



Effect of fake or expired driving license, or absence of driving licence

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DISTRICT JUDGE, ALMORA

Relevant sections of Motor vehicle act 1988

Chapter II of the Act deals with the provisions of licensing of drivers of motor vehicles.

Section 2(10) "Driving licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description.

Section 3. Necessity for driving licence.—(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than [a motor cab or motor cycle] hired for his own use or rented under any scheme made under sub-section (2) of section 75] unless his driving licence specifically entitles him so to do. (2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.

Relevant sections of Motor vehicle act

Section 4. Age limit in connection with driving of motor vehicles.

Section 5. Responsibility of owners of motor vehicles for contravention of sections 3 and 4.—No owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle.

Section 6. Restrictions on the holding of driving licences.

Section 7. Restrictions on the granting of learner's licences for certain vehicles.

Section 8. Grant of learner's licence.

Section 9. Grant of driving licence. -Section 9 provides for grant of driving licence

Relevant sections of Motor vehicle act

Section 15. Renewal of driving licences.

Section 19 provides for power of the licensing authority to disqualify from holding a driving licence or revoke such licence.

Section 20 empowers the court to disqualify a person in the event a person is convicted of an offence under the Motor Vehicles Act or of an offence in the commission of which a motor vehicle was used.

Section 21 provides for suspension of driving licence in certain cases.

Section 23 provides for effect of disqualification order.

Relevant sections of Motor vehicle act

Section 27 provides for the power of the Central Government to make rules.

Section 147 of the Act provides for requirements of policies and limits of liability.

Section 149 provides for the duty of insurers to satisfy judgments and award against persons insured in respect of third party risks.

Section 165. Claims Tribunals.

Section 166. Application for compensation.

Section 168. Award of the Claims Tribunal.

Land Mark Judgements

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1. On the issue of fake license

United India Insurance Co. Ltd v. Lehu & Ors. (2003) 3 SCC 338

The principle laid down by the Hon'ble Supreme Court in this judgment is as follows:

“20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The insurance company would not then be absolved of liability. If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly, even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia [(1987) 2 SCC 654] , Sohan Lal Passi [(1996) 5 SCC 21 : 1996 SCC (Cri) 871] and Kamla [(2001) 4 SCC 342 : 2001 SCC (Cri) 701] cases. We are in full agreement with the views expressed therein and see no reason to take a different view.”

National Insurance Co. Ltd. v. Swaran Singh and Ors. (2004) 3 SCC 297

It was held by Hon'ble Supreme Court in this judgment that:

“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 driver or one who was not disqualified to drive at the relevant time.”

National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700

It was held by The Hon'ble Supreme Court in this judgement that:

“38. In view of the above analysis the following situations emerge:

- 1. The decision in *Swaran Singh case* [(2004) 3 SCC 297 : 2004 SCC (Cri) 733] has no application to cases other than third-party risks.**
- 2. Where originally the licence was a fake one, renewal cannot cure the inherent fatality.**
- 3. In case of third-party risks the insurer has to indemnify the amount, and if so advised, to recover the same from the insured.**
- 4. The concept of purposive interpretation has no application to cases relatable to Section 149 of the Act.”**

Pepsu RTC vs. National Insurance Co. (2013) 10 SCC 217

It was held by the Hon'ble Supreme Court in this judgment that

“In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case (*supra*). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation.

Ram Chandra Singh v. Rajaram, (2018) 8 SCC 799

It was held by the Hon'ble Supreme Court in this judgment that

“11. Suffice it to observe that it is well established that if the owner was aware of the fact that the licence was fake and still permitted the driver to drive the vehicle, then the insurer would stand absolved. However, the mere fact that the driving licence is fake, per se, would not absolve the insurer. Indubitably, the High Court noted that the counsel for the appellant did not dispute that the driving licence was found to be fake, but that concession by itself was not sufficient to absolve the insurer.”

Nirmala Kothari v. United India Insurance Company Limited. (2020) 4 SCC 49

In this judgment, it was held by the Hon'ble Supreme Court that

“12. On facts, in the instant case, the Appellant/Complainant had employed the Driver, Dharmendra Singh as driver after checking his driving licence. The driving licence was purported to have been issued by the licencing authority, Sheikh Sarai, Delhi, however, the same could not be verified as the concerned officer of the licencing authority deposed that the record of the licence was not available with them. It is not the contention of the Respondent/ Insurance Company that the Appellant/complainant is guilty of willful negligence while employing the driver. The driver had been driving competently and there was no reason for the Appellant/Complainant to doubt the veracity of the driver's licence. In view of above facts and circumstances, the impugned judgment is not liable to be sustained and is hereby set aside. The appeals accordingly stand allowed. The respondent/ Insurance Company is held liable to indemnify the appellant.”

