**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

134

FAO-845-2024 (O&M)
Date of decision : 13.05.2025

Future Generali General India Insurance Company Ltd.
...... Appellant

versus

Smt. Sunita Devi and others ...... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Vishal Aggarwal, Advocate and
Mr. Hritik Sharma, Advocate
for the appellant.

Mr. Shivam Sharma, Advocate for
Mr. Ashish Gupta, Advocate
for respondents No.1, 3 & 4/Caveator.

****

PANKAJ JAIN, J. (Oral)

1. Insurance company is in appeal against order dated 02.11.2023 passed by Commissioner Circle IV, Gurugram under Employees Compensation Act, 1923.

2. Though, the Tribunal has returned the finding that the driver was not possessing a valid driving license on the date of accident, but the appellant-insurance company has been held liable to pay compensation at the first instance and thereafter to recover from the employer.

3. Insurance company is aggrieved of the observations made by Commissioner to the effect that they have been directed to pay compensation. Reliance is being placed on ratio of law laid down by Supreme Court in the case of ***Beli Ram vs. Rajinder Kumar and***

another 2020 AIR (Supreme Court) 4453.

4. Counsel for the respondents-claimants submits that in the present case, the license expired on 31.03.2022 and the date of accident is 23.05.2022. Thus, it is not a case wherein there was a long time gap. Reliance is being placed upon observations made by Supreme Court in para 15 of the ***Beli Ram's case (supra)*** which read as under:-

> "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 Singh5 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."

5. In the considered opinion of this Court, the observations made in para 15 *ibid*, is not the ratio and thus, cannot be held to be binding precedents. Ratio of law has been laid down in para 17 to para 23 which reads as under:-

> 17. We now turn to the views of some of the High Courts, which have come to our notice on our own research.
>
> 18. The Delhi High Court in ***Tata AIG General Insurance Co. Ltd. v. Akansha & Ors., 2015 SCC OnLine 6758 : (2015) 2 TAC 52*** found that the driving licence having expired led to the natural finding that there was no valid

driving licence on the date of the accident. The initial onus was discharged by the insurance company in view of the licence not being valid on the date of the accident. The onus, thereafter, shifted to the owner/insured to prove that he had taken sufficient steps to ensure that there was no breach of the terms and conditions of the insurance policy. Since no evidence had been led in this behalf, a presumption was drawn that there was willful and conscious breach of the terms and conditions of the insurance policy.

19. The Allahabad High Court in ***The Oriental Insurance Co. Ltd. v. Manoj Kumar & Ors., (2015) 111 ALR 275*** (authrotised by Krishna Murari, J., as he then was) again dealt with the case of an expired driving licence. The endeavour to rely on the principle set forth in a fake licence case was held not applicable in the case of an expired licence since the owner was supposed to be aware that the driving licence of the driver had expired and, thus, it was held that it was the duty of the owner to have ensured that the driver gets the licence renewed within time. In the absence of a valid driving licence, the vehicle was being driven in breach of the condition of the policy, requiring the vehicle to be driven by a person who is duly licensed, and thus, there was breach of Section 149(2)(a)(ii) of the MV Act, the consequence being that the insurance company could not he held liable.

20. The last judgment is of the Himachal Pradesh High Court in ***National Insurance Co. Ltd. v. Hem Raj & Ors., 2012 ACJ 1891*** (authorised by Deepak Gupta, J., as he then was). 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 (supra) 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 (supra) 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 10 (supra) 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 employees 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 (supra) case.

23. When we turn to the facts of the present case there is almost an identical situation where the appellant has permitted to let the first respondent driver drive the truck with an expired licence for almost three (3) years. It is clearly a case of lack of reasonable care to see that the employee gets his licence renewed, further, if the original licence is verified, certainly the employer would know when the licence expires.And here it was a commercial vehicle being a truck. The appellant has to, thus, bear responsibility and consequent liability of permitting the driver to drive with an expired licence over a period of three (3) years. 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.

The only exception is in the provisos to Section 3 of the Compensation Act, which is not the factual situation in the present case. The relevant provision reads as under:

"3. Employer' s liability for compensation.-

(1) If personal injury is caused to a workman by

> accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:
>
> Provided that the employer shall not be so liable--
>
> (a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding [four] days;
>
> (b) in respect of any [injury, not resulting in death, caused by] an accident which is directly attributable to--
>
> (i) the workman having been at the time thereof under the influence of drink or drugs, or
>
> (ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or
>
> (iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen."
>
> We are not aware whether any other proceedings have been initiated or not, at least, none that have been brought to our notice. The aforesaid findings of the initial lack of care by the first respondent in not renewing the driving licence would be present, but the lack of care of the appellant as the employer would also arise. 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."

5. Admittedly, the deceased was not holding valid license on the date of accident.

6. In view of thereof, in the light of the ratio of law laid

down in ***Beli Ram's case (supra)***, Commissioner erred in holding appellant-insurance company liable to indemnify the claim of the applicant and recover the same from respondent No.1.

7. As a consequence, appellant-insurance company is exonerated from its liability. Claimants are free to get award executed against the employer.

8. Disposed off, accordingly.

9. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

13.05.2025
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No