

A NATIONAL INSURANCE CO. LTD.  
v.  
VIDHYADHAR MAHARIWALA & ORS.  
(Civil Appeal No. 5721 of 2008)

B SEPTEMBER 17, 2008  
(DR. ARIJIT PASAYAT AND HARJIT SINGH BEDI, JJ.)

*Motor Vehicles Act, 1988 - & 173:*

C *Motor vehicle accident – Claim – Award – Liability of insurer  
when driver not holding valid licence – Held: Insurer not liable.*

D The question which arose for determination in this  
appeal was as to whether the Insurer is liable to pay the  
amount awarded by the Motor Accident Claims Tribunal  
to claimant in a motor vehicle accident when the driver of  
the vehicle was not holding a valid licence while driving  
the vehicle which met with an accident.

E Appellant-insurer contended that in view of the judg-  
ment of this Court in *Ishwar Chandra and Ors. Vs. Oriental  
Insurance Co. Ltd. & Ors.*, insurer is not liable to pay com-  
pensation to the claimant when the driver of the vehicle  
was not possessing valid driving licence on the day of  
F the accident.

Allowing the appeal, the Court

G HELD: In *Ishwar Chandra's* case, it was held by this  
Court that the insurance company would have no liabil-  
ity in the case of this nature. This Court is in agreement  
with the view. Hence, the impugned order is set aside. It  
is open to the claimant to recover the amount from re-

Respondent No.2. (Para – 11) [609 H 610 A B]

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*Ishwar Chandra and Ors. Vs. Oriental Insurance Co. Ltd. & Ors. (2007) 10 SCC 650; National Insurance Co. Ltd. vs. Swaran Singh & Ors. (2004) 3 SCC 297; National Insurance Co. Ltd. vs. Kusum Rai & Ors. (2006) 4 SCC 250 and Oriental Insurance Co. Ltd. vs. Nanjappan & Ors. (2004) 13 SCC 224 – relied on.*

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**Case Law Reference**

(2007) 10 SCC 650 Relied on Para - 6

C

(2004) 3 SCC 297 Relied on Para - 5

(2006) 4 SCC 250 Relied on Para - 5

(2004) 13 SCC 224 Relied on Para - 5

D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5721 of 2008

From the Final Judgment and Order dated 13.2.2007 of the High Court of Judicature for Rajasthan at Jodhpur in S.B. Civil Misc. Appln. No. 948/2007

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Dr. Meera Agarwal for the Appellant.

Devashish Bharuka, Alok Sangwan, Jaya Bharuka and Hansa Bharuka for the Respondents.

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The Judgment of the Court was delivered by

**Dr. ARIJIT PASAYAT, J. 1.** Leave granted.

G

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Rajasthan High Court at Jabalpur dismissing the appeal filed by the appellant under Section 173 of the Motor Vehicles Act, 1988 (in short the 'Act'). Challenge in the

H

A appeal was to the award made by the Motor Claims Appellate  
Tribunal, Ratangarh (Churu) (in short 'MACT') in Claim Case  
No.89 of 2004. By the said award, a sum of Rs.4,03,650/- was  
awarded to the claimant-respondent No.1 in the appeal. The  
B dispute related to the rejection of appellant's claim for exonera-  
tion on the ground of violation of policy condition. It was pointed  
out that the driving license of the driver of the offending vehicle  
was not in force on the date of accident.

C 3. Factual position in detail need not be indicated because  
the issue relates to the liability of the insurance company as the  
driving license was not valid on the date of the accident.

D 4. In the instant case the date of accident was 11.6.2004.  
The driver's license was initially valid for the period from  
15.12.1997 to 14.12.2000 and thereafter from 29.12.2000 to  
14.12.2003. Thereafter, it was again renewed from 16.5.2005  
to 15.5.2008. The appellant filed its objections before MACT  
taking the stand that since the driving license was not valid on  
E the date of accident it had no liability. The MACT turned down  
the plea. According to it though on the date of accident the driv-  
ing license was not valid, since the driver's license was renewed  
on 16.5.2005 for a further period of three years it cannot be  
said that during the intervening period the driver was incompe-  
F tent or disqualified to driver the truck. With reference to Section  
114 of the Indian Evidence Act, 1872 (in short the 'Evidence  
Act') it was held that at the time of accident driver was compe-  
tent to drive the vehicle.

G 5. In appeal by the impugned judgment the High Court re-  
ferred to three judgments of this Court in *National Insurance  
Co. Ltd. v. Swaran Singh and Ors.* (2004 (3) SCC 297), *National Insurance Co. Ltd. v. Kusum Rai and Ors.* (2006 (4) SCC  
H 250) and *Oriental Insurance Co. Ltd. v. Nanjappan and Ors.*

(2004 (13) SCC 224) and came to hold that the insurance company, the insurer was liable to indemnify the award. It was held that merely there was a gap in the renewal of driving license that cannot be a ground for exoneration.

6. In support of the appeal, placing reliance on the decision of this Court in *Ishwar Chandra and Ors. v. Oriental Insurance Co. Ltd. and Ors.* (2007 (10) SCC 650), it was contended that the High Court's view is unsustainable.

7. Learned counsel for respondent No.2 the owner of the vehicle on the other hand supported the judgment of MACT.

8. In *Swaran Singh's* case (supra) whereupon the respondent no.2 relied, it was held as follows:

"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

A 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.”

9. In *Kusum Rai's* case (*supra*) it was held as follows:

B 14. This Court in *Swaran Singh* (2004 (3) SCC 297) 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)

E “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."

10. *Nanjappan's* case (supra) was referred to in *Kusum Rai's* case (supra).

11. In *Ishwar Chandra's* case (supra) the three decisions referred to by the High Court were considered and it was held

- A that the insurance company would have no liability in the case of this nature. We are in agreement with the view. The appeal deserves to be allowed which we direct. The impugned order of the High Court is set aside. It is open to the claimant to recover the amount from respondent No.2.
- B

S.K.S.

Appeal allowed.