

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**M.A. No. 1387 of 1999**

Bisambhar Prasad Verma (since died), through LRs

1. Ravi Verma, S/o Late Shri Bisambhar Prasad Verma, aged 35 years
2. Dinesh Verma, S/o Late Shri Bisambhar Prasad Verma, aged 33 years
3. Ramesh Verma, S/o Late Shri Bisambhar Prasad Verma, aged 30 years

All of the legal heirs of sole appellant are residents of Hatri Bazar, Main Road, Baloda Bazar, P.S. Baloda Bazar, Revenue and Civil District- Baloda Bazar-Bhatapara (C.G.)

... Appellants**Versus**

1. Ku. Sharmila Mandhani, D/o Late Goverdhan Das Mandhani, aged 17 years
 2. Ku. Madhu Mandhani, D/o Goverdhan Das Mandhani, aged 15 years
- Both minor through their brother Shri Ramdev Mandhani, S/o Late Shri Goverdhan Das Mandhani.

All R/o Shailendra Nagar, Raipur, District Raipur.

3. Ramanlal, S/o Khoru Ram Sahu, aged 29 years, R/o Kusmi, P.S. Palari, District Raipur.
4. The New India Insurance Company Ltd., through Divisional Manager, Divisional Office, Madina Building, Station Road, Raipur.

... Respondents

For Appellant	:	Mr. Palash Tiwari, Advocate.
For Respondents No. 1 and 2	:	Mr. B.M. Roy, Advocate.
For Respondent No.4	:	Mr. Qamrul Aziz, Advocate.

Hon'ble Shri Justice P. Sam Koshy**C A V Order****Reserved on : 22/08/2017****Delivered on : 07/09/2017**

1. The present is an owner's appeal under Section 173 of the Motor Vehicles Act, 1988, assailing the award dated 13.4.1999 passed by the Additional Motor Accident Claims Tribunal, Raipur, in Claim Case No. 11/1997.

2. Vide the said impugned award, the Tribunal, in a proceeding under Section 166 of the Motor Vehicles Act initiated by the claimants, has awarded a compensation of Rs. 1,78,600/- to the claimants with interest

thereon at the rate of 12% per annum from the date of claim application. While passing the award, the Tribunal has exonerated the insurance company from its liability to pay compensation on account of the fact that the driver of the offending jeep at the relevant point of time was not having a valid licence to drive the jeep involved in the accident.

3. It is a case where on 24.8.1997, the deceased-Goverdhan Das Mandhani, father of the respondents no.1 and 2/claimants, met with a vehicular accident and succumbed to the injuries sustained in the accident when the Scooter No. MP23/YA-9291 on which he was travelling was hit by Jeep No. MP23/G-8645 which was being driven by respondent no.3-Ramanlal, owned by the original appellant-Late Bisambhar Prasad Verma and insured with respondent no.4-New India Insurance Company.

4. The present appeal was filed as early as on 12.7.1999 by the appellant namely, Bisambhar Prasad Verma, the original owner of the offending jeep, who died during the pendency of the appeal, i.e., on 17.2.2012. Thereafter, the legal representatives, i.e., the three sons of the deceased-appellant, were brought on record and who have been pursuing the appeal thereafter.

5. Contention of the learned Counsel for the appellants is that the Tribunal has committed an error in exonerating the respondent no.4-insurance company only on the ground that the driver of the offending jeep, namely, Ramanlal, did not have a valid driving licence. According to him, the said finding of the Tribunal is erroneous, bad in law and also contrary to the law laid down by the Hon'ble Supreme Court as also a large number of High Courts in this regard. As per the appellants, the accident

occurred on 24.8.1997 and the licence of the driver-Ramanlal got expired on 28.7.1997, i.e., within 30 days period from the date of expiry, thus, it cannot be said that the owner has not taken due and proper care in ensuring that the vehicle was being driven by a driver having a valid driving licence. According to the appellants, the law itself permits that in the event of the licence getting expired it could be renewed within a period of 30 days and on the expiry of the licence the effectiveness of the licence continues for a period of 30 days and thus it cannot be held to be a breach of policy condition.

6. It was also the contention of the learned Counsel for the appellants that it is a case where the liability originally was fastened upon the original appellant, i.e., the father of the present appellants, and after the death of their father, the present appellants cannot be forced to honour the award which was against their father as they were neither a party before the Tribunal nor are they directly or indirectly related to the operation of the said vehicle at the time of accident with which they could be fastened with the liability of honouring the award passed against their father. He further submits that even if the principle of vicarious liability is taken into consideration the present appellants cannot be held in any manner to be liable for the payment of compensation. It was also contended that the present appellants cannot be said to be the employer of the driver of the offending jeep, namely, Ramanlal, and thus there would not be any master-servant or an employer-employee relationship with which the present appellants could be held liable to indemnify the act done by a person who was engaged by their late father.

