

*Before Tribhuvan Dahiya, J.*

**RELIANCE GENERAL INSURANCE COMPANY LIMITED—**  
*Petitioner*

*versus*

**RAJNESH AND OTHERS—Respondents**

**FAO No. 10378 of 2014**

September 07, 2022

***A. Motor Vehicles Act, 1988, Sections 6—Rash and negligent driving by owner and driver of offending vehicle—Death in accident—Liability of Insurance Company to pay compensation—Plea of two driving licences—Held, merely because driver of offending vehicle was issued two licenses by two different Licensing Authorities, which might be irregularity, but it cannot have effect of declaring one of the licenses, to liking of Insurance Company, invalid and nor can it have any bearing on liability of Insurance Company to indemnify insured.***

*Held*, that provisions of Section 6 of the Act do not get attracted here. As, in the instant case, it is not proved that any of the licences issued to respondent No.5/driver and owner, is fake or fabricated. It was not the appellant case before the Tribunal either, nor any evidence to that effect had been led on its behalf. In these circumstances, there is no escape from concluding that both the licenses issued to respondent No.5 were valid on the date of the accident. He had a valid driving licence to drive the offending vehicle. Besides, so far as the licence, Ex. R-1, is concerned, it has been issued to respondent No.1 to drive light motor vehicles (LMV) and motor cycle/scooter on 24.5.2010, with validity upto 23.5.2017. The earlier licence, Ex. R-3, said to have been issued to respondent No.5 was not for driving light motor vehicles but to drive motor cycle/scooter only. It is, therefore, apparent that respondent No.5 was not holding two driving licences to drive light motor vehicles (LMV) at the relevant time. Further, merely because he has been issued two licenses by two different Licensing Authorities, which might be an irregularity, but it cannot have the effect of declaring one of the licenses, to the liking of the appellant, invalid. Nor can it have any bearing on the liability of the appellant to indemnify the insured.

(Para 8)

***B. Motor Vehicles Act, 1988, Section 9—Rash and negligent driving by owner and driver of offending vehicle Death in accident—Liability of Insurance Company to pay compensation—Plea that driver of offending vehicle not entitled to get driving licence by Licensing Authority/District Transport Authority, Nagaland, since he not been ordinary resident of State rejected—Held, no evidence led by Insurance company before Tribunal that owner was not ordinarily residing in Nagaland, at time when licence was issued to him—Mere reference to address of owner, given in memo of parties of claim petition cannot, in any manner, establish that he was not ordinarily residing in Nagaland, at the time licence in question was issued to him in 2010—Hence, Liability of Insurance Company to pay compensation upheld.***

*Held*, that the next contention of learned counsel for the appellant that respondent No.5 was not entitled to get driving licence by the Licensing Authority/District Transport Authority, Nagaland, since he has not been ordinary resident of the State, also deserves to be rejected. There is no dispute regarding provisions of Section 9 of the Act, which are to the effect that a person who is not disqualified to hold a driving licence, may apply to the Licensing Authority in the State in which he ordinarily resides or carries on business for issue of a driving licence. So far as the facts of this case are concerned, no evidence was led by the appellant/Insurance company before the Tribunal that respondent No.1 was not ordinarily residing in Nagaland, at the time when licence, Ex. R-1, was issued to him, i.e., 24.5.2010. Mere reference to the address of respondent No.1, given in the memo of parties of the claim petition filed on 28.10.2013, could not, in any manner, establish that he was not ordinarily residing in Nagaland, at the time licence in question was issued to him in 2010.

(Para 9)

Subhash Goyal, Advocate, *for the appellant.*

Ashwani Arora, Advocate, for respondents No. 1 and 4.

Ravi Gakhar, Advocate, (Court Guardian), for respondents No.2 and 3.

### **TRIBHUVAN DAHIYA, J. (Oral)**

(1) This appeal has been filed by the appellant/ Insurance Company disputing its liability to indemnify the respondents' claim on account of death of Vijay @ Vijay Kumar.

(2) By the award passed by the Motor Accident Claims Tribunal, Chandigarh (in short 'the Tribunal'), dated 17.10.2014, compensation has been awarded to the respondents/claimants being dependents of the deceased, who was employee of Chandigarh Police. He died in an accident on the intervening night of 30 September/1 October, 2013, due to rash and negligent driving by respondent No.1, owner and driver of the offending vehicle, i.e., car bearing registration No. CH01-AM-9762. The deceased was 39 years of age at the time of accident. After deducting savings and income tax etc. from his salary, an amount of Rs.66,73,230/-along with interest was awarded as compensation. The offending vehicle in question being insured by the appellant/Insurance company, the liability was fastened jointly and severally on the respondents.

(3) While assessing income of the deceased, apart from his gross salary of Rs.30817/- per month, the monthly pension of Rs. 9870/-being paid to him on account of his being an ex-serviceman, was also taken into account. Total income of the deceased was thus taken to be Rs.40687/- per month. (Rs.30817+Rs.9870). Learned counsel for the appellant has argued that the pension being drawn by the deceased as ex-serviceman is not to be taken into account to assess his total monthly income. It has been contended that the deceased's family, in any case, would continue getting pension despite his death. Therefore, the total income was wrongly calculated, which needs to be corrected by deducting the amount of pension. In support of his contention, learned counsel relies upon the judgment of this Court dated **13.1.2018** passed in **FAO No.10228 of 2014** titled as ***Charanjit Singh versus Harish Kumar Sachdeva and others***. The question for consideration in ***Charanjit Singh case*** was as to whether the entire pension paid to the deceased was to be taken as income for computing loss of dependency, or the family pension paid to the widow was liable to be deducted and difference of pension and family pension was to be considered for computing loss of dependency. The Court held, in case family pension was not deducted out of the pension drawn by the deceased, it would amount to giving double benefit, i.e., benefit of pension drawn by the deceased as well as family pension available to the family.

