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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 10th December, 2024***+ **MAC.APP. 644/2024 & CM APPL. 72141/2024****THE NEW INDIA ASSURANCE COMPANY LTDAppellant**Through: Ms. Shuchi Singh, Advocate through
VC.

versus

1. KARU YADAV (INJURED CLAIMANT)S/o Rameshwarath Yadav,
R/o H. No. 123, Dumariya,
Barh, Town, Patna, Bihar

.....Respondent No. 1

2. DALIP SINGH (DRIVER-CUM-OWNER)S/o Shri Jarnail Singh,
R/o Village Santpura, PS Jhansa,
District Kurkshetra, Haryana

.....Respondent No. 2

Through: None.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)****CM APPL. 72142/2024 (Exemption)**

1. Allowed, subject to all just exceptions.
2. The Application is disposed of.

CM APPL. 72143/2024 (u/S 151 of CPC, 1908)

3. By way of present Application, the Applicant/Appellant seeks condonation of 48 days' delay in re-filing the Appeal.



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4. For the reasons and grounds stated in the Application, the Application is allowed. The delay of 48 days in re-filing the Appeal is hereby condoned.

5. The Application is disposed of accordingly.

MAC.APP. 644/2024

6. The present Appeal under *Section 173 of the Motor Vehicles Act, 1988* has been filed on behalf of the Appellant/Insurance Company against the Award dated 30.07.2024 *vide* which a compensation of Rs. 8,77,44.2/- along with interest @ 9% per annum has been granted to the Respondent No. 1/Claimant on account of injuries suffered by the Respondent No. 1/Claimant in a road accident which took place on 08.06.2016.

7. The impugned Award has been challenged by the Appellant/Insurance Company on the ground *that no recovery rights have been granted against the Respondent No. 2/Dalip Singh, the Driver-cum-Owner* even though his Driving Licence was fake.

8. *Learned counsel for the Appellant/Insurance Company* has argued that though Respondent No. 2/Dalip Singh was holding the valid Driving Licence, but it had been renewed by the Transport Authority on the basis of a Driving Licence which has been proven to be fake by the testimony of R2W1/Sumit Nahar, Junior Assistant, RTO Jhansi, Uttar Pradesh. It is argued that since the Driving Licence of the Respondent No. 2/Dalip Singh was originally fake, this inherent invalidity of Driving Licence would not get cured by its subsequent renewal by the Transport Authority.

9. It is, therefore, submitted that the observations of the learned Claim Tribunal that there was a valid Driving Licence with the Respondent No. 2/Dalip Singh at the time of accident need to be reconsidered and the



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recovery rights be granted to the Appellant/Insurance Company against the Respondent No. 2/Dalip Singh.

10. Submissions heard.

11. *The sole ground of challenge* is whether a fake licence allegedly issued by the RTO, Jhansi, Uttar Pradesh, its subsequent renewal by the RTO Kurukshetra, Haryana, would validate the inherent invalidity of the Driving Licence.

12. Pertinently, the first document of relevance is the Reply-cum-Written Statement filed on behalf by the Appellant/Insurance Company before the learned Claim Tribunal, wherein it had been stated that the DL No. UP-93 Licence No. HR-6519970190945 issued on 01.01.1997 in the name of Respondent No. 2/Dalip Singh, son of Shri Jarnail Singh, is valid from 07.04.2015 to 06.04.2018 for TRV Rigid Chassis, was found genuine as per Verification Report filed by the Police. However, the Licence had been renewed on the basis of earlier Licence issued from the Licensing Authority, Jhansi, Uttar Pradesh which has not been verified by the Investigating Officer (IO).

13. During the trial, *R1W1/Surjeet Singh, Transport Sub-Inspector, RTA Officer, Kurukshetra, Haryana* produced the extract of Driving Licence No. HR-6519970190945 and deposed that the entire record from 02/2001 to 31.03.2018 stood weeded out as per the Order dated 19.04.2021 issued by the Secretary, Regional Transport Authority, Kurukshetra, Haryana. He further deposed that the Driving Licence of Respondent No. 2/Dalip Singh had been renewed from 28.11.2014. He also deposed that the renewal is done only after receiving of an NOC from the earlier Issuing Authority.



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However, he was unable to tell if an NOC had been received from the Jhanshi Authority as the record stood weeded out.

