

GAHC010031732017



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : MACApp./373/2017**

SRI MANOJ KUMAR JAIN  
S/O LATE PRAKASH CH. JAIN, R/O VILL. and P.O. BIJOY NAGAR, P.S.  
PALASHBARI, DIST. KAMRUP, ASSAM.

VERSUS

SMT PAYARI DEVI and 5 ORS  
W/O SRI NATHUNI SINGH, R/O HOUSE NO. 9, GANGA CHAPPAR, P.O.  
MUSHCHARI BAZAR, P.S. BIJOYPUR, DIST. GOPALGUNJ, BIHAR

2:SMT. SUNITA DEVI

D/O SRI NATHUNI SINGH  
R/O HOUSE NO. 9  
GANGA CHAPPAR  
P.O. MUSHCHARI BAZAR  
P.S. BIJOYPUR  
DIST. GOPALGUNJ  
BIHAR

3:JYOTI RAI

D/O SRI SRI NATHUNI SINGH  
R/O HOUSE NO. 9  
GANGA CHAPPAR  
P.O. MUSHCHARI BAZAR  
P.S. BIJOYPUR  
DIST. GOPALGUNJ  
BIHAR

4:JANKI RAI

D/O SRI NATHUNI SINGH  
R/O HOUSE NO. 9  
GANGA CHAPPAR  
P.O. MUSHCHARI BAZAR  
P.S. BIJOYPUR  
DIST. GOPALGUNJ  
BIHAR.

5:AKASH RAI

S/O SRI NATHUNI SINGH  
R/O HOUSE NO. 9  
GANGA CHAPPAR  
P.O. MUSHCHARI BAZAR  
P.S. BIJOYPUR  
DIT. GOPALGUNJ  
BIHAR

6:UNITED INDIA INSURANCE CO. LTD.

HAVING ITS REGISTERED / HEAD OFFICE AT UNITED INDIA HOUSE 24  
WHITES ROADS  
CHENNAI AND REGIONAL DIVISIONAL AND BRANCH OFFICES AT  
SEVERAL PLACES  
INCLUDING THE CONCERNED BRANCH OFFICE BEING BIJOY NAGAR  
BRANCH AT BIJOY NAGAR 781122 IN THE DIST. OF KAMRUP  
ASSAM

**Advocate for the Petitioner** : MR.B K JAIN, MS A BORBHUYAN

**Advocate for the Respondent** : MR. K K BHATTA, MS R DEVI

**:::BEFORE:::**

**HON'BLE MRS. JUSTICE MITALI THAKURIA**

Date of hearing : 23.04.2024

Date of Judgment & Order : 31.07.2024

## **JUDGMENT & ORDER (CAV)**

Heard Mr. B. K. Jain, learned counsel for the appellant. Also heard Mr. K. K. Bhatta, learned counsel for the respondents.

**2.** This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 13.02.2017, passed by the learned Member, Motor Accident Claims Tribunal No. 3, Kamrup(M), Guwahati, in MAC Case No. 2122/2012.

**3.** In brief, the case of the appellant is that the respondent Nos. 1 to 5, as claimants, had filed a claim petition under Section 166 of the Motor Vehicles Act, which was registered as MAC Case No. 2122/2012, before the learned Member, Motor Accident Claims Tribunal No. 3, Kamrup(M), Guwahati, wherein the present appellant/owner cum driver of offending vehicle was made as opposite party No. 1 and the present respondent No. 6/insurer as opposite party No. 2 for grant of compensation on account of death of Late Karan Singh in the motor vehicle accident which took place on 27.10.2012 near Dharapur Petrol Pump on NH-37. It is alleged that the accident took place due to rush and negligent driving of the offending vehicle which dashed against the motor cycle of the deceased bearing Registration No. AS-01/MA 2789. Accordingly, the present appellant/owner cum driver and the insurer/respondent No. 6 also appeared in the said case on receipt of the notice and contested the same by filing their Written Statements.

