**1IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO No. 2185 of 2008
Date of Decision: December 24, 2014

New Insurance Company Ltd.

....Appellant.

Versus

Parmeshwari Devi and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Paul S. Saini, Advocate for
for the appellant.

Mr. Dheeraj Narula, Advocate,
for respondents No. 1 to 3.

Ms. Divya Godara, Advocate,
for respondent No.4.

Mr. Ramandeep Singh, Advocate for
Ms. Swati Batra, Advocate,
for respondents No. 5 and 6.

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? √
3. Whether the judgment should be reported in the Digest?

JASPAL SINGH, J.

Feeling aggrieved against the impugned award dated June 06, 2008, passed by Motor Accident Claims Tribunal (Fast Track Court), Sirsa (for short, 'Tribunal') in MACT No. 150 of 2004/2008, captioned as ***"Parmeshwari Devi and others vs.***

Mangat Ram and others", whereby claim petition preferred by respondents No. 1 to 3-claimants, seeking compensation under Section 166 of the Motor Vehicles Act, 1988 (for brevity, "the Act" only) on account of death of Devi Lal, was partly allowed, holding respondents i.e. driver/owner and insurer jointly and severally liable. Appellant-insurance company has preferred the instant appeal seeking exoneration from its liability to pay compensation or in the alternative to grant recovery rights i.e. to recover the compensation amount so paid by it or to be paid, from the registered owner/driver.

2. In response to the notice issued to the respondents, Mr. Dheeraj Narula, Advocate appeared and represented respondents No. 1 to 3 whereas Ms. Divya Godara, Advocate appeared on behalf of respondent No.4. Respondents No.5 and 6 were represented by Mr. Ramandeep Singh, Advocate for Ms. Swati Batra, Advocate.

3. The sole question which requires determination in this appeal is whether the driver of the offending jeep No. HR-20C-0635, namely, Mangat Ram was not holding a valid and effective driving license on the date and time of occurrence.

4. While assailing the findings recorded by the ld. Tribunal regarding this issue and fastening the liability jointly and severally on respondents including insurance company to pay the compensation, so awarded, it has been ebulliently argued by learned counsel for appellant, Mr. Paul S. Saini that same are not only

against the evidence available on file and settled canons of law but also result of mis-appreciation of evidence and legal proposition applicable to the facts and circumstances of the case in hand. To prove that respondent No. 1 was not holding a valid and effective driving license at the time of accident, insurance company has examined Hardeep Singh as RW-1, Driving Licence Clerk of the Office of Licensing Authority/SDM, Sirsa, who has clearly deposed that license No. 70825, was issued to Mangat Ram-respondent No.1 on April 08, 1994 valid up to April 07, 1999 and, thereafter, there was no renewal of the above said driving license after April 07, 1999 till June 13, 2004, as it was got renewed on June 14, 2004. It was valid for a period of 5 years i.e. upto June 13, 2009. He also proved verification report (Ex.R1). In this regard ld. Tribunal has ignored this aspect by simply observing that non-renewal of the license during the period April 07, 1999 to June 13, 2004, does not mean that during this period, Mangat Ram was not knowing how to drive the vehicle and further that it subsequently stood validated by renewal of his old license. This observation is absolutely wrong and erroneous, which has caused prejudice to appellant-insurance company. To buttress his contention, learned counsel for appellant has placed reliance upon the "***United India Insurance Co. vs. Malla Janaki, 1990 ACJ 1022, "Beer Singh vs. Satbir Singh" 2000 ACJ 681***, ***"Oriental Insurance Co. v. Babu Lal and others, 1998 ACJ 67,*** and ***Ram***

Babu Tiwari v. United Indian Insurance Co. Ltd. and others, 2008 (3) SCC (Crl.)442.

5. While concluding his arguments, learned counsel for appellant has submitted that since it stands amply proved on record that on the relevant time and date, respondent No. 1 was not holding valid and effective driving license, either the insurance company be absolved of its liability to pay the compensation so awarded by the ld. Tribunal or in the alternative, rights to recover the compensation amount from the registered owner of jeep be granted to it.

