In the High Court of Punjab and Haryana at Chandigarh

F.A.O No. 5180 of 2011 (O&M)
Date of Decision: 30.1.2017

The New India Assurance Company Limited ......Appellant

Versus

Santosh and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Deepak Suri, Advocate
for the appellant.

Ms. Bhagyashri, Advocate for
Mr. Vinod S. Bhardwaj, Advocate
for respondent No. 2.

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ANITA CHAUDHRY, J

CM-19706-CII-2011

Application is allowed for the reasons stated therein.

Delay of 40 days in refiling the appeal is condoned.

F.A.O No. 5180 of 2011

Before the issue raised in the appeal is dealt with, a brief resume of the facts are required to be noticed.

A claim petition had been filed by Balwan Singh son of Chandi Ram seeking compensation for the injuries received by him in an accident which occurred on 27/28.9.2005. He along with Rajbir Singh were returning to their village on a tractor driven by Rajbir Singh from the liquor vend where Balwan Singh was working. At about 11.45 P.M. they had reached near the Reliance Petrol Pump, Rajgarh road when the offending truck driven by respondent No. 1 came in a rash and negligent manner from behind and struck into the tractor. Due to the accident, the excel tube of the tractor broke and the claimant and other occupants fell on the road and received injuries. A claim petition was filed by Balwan Singh. However, during the pendency of the petition he died and his widow represented him.

The plea set-up by the wife was Balwan had died on account of the injuries received by him in the accident was disputed by the other side. There was no evidence to show that he had become permanently disabled as no disability certificate was filed. There was no post-mortem report. Therefore it was held that the legal heir was not entitled to the compensation for the death. However, a claim of Rs. 23,201/- was allowed for the amount spent on the treatment and transportation etc.

The insurance company had taken the plea that respondent No. 1 had not renewed his licence and therefore they should be absolved from their liability. The Tribunal recorded the finding in para 14 of the judgment which reads as under:-

> *"So far as liability to pay compensation is concerned, admittedly, offending truck on the day of accident was having valid and effective insurance policy Ex.R2. The counsel for the respondent No. 3 argued on the day of accident, the licence Ex. R1 pertaining to respondent No. 1 was not renewed as verification report Ex. P3. The respondent No. 3 cannot wriggle out from its own document Ex. R3. As per this document driving licence of the respondent was renewed with effect from 7.10.2005 to 6.10.2008 whereas the accident took place on 27/28.9.2005. On which particular day the licencing*

authority Churu (Rajasthan) received application from the respondent No. 1 to renew the driving licence, has not been brought on record. It may be possible that he had already filed an application for renewal of his driving licence before the Registration authority Churu and it took time to renew the same. Once, the driving licence has been renewed it is presumed to be in existence during intermittent period unless contrary is proved. The respondent No. 3 cannot be absolved from his liability to indemnify the respondent No. 3 on the ground on the day of accident, the licence of the respondent No. 1 was not renewed. All the respondents are jointly and severally held liable to pay compensation to the petitioner. Issue No. 1 goes in favour of the petitioner. Issue No. 2 partly goes in favour of the petitioner. Issue No. 4 goes in favour of the petitioner."

The Tribunal partly allowed the claim petition and allowed 6% interest and held all the respondents jointly and severally liable to pay the compensation.

The insurance company has disputed its liability while relying upon ***New India Assurance Company Limited versus Suresh Chandra Aggarwal III (2009) Accident and Compensation Cases 895 (SC***) and it was submitted that the accident had taken place in September 2005 whereas the driving licence was renewed subsequently on 7.10.2005. It was urged that the copy of the licence is available on record and Ex. R3 is the certificate issued by the licensing authority which shows that the licence was renewed from May 2001 upto April 2004 but there was no renewal between May 2004 till 6.10.2005 and the licence was renewed subsequently and it could not be shown that any application had been made within 30 days of the date of expiry and therefore the driver did not have a valid and effective licence on the date of accident and as the provisions of Motor Vehicle Act have been violated therefore the Tribunal should have given the recovery rights to them. Reliance was placed upon ***Ram Babu Tiwari versus United India Insurance Company Limited and others Vol. CLII (2008-4) Punjab Law Reporter 138*** and ***Ishwar Chandra and others versus Oriental Insurance Co. Ltd. and others II (2007) ACC 63 (SC)***.

The submission on the other hand was that the insurance company had not summoned the record to show when the application for renewal had been moved and the driver was holding a licence and that has been proved on record and the insurer is liable to satisfy the award. Reliance was placed upon '***National Insurance Company Limited versus Om Parkash and others 2010(3) PLR 752***.

Section 15 of the Motor Vehicles Act, 1988 reads as under:-

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.

(4) Where an application for the renewal of a driving licence is made more than thirty days after the date of its expiry, the fee payable for such renewal shall be such amount as may be prescribed by the Central Government. Provided that the fee referred to in sub-section (3) may be accepted by the licensing authority in respect of an application for the renewal of a driving licence made under this sub-section if it is satisfied that the applicant was prevented by good and sufficient cause from applying within the time specified in sub-section (3): Provided further that if the application is made more than five years after the driving licence has ceased to be effective, the licensing authority may refuse to renew the driving licence, unless the applicant undergoes and passes to

its satisfaction the test of competence to drive referred to in sub-section (3) of Section 9.

(5) Where the application for renewal has been rejected, the fee paid shall be refunded to such extent and in such manner as may be prescribed by the Central Government.

(6) Where the authority renewing the driving licence is not the authority which issued the driving licence it shall intimate the fact of renewal to the authority which issued the driving licence."

The provisions above clearly show that an application for renewal has to be made before the expiry and if the application 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.

The date of the accident is not in dispute. The accident occurred in the intervening night of 27/28.9.2005. The FIR was got registered on 30.9.2005. The driver and the owner did not step into the witness box. The insurance company had summoned the official from the office of the DTO who had brought the record relating to the licence issued to respondent No. 1 and had given the dates of renewal which are contained in Ex. R3. The date of issue of the licence was 5.1.1989 which was being renewed from time to time and sometimes with delay and the renewal was upto 30.4.2004. Thereafter the licence had been renewed from 7.10.2005 to 6.10.2008. The onus was upon the driver to show that he had moved an application within 30 days of the date of expiry. No application was given for renewal within 30 days of the expiry i.e. in April 2004. The licence had been renewed after the accident and therefore the driver did not have a valid and effective licence on the date of the accident and the provisions of the Motor Vehicle Act had been violated. Therefore, the insurance company was entitled to recovery rights.

The appeal as against respondent No. 3 had been dismissed on 9.8.2016 as the appellant has failed to implead his legal representatives. The adverse effects thereto were to be examined at the stage of final arguments. Since the appeal has been dismissed qua respondent No. 3 for their default, the insurance company cannot recover the amount from the legal heirs of respondent No. 3.

With the above modification, the appeal is partly allowed.

(ANITA CHAUDHRY)
JUDGE

January 30, 2017
Gurpreet

Whether speaking/reasoned	**:**	**Yes**
Whether reportable	**:**	**Yes**