IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.845 of 2001
and C.M.P.No.1300 of 2010

1.Muniammal

2.Saravanan (Minor)

3.Sarala (Minor)

4.Ranjit Kumar (Minor)

5.Lakshmi Ammal ... Appellants

(Minor Appellants 2 to 4 are rep. by M & N.F. Muniammal)

vs.

1.Srinivasa Rao

2.The National Insurance Co. Ltd.,
No.751, Anna Salai, Chennai – 6. ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, to set aside the order dated 06.10.1999 in W.C.No.251/1997 on the file of the Commissioner for Workmen's Compensation-II, Chennai – 6 and pass an award for a sum of Rs.1,95,113/-

against the Respondents payable by the second respondent with interest at the rate of 12% per annum from the date of accident.

For Appellants	:	Mr.A.Shanmugaraj
For R2	:	M/s.R.Sree Vidhya
For R1	:	Notice Dispensed With

JUDGMENT

The claimants in Workmen's Compensation Claim Petition are the appellants.

2. The husband of the 1st claimant, father of the claimants 2 to 4 and son of the 5th claimant namely Ganesan, who was employed as a Driver under the 1st respondent died in a road accident involving the lorry belonged to the 1st respondent insured with the 2nd respondent. A claim petition was filed by the claimants seeking compensation of Rs.3,00,000/- under the Workmen's Compensation Act on the ground that accident had occurred during the course of his employment with the 1st respondent.

3. The 1st respondent-owner of the lorry remained *exparte* before the Commissioner and the claim petition was opposed by the 2nd respondent-Insurer mainly on the ground that there was a violation of policy conditions. The 2nd respondent also denied the averment found in the claim petition that accident had occurred during the course of his employment. In the additional counter affidavit filed by the 2nd respondent it was stated that at the time of accident, the deceased did not hold effective driving licence to drive the goods vehicle.

4. Before the Commissioner for Workmen's Compensation-II, the 1st claimant was examined as AW.1 and 7 documents were marked on behalf of the claimants as Exs.A1 to A7. On behalf of the 2nd respondent, an Official of the Insurance Company was examined as RW.1 and a Junior Assistant from RTO Office was examined as RW.2. On behalf of the 2nd respondent, 4 documents were marked as Exs.R1 and R4.

5. Based on the evidence available on record, the Commissioner came to the conclusion that accident had occurred during the course of employment with the 1st respondent. The Commissioner also came to the

conclusion that on the date of accident there was no valid driving licence and hence, policy conditions were violated. Accordingly, the claim petition was dismissed as against the 2nd respondent by holding that it was not liable to pay compensation. The 1st respondent-owner of the vehicle was directed to pay a sum of Rs.1,95,113/- to the claimants. Aggrieved by the same, the claimants have come before this Court.

6. The learned counsel appearing for the appellants/claimants vehemently contended that though driving licence got expired on 13.08.1994, the same was subsequently renewed with effect form 01.11.1996 (i.e., the date of accident). Therefore, according to him, the finding of the Commissioner that there was no valid driving licence on the date of accident was not correct in the light of the endorsement made in the driving licence. The learned counsel further submitted that as per the Insurance Policy, the 2nd respondent collected extra premium amount of Rs.60 towards personal coverage for the driver/cleaner and therefore, the 2nd respondent is liable to pay atleast the minimum amount as per personal accident coverage.

7. The learned counsel appearing for the 2nd respondent/Insurance Company would submit that as per renewal endorsement made in the driving licence, it was made by RTO only on 04.11.1996 subsequent to the death of holder of driving licence. The learned counsel further submits that in view of the violation of policy conditions, the 2nd respondent is not at all liable to pay any amount.

8. In order to prove that on the date of accident, there was an effective driving licence, the claimants marked the driving licence of the deceased as Ex.A3. A perusal of the same would indicate that the driving licence got expired on 13.08.1994. The accident had taken place on 01.11.1996 nearly after two years from the date of expiry of the driving licence. The last endorsement in the driving licence would indicate that the Competent Authority namely Assistant Licencing Authority made an endorsement on 04.11.1996 renewing the driving licence from 01.11.1996 to 31.10.1999. Based on this endorsement, the learned counsel appearing for the appellants submits that there was a valid driving licence on the date of accident. It is contended by him that the deceased appeared before the RTO, even before the accident on 01.11.1996. After completing formalities, endorsement was

made by the Statutory Authority only on 04.11.1996 giving effect to the renewal from 01.11.1996.