**4.** The present appellant took all general plea besides denying the negligence in driving vehicle and it is stated *inter alia* that the said vehicle was duly insured

with United India Insurance Co. Ltd., Bijoy Nagar Branch vide Policy No. 130202/31/12/ 00000 and the said policy was valid and subsisting on the date of the accident. Apart from that, the owner cum driver also filed his driving license issued by the DTO (R & L), Kamrup, Guwahati and the same was also valid till 21.10.2021.

**5.** The insurer/respondent No. 6 also filed their written statement denying the claim of the claimants, but it was admitted that the said vehicle (Maruti Car) bearing Registration No. AS-01-K-8841 was duly insured by the company. More so, the insurer has not specifically denied that the driver of the said vehicle was not having valid license at the time of the alleged incident.

**6.** Accordingly, the learned Member, MACT, disposed of the said case after recording the evidence etc. on 13.02.2017, whereby the learned Tribunal had passed an award of Rs. 6,36,500/- in favour of the claimants along with interest @ 6% per annum with a direction that the insurance company will pay the compensation amount which they would recover from the owner of the vehicle in due course of time. But, during the evidence of the claimant, Smti Payari Devi, who examined herself as PW1, she exhibited the documents wherein the particulars of the driving license of the owner cum driver of the offending vehicle were also brought on record mentioning that the license was dated 22.10.2007 and valid up to 21.10.2021. In her cross-examination also, she was never put to any question regarding the validity of the driving license of the owner cum driver nor any suggestion was made to her denying the validity of the driving license and in the same time, the insurer also did not give any suggestion challenging the validity of the driving license of the owner cum

driver. Thus, the appellant was under impression that as the vehicle is duly insured under the respondent No. 6/Insurance Company and his driving license was also valid at the relevant time of incident as well as there was no challenge made by the other side regarding the validity of the driving license, the insurer of his vehicle would be directed to pay the compensation. But, after obtaining the certified copy of the judgment and award, he was surprised to know that the insurance company was directed to pay the awarded compensation amount provided that they would recover the amount from the owner of the vehicle in due course of time.

**7.** Subsequently he came to know that after completion of evidence of the PW1, the insurer had filed an Additional Written Statement on 14.06.2016, whereby an additional plea was taken that the Driving License No. 3597-94-EZ-K-V20, issued by DTO Kamrup in favour of his vehicle, was expired on 23.10.2012, i.e. much before the date of accident i.e. on 27.10.2012 and the same was also verified by the Office of the DTO and as such, the said driving license was not valid and effective at the time of accident. Thus, it was pleaded that there was violation in the policy condition as well as the statutory provision of motor vehicle and therefore, the insurance company is not liable to pay any compensation. But the copy of the Additional Written Statement, on the basis of which the appellant was directed to pay the compensation, was not furnished to the counsel for the present appellant. The learned Tribunal after accepting the Additional Written Statement ought to have furnished a copy of the same to the driver cum owner and also should have framed additional issue as to whether the driver of the said vehicle had a valid and effective driving license on the date of accident. However, the DTO was examined as DW3 by the insurance

company along with other witnesses.

**8.** It is further stated that all the 3 (three) witnesses of the insurance company had stated that the present appellant/owner cum driver had no effective driving license on the date of accident inasmuch as the said license was effective from 22.10.2007 to 23.10.2012. However, the DWs were not cross-examined by the present appellant/the driver-cum-owner as he was under impression that he produced the valid driving license before the learned Member, MACT, which was effective from 22.10.2007 to 21.10.2021, and the same was filed along with the Written Statement of the owner-cum-driver.

**9.** It is submitted by Mr. Jain, learned counsel for the appellant, that the driving license issued against the present appellant was valid from 22.10.2007 to 21.10.2021 and they have also taken their plea in their Written Statement that as the license was valid up to 2021, the driver-cum-owner had *bona fide* belief that it is valid up to 21.10.2021. He further submitted that if there is any typographical or printing error about the year of validity in his license and he might have ignored it all along, but he is not responsible for the same as he was under *bona fide* belief that the license was valid from 21.10.2007 till 21.10.2021.

