

**HIGH COURT OF TRIPURA
AGARTALA
MAC.APP.No.103 of 2024
connected with
MAC.APP.No.121 of 2024**

MAC.APP.No.103 of 2024

The Divisional Manager,
The Bajaj Allianz General Insurance Company Limited,
3rd Floor, Aitorma Agartala Centrum Mall,
Sakuntala Road, Agartala, District-West Tripura,
(Insurer of vehicle No.TR-07-D-7714 Pulsar Motorcycle)

---- Appellant(s)

Versus

1. Baharul Islam Khan,
son of Late Farid Uddain Khan
of Durgapur, Sonamura,
P.O. & P.S. Sonamura, Pin-799131,
District-Sepahijala Tripura

2. Mir Hossain,
son of Late Siraj Miah
of Tarapukur, Dhanpur, Sonamura,
P.O.& P.S. Sonamura, Pin-799131,
District-Sepahijala Tripura
(Owner of vehicle No.TR-07-D-7714 Pulsar Motorcycle)

----Respondent(s)

For Appellant(s)	:	Mr. Shubhajit Chakraborty, Adv.
For Respondent(s)	:	Mr. Saugata Datta, Adv.

in connection with
MAC.APP.No.121 of 2024

Baharul Islam Khan,
son of Late Farid Uddain Khan
of Durgapur, Sonamura,
P.O. & P.S. Sonamura, Pin-799131,
District-Sepahijala Tripura

---- Appellant Claimant Petitioner(s)

Versus

1. Mir Hossain,
son of Late Siraj Miah
of Tarapukur, Dhanpur, Sonamura,
P.O.& P.S. Sonamura, Pin-799131,
District-Sepahijala Tripura
(Owner of vehicle No.TR-07-D-7714 Pulsar Motorcycle)

2. The Divisional Manager,
The Bajaj Allianz General Insurance Company Limited,
3rd Floor, Aitorma Agartala Centrum Mall,
Sakuntala Road, Agartala, District-West Tripura, Pin-799001
(Insurer of vehicle No.TR-07-D-7714 Pulsar Motorcycle)

----Opposite Party Respondent(s)

For Appellant(s)	:	Mr. Saugata Datta, Adv.
For Respondent(s)	:	Mr. Shubhajit Chakraborty, Adv.
Date of Hearing	:	22.04.2025

Date of Judgment
& Order : 29.04.2025
Whether fit for reporting : YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

Both the appeals are taken up together for hearing and decision as because both the appeals have arisen out of common judgment and award dated 29.06.2024 delivered by Learned Member, Motor Accident Claims Tribunal, Sepahijala District, Sonamura in connection with Case No.T.S.(MAC)14 of 2021. MAC.APP.No.103 of 2024 is preferred by the Bajaj Allianz General Insurance Company Limited for setting aside/modification of the award and on the other hand MAC.APP.No.121 of 2024 is preferred by the claimant petitioner for enhancement of the award.

[2] Heard Learned counsel, Mr. Shubhajit Chakraborty appearing on behalf of the appellant-Insurance Company in connection with MAC.APP.No.103 of 2024 and said counsel also appeared on behalf of the respondent-Insurance Company in MAC.APP.No.121 of 2024. Further heard Learned counsel, Mr. Saugata Datta appearing on behalf of the respondent claimant petitioner in MAC.APP.No.103 of 2024 and also as appellant claimant petitioner in MAC.APP.No.121 of 2024.

[3] Taking part in the hearing, Learned counsel appearing on behalf of the appellant-Insurance Company first of all submitted that on behalf of the Insurance Company before the Tribunal one witness Abhishek Chatterjee was examined as OPW-2. In course of his examination, he stated that on the day of alleged incident the rider of the insured bike TR07D7714(Pulsar) i.e. OP No.1 Mir Hossain had no effective

driving license at the time of accident and as such, in absence of effective and valid driving license of the driver of the vehicle no liability can be imposed upon the Insurance Company for making payment of compensation to the claimant petitioner in a case of this nature. But surprisingly, Learned Tribunal below at the time of delivery of judgment/award fastened the liability of payment of compensation upon the appellant-Insurance Company when it was on record that the driver of the offending vehicle had no effective driving license on the day of alleged accident.

