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

% *Decided on: 18.11.2019*

\+ MAC.APP. 882/2019, CM APPL. 49537/2019 & CM APPL. 49538/2019

THE ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr. A.K. Soni.

versus

MOHIT DABAS & ORS ..... Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

CM APPL. 49539/2019 (delay of 15 days in filing)

1. This application seeks condonation of delay of 15 days in filing of the appeal.

2. For the reasons mentioned in the application, it is allowed.

3. The application stands disposed-off.

MAC.APP. 882/2019, CM APPL. 49537/2019 & CM APPL. 49538/2019

4. This appeal impugns the award of compensation dated 02.08.2019 passed by the learned MACT in MACT Petition No. 297/15 (New No. 50176-16) in so far as it has not granted the right of recovery against the vehicle owner despite of the fact that on the date of the motor accident i.e. 14.02.2014, the driver did not possess a valid driving licence. It was renewed only on 19.02.2014. There being a delay of over 77 days in its

renewal and even if the 30 days' validity of the driving licence is taken into consideration, there would still be a delay of about 47 days.

5. It is the appellant's case that when the applicant had paid the requisite fees for renewal of the driving licence, there could possibly be no occasion for the Licence Issuing Authority to take back the receipt of such payment. The application which was allegedly made 20 days prior to its expiry. Till its renewal or extension, nothing more was required to be done by the licence holder. The impugned order has discussed the issue as under:

> *"10. Liability*
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> *Oriental Insurance co./R3 has examined Sh. Ajeet Singh, Dealing Clerk, RTO office, North-West-2, Sector-16, Rohini, Delhi as R3W1. He deposed that he had brought the summoned record i.e. extracts of DL no. DL1119900115675 issued in the name of Sh. Raj Kumar S/o Sh. Sunil Singh. He deposed that as per record, the said driving licence (DL) was issued to Sh. Raj Kumar on 04.08.1990 for Light Transport Vehicle (TSR) & Light Motor Vehicle (Commercial) which was thereafter renewed on 02.12.2010 till 03.12.2013, thereafter on 19.02.2014 till 19.02.2017 & lastly renewed on 14.03.2017 till 14.03.2020. He has proved the said record as Ex. R3W1/1 (colly). He deposed that as per rules, the vehicle could not be plied after the date of expiry of DL till its renewal and that DL will not be considered as valid for the period. He admitted that the DL was not valid on 14.02.2014. He deposed, that there was a difference of 77 days between the date of validity i.e. 03.12.2013 and date of new renewal on 19.02.2014.*
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> *R3W1 was cross examined on behalf of Id counsel for R1 and R2 wherein he denied the suggestion that driver/licence holder had given application for renewal before 20 days and the licence was renewed on 19.02.2014. He has proved the*

copy of extract of driving licence of Raj Kumar as Ex. R3W1/R1X1. He deposed that the record/form, if any, submitted by R1/Raj Kumar was not traceable at present despite best efforts which had been intimated by MLO vide letter dated 08.01.2019. He has proved the same as Ex. R3W1/R1X2. He deposed that even otherwise as per circular dated 04.10.1999, the record was being maintained only for one year after which it was destroyed. He has proved the said circular as Ex. R3W1/R1X3.

R3W1 further deposed in his cross examination that no list was being maintained in the office regarding the record being destroyed and as such he could not say if Mr. Raj Kumar had given application for renewal before 20 days when the licence was to expire on 19.02.2009 (wrongly typed and the said date should be 03.12.2013). He admitted that a licence was only issued to a person when a person was skilled to drive the type of vehicle for which the licence was issued. He further admitted that Raj Kumar must have been skilled to drive the vehicle when his driving licence was lastly renewed on 14.03.2017 till 14.03.2020. He admitted that whenever the driving licence of Raj Kumar was renewed then he must have been skilled to drive the vehicle. He denied the suggestion that he had deliberately not brought the application for renewal, if any, of R1/Raj Kumar.

Insurance co/R3 has also examined Ms. Neelam Rani, its Assistant as R3W2. She has tendered her evidence by way of affidavit as Ex. R3W2/A. She has proved the notice u/s 12 rule 8 CPC sent to owner and driver of the offending vehicle dated 11.04.2018 as Mark A and Mark A-2 respectively, postal receipt as Ex. R3W2/1, investigation report of DL as Ex. R3W2/2, DL report as Ex. R3W2/3, copy of extracts of DL as Ex. R3W2/4 and insurance policy as Ex. R3W2/5 (colly).

In her cross examination by Id counsel for petitioner, R3W2 admitted that the insurance policy covered the date of accident.