**10.** Mr. Jain, further submitted that as per Section 14 of the Motor Vehicle Act, the driving license can be renewed within 30(thirty) days from its expiry and it remains to be valid for the said period of 30(thirty) days. The non-renewal of his driving license by the owner-cum-driver within 30(thirty) days of the alleged expiry of his license on 23.10.2012 also goes to show his *bona fide* belief that

his license was valid till 21.10.2021. Moreso, as per proviso of Section 14(2) of Motor Vehicle Act, the driving license shall notwithstanding its expiry, continue to be effective for a period of 30(thirty) days from such expiry. Thus, under the said provision of law also, even if it is assumed that the driving license of the owner-cum-driver had expired on 23.10.2012 in that case also, the driving license was effective on the date of accident on 27.10.2012 and as such there is no violation of the policy condition as under the above circumstances.

**11.** However, the owner-cum-driver could not take the plea of genuineness of the driving license issued to him due to *bona fide* mistake on the part of the advocate who failed to take proper steps in leading proper evidence and also failed to cross-examine the DWs. Further, it is submitted that from the Exhibit-1, i.e. the Accident Information Report in Form-54, and Seizure List [Exhibit-2(2)], MVI Report [Exhibit- 2 (3)], it clearly disclosed that the owner-cum-driver had a valid driving license on the date of accident. The existence, genuineness, admissible and the contents of the said documents was also never challenged by the respondent/the insurer. He further submitted that the appellant was directed to pay the compensation award even after possession of the valid driving license and as such, he will be highly prejudiced and there will be gross failure of justice. Thus, he submitted that it is a fit case where the opportunity may be given to the owner-cum-driver for the limited purpose of recording the relevant evidences in the matter of the validity of the driving license in question either before this Court or by remanding the case before the learned tribunal.

**12.** Mr. Jain further submitted that the learned Member, MACT overlooked and ignored the fact that in an accident case, the evidence should not be securitized

in a manner as done in a civil suit or a criminal case as it is a summary enquiry and if there is some evidence to arrive at a finding, that itself is sufficient and accordingly, it is submitted that the impugned judgment and award passed by the learned Member, MACT No. 3, Kamrup (M), Gauhati in MAC Case No. 2122/2012 is liable to be set aside and the Insurance Company may be directed to pay the entire compensation award.

**13.** He further submitted that as per the provision of Section 14 of the Motor Vehicle Act, the license originally issued or a renewal thereof had to be issued would be effective for a period of 20 years or until the person obtaining such license attains the age of 50 years, whichever is earlier. In the instant case, the date of birth, as per the license of the present appellant, is 18.08.1967 and thus, he was attaining his age of 50 years only on 18.08.2017. In view of this provision also, the license issued in the year 2012 would be valid otherwise up to 18.08.2017. So, considering the entire facts and circumstances of the case, mainly the license issued by DTO which was shown to be valid up to 21.10.2021, covers the date of accident. And, in otherwise also, as per provision of Section 14 (2) of the Motor Vehicle Act, the license of the appellant will be considered to be valid up to 30 days even from the date of expiry if it is assumed that the license was expired on 23.10.2012. In this context, Mr. Jain relied on a decision of Apex Court reported in **(2018) 6 SCC 342 (Compaq International & Anr. Vs. Bajaj Allianz General Insurance Company Limited & Anr.)** wherein also, the Apex Court had expressed the view that as per proviso of Section 14(2)(b), the license would be effective for a period of 20 years from the date of such issue or renewal until the date on which the person attains 50 years, whichever is earlier.



**14.** Mr. Jain also relied on the decision of 3(three) Judges Bench of Apex Court reported in **(2004) 1 SCC 497**, wherein it has been held that “*Court must give the opposite party an opportunity to contest the amendment and give its decision thereon – Where court allowed the amendment application without affording any opportunity to the opposite party and simultaneously passed a decree not only based on the amended plea but exceeding it, held, procedure was wholly illegal.*”

