

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.711 of 2011

AFR

(From the judgment dated 29th August, 2011 passed by Shri G. Ch. Patnaik, learned Addl. Dist. Judge-cum-4th M.A.C.T., Jharsuguda in M.A.C. No.40 of 2010)

Narsin Begum and others

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Appellants

Versus

Mr. Chandeswar Ray and another

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Respondents

Advocate(s) appeared in this case :-

For Appellants	:	Mr. P.K. Rath, Advocate
For Respondent	:	Mr. Anirudha Das, Advocate for Respondent No.1
		Mr. G.P. Dutta, Advocate for Respondent No.2

CORAM : JUSTICE B.P. ROUTRAY

JUDGMENT

30th March, 2022

B.P. Routray, J.

1. Present appeal is directed against judgment dated 29th August, 2011 of learned 4th M.A.C.T., Jharsuguda in M.A.C. No.40 of 2010, wherein learned Tribunal has granted compensation to the tune of Rs.3,63,000/- in favour of the claimants on account of death of the deceased – Diwan Farukh Khan in the motor vehicular accident dated 6.4.2010.

2. The claimants are the wife, four children and mother of the deceased. Their case is that the deceased was the driver of a Truck and on 6.4.2010 his Truck was parked behind the offending Truck bearing Registration No.HR-69-A-1264 for unloading coal. As the driver of the offending Truck had slept in the driver seat and did not move after unloading the coal, the deceased climbed up to the driver's cabin of the offending Truck to wake him for moving forward who were in the queue for unloading coal. But the driver carelessly drove the Truck suddenly in a rash and negligent manner resulting fall of the deceased from the cabin and the wheels of the Truck crushed over him causing his instant death.

3. Learned Tribunal fixed the negligence on the part of the driver of the offending Truck and directed the owner to pay the compensation. It refused to fix the liability on the insurer (present Respondent No.2) to indemnify the compensation amount on behalf of the owner on the ground that the driver of the offending Truck had no valid DL on the date of accident.

4. The negligence on the part of the offender driver is not challenged by any of the parties. The claimants have come up in challenging the exclusion of liability on the part of the insurer. The quantum of

compensation is also questioned by the claimants (Appellants) on the ground that fixing notional income of the deceased at Rs.3,000/- per month despite salary certificate of the deceased was produced on record. However in course of hearing the exclusion of liability of the insurer to indemnify the compensation amount has been much pressed.

5. Thus the main question as for determination is that, whether in the given facts and circumstances of the case the insurer would liable to indemnify the compensation amount ?

6. The admitted case of the parties is that the driver of the offending vehicle had a valid licence upto 25.5.2009 and the same was not renewed thereafter. It is not the case of the insurer that the driver was incompetent one or the license was fake, but the fact remains that he did not renew his licence from 25.5.2009 onwards. Nothing has been brought on record to reveal if the owner had no knowledge of expiry of the license period or in good faith he unknowingly permitted the offender to drive the vehicle. Nothing has been brought on record if the owner had taken enough precaution to verify the validity of the DL upon renewal. No evidence was adduced from the side of the owner or the insurer concerning this aspect.

7. The Supreme Court in the case of *Nirmala Kothari vs. United India*

Insurance Company Limited, (2020) 4 SCC 49 have held as follows:

“12. While hiring a driver the employer is expected to verify if the driver has a driving licence. If the driver produces a licence which on the face of it looks genuine, the employer is not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise. If the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving licence there would be no breach of Section 149(2)(a)(ii) and the insurance company would be liable under the policy. It would be unreasonable to place such a high onus on the insured to make enquiries with RTOs all over the country to ascertain the veracity of the driving licence. However, if the insurance company is able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive, the insurance company would no longer continue to be liable.

13. On facts, in the instant case, the appellant complainant had employed the driver, Dharmendra Singh as driver after checking his driving licence. The driving licence was purported to have been issued by the licensing authority, Sheikh Sarai, Delhi, however, the same could not be verified as the officer concerned of the licensing authority deposed that the record of the licence was not available with them. It is not the contention of the respondent insurance company that the appellant complainant is guilty of willful negligence while employing the driver. The driver had been driving competently and there was no reason for the appellant complainant to doubt the veracity of the driver's licence.”

