

Ishwar Chandra & Ors vs The Oriental Insurance Co. Ltd. & Ors on 8 March, 2007

Equivalent citations: AIR 2007 SUPREME COURT 1445, 2007 (10) SCC 650, 2007 AIR SCW 1889, 2007 (3) ALL LJ 374, 2007 (3) AIR KAR R 254, (2007) 37 OCR 183, (2007) 2 CLR 101 (SC), (2007) 2 JCC 1109 (SC), (2007) 3 JCR 18 (SC), 2007 (2) CLR 101, 2007 (2) JCC 1109, 2007 (4) SCALE 292, 2007 (2) JKJ 25, (2007) 52 ALLINDCAS 61 (SC), 2008 (1) SCC (CRI) 591, (2007) 4 MAD LJ 557, (2007) 2 JLJR 152, (2007) 2 CURCC 225, (2007) 2 ACJ 1067, (2007) 2 PUN LR 70, (2007) 2 ACC 63, 2007 WLC(RAJ)(UC) 357, (2007) 2 RECCIVR 370, (2007) 4 SCALE 292, (2007) 2 WLC(SC)CVL 109, (2007) 67 ALL LR 316, (2007) 3 ANDH LT 35, (2007) 3 CIVLJ 461, (2007) 2 MAD LW 733, (2007) 2 TAC 393, (2007) 2 RAJ CRI C 591, (2007) 2 PAT LJR 168, (2007) 3 SUPREME 65, (2007) 2 UC 1325

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Bench: S.B. Sinha, Markandey Katju

CASE NO.:

Appeal (civil) 1213 of 2007

PETITIONER:

Ishwar Chandra & Ors

RESPONDENT:

The Oriental Insurance Co. Ltd. & Ors

DATE OF JUDGMENT: 08/03/2007

BENCH:

S.B. Sinha & Markandey Katju

JUDGMENT:

J U D G M E N T [Arising out of SLP (Civil) No. 16437 of 2006] S.B. SINHA, J :

Leave granted.

One Reshma Devi, aged about 40 years, was going to take bath at Rajghat Ganga with her son, Respondent No.3 herein. Driver of an Eicher Tractor bearing Registration No. U.P.30/8423 was driving the said vehicle rashly and negligently hit her as a result whereof, she fell down. She died on 01.05.1995. A claim petition under Section

166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by Respondent No. 2 herein. The said tractor was insured with Respondent No.1, the Insurance Company.

The Motor Accidents Claims Tribunal by an award dated 14.10.2004 determined the amount of compensation payable to the said respondent at Rs.1,06,000/-. Out of the said amount, a sum of Rs.75,000/- was to be paid to Respondent No. 2 (husband of the deceased) and Rs.31,000/- to her son, Respondent No.3 herein.

Respondent No.1, however, preferred an appeal thereagainst, which was dismissed by an order dated 24.01.2005, stating :

"We, therefore, while dismissing the aforesaid appeal give liberty to the appellant to initiate appropriate proceedings against the owner and driver of the vehicle for realization of the amount, which is to be paid by the Insurance Company in terms of the award to the third party-claimant subject to establishing its case before the Tribunal.

We further provide that the amount, which is in deposit before this Court as well as before the Tribunal shall be allowed to be withdrawn by the claimants/respondents. The balance amount shall be deposited by the Insurance Company within two months from today before the Tribunal. On deposit so being made, the claimants/respondents shall be allowed to withdraw the same also without furnishing any security.

It will, however, be open to the Insurance Company to recover the amount in question from the insured. For the purpose of recovering the same from the insured owner of the vehicle, the insurer shall not be required to file a suit. It may initiate a proceedings before the Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. It is further directed that before releasing the amount, the insured owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount, which the insurer will pay to the claimants. This observation is in consonance with the view taken by the Apex Court in case of Oriental Insurance Co. Ltd. Vs. Nanjappan and Others, AIR 2004 SC page 1630."

Respondent No.1, however, filed an application for review of the said order, inter alia, on the premise that as on the date of the accident, admittedly, the driver was not holding any valid licence in terms of the judgment of this Court in National Insurance Company Limited v. Swaran Singh and Others [(2004) 3 SCC 297]. Relying on or on the basis of the decision of this Court in Oriental Insurance Co. Ltd. v. Nanjappan and Others [AIR 2004 SC 1630], the said application for review was dismissed.

The learned counsel appearing on behalf of the appellants would submit that although the licence held by the driver of the tractor expired on 27.08.1994, the same later on having been renewed, the Insurance Company was liable to reimburse the amount of compensation payable by the appellants to the claimant-respondents.

The learned counsel appearing on behalf of the respondents, however, supported the impugned judgment.

Section 15(1) of the Act and the first proviso appended thereto reads as under :

"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:

Provided that in any case where the application for the renewal of a licence is made more than thirty days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal:"

From a bare perusal of the said provision, it would appear that the licence is renewed in terms of the said Act and the rules framed thereunder. The proviso appended to Section 15(1) of the Act in no uncertain terms states that whereas the original licence granted despite expiry remains valid for a period of 30 days from the date of expiry, if any application for renewal thereof is filed thereafter, the same would be renewed from the date of its renewal. The accident took place 28.04.1995. As on the said date, the renewal application had not been filed, the driver, did not have a valid licence on the date when the vehicle met with the accident.

In Swaran Singh (supra), whereupon the learned counsel appearing on behalf of the appellants relied upon, it is stated :

"45. Thus, a person whose licence is ordinarily renewed in terms of the Motor Vehicles Act and the Rules framed thereunder, despite the fact that during the interregnum period, namely, when the accident took place and the date of expiry of the licence, he did not have a valid licence, he could during the prescribed period apply for renewal thereof and could obtain the same automatically without undergoing any further test or without having been declared unqualified therefor. Proviso appended to Section 14 in unequivocal terms states that the licence remains valid for a period of thirty days from the day of its expiry.

46. Section 15 of the Act does not empower the authorities to reject an application for renewal only on the ground that there is a break in validity or tenure of the driving licence has lapsed, as in the meantime the provisions for disqualification of the driver contained in Sections 19, 20, 21, 22, 23 and 24 will not be attracted, would indisputably confer a right upon the person to get his driving licence renewed. In that view of the matter, he cannot be said to be delicensed and the same shall remain valid

for a period of thirty days after its expiry."

This aspect of the matter is now covered by a decision of this Court in National Insurance Company v. Kusum Rai & Others [(2006) 4 SCC 250], wherein this Court referring to Swaran Singh (supra), opined :

"14. This Court in Swaran Singh clearly laid down that the liability of the Insurance Company vis-à-vis the owner would depend upon several factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle. The question as regards the liability of the owner vis-à-vis the driver being not possessed of a valid licence was considered in Swaran Singh stating: (SCC pp. 336-37, para

89)

89. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section (2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are: (a) motorcycle without gear, (b) motorcycle with gear, (c) invalid carriage,

(d) light motor vehicle, (e) transport vehicle, (f) road roller, and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10. They are goods carriage, heavy goods vehicle, heavy passenger motor vehicle, invalid carriage, light motor vehicle, maxi-cab, medium goods vehicle, medium passenger motor vehicle, motor-cab, motorcycle, omnibus, private service vehicle, semi-trailer, tourist vehicle, tractor, trailer and transport vehicle. In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence for motorcycle without gear, [sic may be driving a vehicle] for which he has no licence. Cases may also arise where a holder of driving licence for light motor vehicle is found to be driving a maxi-cab, motor-cab or omnibus for which he has no licence. In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence."

[See Nanjappan (supra)] In this view of the matter, there is no merit in this appeal, which is dismissed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.