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

Decided on: 20th March, 2015

+ **FAO. 621/2003**

THE NEW INDIA ASSURANCE CO. LTD.

..... Appellant

Through: Mr.Pankaj Seth, Advocate

versus

SANJEEV KUMAR KAPUR & ORS.

..... Respondents

Through: Mr. Ashok Popli, Advocate for
Respondent no.1.

+ **FAO. 642/2003**

THE NEW INDIA ASSURANCE CO. LTD.

..... Appellant

Through: Mr.Pankaj Seth, Advocate

versus

SANJEEV KUMAR KAPUR & ORS.

..... Respondents

Through: Mr. Ashok Popli, Advocate for
Respondent no.1.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These two appeals (FAO.621/2003 and FAO.642/2003) arise out of common judgment dated 28.05.2003 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of Rs.3,09,560/- and Rs.73,000/- respectively was awarded in favour of Respondent no.1 for the death of Raj Rani Kapur and Teena Kapur, who suffered fatal injuries in a motor vehicular accident which occurred on 31.12.1995.
2. The only ground of challenge raised by the learned counsel for the Appellant is that the Appellant Insurance Company had sufficiently proved that on the date of the accident, the vehicle was being driven by the driver, Respondent no.2 herein, without a valid and effective driving licence and therefore, the Appellant was entitled to avoid the insurance policy, and consequently, was entitled to recovery rights. It is urged that the Claims Tribunal erred in holding that the driver was entitled to renew the driving licence any time during the period of five years from the date of expiry of the licence and since he was not disqualified from holding the driving licence, the Insurance

Company could not avoid liability.

3. The appeals are squarely covered by the reports of the Supreme Court in *National Insurance Company Limited v. Jarnail Singh & Ors.*, (2007) 15 SCC 28 and *New India Assurance Company Ltd. v. Suresh Chandra Aggarwal*, (2009) 15 SCC 761.
4. In the case at hand, the driving licence of the driver had expired on 26.11.1995. The accident had taken place on 31.12.1995. The driving licence had not been renewed within 30 days of the expiry of the driving licence in accordance with Section 15 of the Motor Vehicles Act, 1988(the Act) so as to make it effective backdated from the date of the expiry.
5. In *Jarnail Singh & Ors.(supra)* and *Suresh Chandra Aggarwal(supra)*, the Supreme Court has clearly held that the driver is not deemed to be holding a valid driving licence after the expiry of 30 days of the driving licence and if renewed thereafter, the same would be effective only from the date of renewal and the driver of the vehicle shall be deemed to be driving a vehicle without holding a valid and effective driving

licence in the interregnum and the insured would be guilty of breach of terms and conditions of the insurance policy as envisaged under Section 149 (2) (a) (ii) of the Act.

6. 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 and since the Insurance Policy stipulated the condition that the vehicle would not be driven by a person without a valid driving licence, the Insured was held guilty of violation of the condition of the insurance policy.
7. 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."

8. Thus, the Supreme Court has held that the person holding an expired licence would be guilty for the offence of driving the vehicle without a licence and the insured will be guilty of committing the breach of the policy. It was held that the Insurance Company would not be liable to pay any amount.
9. 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 and it was held to be breach of the conditions of the policy, entitling Insurance Company to avoid the policy. I hold that the Claims Tribunal erred in holding that there was no breach on the part of the insured. Since the Insurance Company has successfully proved the breach of the terms and conditions of the insurance policy, it will be entitled to recover the amount of compensation paid from the insured Respondent no.3.

10. It is made clear that the Appellant Insurance Company will be entitled to recover the amount of compensation paid in execution of this very judgment without having need to take recourse to independent recovery proceedings.
11. The appeal is allowed in above terms.
12. Pending applications stand disposed of.
13. The amount of compensation deposited shall be disbursed in terms of the orders passed by the Claims Tribunal.

14. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

MARCH 20, 2015
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