannie, Adv. for
R-1.
Mr. Jyotindra, Adv. for R-7.

**CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA**

JUDGMENT(ORAL)

1. The appellant has challenged the impugned award on the limited ground that the appellant is entitled to the recovery rights against respondent No.7, Delhi Transport Corporation (DTC).
2. The accident dated 20th April, 2003 resulted in grievous injuries to claimant/respondent No.1. 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 driving licence of the driver of the offending vehicle expired on 1st March, 2003 whereas the accident occurred on 20th April, 2003. The Claims Tribunal rejected the plea of the appellant on the ground that a licence can be renewed within a period of five years under Section 15(4) of the Motor Vehicles Act, 1988 and therefore

there is no breach of the policy. The Claims Tribunal awarded Rs.3,04,000/- to claimant/respondent No.1.

3. 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, the renewal 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 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.”

4. In *DTC v. Jagdish Kataria*, MAC.APP.No.565/2008 decided on 5th March, 2012, this Court was dealing with bunch of petitions in which the driving licence was renewed after the expiry of 30 days of the licence. Following *New India Assurance Co. Ltd. v. Suresh Chandra Aggarwal* (supra), this Court upheld the grant of recovery rights by the Claims Tribunal to the insurance company against DTC.

5. The learned counsel for respondent no.7 submits that under Section 14(2) of the Motor Vehicles Act, 1988, the driving licence in respect of transport vehicle has to be issued/renewed by the authority for a period of three years whereas in this case, the licence was issued for a period of one year i.e. 2nd March, 2002 to 1st March, 2003. It is submitted that the licence be deemed to be for a period of three years and in that event, there would be no violation on the part of the driver.

6. There is no merit in the contention raised by the learned counsel for respondent no.7. This case is squarely covered by the judgment of the Supreme Court in *New India Assurance Co. Ltd. v. Suresh Chandra Aggarwal* (supra). The driving licence of the driver of the offending vehicle expired on 1st March, 2003 and the driver was not holding any licence on the date of the accident i.e. 20th April, 2003. The finding of the Claims Tribunal that the licence can be renewed within a period of five years under Section

15(4) of the Motor Vehicles Act, 1988 is erroneous inasmuch as the renewal after the expiry of 30 days would be from the date of the renewal and, therefore, it would not validate the breach prior to the date of the renewal. The respondent's contention that the driving licence be deemed to be issued/renewed for a period of three years under Section 14 of the Motor Vehicles Act has no merit. The respondent never raised this plea before the Claims Tribunal. If the respondent has any grievance against the Licencing Authority, it is for the respondent to agitate the same in appropriate proceedings. So far as the present proceedings are concerned, this Court is concerned with the issue as to whether the driver of the offending vehicle was holding a valid effective driving licence on the date of the accident to which the answer is in negative as the driver was not holding a valid effective driving licence on the date of the accident. Consequently, there is breach on the part of respondent no.7 and, therefore, the appellant is entitled to recover the award amount from respondent no.7.

7. The appeal is allowed and the award is modified to the extent that the appellant shall be entitled to recover the award amount from respondent no.7 after making the payment of the award amount to the claimants.

8. The learned counsel for the appellant submits that the appellant has deposited the entire award amount along with interest with the Claims Tribunal before filing of this appeal. The learned counsel for the claimants admit the receipt of the award amount by the claimants. In that view of the matter, the recovery rights are

granted to the appellant to recover the award amount from respondent no.7.

FEBRUARY 15, 2013

J.R. MIDHA, J