**15.** In this context, Mr. K. K. Bhatta, learned counsel for the respondent No. 6, has submitted that the DWs were examined on the point of validity of the driving license of the present appellant. However, the appellant sides neither cross-examine the DWs nor filed any Written Objection against the Additional Written Statement filed by the Insurance Company, wherein they specifically took the plea regarding the validity of the driving license at the relevant time of incident. Moreso, there is no prove or there is any evidence to show that they applied for renewal of license within 30 days from the date of expiry of his license. He further submitted that as per the records maintained by the Office of DTO, the license was only valid up to 23.10.2012 and hence, the chance of manipulation also cannot be denied at this stage and thus, such plea cannot be taken at this stage. However, he submitted that the matter may be remanded back to the learned Court below giving an opportunity to the present appellant to take their defence or to place their evidence in that regard. He further submitted that the Additional Written Statement was filed with a specific plea in regards to the validity of the driving license of the owner-cum-driver and as per the records of the DTO, the license was effective from 22.10.2007 and it was

valid up to 23.10.2012 and the alleged incident took place on 27.10.2012, i.e. after the expiry of the validity of driving license. So, they took the specific plea in the written statement that as the appellant did not have a valid license at the relevant time of incident, they violated the terms and conditions of the policy and thus, the Company is not at all liable to pay compensation for the alleged accident.

**16.** Mr. Bhatta further relied on the decision of Apex Court reported in **2007 AIR (SC) 1445 (Ishwar Chandra & Ors. Vs. Oriental Insurance Co. Ltd. & Ors.)**, wherein it has been held that despite expiry of license, it 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 and as on the said date, the renewal application has not been filed, it cannot be considered that the driver had a valid license on the date of accident. He mainly stressed on the paragraph Nos. 9 & 10 of the judgment, which read as under:

*"9. 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.*

*10. 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."*

**17.** Accordingly, it is submitted by Mr. Bhatta that from the facts and circumstances of this case, it is seen that the driving license was not valid at the relevant time of incident nor there is any evidence to show that the appellant applied for renewal on or before 30 days of the accident. However, he submitted that the matter may be remanded back before the learned Member, MACT and the appellant may be given one more chance to defend his case in that regard.

**18.** After hearing the submissions made by the learned counsel for both sides, I have perused the case record and the relevant documents filed along with appeal memo, viz-a-viz the judgment of the learned Member, Motor Accident Claims Tribunal No. 3, Kamrup(M), Guwahati.

**19.** The appeal is filed challenging the judgment and award dated 13.02.2017, passed by the learned Member, Motor Accident Claims Tribunal No. 3, Kamrup(M), Guwahati only on the ground of validity of the driving license of the appellant/ owner-cum-driver of the vehicle. The accident, viz-a-viz the award, is not challenged in the appeal. However, it is claimed by the present appellant

that at the relevant time of incident, he had a valid driving license and hence, the learned Member, MACT ought to have considered these aspects of the case and he should not be liable to make any payment on the awarded amount as it is the admitted fact that the vehicle was duly ensured under the respondent No. 6 at the relevant time of incident. Further, it is the claim of the appellant that he filed his driving license along with his Written Statement and the PW-1/ claimant also exhibits some documents at the time of her evidence, but she was not cross-examined in regards to the validity of the driving license nor any suggestion was put to her in that regard. Further, it is the claim of the appellant that they were not provided with the copy of the Additional Written Statement and due to non-availability of the proper instruction, the appellant was under impression that he had a valid driving license at the relevant time of incident and the vehicle was duly ensured under the respondent No. 6 and hence, he is not liable to pay any compensation in that regard. But it is a fact that he could not avail the opportunity to cross-examine the DWs adduced by the respondent No. 6, wherein the DTO was also called for as DW-3 with the relevant Register to prove the fact that the license was not valid at a relevant time of incident.

**20.** On the other hand, it is the case of the respondent No. 6/Insurance Company that inadvertently they could not take the plea in regards to the validity of the driving license, though subsequently they filed an Additional Written Statement, wherein the specific plea was taken in regards to the validity of the driving license and to substantiate their plea, they also called for the employee from the DTO Office, who came with the Register and accordingly deposed before the Court. But the present appellant remained silent and he did not avail the opportunity of cross-examining the DWs nor he filed any document

to substantiate his plea that the driving license was valid and it was not manipulated by the Office of the DTO.