8. In the case of *Beli Ram vs. Rajinder Kumar and another*, 2020 SCC

OnLine SC 769, the Supreme Court had examined the principle of law

decided in the case of *Nirmala Kothari* (supra). In the case of *Beli Ram* (supra) it was a claim under the Workmen's Compensation Act, 1923. The sole question for consideration was, whether in a case of valid driving licence, if the licence has expired, the insured is absolved of its liability? The Supreme Court examined the cases of *Nirmala Kothari* (supra), *National Insurance Co. Ltd. vs. Swaran Singh*, (2004) 3 SCC 297 and three other cases, viz., *Tata AIG General Insurance Co. Ltd. vs. Akansha*, 2015 SCC OnLine 6758, *The Oriental Insurance Co. Ltd. vs. Manoj Kumar*, (2015) 111 ALR 275 and *National Insurance Co. Ltd. vs. Hem Raj*, 2012 ACJ 1891 of Delhi High Court, Allahabad High Court and Himachal Pradesh High Court respectively. The Supreme Court upon examination of all those cases has concluded that the judgment in the case of *Hem Raj* (supra) of Himachal Pradesh High Court is the correct legal principle. The view in *Hem Raj's* case as discussed in *Beli Ram's* case by the Supreme Court is that, *Swaran Singh* case did not deal with the consequences if the licence is not renewed within the period of 30 days and in such case, the driver who did not get renewed the validity of the licence after it was expired cannot claim that the licence has deemingly renewed retrospectively. The Himachal Pradesh High Court has further observed that MV Act being a beneficial

piece of legislation, if two interpretations were possible, the one which is in favour of the claimants should be given without violating the clear and plain language of the statute and the right of the victim, not of the owner of the vehicle, has to be protected. The Supreme Court has further observed that in *Beli Ram's* case they are dealing with the Workmen's Compensation Act and not a third party claim under the MV Act. The relevant observations are as follows:

“1. The sole question of law for consideration in the present appeals is whether in case of a valid driving licence, if the licence has expired, the insured is absolved of its liability.

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11. We consider it appropriate to first commence with the view of this Court in the *Swaran Singh* case, which examined the meaning of the expression “duly licensed”, as used in Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988 (hereinafter referred to as the ‘MV Act’). The factual matrix dealt with the claim of a third party and the different eventualities considered were : (a) licence not held; (b) fake licence held; (c) licence held but validity whereof has expired; (d) licence not held for type of vehicle being driven; (e) learner's licence held. We may note here that the facts of the present case relate to eventuality (c) above. A liberal view was taken considering the intent of the legislation in question and that it was a case of a third party claim. xx xx xx

12. We may next advert to the judgment in the *Nirmala Kothari* case. The judgment was sought to be canvassed in support of the proposition by learned counsel for the

appellant and we reproduce the relevant paragraphs in addition to the one reproduced above, as under:

“10.While the insurer can certainly take the defence that the licence of the driver of the car at the time of accident was invalid/fake however the onus of proving that the insured did not take adequate care and caution to verify the genuineness of the licence or was guilty of willful breach of the conditions of the insurance policy or the contract of insurance lies on the insurer.

11. The view taken by the National Commission that the law as settled in the *PEPSU* case is not applicable in the present matter as it related to third-party claim is erroneous. It has been categorically held in the case of *National Insurance Co. Ltd. vs. Swaran Singh* (SCC p. 341, para 110) that

“110. (iii)...Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licenced driver or one who was not disqualified to drive at the relevant time.”

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15. We are of the view that once the basic care of verifying the driving licence has to be taken by the employer, though a detailed enquiry may not be necessary, the owner of the vehicle would know the validity of the driving licence as is

set out in the licence itself. It cannot be said that thereafter he can wash his hands off the responsibility of not checking up whether the driver has renewed the licence. It is not a case where a licence has not been renewed for a short period of time, say a month, as was considered in the case of *Swaran Singh* where the benefit was given to a third party by burdening the insurance company. The licence in the instant case, has not been renewed for a period of three years and that too in respect of commercial vehicle like a truck. The appellant showed gross negligence in verifying the same.

16. We are conscious of the fact that in the present case the beneficiary is the driver himself who was negligent but then we are not dealing with a claim under the MV Act but under the Compensation Act, which provides for immediate succor, not really based on a fault theory with a limited compensation as specified being paid. We are, thus, in the present proceedings not required to decide the share of the burden between the appellant as the owner and the first respondent as the driver as may happen in a proceeding under the MV Act.

