REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 7220-7221 OF 2011

BELI RAM **…Appellant**

Versus

RAJINDER KUMAR & ANR. **…Respondents**

J U D G M E N T

SANJAY KISHAN KAUL, J.

1. The sole question of law for consideration in the present appeals is whether in case of a valid driving licence, if the licence has expired, the insured is absolved of its liability.

2. The facts are in a very narrow compass. The first respondent herein, met with an accident on 20.5.1999 while driving a truck owned by the appellant herein, under whom he was gainfully employed. The consequence for the first respondent was 20 per cent permanent disability. The first respondent herein filed a petition under the

Workmen's Compensation Act, 1923 (hereinafter referred to as 'the Compensation Act') before the Commissioner, Sadar, Bilaspur on 17.2.1999 seeking compensation of an amount of Rs.5,00,000/-, impleading the appellant and second respondent herein – the insurance company which had insured the vehicle. These proceedings resulted in an award by the Commissioner on 8.12.2004 granting Rs. 94,464/- for the injuries suffered and Rs.67,313/- towards medical expenses of the first respondent. The amounts awarded were to carry interest @ 9 per cent per annum from the date of filing of the application till the date of payment. The compensation amount was mulled on to the second respondent as insurer, while the interest was directed to be paid by the appellant herein.

3. The parties to the proceedings all filed appeals aggrieved by different aspects of the award. An intrinsic part of the consideration by the High Court was the issue raised about the validity of the driving licence of the first respondent at the time of the accident. The driving licence was endorsed by the Superintendent of R&LA Office, Udaipur but the licence expired on 6.9.1996 and there was no endorsement for

renewal thereafter. Thus, the first respondent was driving the vehicle as the driver of the appellant herein for almost three years without the licence being renewed.

4. The aforesaid aspect of the non-validity of the driving licence weighed with the High Court while passing the impugned judgment dated 3.3.2009, absolving the insurance company of any liability and fastening the same upon the appellant herein on account of there being a material breach of the insurance policy.

5. The High Court, after the aforesaid finding took note of Section 4 of the Compensation Act, more specifically the following aspect:

"4. Amount of compensation –

(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-

(a) Where death results from the injury	An amount equal to fifty per cent of the monthly wages of the deceased workman multiplied by the relevant factor; or

	An amount of eighty thousand, whichever is more;
(b) Where permanent total disability results from the injury	An amount equal to sixty per cent of the monthly wages of the injured workman multiplied by the relevant factor, or An amount of ninety thousand rupees, whichever is more.

Explanation I.-- For the purposes of clause (a) and clause (b)," relevant factor", in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due."

6. On consideration of the aforesaid provision, the High Court opined that there was no provision under the Compensation Act for payment of medical expenditure incurred by the claimant for treatment. The accident having taken place in the year 1999, the monthly wages stated to be Rs.4,500/-, it was found that the maximum amount of wages permissible under the Compensation Act for determining the compensation could be Rs.2,000/-. Compensation was liable to be paid within thirty (30) days of

the accident and the owner could have recovered the amount from the insurer if ultimately it was established that the insurer was liable to have indemnified the insured. The appellant was found to be in breach of the statutory duty of a benevolent legislation, i.e., the Compensation Act and, thus, the appellant was burdened to pay interest as also maximum penalty of 50 per cent. The amount of compensation was thus quantified as under:

"1. Amount of compensation	= Rs. 83,968/-
2. Penalty @ 50% on the amount of compensation	= Rs. 41,984/-
3. Interest w.e.f. 20.6.1999 to 3.3.2009 (9 years & 257 days) on the amount of compensation	= Rs. 73,335/-"

7. The result was that the appeals of the insurer and the claimant were allowed. The endeavour to seek review of the judgment on the basis of pronouncement of this Court in ***National Insurance Co. Ltd. v. Swaran Singh and Ors.***[1] failed and the application was dismissed on 8.7.2009.

8. The only question which has been debated before us, is as set out at the inception of the judgment. The appellant sought to rely upon the

1 (2004) 3 SCC 297

recent judgment of this Court, ***Nirmala Kothari v. United India Insurance Company Limited.***[2] The question of law examined in this judgment was as to what is the extent of care/diligence expected of the employer/insured while employing a driver. The legal position regarding the liability of the insurance company when the driver of the offending vehicle possessed an invalid/fake driver's licence was adverted to for answering this question, by referring to earlier judicial pronouncements and the same was culled out in para 12 as under:

> "12. While hiring a driver the employer is expected to verify if the driver has a driving licence. If the driver produces a licence which on the face of it looks genuine, the employer is not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise. If the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving licence there would be no breach of Section 149(2)(a)(ii) and the insurance company would be liable under the policy. It would be unreasonable to place such a high onus on the insured to make enquiries with RTOs all over the country to ascertain the veracity of the driving licence. However, 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."

9. We have heard learned counsel for the parties and on a query being

2 (2020) 4 SCC 49 (authored by one of us, Krishna Murari, J.)

raised, whether there is a view taken on the question as to what would be the consequence of a valid driving licence having expired both the learned counsel for the appellant and learned counsel for respondent No.2 insurance company stated that there was no direct view on this point. We even posed a question qua any judicial view of the High Courts in this behalf, but the answer to the same was also in the negative. We reserved the orders because we wanted to satisfy ourselves over this aspect.