7. Learned Counsel appearing for respondent no.4-insurance company however opposing the appeal submits that from the facts which have come before the Tribunal it is sufficiently established and proved that the driver of the offending jeep, i.e., respondent no.3-Ramanlal, did not have a license to drive a vehicle on the date of accident inasmuch as the license which he was possessing earlier stood expired on 28.7.1997 with no application for renewal of the same immediately, and the license was subsequently renewed or prepared again only in the year 1999. Therefore, it can be safely concluded that the driver-Ramanlal at the time of accident did not have any license or valid license and thus there is a clear breach of policy condition and for which the insurance company has rightly been exonerated of its liability to pay compensation and the appeal therefore deserves to be rejected. In support of his contentions, learned counsel for the insurance company has relied upon the decisions of the Hon'ble Supreme Court in the case of **Ishwar Chand and others vs. Oriental Insurance Company and others, 2007 ACJ 1067**, and **Ram Babu Tiwari vs. United India Insurance Co. Ltd. & Ors., AIR 2008 SCW 6512**, and based upon the said decisions prayed for rejection of the appeal.

8. This Court having heard the contentions on either side ventures to decide the issue of liability of the owner or the exoneration of the insurance company and only thereafter if required we need go to decide the other contentions raised by the appellants.

9. Having heard the rival contentions put forth on either side and on perusal of the record what is undisputed is the fact that, the accident took place on 24.8.1997 resulting in the death of Goverdhan Das Mandhani. The vehicle which had hit the deceased was the jeep owned by the father

of the present appellants, namely, Late Bisambhar Prasad Verma. The said jeep was being driven by respondent no.3-Ramanlal at the time of accident. Undisputedly, he had a driving license for driving a "Light Motor Vehicle" and which was valid till 28.7.1997. Thus, the accident that took place on 24.8.1997 occurred on the 27th day from the date the license got expired.

10. At this juncture, it would be relevant to refer to Section 14 of the Motor Vehicles Act, 1988. The said Section deals with, *currency of the licenses to drive motor vehicles*. The *proviso* to sub-section (2) of Section 14 reads as under:-

"Provided that every driving licence shall, notwithstanding its expiry under this sub-section continue to be effective for a period of thirty days from such expiry."

The plain reading of the said *proviso* clause clearly stipulates that the driving license shall continue to be effective for a period of 30 days from the date of such expiry. This *proviso* clause does not have any sort of rider attached to it. In the absence of any rider, it has to be given the plain interpretation as it reflects, that is, on the expiry of a driving license its effect would continue for a period of 30 days beyond which unless it is renewed it will lose its sanctity, validity and its effectiveness.

11. Giving the aforesaid factual matrix, now what is relevant to be considered is, whether there was any lapse on the part of the owner of the offending jeep, which could be said to be a breach of policy condition.

12. If we look into the facts of the case, the owner when he had engaged the services of the driver, had a valid policy. The validity of the license continued up till 28.7.1997. The *proviso* clause of sub-section (2)

(b) of Section 14 of the Motor Vehicles Act, grants extension of the validity of the license for a period of 30 days from such expiry, that is to say, it would have been valid till 27.8.1997 and, in the instant case, the accident had occurred during this intervening period. Thus, under the Motor Vehicles Act itself, for all practical purposes, it has to be presumed that the license of the driver of the offending jeep was an effective license on the date of accident. In view of the said factual position, this Court finds it difficult to accept the analogy on the basis of which the Tribunal had exonerated the insurance company.

13. Further, what is also relevant to take note of the fact is, as to what is the lapse or fault on the part of the owner of the jeep with which it could be said that there was a deliberate breach of policy condition. The owner in the instant case did take all necessary precautions that he could take at his end with which he was duly indemnified and, in the process, if the driver's license does get expired and if the driver does not take proper steps for its renewal promptly and which fact is not in the notice of the owner, he cannot be blamed for it or held responsible.

14. As regards the two judgments referred to by the appellants, i.e., **Ishwar Chand** (supra) and **Ram Babu Tiwari** (supra), the facts of the said cases are distinguishable inasmuch as in both the aforesaid judgments the accident did not occur within 30 days from the date the license had got expired. Whereas, in the instant case, the accident occurred on the 27th day of the expiry of the license. Thus, the ratio and the principles of law laid down in the said judgments cannot be made applicable in the present case as the owner as also the driver would be governed and protected

under the proviso to sub-section (2)(b) of Section 14 of the Motor Vehicles Act.

15. Thus, for the aforesaid reasons, the appeal stands allowed and the impugned award stands modified to the extent that the finding of exoneration of respondent no.4-insurance company from the liability of payment of compensation is set-aside. It is further held that the driver, owner and insurance company are jointly and severally liable to pay the compensation. It shall be the responsibility of respondent no.4-insurance company to deposit the compensation before the Tribunal indemnifying the insured owner. The appeal of the owner thus deserves to be and is allowed. The appellants shall also be entitled for refund of the money which they have deposited in the Court below till now, from the insurance company.

**Sd/-
(P. Sam Koshy)
Judge**