R1W1 i.e. driver of the offending vehicle in his cross examination by ld counsel for R3/insurance co. inter alia deposed that he had only one DL at the time of accident which was handed over to the police. He deposed that he had given one application for renewal of his driving licence, however, he did not remember the date when such application was moved before the concerned authority; He deposed that no receipt or receiving was given while filing the application for renewal, however, a receipt was given after payment of renewal fees and the said receipt was also taken back from him by the authority after handing over the renewed DL to him. He deposed that he did not keep any photocopy of the receipt.

The ld counsel for insurance co/R3 has referred to Section 15(1) of M.V. Act and argued that a driving licence is renewed w.e.f the date of its expiry, however, where the application for renewal of the licence was made more than 30 days after the date of its expiry, then the driving licence shall be deemed to be renewed w.e.f date of its renewal. He referred to the testimony of R3W1 and argued that the DL of R1 expired on 03.12.2013, however, it was renewed only on 19.02.2014 and as such on the date of accident dated 14.02.2014, R1 was not having a valid driving licence to drive the offending vehicle. He prayed for recovery rights against R2. He also referred to the judgment of Hon'ble Supreme Court of India in case Ishwar Chandra vs Oriental Insurance Co. Ltd., 2007 ACJ 1067.

The ld Counsel for R1 and R2 argued that R1 had applied for renewal of DL even 20 days before the expiry of the driving licence, however, the DL was renewed on 19.02.2014.

He further argued that insurance co. Has taken a plea that the application for renewal of driving licence was not filed by R1 within 30 days of its expiry, however, R3 has failed to prove it and has failed to discharge the said onus.

Ld counsel for petitioners has argued that the formality of renewal of driving licence does not go to the roots of invalidation of the driving licence on the date of accident as it was renewed later on. He argued that the insurance company should not have any recovery rights and referred to the following two judgments:-

1. New India Assurance Co. Ltd. Vs Santosh Devi & Ors., MAC.APP.

866/2017, date of decision 09.01.2019 of Hon'ble Delhi High Court.

2. The Oriental Insurance Co. Ltd. Vs Deepa & Ors., MAC.APP.1042/2016, date of decision 11.08.2017 of Hon'ble Delhi High Court.

The Hon'ble Supreme Court of India in the case of Ishwar Chandra (Supra) has referred to its judgments in the case of National Insurance Co. Ltd. Vs Swaran Singh, 2004 ACJ 1 (SC) and National Insurance Co. Ltd vs. Kusum Rai, 2006 ACJ 1336 (SC) and after referring to Section 15 (1) of the M.V. Act has inter alia held as follows:-

" 8. Section 15(1) of the Act and the first proviso appended thereto 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:

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:"

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. Accident took place on 28.04.1995. 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."

The accident occurred on 14.02.2014. The testimony of R3W1 would show that the date of expiry of licence of R1 was 03.12.2013 which was renewed only on 19.02.2014 i.e. there was a difference of 77 days between the date of its expiry and date of its renewal. It would show that as on the date of the accident dated 14.02.2014, the DL of R1 had expired and it was renewed only on 19.02.2014. R1W1 has specifically deposed in his cross examination that he had given one application for renewal of his driving licence, however, he did not remember the date when such application was moved before the concerned authority. He further deposed that no receipt or receiving was given while filing the application for renewal, however a receipt was given after payment of renewal fees, the said receipt was also taken back from him by the authority after handing over the renewed DL to him and he did not keep any photocopy of the receipt. He did not remember as to after what time he had moved an application for renewal of his licence after its expiry on 03.12.2013. The testimony of R3W1, a dealing clerk from RTO office, North West-2, Rohini, Delhi would also show that the record/form, if any, submitted by R1 was not traceable vide Ex.

R3W1/R1X2 and further as per circular dated 04.10.1999 the record which was one year old had to be destroyed vide circular Ex. R3W1/R1X3.

From the above said testimony, it is evident that the insurance co/R3 which alleges that an application for renewal of licence was made by R1 after the expiry of 30 days, has failed to discharge its onus to prove that the renewal application was in fact filed by R1 after more than 30 days of the expiry of his driving license. In the said circumstances, the above said judgment in the case of Ishwar Chandra (Supra) would not help the insurance Co/R3.

Further, in the case of Deepa (Supra) the Hon'ble Delhi High Court also referred to the judgment of Hon'ble Supreme Court of India in the case of Swaran Singh (Supra) and inter alia held as follows:-

"2. The appeal is pressed only to seek recovery rights against the insured (seventh respondent), it admittedly being the registered owner of the offending vehicle, on the ground that the driver (sixth respondent) was not holding a valid or effective driving driving on the date of the accident. This plea is sought to be substantiated by a report dated 14.10.2016 of investigator to the effect that the sixth respondent held a valid and effective driving licence for the vehicle in question but the same had expired on 28.12.2013, the accident having occurred later on 18.02.2014, for which purposes application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC) is also moved for opportunity to lead additional evidence.