10. We have not been able to trace out any judgments of this Court but there are judicial pronouncements of the High Courts dealing with the issue.

11. We consider it appropriate to first commence with the view of this Court in the ***Swaran Singh.***[3] case, which examined the meaning of the expression "duly licensed", as used in Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'MV Act'). The factual matrix dealt with the claim of a third party and the different eventualities considered were: (a) licence not held; (b) fake licence held; (c) licence held but validity whereof has expired; (d) licence not held for type of

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vehicle being driven; and (e) learner's licence held. We may note here that the facts of the present case relate to eventuality (c) above. A liberal view was taken considering the intent of the legislation in question and that it was a case of a third party claim. In an endeavour of the insurance company to absolve itself of liability the following observations were made:

> "41. However, clause *(a)* opens with the words "that there has been a breach of a specified condition of the policy", implying that the insurer's defence of the action would depend upon the terms of the policy. The said sub-clause contains three conditions of disjunctive character, namely, the insurer can get away from the liability when (a) a named person drives the vehicle; (b) it was being driven by a person who did not have a duly granted licence; and (c) driver is a person disqualified for holding or obtaining a driving licence.
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> 42. We may also take note of the fact that whereas in Section 3 the words used are 'effective licence', it has been differently worded in Section 149(2) i.e. 'duly licensed'. If a person does not hold an effective licence as on the date of the accident, he may be liable for prosecution in terms of Section 141 of the Act but Section 149 pertains to insurance as regard third party risks.
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> 43. A provision of a statute which is penal in nature vis-a-vis a provision which is beneficent to a third party must be interpreted differently. It is also well known that the provisions contained in different expressions are ordinarily construed differently.

44. The words “effective licence” used in Section 3, therefore, in our opinion cannot be imported for sub-section (2) of Section 149 of the Motor Vehicles Act. We must also notice that the words 'duly licensed' used in sub-section (2) of Section 149 are used in past tense.

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 term states that the licence remains valid for a period of thirty days from the day of its expiry.”

…. …. …. …. …. ….

“48. Furthermore, the insurance company with a view to avoid its liabilities is not only required to show that the conditions laid down under Section 149(2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. By reason of the provisions contained in the 1988 Act, a more extensive remedy has been conferred upon those who have obtained judgment against the user of a vehicle and after a certificate of insurance is delivered in terms of Section 147(3) a third party has obtained a judgment against any person insured by the policy in respect of a liability required to be covered by Section 145, the same must be satisfied by the insurer, notwithstanding that the insurer may be entitled to avoid or to cancel the policy or may in fact have done so. The same obligation applies in respect of a judgment against a person not insured by the policy in respect of

such a liability, but who would have been covered if the policy had covered the liability of all persons, except that in respect of liability for death or bodily injury."

12. We may next advert to the judgment in the ***Nirmala Kothari***[4] case. The judgment was sought to be canvassed in support of the proposition by learned counsel for the appellant and we reproduce the relevant paragraphs in addition to the one reproduced above, as under:

> "10. While the insurer can certainly take the defence that the licence of the driver of the car at the time of accident was invalid/fake however the onus of proving that the insured did not take adequate care and caution to verify the genuineness of the licence or was guilty of willful breach of the conditions of the insurance policy or the contract of insurance lies on the insurer.
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> 11. The view taken by the National Commission that the law as settled in the *PEPSU case* is not applicable in the present matter as it related to third-party claim is erroneous. It has been categorically held in the case of *National Insurance Co. Ltd. vs. Swaran Singh & Ors.* (SCC p.341, para 110) that,
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> > "110. (iii)…Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the *insurer against either the insured or the third parties*. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licenced

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> driver or one who was not disqualified to drive at the relevant time."

13. The submission, thus, was that the appellant as insured had taken adequate care by verifying the licence of the driver/first respondent at the time of employment and the liability could have been mulled on the appellant only if he was aware or had notice that the licence was fake or invalid and still permitted the person to drive. This was stated not to be the factual position in the present case as the issuance of the licence has not been doubted, but rather that it was not subsequently renewed which was pleaded to be the responsibility of the first respondent.

14. We did point out at that stage itself by raising a query as to how this judgment would help in the case of the appellant since it was not a case of a fake or invalid licence. If the appellant was required to take adequate care and caution to verify the driving licence at the threshold, thereafter, the burden shifted on the insurance company to prove that such due care was not taken, could it be said that having, at the first blush verified the driving licence, the appellant was absolved of the responsibility of verifying whether the driving licence was kept renewed?

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***[5] 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.

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

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between the appellant as the owner and the first respondent as the driver as may happen in a proceeding under the MV Act.

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.***[6] 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.***

6 2015 SCC OnLine 6758 : (2015) 2 TAC 52

Manoj Kumar & Ors.[7] 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.***[8] 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***[9] case of this Court, were that the insurance company can defend an action on the

7 (2015) 111 ALR 275 (authored by Krishna Murari, J., as he then was)
8 : 2012 ACJ 1891 (authored by Deepak Gupta, J., as he then was)
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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.***[10] 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

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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***[11] 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

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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.

24. In view of the aforesaid, the appeals are dismissed by settling the aforesaid question of law and leaving the parties to bear their own costs.

...……J.
[Sanjay Kishan Kaul]

...……J.
[Aniruddha Bose)

...……J.
[Krishna Murari)

New Delhi.
September 23, 2020.