IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.436 of 2016 (O&M)
Date of decision: 10.07.2019

Raj Kumar ... Appellant

Versus

United India Insurance Co. Ltd. and ors. ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. SS Sahu, Advocate for the appellant.

Mr. Paul S. Saini, Advocate and
Mr. Vipul Sharma, Advocate for the insurance company.

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REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against award dated 28.08.2015 passed by the Motor Accidents Claims Tribunal, Fatehabad whereby compensation has been assessed on account of death of Sehdev in a motor vehicular accident that took place on 15.06.2014 and the insurance company has been allowed right of recovery on the basis of findings on issue No.3 particularly the question of driving licence possessed by the appellant, driver cum owner of offending vehicle namely tractor Swaraj bearing No.HR-22-B-7105.

Counsel for the appellant would inform that the appeal has been preferred to assail findings of the Tribunal in respect of driving licence on the basis whereof the insurance company has been given right of recovery against the insured. It is argued that driving licence possessed by the appellant was initially issued on 08.10.1999. It was renewed from 01.12.2004 to 20.11.2007, 30.11.2007 to 30.11.2010, 30.11.2010 to 30.11.2013 and 30.06.2014 to 29.06.2017 but accident took place on 15.06.2014 during the intervening period from 01.12.2013 to 30.06.2014. It is argued that the appellant applied for renewal of licence on 09.12.2013 but licence was actually renewed w.e.f. 30.06.2014 to 29.06.2017. It is further submitted that in the insurance policy, one of the conditions under the caption “Persons or Classes of Persons entitled to drive" provides “any person including insured provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence.” It is further argued that in Section 149 (2)(a)(ii) of the Motor Vehicles Act, 1988 (in short ‘the Act’), the expression “effective driving licence” mentioned in the insurance policy has not been provided for. It is argued that driver of the vehicle was never disqualified from holding or obtaining a driving licence, therefore, it cannot be held that he was not duly licensed on the day of occurrence and as such, findings of the Tribunal upholding plea of the insurance company and giving recovery right against the insured cannot be allowed to sustain. In support of his contention, he has relied upon judgment of Rajasthan High Court **Laxminarain VS. Smt. Sona Devi and another, 2003(3) TAC 778,** wherein para 11 of the judgment reads as follows:-

> 11. Before coming into force the Motor Vehicles Act, 1988 w.e.f. 1st July, 1989, the Motor Vehicles Act, 1939 (for short 'the Old Act') was applicable and so far as condition relating

to driving licence is concerned, it is almost identical as under the Old Act. Section 96(2)(b)(ii) of the Old Act is also in paramateria to that of Section 149(2)(b)(ii) of the Act. A plain reading of Section 149(2)(b)(ii) of the Act makes it clear that the insurer shall be entitled to defend the action on the condition excluding 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. The policy of insurance Exhibit-NA-1 is on record, which provides under the caption "Persons or Classes of Persons entitled to drive" Any person including insured provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence. The expression "Effective Driving Licence" mentioned in the insurance policy has not been provided under Section 149(2)(a)(ii) of the Act. The Act provides the expression any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining the driving licence during the period of disqualification. Thus, the word effective driving licence incorporated in the policy is clearly against the provisions of Section 149(2)(a)(ii) of the Act. It is settled law that the Insurance Company can defend the action on the grounds enumerated under Section 149(2) of the Act and no more; any condition incorporated in the policy contrary to the Act is to be read down. Now the question arises as to whether the driver of the said tempo was not duly licensed and has been disqualified for holding or obtaining a driving licence during the period of disqualification. It is not the case of the appellant that the said tempo driver was not duly licensed and has been disqualified for holding or obtaining the licence, as It is evident from Exhibit-10 that the driver of the tempo had a driving licence with effect from 27.10.1986, which was

> renewed from time to time and lastly it was renewed up to 9.4.2003. The only break of period for renewal was from 22.1.2000 to 9.4.2000 and during this intervening period the accident occurred on 4.4.2000. The driver had a driving licence for more than 15 years and thereafter for further 3 years, this shows that he was not disqualified for holding or obtaining driving licence. The very purpose of providing such exclusion clause in the Act is that at the time of accident the person who drove the vehicle was qualified and skilled to drive the vehicle having authorisation by the competent licencing authority. In the instant case, it cannot be said that the driver of the tempo was not qualified or lacking any skill to drive the tempo when he met the accident.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal with the submission that as the appellant was not duly licensed on 15.06.2014 the date on which the accident had occurred, provisions of Section 149(2)(a)(ii) of the Act would be attracted that creates defence in favour of the insurer in respect of driving licence. It is further argued that application for renewal of licence was filed on 29.06.2014 and fee for renewal was deposited on 30.06.2014 and for that reason licence was renewed w.e.f. 30.06.2014. It is further argued that the mere fact that certain documents placed on record in support of application for renewal of licence were attested on 09.12.2013 is not at all sufficient to accept contention of the appellant that application for renewal was filed on 09.12.2013 when otherwise the said fact is not borne out from testimony of Gajender Kumar, Clerk in the Office of RTA, Fatehabad RW2 examined by the insurance company and cross examined at length by counsel for the appellant before the Tribunal. It is further argued that as the appellant was not duly licensed on the date of occurrence i.e. 15.06.2014, one of the defences available under Section 149(2) of the Act has been proved and as such, the insurance company has rightly been given right of recovery against the insured after discharging liability towards the claimants. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court **Ram Babu Tiwari VS. United India Insurance Co. Ltd. and ors., 2008(3) RCR (Civil) 912** and **National Insurance Co. Ltd. VS. Jarnail Singh and others, 2007(15) SCC 28.**

Counsel for the appellant, in reply, would contend that application for renewal of licence was filed on 09.12.2013 but since the appellant did not append refresher course certificate, the application was returned to the appellant but later the application was submitted on 29.06.2014. It is argued that there is no such requirement in law to submit a refresher course certificate with an application for renewal of licence, illegal action of the licensing authority in returning the application originally filed in December, 2013 should not cause prejudice to the appellant/insured.

