



JUDGMENT

In this appeal, the Insurance Company has challenged the award dated 17.01.2012 passed by the Commissioner for Workmen's Compensation, Chitradurga District ('the Commissioner' for short) in No. ಕಾಲಚಿ/ಕಾನಪ/ಎಫ್/ಸಿಆರ್-233/2009.

2. For the sake of convenience, the rank of the parties shall be referred to as per their status before the Commissioner.

3. The brief facts of the case are, the first respondent/S.M.Nooruddin is the owner of the lorry bearing registration No.KA-02/AC-5018. He has employed the husband of petitioner No.1, son of petitioner Nos.2 and 3 and father of petitioner Nos.4 and 5 by name Ghouse, the deceased as driver in the said lorry. On 04.07.2008 at about 5.30 a.m., while the deceased was driving the said lorry from Namakkal to Hiriyur on NH-4 at Adakamaranahalli Gate near Jain temple cross, it was capsized killing the deceased at



the spot. The legal representatives of the deceased have approached the Commissioner seeking compensation under Section 22 of the Workmen Compensation Act. The claim was opposed by the Insurance Company. After taking the evidence, the Commissioner by the impugned judgment awarded compensation of Rs.4,23,580/- with interest at 12% per annum. Aggrieved by the same, questioning the liability fastened against it, the Insurance Company has filed this appeal on various grounds.

4. Heard the arguments of Sri.B.C.Seetharama Rao, learned counsel for the Insurance Company and Sri.K.Shashikanth Prasad, learned counsel for the petitioners.

5. It is the contention of the learned counsel for the Insurance Company that the driving licence of the deceased was not found at the spot, there is no material placed before the Commissioner regarding valid driving licence held by the deceased. The owner



has allowed a person to drive the vehicle without valid driving licence, thereby, he has violated the terms and conditions of the policy, also the provisions of the Motor Vehicles Act, thereby, the Insurance Company can avoid its liability. It is further contended that the Commissioner has erroneously assumed that the deceased was holding a valid driving licence and fastened the liability against the Insurance Company. The Commissioner is not supposed to give such a reasoning and cannot make any personal assumption and presumption that the deceased was holding a valid driving licence. In support of his contentions, he has relied upon the judgment in ***Beli Ram -vs- Rajinder Kumar and Others***¹.

6. It is contention of the learning Counsel for the petitioners that, primary burden of proving non-holding of valid driving licence by the deceased is on the Insurance Company. But no efforts are made by the Insurance Company to secure the RTO authorities nor

¹ AIR 2020 SC 4453



placed any other evidence to establish it. Unless the Insurance Company discharges its primary burden, it cannot avoid its liability. To this effect, he has relied upon the judgment in ***Rukmani and others -vs- New India Assurance Co. and Others***² and ***United India Insurance Co.Ltd. -vs- Smt.Rathna and another***³ and contended that in view of the settled principles, the Insurance Company on its failure to discharge its burden cannot avoid its liability and has to indemnify the insured. It is also contended that the dispute between the owner and the Insurance Company is nothing to do with the petitioners in getting the compensation and he requested for a direction to the Insurance Company to deposit the compensation.

7. I have given my anxious consideration to the arguments advanced on behalf of both sides and also perused the materials on record.

² (1998) 3 SCC 160
³ ILR 2016 KAR 1935



8. There is no dispute as to the relationship between the parties. The petitioners are the dependents of deceased. First respondent is the owner of the lorry bearing No.KA-02/AC-5018. First respondent has employed the deceased as his driver and he has allowed him to drive the vehicle which met with an accident resulting in his death. There exists a relationship between the employer and employee between first respondent and the deceased and thereby, the petitioners are entitled to claim compensation as dependants under Section 22 of the Workmen's Compensation Act, 1923.

9. As regards quantum of compensation is concerned, the Commissioner considered that the deceased was earning Rs.4,000/- per month and he was aged 28 years. Petitioners are the dependents and applied multiplier (factor) of 211.79 by taking 50% of the salary and arrived at a compensation of Rs.4,23,580/- and also awarded interest at the rate of 12% per annum. The finding so recorded is in



accordance with the settled principles and thereby it does not call for any interference.

10. As regards liability is concerned, the sole contention of the Insurance Company is that since the deceased did not possess valid driving licence, it can avoid its liability. On perusal of the impugned judgment, it is pertinent to note that the Commissioner has referred to the evidence relied upon by both the parties and has come to the just and proper conclusion that there are no material explaining the driving licence held by the deceased. While recording so, the Commissioner has made an observation that the first respondent while appointing the deceased as a driver had verified the driving licence and only on confirming the existence of valid driving licence, he was appointed. It is also the opinion of the Commissioner that no owner of the vehicle will appoint a person without driving licence and he has come to a conclusion that for the reason of deceased holding



valid driving licence, first respondent has employed him as his driver.