6. On the other hand, learned counsel for respondent No. 4 while controverting the contention put forth by learned counsel for appellant has submitted that findings recorded by ld. Tribunal holding the appellant as well as driver/owner jointly and severally liable are absolutely in accordance with the evidence available on file and legal proposition of law. As such, the same do not call for any interference by this Court. Ld. Tribunal has rightly concluded that mere non-renewal of driving license on a particular date and subsequent renewal of driving license validates it from back date, is absolutely justified. There is no infirmity or illegality in the impugned award and appellant-insurance company has rightly been fastened with the liability to pay compensation awarded by ld. Tribunal. Appeal being devoid of merits deserves to be dismissed with special costs.

7. Since, other respondents were not aggrieved against the impugned award, though, they were present but did not raise any contention.

8. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the parties and minutely gone through the records available and has also bestowed due consideration to the legal proposition applicable to the facts and circumstances of the case in hand.

9. Undisputedly, the stand taken by appellant-insurance company in written statement before ld. Tribunal was that driver of offending jeep namely, Mangat Ram was not holding valid and effective driving license on the date of accident and to prove this fact, appellant-insurance company has examined Hardeep Singh as RW-1, Driving License Clerk of the Office of Licensing Authority/SDM, Sirsa. His statement is categoric and is based upon record maintained in the office in the regular course of its business/conduct. No doubt, Mangat Ram-respondent No.1 was validly issued driving license No. 70825 on April 08, 1994, for five years for driving motorcycle, scooter, car and jeep. But the period of five years expired on April 07, 1999. It was not got renewed during the period April 08, 1999 to June 13, 2004. It was only got renewed on June 14, 2004 i.e. after about a fortnight of the date of accident i.e. May 31, 2004. Verification report (Ex.R-1) also depicts the above said actual facts.

10. Now, question arises whether driving license was valid and effective during the period it remained un-renewed particularly, on the date of accident i.e. May 31, 2004. In this regard, this Court shall have to consider Section 15 of the Act which deals with the renewal of driving licenses. To facilitate the actual applicability, Section 15 is relevant, which reads as under:-

> *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.*

11. A glance on the aforesaid provisions is indicative of the fact that an application is required to be moved within 30 days from the date of expiry of validity period of driving license by its holder to the licensing authority. It further stipulates that in case an application for renewal of driving license is moved after 30 days of the expiry of validity period, driving license shall be renewed w.e.f. date of its renewal.

12. Adverting to the facts of the case in hand, driving license of respondent No.1 (Ex. R-1) was only valid up to April 07, 1999 and no application thereafter was moved till it was renewed w.e.f June 14, 2004 i.e. approximately for a period of more than 5 years. Thus, during the interregnum period starting from April 08, 1999 upto June 13, 2004, driving license of respondent No. 1, cannot be said or termed to be legal and valid. Respondent No. 1 was not legally authorised to drive the vehicle.

13. Here, it would also be pertinent to mention that even the Id. Tribunal has given a go-bye to the provisions contained in Sub-section 2(a) (ii) of Section 149 of the Act which deals with the

duty of the insurer to satisfy the judgment and award but subject to certain conditions and if, there is violation or breach of those conditions, the insurer is not liable to indemnify the insured/owner. The relevant portion of Section 149 of the Act is reproduced here as under:-

> *149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.-*
> *(1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (l) of section 147 (being a liability covered by the terms of the policy) 1[or under the provisions of section 163A] is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.*

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or 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) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(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*
>
> *(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or*
>
> (b) that the policy is void on the ground that it was obtained by the non- disclosure of a material fact or by a representation of fact which was false in some material particular.

14. A close scrutiny of the above referred provisions makes it crystal clear that in case of breach of terms and conditions of the insurance policy, the insurer would not be liable to pay any compensation. In the case in hand, as has already been discussed above, there was a breach of condition Sub-section 2(a)(ii) of Section 149 of the Act but despite that ld. Tribunal has jointly and severally held the insurance company liable by ignoring the above referred breach of condition of the insurance policy.