17. We now turn to the views of some of the High Courts, which have come to our notice on our own research!

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20. The last judgment is of the Himachal Pradesh High Court in *National Insurance Co. Ltd. vs. Hem Raj, 2012 ACJ 1891*. This was, once again, a case of an originally valid licence, which had expired, there was no question of a fake licence. It was opined that the conclusions to be drawn from the observations of the judgment in the *Swaran Singh* case of this Court, were that the insurance company can defend an action on the ground that the driver was not duly licensed on the date of the accident, i.e., an expired licence having not been renewed within thirty (30) days of the expiry of the licence as provided in Sections 14 & 15 of the MV Act. In this context it was observed that the *Swaran*

Singh case did not deal with the consequences if the licence is not renewed within the period of thirty (30) days. If the driving licence is not renewed within thirty (30) days, it was held, the driver neither had an effective driving licence nor can he said to be duly licenced. The conclusion, thus, was that the driver, who permits his licence to expire and does not get it renewed till after the accident, cannot claim that it should be deemed that the licence is renewed retrospectively.

21. The learned Judge debated the question of the consequences of the MV Act being a beneficial piece of legislation. Thus, if two interpretations were possible, it was opined that the one which is in favour of the claimants should be given, but violence should not be done to the clear and plain language of the statute. Thus, while protecting the rights of the claimants by asking the insurance company to deposit the amount, the recovery of the same from the insured would follow as the sympathy can only be for the victim of the accident. The right which has to be protected, is of the victim and not the owner of the vehicle. It was, thus, observed in para 18 as under:

“18. When an employer employs a driver, it is his duty to check that the driver is duly licensed to drive the vehicle. Section-5 of the Motor Vehicles Act provides that no owner or person incharge of a motor vehicle shall cause or permit any person to drive the vehicle if he does not fulfil the requirements of Sections 3 and 4 of the Motor Vehicles Act. The owner must show that he has verified the licence. He must also take reasonable care to see that his employee gets his licence renewed within time. In my opinion, it is no defence for the owner to plead that he forgot that the driving licence of his employee had to be renewed. A person when he hands his motor vehicle to a driver owes some responsibility to society at large. Lives of innocent people are put to risk in case the vehicle is

handed over to a person not duly licensed. Therefore, there must be some evidence to show that the owner had either checked the driving licence or had given instructions to his driver to get his driving licence renewed on expiry thereof. In the present case, no such evidence has been led. In view of the above discussion, I am clearly of the view that there was a breach of the terms of the policy and the Insurance Company could not have been held liable to satisfy the claim.”

22. We have reproduced the aforesaid observations as it is our view that it sets forth lucidly the correct legal position and we are in complete agreement with the views taken in all the three judgments of three different High Courts with the culmination being the elucidation of the correct legal principle in the judgment in the *Hem Raj* case.

23. xxx xxx xxx. The only thing we note is that fortunately there has been no accident with a third party claimant but the person who has caused the sufferance and sufferer are one and the same person, i.e., the first respondent driver. We are, however, dealing with the determination under the Compensation Act and those provisions are for the benefit of the workmen like the first respondent, even though he may be at fault, by determining a small amount payable to provide succor at the relevant stage when the larger issues could be debated in other proceedings.

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25. xxx xxx xxx. We have penned down the aforesaid views as such a situation is quite likely to arise in proceedings under the MV Act where a third party is claiming the amount. Proceedings here being under the Compensation Act, the consequences are not flowing to the first respondent as the initial negligent person.

26. In view of the aforesaid, the appeals are dismissed by settling the aforesaid question of law and leaving the parties to bear their own costs.”

9. In the instant case, no such evidence is there to reveal if any diligence was taken by the owner of the offending vehicle for verification of the licence of the offender driver that it has been duly renewed after its expiry. The fact remains that even validity of the DL was expired since 25.5.2009, the same was not renewed till the date of accident i.e. 6.4.2010. Nothing has also been brought on record to reveal anything if the licence was renewed thereafter or retrospectively. Here the argument advanced on behalf of the Appellants that *Beli Ram's* case being a claim under the Workmen's Compensation Act is not applicable to the facts of the present case where the claim is under the MV Act, has no force in view of the clear observation of the Supreme Court made at paragraph 25 of the *Beli Ram's* case.

10. Thus in the result, no merit is seen in the challenge of the Appellants to shift the liability on the insurer to indemnify the compensation amount. As such the appeal is dismissed.

(B.P.Routray)
Judge

B.K. Barik/P.A.