



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO.172 OF 1999

The Oriental Insurance Co. Ltd.
Through Divisional Manager,
Divisional Office,
Adalat Road, Aurangabad.

... **Appellant.**
(Ori. Defendant)

Versus

Dr. Suresh S/o Sadanand Borkar,
Age 44 years, Occu. Medical Practitioner,
R/o. Avanti, 74, Dashmeshnagar,
New Osmanpura, Aurangabad.

... **Respondent.**
(Ori. Plaintiff)

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Advocate for Appellant : Mr. R. F. Totla.
Advocate for Respondent : Mr. Adwait M. Joshi h/f Mr. Milind
Madhu Joshi.

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CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 31.07.2025

PRONOUNCED ON : 06.08.2025.

JUDGMENT :-

1. Heard both the sides finally.
2. Appellant/insurance company is aggrieved by judgment and decree passed by Lower Appellate Court in Regular Civil Appeal No.103 of 1998 confirming the judgment and decree passed by Trial Court in Special Civil Suit No.679 of 1996 awarding damages of Rs.37,923/- to the respondent/original plaintiff payable by the appellant/original defendant.

3. Respondent had filed suit for damages of Rs.37,923/-. He is owner and driver of the four wheeler which was insured with the appellant company. It met with an accident on 14.04.1996 and sustained damages. The respondent claimed damages from the appellant company, but no heed was paid. Therefore, suit was filed by the respondent contending that there was a valid insurance and valid licence with the respondent at the time of accident.

4. Appellant contested the suit on the ground that there was no valid licence at the relevant time. The licence of the respondent was expired. Under the contract, appellant was not liable to pay anything to the respondent.

5. Respondent examined himself and produced his licence at Exh.31 and insurance policy at Exh.32. Appellant examined one witness. Trial Court decreed the suit and awarded damages of Rs.37,923/- along with interest @ 18% p.a. vide judgment dated 16.02.1998. Being aggrieved, Regular Civil Appeal No.103 of 1998 was filed and it was dismissed on 09.11.1998.

6. While admitting Second Appeal, following substantial question of law was framed :

“Whether on the date of the accident, the driver of the vehicle was having effective licence meaning thereby, whether he was holding a licence on the date of the accident ?”

7. At the time of final hearing with the consent of the parties, additional substantial questions of law are framed. Both the parties showed readiness to work out the matter on the same date. They did not ask for time. Hence, with their consent, the matter was heard by framing following additional substantial questions of law :

“A) Whether the Hon'ble Civil Court has jurisdiction to decide the claim arising out of an accident in view of sections 166 and 175 of the Motor Vehicles Act ?

B) Whether the Hon'ble Lower Appellate Court is justified in deciding an appeal without passing any order on the production of additional evidence by way of document ?

C) Whether the Hon'ble Lower Court is justified in awarding an interest @ 18% p.a without framing any issue, as well without any discussion in the impugned judgment ?”

8. Learned counsel Mr. Totala appearing for the appellant submits that suit filed by the respondent is barred under Section 175 of Motor Vehicles Act (hereinafter referred to as

“Act” for sake of brevity and convenience). He would further submit that application Exh.3 which was submitted before Lower Appellate Court under Order 41 Rule 27 was not decided by the Appellate Court causing great prejudice to the appellant because vital documents were placed on record towards additional evidence. He would further submit that no reasons are assigned by both the Courts below for awarding interest @ 18% nor any issue to that effect was framed in the Trial Court. It is further submitted that it was mandatory for the respondent to have valid and effective licence which is under Section 3(1) as well as there is a term of the contract between appellant and the respondent which is misinterpreted by the Courts below.

9. Per contra, learned counsel Mr. Joshi would submit that the Civil Court has jurisdiction because this type of plea was not raised by the appellant in the Trial Court and conjoint reading of Section 166 read with 165(1) of the Act invests jurisdiction with the Civil Court. The additional evidence which was sought to be produced before the Lower Appellate Court could have been produced by the appellant in the Trial Court itself. There was no pleading to that effect. The additional evidence was not the fresh discovery. It is further submitted

that the respondent had applied for renewal of licence which was renewed from 25.07.1996. A renewal is mere a regularity. It is further contended that as per Section 15(1), the renewal has to be treated with effect from date of its expiry.

10. Appellant did not raise defence of want of jurisdiction in the written statement. Neither any issue was framed in the Trial Court nor point of determination is framed in the Lower Appellate Court. However, the objection is regarding the jurisdiction of the Civil Court which goes to the root of the matter, I permitted the appellant to address on the point. My attention is adverted to Section 175 which bars the jurisdiction of the Civil Court.

