AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 859 of 2013

1. Kanker Roadways Through The Managing Partner Through- The Managing Partner, Near Gandhi Udyan, Civil Line, P.S. Civil Line, Raipur, Distt. Raipur C.G., Chhattisgarh

---- Appellant

Versus

1. Dinesh Yadav Alias Dinu, S/o Budhram Yadav R/o Anupama Chowk, Near Kanhiya Kirana, P.S. City Kotwali, Jagdalpur, District Bastar C.G.
2. Ram Alias Ramu Kawade S/o Chaitram Kawade R/o Bardevabhata, P.S. Kanker, District Kanker C.G. (Driver of the bus No.CG08-ZA-0154).
3. New India Insurance Company Ltd., Branch Raipur, Through Branch Manager, Jagdalpur, PS City Kotwali, Jagdalpur Distt Bastar C.G. (Insurance Company Of The Bus No. CG08-ZA-0154).

---- Respondents

For Appellant	:	Shri Ishhadil Ali, Advocate on behalf of Shri Sudeep Johri, Advocate
For Respondent No.3	:	Smt. Chitra Shrivastava, Advocate.

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu

17/05/2019

1. Owner/appellant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging award dated 4.8.2012 passed by learned 1st Additional Motor Accident Claims Tribunal, Jagdalpur (for short 'the Claims Tribunal') in Claim Case No.42/09 whereby the Claims Tribunal while partly allowing claim application awarded compensation of Rs.1,10,000/- along with interest @ 6% p.a.

to the claimants in a death case, exonerated insurance company and fastened liability upon appellant herein to pay compensation.

2. Facts of the case, in nutshell, are that injured claimant is a motor mechanic by profession. On 11.2.2009 he was requested by driver of bus No.CG08-ZA-0154 to repair his vehicle and while injured claimant was repairing pressure pipe underneath bus, non-applicant No.1 suddenly moved the bus ahead because of which rear wheel of bus ran over his right leg causing fracture injury over his right leg. He also sustained injuries on his waist and left leg. He was admitted in Maharani Hospital, Jagdalpur for treatment. Matter was reported to Police Station Bodhghat based on which Crime No.70/09 against non-applicant No.1. After recovering from injuries, injured claimant filed claim application before the competent Claims Tribunal claiming Rs.9,26,000/- as compensation.

3. Non-applicant No.2/appellant herein submitted his reply to claim application and denied all adverse pleadings made in application. He pleaded that on the date of accident, offending vehicle was insured with non-applicant No.3 Insurance Company, therefore, liability, if any, for payment of compensation would be on the insurance company.

4. Non-applicant No.3 Insurance Company also submitted its reply and pleaded that on the date of accident, driver of offending vehicle was not having valid and effective driving license and other documents relating to offending vehicle were

also not valid and effective. As the vehicle was being plied in breach of conditions of insurance policy, therefore, it was pleaded by insurance company that non-applicant No.1 & 2 are only liable to pay compensation to claimants.

5. Learned Claims Tribunal, after appreciating pleadings and evidence of respective parties, has partly allowed claim application of claimants and awarded Rs.1,10,000/- along with interest @ 6% p.a. The Claims Tribunal has held that accident took place due to rash & negligent act of non-applicant No.1- driver of offending bus and as there was violation of conditions of insurance policy, therefore, exonerated insurance company and saddled the liability to satisfy award on the owner of offending vehicle.

6. Learned counsel for appellant would argue that the Claims Tribunal committed an error in recording a finding that on the date of accident driver of offending vehicle was not having valid and effective driving license, rather the license possessed by driver was valid from 4.7.2008 to 4.1.2009 and thereafter its renewal application was pending consideration. He further submitted that insurance company failed to prove that on the date of accident, driver of offending vehicle was not having valid and effective driving license as the witness examined on behalf of insurance company i.e. employee of concerned Regional Transport Office, showed his ignorance about submission of any application by non-applicant No.1 for renewal of his license.

7. I have heard learned counsel for the parties and perused the

record.

8. Perusal of property seizure memo (Ex.P-4) would show that along with other relevant documents of offending vehicle, the police also seized one driving license bearing No.DSH/2756/BTR/07, which was valid upto 18.2.2012. Particulars of this driving license (Ex.D1-C) has been issued by Licensing Authority, Bastar Region, Jagdalpur and perusal of which shows that holder of license is authorized to drive heavy public motor vehicle and it was renewed on 19.2.2009 upto 18.2.2012. This document (Ex.D1-C) has been proved by NAW3-1 Ramkaran Ratre, Assistant Grade-II, Regional Transport Office, Jagdalpur, who has stated in his evidence that license issued to non-applicant No.1 was valid upto 4.1.2009; application for renewal of license was submitted on 18.2.2009 and accordingly it was renewed for a period from 19.2.2009 to 18.02.2012.