3. Even if the report to above effect were to be formally introduce in evidence, it would not made any headway for the appellant. The fact remains that it cannot be disputed that the driver held a valid and effective driving licence till 18.12.2013. It does appear that the licence had expired and it *may be presumed that there was no renewal so as to cover its validity for the date of accident (18.02.2014). But, this fact, by itself, cannot mean that a case of breach of the terms and conditions of the insurance policy has been properly made out. The rule of main purpose as envisaged in National Insurance Company Vs. Swaran Singh (2004) 3 SCC 297, will have to be borne in mind. The fact that the driver held a valid and effective driving licence just less than two months prior to the date of accident shows that he possessed the necessary skills and had the necessary competence and experience. There is nothing shown from which it could be deduced that the absence of validity of the driving licence on the crucial date contributed to the cause of accident.*

4. For the foregoing reasons, the appeal is found devoid of substance and the same, with pending applications, is dismissed".

The facts of the case titled as Deepa (Supra) would show that the driving licence expired on 28.12.2013 and there was no renewal till the date of accident i.e. 18.02.2014. In the present case, the licence had expired on 03.12.2013 and there was no renewal till the date of accident dated 14.02.2014. In the present case also the rule of the main purpose as envisaged in the case of Swaran Singh (Supra) would have to be kept in mind and the fact that R1 had a valid and effective driving licence just about two months or so prior to the date of the accident showed that he possessed the necessary skills and had the necessary competence and experience. Moreover, there was nothing shown on record from which it could be deduced that absence of validity on the date of accident contributed to the cause of accident.

Further, in a latest judgment the Hon'ble Delhi High Court in case of Santosh Devi (Supra) has inter alia held as under:-

"8. It Is evident from the records that on the date of the incident i.e. 07.04.2016, Appellant No. 2 Rohitash Gurjar was having a valid Driving licence issued on 30.11.2011. The accident occurred on 07.04.2016. The said driving licence expired on 08.01.2016, however the same was renewed on 11.04.2016.

Initially, Rohitash Gurjar, driver of offending vehicle fulfilled all requisites for holding a valid licence on the date of issuance i.e. 30.11.2011 and he also fulfilled all the requirements on the date of renewing of the licence i.e. 11.04.2016 after the accident, what was lacking was only the formality of renewal, which does not go to the roots of invalidation of the driving licence on the date of the accident i.e. 07.04.2016. The same driving licence was renewed on 11.04.2016 which indicates that he held good in all respect to hold a valid licence even on the date of the accident as the same has been renewed on 11.04.2016.

9. Moreover, Section 15 of Motor Vehicles Act, 1988 gives an option to any person who's validity has expired to renew his licence after paying the requisite penalty which ipso facto shows that once a driver hold a valid licence, his driving licence continues to be so till it is explicitly invalidated on certain specific grounds.

Therefore, in the instant case Appellant No. 2 was not suffering from any disqualification and section 15(4) of Motor Vehicles Act, 1988 recognises renewal of licence after the period of 30 days by paying requisite fine. Thus, Tribunal went wrong on point of liability and reached to a different conclusion.

Reliance is placed on National Insurance Co. Ltd. V. Om Prakash & Ors. 2012 ACJ 1566."

This latest judgment of Hon'ble Delhi High Court in case of Santosh Devi (Supra) is also squarely applicable on the facts *of the present case. In the present case also the driving licence of R1 expired on 03.12.2013 and was renewed on 19.02.2014.*

In view of above said discussion, it is held that insurance co/R3 would not be entitled to any recovery rights."

6. The Court finds no grounds to interfere with the aforesaid reasoning, because what is to be seen is that the licence holder must have applied for the renewal much prior to the accident, if not within the prescribed time. The contention of the driver to have applied 20 days prior to the accident has not been disapproved because the records of the Licence Issuing Authority had been destroyed as per the Record Keeping Rules. The skills of the driver were never retested; he was granted renewal by a mere ministerial exercise and not by reassessing his skills. The delay in renewal of his driving licence cannot be held against the driver. It is quite possible that renewal of the licence may have been approved much earlier than the date of accident itself; the date of renewal was 19.02.2014 while the accident had occurred 5 days earlier on 14.02.2014. There is no reason to alter the award. The appeal is without merit and is accordingly dismissed.

7. The statutory amount, alongwith interest accrued thereon, be deposited into the 'AASRA' Fund opened by this Court.

NAJMI WAZIRI, J

NOVEMBER 18, 2019

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