14. *R2W1/Sumit Nahar, Junior Assistant, RTO Jhansi, Uttar Pradesh*, was also examined who had deposed that the Driving Licence No. 394/JHS/97 had been issued in the name of Sanjay Kumar, Son of Shri Ram Nath, resident of Jugyana, Jhansi and not in the name of Respondent No. 2/Dalip Singh. A photocopy of the relevant page of register was Ex.R2W1/1. During the cross-examination, the witness clarified that the second photo affixed upon the earlier photo of the person due to the reason that the Licence was subsequently renewed. Moreover, the second photo affixed upon the earlier photo was in a manner that the face of the person in earlier photo was not visible. He further deposed that there was no entry in the register regarding seeking the NOC from the RTO Kurukshetra, Haryana. He denied that NOC had been issued by the Office for the renewal of Licence in the name of Respondent No. 2/Dalip Singh.

15. From the evidence of *R1W1/Surjeet Singh, Transport Sub-Inspector, RTA Officer, Kurukshetra, Haryana*, it is evident that renewal of the Licence had been duly carried out, for which an NOC was obtained, but because the record had been weeded, nothing could be brought on record.

16. Even if the testimony of *R2W1/Sumit Nahar, Junior Assistant, RTO Jhansi, Uttar Pradesh*, is considered, wherein he had deposed that in fact, the Driving Licence was never issued in the name of Respondent No.2/Dalip Singh, but it cannot be overlooked that the said testimony has been given on the basis of existing record. *R1W1/Surjeet Singh, Transport Sub-Inspector, RTA Officer, Kurukshetra, Haryana*, in his testimony has explained that no



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renewals are carried out without getting the NOC from the previous RTO. With the disparity and non-availability of documents with the two RTOs, benefit has to be given to the Respondent No. 2/Dalip Singh, Driver-cum-Owner of the offending vehicle.

17. Furthermore, the Apex Court in the case of National Insurance Co. Ltd. vs. Swaran Singh & ors., 2004 (3) SCC 297, considered in detail the circumstances wherein the driver-owner may be affixed with the responsibility of reimbursing the Insurance company. It was observed that the Insurance Company is entitled to take the defence that the offending vehicle was being driven by an unauthorized person or a person driving the vehicle did not have the valid driving license. The onus would shift on the Insurance Company only after the owner of the offending vehicle pleads and proves that the basic fact is within his knowledge that the driver of the offending vehicle was authorized by him to drive the vehicle and was having a valid driving license at the relevant time.

18. In the present case, the Respondent No.2/Dalip Singh was in possession of a Valid Driving license. The Insurance company has not been able to produce requisite documents to establish the fakeness of the driving license of the Respondent No.2. Further, it cannot be overlooked that there is nothing to show that the Respondent No.2/Dalip Singh, Driver-cum-Owner was not having the requisite skill, any aberration on the part of the Authorities, cannot be transmitted to the Respondent No. 2/Dalip Singh, Driver-cum-Owner.

19. The Apex Court in *Swaran Singh* (supra) thus, observed that mere failure to renew the license in time would not mean that the driver ceases to



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be a person skilled to drive the vehicle. The question of violation of a condition of license would arise only if the driver was found to be unqualified to drive at the relevant time.

20. Coordinate Bench of this Court in The Oriental Insurance Co. Ltd. vs. Mohit Dabas, MAC. APP. 882/2019 following *Swaran Singh* (supra) held that mere technicality of an expired license should not automatically impose liability, especially when there was no evidence suggesting the lapse in license renewal contributed to the accident.

21. Therefore, it may be concluded that *firstly*, there is no cogent evidence that the Driving Licence of the Respondent No. 2/Dalip Singh was not valid. *Secondly*, there is nothing to show that the Respondent No. 2/Dalip Singh lacked the requisite skill to drive the vehicle.

22. Moreover, even if the Driving Licence is found to be not genuine, the Respondent No. 2, in the peculiar circumstances of this case, may be liable for prosecution under the provisions of the Motor Vehicles Act, 1988, but he cannot be penalised with payment of compensation by concluding that he was not having a valid Driving Licence.

23. Therefore, there is no error in the findings of the learned Claim Tribunal, whereby no recovery rights have been granted to the Appellant/Insurance Company.

24. There being a valid renewed Licence at the time of accident, the Respondent No. 2/Dalip Singh, Owner cannot be held liable.

25. In view of above, there is no merit in the Appeal which is hereby dismissed along with pending Application.

26. The statutory amount deposited by the Insurance Company be



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returned, in accordance with the Rules.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 10, 2024
S.Sharma