9. A perusal of Ex.A1-FIR would indicate that the accident had occurred on 01.11.1996 at 6.00 a.m. Therefore, it could not have been possible for the deceased to appear before the RTO on 01.11.1996 prior to the accident and complete the formalities for renewal before the accident. It is common knowledge that RTO Office will be opened only by 10.00 a.m., onwards. A close scrutiny of driving licence would indicate the renewal endorsement was made by RTO only on 04.11.1996, 3 days after the accident, when the holder of driving licence was not at all alive. Therefore, the contention raised by the learned counsel appearing for the appellants that deceased appeared before the RTO on the fateful day prior to the accident and completed formalities for renewal is not acceptable to this Court in the light of the concrete evidence available before this Court namely Exs.A1 and A3.

10. The finding rendered by the Commissioner that there was no driving licence on the date of accident is based on proper appreciation of

evidence available on records and the same is confirmed.

11. As far as the personal accident coverage relied on by the learned counsel for the appellant in IMT – 17 (Indian Motor Traffic-17), which was part of the policy reads as follows:-

"IMT - 17 LEGAL LIABILITY TO PERSONS EMPLOYED IN CONNECTION WITH THE OPERATION AND / OR MAINTAINING AND / OR UNLOADING OF GOODS CARRYING COMMERCIAL VEHICLES

In consideration of the payment of an additional premium it is hereby understood and agreed that notwithstanding anything contained herein to the contrary the Company shall indemnify the Insured against his legal liability under the Workmen's Compensation Act, 1923 and subsequent amendments of that Act prior to the date of this Endorsement the Fatal Accidents Act, 1855 or at Common Law in respect of personal injury to any paid driver or cleaner or persons employed in loading / or unloading but in any case not exceeding seven in number including driver and cleaner whilst engaged in the service of the Insured in such occupation in connection with the goods carrying commercial Vehicle and will in addition be responsible for all costs and expenses incurred with its written consent.

The premium have been calculated at the rate of Rs.15/- per driver and or cleaner and or person employed in loading and / or unloading but not exceeding seven in number including driver and cleaner.

Provided always that

(1) this Endorsement does not indemnify the insured in respect of any liability in cases where the Insured holds or subsequently effects with any Insurance Company a Policy of Insurance in respect of liability as herein defined for his general employees.

(2) the Insured shall take reasonable precautions to prevent accidents and shall comply with all statutory obligations.

(3) the Insured shall keep a record of the name of each driver cleaner conductor or person employed in loading and / or unloading and the amount of wages salary and other earnings paid to such employees and shall at all times allow the Company to inspect such record.

(4) In the event of the Policy cancelled at the request of the Insured no refund of the Premium paid in respect of this Endorsement will be allowed.

Subject otherwise to the terms exceptions conditions and limitations of this Policy."

12. A close scrutiny of the same would indicate that insured has a duty to comply with the statutory obligations. In the case on hand, it is needless to say that under the Motor Vehicles Act, all drivers of the motor vehicles are entitled to drive the vehicle only after obtaining valid driving licence.

13. In the case on hand, the driving licence of the driver expired two years prior to the date of accident and the owner was negligent in not verifying the same. Therefore, there is a clear violation of statutory obligation and in view of the IMT-17, the insurer is not liable to pay even personal accident coverage.

14. In ***Beli Ram vs. Rajinder Kumar and another*** reported in ***AIR 2020 Supreme Court 4453***, while considering similar case, the Apex Court observed as follows:-

> *"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."

15. In the above mentioned case, the High Court exonerated the Insurance Company mainly on the ground that driving licence was not renewed and the owner of the vehicle failed to verify the same. The finding of the High Court was affirmed by the Apex Court and dismissed the appeal.

16. The facts of ***Beli Ram*** case cited supra are squarely applicable to the facts of the present case. Here also the driving licence expired two years back. The grace period for renewal of licence is fixed as 30 days. The owner of the heavy vehicle namely the lorry failed to verify whether his driver has renewed the licence as per the statutory obligation. In the present case also

claim arises under Workmen's Compensation Act but not under Motor Vehicles Act, as in the case of ***Beli Ram*** case. Therefore, applying the law laid down by the Apex Court in ***Beli Ram*** case, this Court holds that the 2nd respondent-Insurance Company is not liable to pay any compensation due to the violation of policy conditions. Accordingly, the award passed by the Commissioner is affirmed.

17. The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

26.03.2025

Index :Yes
Speaking order :Yes
Neutral Citation :Yes
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To

1.The Commissioner for Workmen's Compensation-II,
Chennai – 6.

2.The National Insurance Co. Ltd.,
No.751, Anna Salai, Chennai – 6.

3.The Section Officer,
VR Section, High Court, Madras.

S.SOUNTHAR, J.

dm

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