Counsel for the insurance company while refuting contention of counsel for the appellant has submitted that there is no evidence on record that application for renewal was submitted either on 09.12.2013 or on any other particular date much less within a period of one month from the date of expiry of earlier renewal on 30.11.2013.

I have heard counsel for the parties, perused the paper book and records.

Be that as it may, it is undisputed position of the case that licence possessed by the appellant was lastly renewed from 30.11.2010 to 30.11.2013, prior to the accident. The accident in question took place on 15.06.2014. The licence was renewed subsequently w.e.f. 30.06.2014 to 29.06.2017. Meaning thereby that appellant was not holding licence on the date of accident i.e. 15.06.2014.

There cannot be dispute about settled position in law that defences available to the insurer are provided for under Section 149(2) of the Act. A relevant extract therefrom, reads as follows:-

> 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) xx xx
>
> (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.

The appellant did not have a driving licence on the date of accident i.e. 15.06.2014 as previous renewal of licence expired on 30.11.2013 and later the licence was renewed from 30.06.2014. The appellant can seek aid of proviso to Section 14 of the Act to contend that his licence was valid upto 30.12.2013 i.e. 30 days after expiry of date of renewal on 30.11.2013.

Section 15 of the Act deals with renewal of driving licence. The first proviso to Section 15 says that where the application for renewal of licence is made more than 30 days after the date of its expiry, the driving licence shall be renewed w.e.f. date of its renewal. Though there is no specific provision in Section 15 of the Act that if the application for renewal of a licence is made within 30 days from the date of its expiry, the licence shall be renewed either w.e.f. from the date of its expiry or from the date of application. However, even if in view of language of first proviso to Section 15 of the Act read with proviso to Section 14 thereof, it is construed that in case the application is made within 30 days after the date of expiry, the driving licence shall be renewed w.e.f. the date of its expiry, the appellant cannot derive any advantage of the same for the reason that he has failed to adduce evidence to prove that application for renewal was submitted within 30 days from the date of expiry much less the said application was filed in complete consonance with the requirements of the

Act and rules framed thereunder.

The insurance company examined Gajender Kumar RW2. The witness has admitted that the documents available on record Exs.R4 to R7 namely medical of Raj Kumar issued by General Hospital, Fatehabad and attested documents i.e. the ration card, voter card and affidavit are dated 09.12.2013. He denied the suggestion that the appellant applied for renewal of licence on 09.12.2013 but authority voluntarily delayed the proceedings. The contention raised by counsel for the appellant that application for renewal of licence was submitted on 09.12.2013 gets falsified and belied from the statement of Raj Kumar who in his cross examination by counsel for the insurance company in the opening line had stated that he applied for renewal of driving licence about two months prior to the alleged accident. The period of two months reckoned from the date of accident would be April, 2014 and about five months of expiry of earlier licence on 30.11.2013. This apart, there is nothing on record suggestive of the fact that the appellant submitted an application for renewal even two months prior to the accident. On the contrary, the application for renewal Ex.R8 produced by Gajender Kumar RW2 is dated 29.06.2014 and fee of Rs.250/- for issuance of licence was deposited on 30.06.2014 and accordingly the licence was renewed w.e.f. 30.06.2014. All these facts clearly establish that the appellant was not duly licensed on the day of accident.

Another question for consideration is that since in the policy under the caption “Persons or Classes of Persons entitled to drive" it says that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence”. From the words used i.e. 'effective licence' in place of 'duly licensed' can it be said that the insured is not guilty of breaching terms and conditions of policy constituting defence in favour of the insurer under Section 149(2)(a)(ii) of the Act.

The Rajasthan High Court in **Laxminarain's case (supra)** by making a distinction between the expression 'effective driving licence' used in the policy and 'duly licensed' used in the aforesaid provision has recorded its conclusion that in the said case, it cannot be said that driver of the tempo was not qualified or lacking any skill to drive the tempo when he met the accident because there was break of period for renewal from 22.01.2000 to 09.04.2000 and during the intervening period, accident occurred on 04.04.2000. I find it difficult to accept that since in the Act in Section 149(2)(a)(ii), the expression used is 'duly licensed' vis a vis the expression used in the policy 'effective licence', the insured cannot be said to be guilty of breaching the terms and conditions of policy constituting defence in favour of the insurer under the aforesaid provisions of the Act. In view of the aforesaid, I find it difficult to differ with findings of the Tribunal that the insured is guilty of driving the vehicle without being duly/effectively licensed on the day of occurrence on the basis whereof the insurance company has been given right of recovery against the insured after payment of compensation to the claimants.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

10.07.2019 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No