Rishi Pal Singh Vs. New India Assurance Co. Ltd. & Ors. Decided on 26.07.2022

In this judgment, it was held by the Hon'ble Supreme Court that

“10. The owner of the vehicle is expected to verify the driving skills and not run to the licensing authority to verify the genuineness of the driving license before appointing a driver. Therefore, once the owner is satisfied that the driver is competent to drive the vehicle, it is not expected from the owner thereafter to verify the genuineness of the driving license issued to the driver.”

2. On the issue of driver being incompetent or unauthorised to drive

Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan, (1987) 2 SCC 654

In this case the owner i.e., insured has never permitted cleaner or any person other than licensed driver to drive the vehicle. But at the time of accident the cleaner was in control of truck. The driver was guilty of negligence as he had left the vehicle with engine running with the cleaner. So even if the breach of condition is from owner, owner can not be liable for the negligence of driver.

It was held by the Hon'ble Supreme Court that:

“14. It is only when the insured himself places the vehicle in charge of a person who does not hold a driving licence, that it can be said that he is “guilty” of the breach of the promise that the vehicle will be driven by a licensed driver. It must be established by the insurance company that the breach was on the part of the insured and that it was the insured who was guilty of violating the promise or infringement of the contract. Unless the insured is at fault and is guilty of a breach the insurer cannot escape from the obligation to indemnify the insured and successfully contend that he is exonerated having regard to the fact that the promisor (the insured) committed a breach of his promise. Not when some mishap occurs by some mischance. When the insured has done everything within his power inasmuch as he has engaged a licensed driver and has placed the vehicle in charge of a licensed driver, with the express or implied mandate to drive himself it cannot be said that the insured is guilty of any breach. And it is only in case of a breach or a violation of the promise on the part of the insured that the insurer can hide under the umbrella of the exclusion clause.”

Sohan Lal Passi v. P. Sesh Reddy, (1996) 5 SCC 21

In this case the basic facts were that, at the time of accident causing injury to person on scooter, the bus was being driven by cleaner under the direction of the driver who are employee of insurance holder. The owner has not taken the stand that the irresponsible act of driver was not within his knowledge.

The Hon'ble Supreme Court held that, as per facts and circumstances in the present case, the owner is deemed to be liable to pay the compensation applying the **principle of vicarious liability**. Because master - servant relation was existing between the owner and driver at the time of accident. And the accident took place when the authorised act was being performed in a mode which may not be proper but directly connected with the course of employment. So the insurance company was held jointly and severally liable to pay the compensation to the third party.

3. On the issue of expired license

The Oriental Insurance Co. Ltd. v. Manoj Kumar & Ors. (2015) 111 ALR 275

The Hon'ble Allahabad High Court in this case 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 be held liable.**

Tata AIG General Insurance Co. Ltd. v. Akansha & Ors. 2015 SCC OnLine 6758

The Hon'ble Delhi High Court in this case 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.**

National Insurance Co. Ltd. v. Hem Raj & Ors. 2012 ACJ 1891

The Hon'ble Himachal Pradesh High Court in this case, once again, a case of an originally valid license, which had expired, there was no question of a fake license. 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 license having not been renewed within thirty (30) days of the expiry of the license 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 license is not renewed within the period of thirty (30) days. If the driving license is not renewed within thirty (30) days, it was held, the driver neither had an effective driving license nor can he said to be duly licensed. The conclusion, thus, was that the driver, who permits his license to expire and does not get it renewed till after the accident, cannot claim that it should be deemed that the license is renewed retrospectively.

Conclusion

1. Mere absence, fake or invalid driving license not an adequate defence for the insurer. Insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in ensuring a duly licensed driver was driving the vehicle.
2. There is no breach of Section 149(2)(a)(ii) where the owner has satisfied himself that the driver has a licence and is driving competently. If the license is fake, the insurance company has to prove that the owner had notice of the fact that the license was fake but still permitted the concerned person to drive.

Conclusion

3. The owner cannot be expected to verify the genuineness of the driving licence with the licensing authority before hiring the services of the driver. Exception being when the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the owner has notice of allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action to verify the genuineness of the license.
4. The insurance company has to prove that the insured/owner was guilty of negligence and failed to exercise reasonable care and caution regarding the use of insured vehicle at the time of accident, to be exonerated of the liability towards insured/owner as well as third party.

Conclusion

5. If the license has expired on the date of incident, then it would be deemed that the person was driving without license. Initial burden on the insurer to prove that the license had indeed expired on the date of the incident. If the driving license is not renewed within thirty days from the date of its expiry, the driver neither has an effective driving license nor can he said to be duly licensed. The driver, who permits his license to expire and does not get it renewed till after the accident, cannot claim that it should be deemed that the license is renewed retrospectively.



Thank You

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