9. From the above documentary and oral evidence it is apparent that validity of license possessed by non-applicant No.1 was upto 4.1.2009 and thereafter it was renewed on 18.2.2009 for a period of three years i.e. upto 18.2.2012, whereas accident took place on 11.2.2009.

10. Section 15 of the Act of 1988 deals with renewal of driving licenses, 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:
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> 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 such-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."

11. Sub-section (1) of Section 15 of the Act of 1988 provides limitation of 30 days for making application for renewal of license after the date of its expiry. It further provides that if application is made beyond the period of 30 days than license

shall be renewed with effect from the date of its renewal only.

12. Issue relating to filing of application for renewal of license after expiry of grace period of 30 days and its effect has been considered by Hon'ble Supreme Court in the matter of **Rambabu Tiwari v. United India Insurance Company Ltd. & ors** reported in **2008 AIR SCW 6512** and held thus;-

> "18. It is beyond any doubt or dispute that only in the event an application for renewal of licence is filed within a period 30 days from the date of expiry thereof, the same would be renewed automatically which means that even if an accident had taken place within the aforementioned period, the driver may be held to be possessing a valid licence. The proviso appended to sub-section (1) of Section 15, however, clearly states that the driving licence shall be renewed with effect from the date of its renewal in the event the application for renewal of a licence is made more than 30 days after the date of its expiry. It is, therefore, evident that as, on renewal of the licence on such terms, the driver of the vehicle cannot be said to be holding a valid licence, the insurer would not be liable to indemnify the insured.
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> The second proviso appended to sub-section (4) of Section 15 is of no assistance to the appellant. It merely enables the licensing authority to take a further test of competent driving and passing thereof to its satisfaction within the meaning of Sub-section (3) of Section 9. It does not say that the renewal would be automatic. It is, therefore, a case where a breech of the contract of insurance is established. This aspect of the matter has been considered by this Court in National Insurance Co. Ltd. v. Kusum Rai & ors [(2006) 4 SCC 250] holding :
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> > "11. It has not been disputed before us that the vehicle was being used as a taxi. It was, therefore, a commercial vehicle. The driver of the said vehicle, thus, was required to hold an appropriate licence therefor. Ram Lal who allegedly was driving the said vehicle at the relevant time, as noticed hereinbefore, was holder of a licence to drive a light motor vehicle only. He did not possess any licence to drive a commercial vehicle. Evidently, therefore, there was a breach of condition of the contract of insurance. The appellant, therefore, could raise the said defence."
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> It was furthermore held :
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> > "14. This Court in Swaran Singh clearly laid down that the liability of the Insurance Company vis-`-vis the owner would depend upon several factors. The owner would be liable for payment of compensation in a case where the driver was

> not having a licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle."

It was opined :

> "16. In a case of this nature, therefore, the owner of a vehicle cannot contend that he has no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or not."

19. The principle laid down in Kusum Rai (supra) has been reiterated in Ishwar Chandra & Ors. v. Oriental Insurance Co. Ltd. & Ors. [(2007) 10 SCC 650], referring to sub-section (1) of Section 15 of the Act, this Court stated the law, thus :

> "9. From a bare perusal of the said provision, it would appear that the licence is renewed in terms of the said Act and the rules framed thereunder. The proviso appended to Section 15 (1) of the Act in no uncertain terms states that whereas the original licence granted despite expiry remains valid for a period of 30 days from the date of expiry, if any application for renewal thereof is filed thereafter, the same would be renewed from the date of its renewal. The accident took place 28-4-1995. As on the said date, the renewal application had not been filed, the driver did not have a valid licence on the date when the vehicle met with the accident."

13. In the case at hand, admittedly license of non-applicant No.1 had expired on 4.1.2009 and application for its renewal was submitted only on 18.2.2009 i.e. much after grace period of 30 days, and therefore the license was renewed on 19.2.2009 w.e.f. from 18.2.2009. Date of accident is 11.2.2009. It is, thus, apparent that on the date of accident, the driver was not holding a valid and effective driving license to drive offending vehicle.

14. Accordingly, in view of specific provisions contained under the Act of 1988 and the law laid down by Hon'ble Supreme Court in the matter of Rambabu Tiwari's case (supra), I am of the considered view that the Claims Tribunal has not committed any illegality or infirmity in recording a finding that on the date of accident non-applicant No.1-driver was not holding valid

and effective driving license. The finding recorded by Claims Tribunal being in accordance with provisions of Section 15 of the Act of 1988 as also the law laid down by Hon'ble Supreme Court in Rambabu Tiwari's case (supra) does not call for any interference.

15. For the foregoing discussion, the appeal being meritless is liable to be and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-