(4) A perusal of the Tribunal's award establishes that deceased's income has been assessed by taking into account salary as well as pension as ex-serviceman that was being paid to him at the time of death, as established by the statement of account, Ex.P-11, of the deceased. The aforesaid judgment in ***Charanjit Singh case (supra)***,

relied upon by the counsel for the appellant is distinguishable on facts as therein the deceased's widow was getting family pension, and in those circumstances the Court has held, in case family pension is not deducted out of pension drawn by the deceased, it would amount to giving double benefit. Whereas, in instant case, the claimant widow's entitlement to family pension or any other pension, has not been established. There is no evidence to the effect on record, nor any could be referred to by learned counsel for the appellant. Therefore, no fault can be found with the assessment of total income of the deceased by the Tribunal by taking into account his gross salary and pension as ex-serviceman. There is no basis to exclude the pension as ex-serviceman he was actually getting, which was a part of his monthly income.

(5) It has been next contended by learned counsel for the appellant that the licence of respondent No. 5/driver and owner was not valid, in as much as, he was holding two driving licenses. Copy of the first licence, Ex. P-3, to drive scooter and motor cycle was issued to him by the Chandigarh Administration on 1.7.1997, and was valid upto 2.2.2015. The other licence, Ex. R-1, that has been produced on record by respondent No.5, was issued by the District Transport Officer, Nagaland, for driving motor cycle and LMV (Light Motor Vehicles) only; it was issued on 24.5.2010 and was valid upto 23.5.2017. On these facts, learned counsel for the appellant has contended that as per Section 6 of the Motor Vehicles Act, 1988 (in short 'the Act'), no person having a driving licence for the time being in force, is allowed to hold another driving licence. He has further argued that as respondent No.5/driver and owner is not ordinary resident of Nagaland, as per his address given in the memo of parties, he could not have been issued the driving licence in question, in violation of Section 9 of the Act.

(6) Sections 6 and 9 (1) of the Act read as under :

**Section 6. Restrictions on the holding of driving licences**

– (1) No person shall, while he holds any driving licence for the time being in force, hold any other driving licence except a learner's licence or a driving licence issued in accordance with the provisions of Section 18 or a document authorising, in accordance with the rules made under Section 139, the person specified therein to drive a motor vehicle.

(2) No holder of a driving licence or a learner's licence shall permit it to be used by any other person.

(3) Nothing in this section shall prevent a licensing authority having the jurisdiction referred to in sub-section (1) of Section 9 from adding to the classes of vehicles which the driving licence authorises the holder to drive.

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**Section 9. Grant of driving licence -** (1) Any person who is not for the time being disqualified for holding or obtaining a driving licence may apply to the licensing authority having jurisdiction in the area -

- (i) in which he ordinarily resides or carries on business, or
- (ii) in which the school or establishment referred to in Section 12 from where he is receiving or has received instruction in driving a motor vehicle is situated, for the issue to him of a driving licence.

(7) Section 6 of the Act lays down that no person while holding any driving licence shall be entitled to hold another driving licence, except (i) a learner's licence or a driving licence issued in accordance with the provisions of Section 18 of the Act, or (ii) a document authorizing the person specified as per rules made under Section 139 of the Act to drive motor vehicle. Section 18 of the Act pertains to driving licences to drive motor vehicles belonging to the Central Government, and has no application here; nor does the provisions of Rules made under Section 139 of the Act by the Central Government apply here.

(8) Provisions of Section 6 of the Act do not get attracted here. As, in the instant case, it is not proved that any of the licences issued to respondent No.5/driver and owner, is fake or fabricated. It was not the appellant's case before the Tribunal either, nor any evidence to that effect had been led on its behalf. In these circumstances, there is no escape from concluding that both the licenses issued to respondent No.5 were valid on the date of the accident. He had a valid driving licence to drive the offending vehicle. Besides, so far as the licence, Ex. R-1, is concerned, it has been issued to respondent No.1 to drive light motor vehicles (LMV) and motor cycle/scooter on 24.5.2010, with validity upto 23.5.2017. The earlier licence, Ex. R-3, said to have been issued to respondent No.5 was not for driving light motor vehicles but to drive motor cycle/scooter only. It is, therefore, apparent that respondent No.5 was not holding two driving licences to drive light motor vehicles (LMV) at the relevant time. Further, merely

because he has been issued two licenses by two different Licensing Authorities, which might be an irregularity, but it cannot have the effect of declaring one of the licenses, to the liking of the appellant, invalid. Nor can it have any bearing on the liability of the appellant to indemnify the insured.

(9) The next contention of learned counsel for the appellant that respondent No.5 was not entitled to get driving licence by the Licensing Authority/District Transport Authority, Nagaland, since he has not been ordinary resident of the State, also deserves to be rejected. There is no dispute regarding provisions of Section 9 of the Act, which are to the effect that a person who is not disqualified to hold a driving licence, may apply to the Licensing Authority in the State in which he ordinarily resides or carries on business for issue of a driving licence. So far as the facts of this case are concerned, no evidence was led by the appellant/Insurance company before the Tribunal that respondent No.1 was not ordinarily residing in Nagaland, at the time when licence, Ex. R-1, was issued to him, i.e., 24.5.2010. Mere reference to the address of respondent No.1, given in the memo of parties of the claim petition filed on 28.10.2013, could not, in any manner, establish that he was not ordinarily residing in Nagaland, at the time licence in question was issued to him in 2010.

(10) In view of the aforesaid observations, the appeal fails and is hereby dismissed.

(11) All the pending miscellaneous applications, if any, stand disposed of as having been rendered infructuous.

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*Ritambhra Rishi*