11. Undisputedly, neither the petitioners nor the owner or the Insurance Company are able to secure the driving licence of the deceased. Under such circumstances, Court has to consider the correctness of fastening of liability on the part of the Insurance Company to indemnify the insured. There is no dispute that the first respondent was the insured, the policy of insurance issued by the Insurance Company is valid and effective as on the date of accident. In ***Beli Ram's*** case (supra), the Hon'ble Apex Court considering the question that if valid driving licence is expired, whether the insurer is absolved of its liability or not. The Hon'ble Apex Court also considered the legal position regarding liability of the Insurance Company when the driver of the offending vehicle possessed an invalid/fake driving licence. The Apex Court discussed that if the Insurance Company is able to prove that the owner/insured was aware or had



notice that the licence was fake or invalid and still permitted the person to drive, the Insurance Company would no longer continue to be liable. At paragraphs- 16, 20 and 21, the Apex Court has observed thus:

"16. We are conscious of the fact that in the present case the beneficiary is the driver himself who was negligent but then we are not dealing with a claim under the MV Act but under the Compensation Act, which provides for immediate succor, not really based on a fault theory with a limited compensation as specified being paid. We are, thus, in the present proceedings not required to decide the share of the burden between the appellant as the owner and the first respondent as the driver as may happen in a proceeding under the MV Act.

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20. The last judgment is of the Himachal Pradesh High Court in National Insurance Co. Ltd. v. Hem Raj & Ors. 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 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 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 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 employs 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."



12. The law settled by the Hon'ble Apex Court comes to the aid of the Insurance Company to the extent of avoiding its liability, but at the same time Insurance Company has to deposit and recover it from the owner.

13. The Hon'ble Apex Court in ***Rukmani's case*** (supra) held that the Insurance Company has failed to discharge the burden cast upon it under Section 96(2)(b)(ii) of the M.V.Act, 1939, when it had the knowledge that the driver had no valid driving licence at the time of accident, the burden of proving the said aspect is upon the Insurance Company. The Co-ordinate Bench of this Court in ***Smt.Rathna's case*** (supra) has referred to the judgment in ***Rukmani's case*** (supra) and held at paragraphs-6 to 8 as under:

"6. In the context of the contention raised, it is relevant to refer the decision of the Supreme Court in Rukmani v.New India Assurance Co. [(1998)9 SCC 160], wherein the Supreme Court has stated as follows:



"3. We have seen the only evidence which the Insurance Company produced in support of the plea. This is the evidence of Inspector of Police who investigated the accident. In his evidence, PW1 who was the Inspector of Police, stated in his examination in-chief. "My enquiry revealed that the 1st respondent did not produce the licence to drive the above said scooter. The 1 respondent even after my demand did not submit the licence since he was not having it. "his cross-examination he has said that it is the Inspector of Motor Vehicles who is required to check whether the licence is there but he had not informed the Inspector of Motor Vehicles that the 1st respondent was not having a licence since he thought it was not necessary. In our view, this evidence is not sufficient to discharge the burden which was cast on the Insurance Company. It did not summon the driver of the vehicle. No record from the Road Transport Authority has also been produced. In these circumstances, the Insurance Company has not discharged the burden cast upon it under Section96(2)(b) (ii) of the Motor Vehicles Act, 1939. The impugned order of the High Court is, therefore, set aside and the order of the Tribunal is restored. The appeal is allowed accordingly. No order as to costs."



7. In the light of the decision of the Supreme Court extracted above and having regard to the fact that there is no evidence on record to show that the rider of the Insured motorcycle had no driving licence as on the date of accident, the contention of the appellant cannot be accepted. In my opinion, the Division Bench decision relied on by the appellant's counsel was rendered on its own facts and no law is laid down therein.

8. To hold that the driver of the insured vehicle had no driving licence as on the date of accident, there must be clear evidence on the record of the case to that effect. Police charge sheet is no evidence to hold that the driver of the insured vehicle had no driving licence as on the date of accident."

14. In view of this, burden of proving that the deceased driver did not possess valid driving licence is upon the Insurance Company, but there is no evidence placed by the Insurance Company. The Hon'ble Apex Court in ***Singh Ram -Vs- Nirmala and Ors.***⁴ in a similar situation where the Tribunal absolved the Insurance Company from its liability to indemnify the owner for the reason of driver did not possess valid

⁴ (2018) 3 SCC 800



driving licence directed the Insurance Company to pay the compensation and recover it from the owner of the offending vehicle.

15. In the case on hand, the petitioners claim that the deceased was holding valid driving licence, but there is no evidence in proof of it. There is no allegation that the owner was negligent or not verified the driving licence of the deceased nor it is a case of fake licence. Under such circumstances, it is a case for applying the principle of '*pay and recovery*'. Accordingly, the appeal merits consideration. In the result, the following:

ORDER

- i) Appeal is *allowed-in-part*.
- ii) The judgment and award passed by the Commissioner is modified to the extent of liability fastening against the Insurance Company.
- iii) The Insurance Company is not liable to pay compensation, but under the principle of '*pay and recovery*' the



Insurance Company is directed to deposit the compensation and recover it from the owner of the lorry in the very same proceedings.

- iii) Insurance Company is directed to satisfy the award within a period of eight weeks from the date of receipt of certified copy of this judgment;
- iv) Amount in deposit, if any, shall be transmitted to the Commissioner for Workmen's Compensation along with records forthwith.

**Sd/-
JUDGE**

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