11. Learned counsel for the respondent has adverted my attention to Sections 165 and 166 of the Act. According to him, as per Section 165(1), the Claim Tribunal is established to decide claims of damages to any property of the third person arising out of the accident. In the present case, owner is the insured person who was driving the car and in accident the same was damaged. Therefore, it is not a case of damage to any property of a third person. I am unable to accept the submission of the respondent. The following provision is relevant :

“166. Application for compensation – (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made

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(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be ?”

12. A specific provision is made in the Act referred above for filing application for compensation by the owner of the property. Section 166(1)(b) covers the present case and the claim could have been filed before the Tribunal instead of approaching the Civil Court. As the claim was entertainable, bar under Section 175 is attracted. I am of the considered view that Civil Court had no jurisdiction.

13. Learned counsel for the appellant had rightly referred to the judgment of ***Harshad Chiman Lal Modi Vs. DLF Universal Ltd. and another ; (2005) 7 Supreme Court Cases 791.***

Following is the relevant paragraph :

“We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) Territorial or local

jurisdiction; (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity.”

For want of jurisdiction appellant is bound to succeed in the present second appeal.

14. It has come on record by the oral evidence of both the witnesses that the licence of the respondent had expired on 11.11.1995. The accident occurred on 14.04.1996. Within one month, no steps were taken by the respondent to renew the licence. He resorted to renewal after the accident which is candidly admitted by him in his cross-examination. The renewal was sought for on 25.07.1996 and it was renewed from 25.07.1996 upto 28.02.2000. When the accident took place, respondent was not holding valid licence. In this regard, it is relevant to notice following provision :

“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.”

15. The respondent did not apply for the renewal within 30 days from the date of expiry of the licence i.e. 11.11.1995. The first proviso comes into effect which renders the renewal of the licence from the date of renewal, not from the date of its expiry. The wordings of Section 15(1) are very specific. Both the Courts below failed to comprehend the literal meaning of the provision and arrived at patent illegality. Both the Courts below have given undue weightage to the fact that he was not disqualified from holding or obtaining the licence. This interpretation is erroneous one. Both the Courts below have not taken into account Section 15(1) of the Act.

16. The contract between the parties i.e. insurance policy is placed on record which is at Exh.32. It provides for effective driving licence at the time of accident. The word “and” is used in between two sentences. First part is about the obligation for a person driving vehicle to hold an effective licence at the time of accident and the next sentence is he should not be disqualified from holding or obtaining such licence. Both the Courts below interpreted “and” as “or” which is not the purport

of the term. The interpretation of the clause of the policy is patently illegal and perverse.

17. Learned counsel for the respondent has placed reliance on the judgment of *Pernod Ricard India (P) Ltd. Vs. The State of Madhya Pradesh and others*. The facts and circumstances of that judgment are distinguishable. It was a case of penalty under Foreign Liquor Rules. The Rule 19 of 1996 Rules provided rigorous penalty of four times for the deficiencies in excess of the limit prescribed under the rules. On 29.03.2011, Rule 19 was substituted and comparatively venial penalty was brought into force. The question before the Court was that the demand notice was given to a person after the amendment was brought into force. The rule is held to be retroactive. This judgment will not help the respondent.

18. Appellant filed application Exh.3 under Order 41 Rule 27 seeking to produce additional evidence. The application was not considered either way by the Lower Appellate Court. The Lower Appellate Court should have dealt with the application at the time of final hearing, but I hold it to be irregularity. I have considered the contents of the application and the documents which were sought to be produced. There is no valid explanation with the appellant as to why those were not

produced before the Trial Court. Those are not the new discovery of the evidence. Therefore, even if the application Exh.3 has not been dealt with, I do not think that any prejudice can be said to have been caused to the appellant.

19. Both the Courts below did not assign any reason for awarding 18% interest. They should have assigned some reasons for imposing the extreme interest on the appellant. However, payment of interest is consequential one. Unless the respondent proves his entitlement to receive the amount, the payment of interest would not come into picture.

20. For the reasons stated above, we find force in the submissions of learned counsel for the appellant. The substantial question of law in respect of the licence and bar of jurisdiction of the Civil Court will have to be answered in favour of the appellant and the question in respect of additional evidence will have to be answered against the appellant. As I have concluded that respondent is not entitled to compensation, the last substantial question becomes redundant.

21. For the reasons stated above, second appeal is allowed.

22. Impugned judgment and decree passed by Lower Appellate Court and Trial Court are quashed and set aside.

23. Special Civil Suit No.679 of 1996 stands dismissed.

(SHAILESH P. BRAHME, J.)

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