15. It is also equally settled proposition of law that the insurer is liable to indemnify the insured only when there is no breach of any of the terms and conditions of the insurance policy. In the case in hand, it is fully proved on record that license (Ex.R-1) possessed by respondent No.1, on the date of accident was not legal, valid and effective one. Certainly, there is a breach of one of the terms of the insurance policy. In "***United Insurance Company's"*** case (supra),

relied upon by learned counsel for appellant-insurance company, following observations was made in para 20:-

> *"Applying the above facts, the insurance company contended that the driver was not having a valid licence on the ground that the renewal comes into effect from 20.10.1986 only and not from the date of its expiry and the vehicle was entrusted by the owner to a driver who was not having a valid driving licence in force as on the date of the accident. As the vehicle has been entrusted by the owner to a driver who is not having valid driving licence in force as on the date of the accident, it amounts to breach of the conditions specified in Exh. B-l, the policy. Therefore, the insurance company is not liable to pay the compensation and the liability that has been fixed along with the owner has to be set aside and the owner alone is liable to pay the compensation."*

While following the aforesaid judgment, this Court in ***Beer Singh's case (supra)*** observed as under:-

> *"In the present case, it cannot be said that the word 'or' has to be read as 'and'. It is clear from provisions of sub-section (2)(a)(ii) of Section 149 that if there is a condition in the insurance policy that only a licensed driver is to drive the vehicle, the insurance company would not be liable in case there is a breach. This had nothing to do with the other part that the person has been*

> *disqualified for holding a driving licence during the period of disqualification. Both are independent of each other. The disqualification for holding a licence during the period of disqualification is independent of not having a licence."*

Similarly, in ***"Oriental Insurance Company's case (supra***), the following observation was made:-

> *"It is significant to point out that the insured though had set up a case that he had not permitted his driver to use the vehicle to carry passengers, he did not lead evidence on this point. He even had no courage to enter into the witness-box. The burden of issue No. 3 was on the owner insured, which he failed to discharge. That being so, it shall be presumed that the deceased driver had used the jeep to carry passengers on hire on the directions of the owner and also with his knowledge. Consequently, it is proved on record that the insured had committed a breach of express condition of the policy. In the aforesaid premises it has to be accepted that the insurance company is not liable to indemnify the insured in respect of the passengers who died or suffered bodily injuries. Appeal Nos. 801 of 1993, 798 of 1993, 797 of 1993, 800 of 1993, 794 of 1993, 796 of 1993 and 795 of 1993 deserve to be allowed."*

Identical view was taken in case captioned as ***"Resham Singh v. Smt. Channo Devi and others", 2013 (3) AICJ 33.***

16. Reverting to the facts of the instant case, findings on other issues except issue No.1 have not been challenged by any of the parties to the instant appeal. Meaning thereby that it has been rightly concluded by ld. Tribunal that death of Devi Lal s/o Harnam r/o Village Shahpuria, Tehsil and District Sirsa, occurred in a vehicular accident due to rash and negligent driving of Jeep No. HR-20C-0635, driven by respondent No.1 and further that amount of compensation has rightly been assessed. For the sake of repetition, it is held that driving license (Ex. R-1) cannot be held to be a legal, valid, genuine or effective driving license on the date of accident and insurance company cannot be fastened with any liability there being a clear cut violation of Sub-section 2(a)(ii) of Section 149 of the Act. However, keeping in view the latest proposition of law in "***National Insurance Co. Ltd. v. Hem Raj and others", 2012 ACJ 1891***, the insurance company at the first instance shall be liable to satisfy the award as offending vehicle was duly insured with it. However, it shall have the right to recover the amount so indemnified by the insurance company.

17. As a net result of the aforesaid discussion, appeal preferred by appellant-insurance company is allowed and impugned award dated June 06, 2008, is modified to the extent that appellant-

insurance company shall have to first satisfy the award, however, it shall have the right to recover the amount so paid to the appellants/claimants/victims from the insured i.e. driver/owner of the offending vehicle.

18. No order as to costs.

(JASPAL SINGH)
JUDGE

December 24, 2014
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