**21.** On perusal of the entire case record, it is seen that as per the license submitted by the appellant, it was valid up to 21.10.2021 which was effective from 22.10.2007 and that is also not disputed by the Insurance Company while cross-examining the PW-1, while she was exhibiting the documents. As per the relevant provision of Section 14(2)(b) of the Motor Vehicle Act, license whether originally issued or renewed thereof, had to be issued and would be effective for a period of 20 years or until the person obtaining the license attains the age of 50 years, whichever is earlier. Further, as per the proviso of Section 14(2), before the amendment of 2019, every driving license shall notwithstanding its expiry, continue to be effective for the period of 30 days from such expiry. Accordingly, the argument placed by the learned counsel for the appellant, Mr. Jain, that as per the license, his date of birth is 18.08.1967 and he attains the age of 50 years on 18.08.2017 and within that period the accident took place and hence, it can be considered that the appellant was holding the valid driving license at the relevant time of accident.

**22.** But, from the evidence of DW-3, the employee of the DTO Office, Kamrup, who came before the Court with the relevant documents in respect of driving license No. 3597/94-EZ-K-V20, it is seen that driving license was initially issued on 09.12.1994 in the name of the appellant and was valid up to 08.12.2007. However, the said license was renewed on 22.10.2007 with validity till 23.10.2012. But, after 23.10.2012, there is no record available nor there is any date in the computer system that it was again renewed and thus, as per the

official record, the driving license was no valid at the relevant time of incident. However, he admitted in his evidence that as per the provision under Section 14 of Motor Vehicle Act, the driving license can be renewed within 30 days after expiry and it remain to be valid for said 30 days. Thus, as per the official record, there is no entry at all in regards to the application filed by the present appellant for renewal within 30 days from the date of expiry and in the same time, it is seen that the license was initially issued to him on 09.12.1994, which was valid up to 08.12.2007, and it was again valid up to 23.10.2012. It is not the case that the license was originally issued on 09.12.1994, but it was renewed again on 22.10.2007. Thus, it cannot be considered that it was not within the knowledge of the appellant regarding the expiry of the license. However, the license which was produced by the appellant was valid till 21.10.2021. But it is the admitted fact that after filing of the Additional Written Statement, no opportunity was given to the present appellant to file any Written Objection nor he could avail the opportunity to cross-examine the DW-3, who adduced before the Court by bringing the official documents challenging the validity of the driving license at the relevant time of incident.

**23.** So, from the entire discussions made above, it is seen that the present appellant could not avail the opportunity of cross-examining the DW-3 nor he was provided with any opportunity to file Written Objection against the Additional Written Statement. It is also a fact that without framing any issue on Additional Written Statement, the judgment was passed by the learned Member, Motor Accident Claims Tribunal No. 3, Kamrup(M), Guwahati and accordingly, at the stage of argument also, they could not raise the issue of validity of driving license at the time of argument placed by the learned counsel appearing on

behalf of the appellant.

**24.** Thus, considering the entire facts and circumstances of this case, I find that it is a fit case to remand the matter before the learned Member, Motor Accident Claims Tribunal No. 3, Kamrup(M), Guwahati for fresh disposal of the case only considering the relevant point regarding the validity of the driving license at the time of incident. And, the learned Member, Motor Accident Claims Tribunal No. 3, Kamrup(M), Guwahati will accordingly frame an additional issue in that regard and without interfering with the decision with other issue will discuss the issue of validity of the driving license giving an opportunity of hearing and adducing evidence to both the parties and will pass the judgment accordingly. The aforesaid exercise has to be carried out within a period of 3 (three) months from the date of passing of this judgment and order.

**25.** The learned Court below, after passing of fresh judgment discussing the aforesaid issue, shall communicate the judgment along with the entire case record to the Registry of this Court and thereafter the Registry shall tag the same with connected MAC Appeal No. 377/2018.

**26.** With the above observation and direction, this appeal stands disposed of.

**JUDGE**

**Comparing Assistant**