[4] Learned counsel for the appellant-Insurance Company further drawn the attention of the Court referring para No.18 Point No.(c) wherein the Learned Tribunal below came to the observation that from Ext.B the Insurance Certificate of the offending bike he found that the offending bike had valid Insurance Certificate from 25.01.2020 to 24.01.2021 which covers the date of accident i.e. on 01.05.2020. But from Ext.D i.e. the Driving license, the Learned Tribunal below came to the observation that the offending vehicle had valid driving license from 06.07.2020 to 23.01.2037 "covering the date of accident on 01.05.2020." Referring the said observation Learned counsel for the Insurance Company drawn the attention of the Court that in absence of valid documentary evidence on record how the Learned Tribunal came to the observation that on the day of accident the driver had valid driving license covering the date of accident on 01.05.2020.

[5] So, finally Learned counsel for the Insurance Company urged for setting aside of the judgment/award delivered by the Learned Tribunal and to fasten the liability of payment of compensation upon the owner/driver of the offending vehicle.

[6] On the other hand, Learned counsel for the respondent claimant petitioner firstly submitted before the Court that there was no irregularity or infirmity in the judgment/award delivered by the Learned Tribunal and as such, there is no scope to interfere with the judgment/award. Learned counsel further drawn the attention of the Court that in para No.15 of the judgment/award it was clearly stated that PW-1 i.e. the claimant in his deposition clearly stated that after the accident he was brought to Sonamura Hospital but due to his serious injuries he was shifted to AGMC and GBP hospital and admitted on 01.05.2020 and as due to Covid situation the treatment of the said hospital was not satisfactory and day by day his condition was deteriorating so the family members of the claimant shifted him in Bhaumic Polyclinic and Nursing Home, Agartala on 21.05.2020 from AGMC and GBP Hospital wherein he was admitted from 21.05.2020 to 27.05.2020. But the Learned Tribunal below at the time of determination of compensation did not fix any award towards attendant charges for the period w.e.f. 01.05.2020 to 20.05.2020 when he was admitted in AGMC and GBP Hospital supported by the attendant and for which according to Learned counsel a considerable sum may be considered for the aforesaid period when the victim was admitted in AGMC and GBP Hospital with severe injuries on his person.

[7] On the other hand, to counter his submission, Learned counsel for the Insurance Company submitted that since the alleged victim is a government servant and as such, he is not entitled to get any benefit in this regard and submitted that the observation of Learned Tribunal below was proper in this respect and the claimant petitioner is not entitled to get any sum for the aforesaid period of his treatment, since he was a government

servant and he was getting salary without any job during the Covid period and finally urged for dismissal of the appeal filed by the claimant petitioner.

Considered.

[8] In the case at hand, the claimant filed one claim petition under Section 166 of M.V. Act before the Learned Tribunal alleging inter alia that on 01.05.2020 at about 10 a.m. the claimant Baharul Islam Khan was proceeding taking extreme proper side of Melaghar to Sonamura road by riding his bike and when he reached near Sonamura BOC, at that time over Melaghar to Sonamura road one vehicle bearing No.TR07-D—7714 (Pulsar) dashed the injured with his bike by rash and negligent driving with excessive speed and as a result of which the accident took place and for that the claimant petitioner Baharul Islam Khan sustained severe injuries on his person. Accordingly, a case was registered under Section 279/338 of IPC and also under Section 184/187 of M.V. Act and finally on conclusion of investigation the IO laid charge-sheet against the rider/owner of the offending bike bearing No. TR07-D—7714 (pulsar) namely Mir Hossen.

[9] After filing of the claim petition, the case was contested by OP i.e. the owner of the offending pulsar bike by filing written statement denying the assertions of the claimant petitioner and submitted that on the alleged day the vehicle was duly insured with the Bajaj Allianz General Insurance Company Limited covering the date of compensation and if any compensation is awarded that should be borne by the Insurance Company.

[10] The noticee Insurance Company also contested the claim petition by filing written statement denying the plea of the

claimant petitioner and also took the plea that the petition is not maintainable and the same is liable to be dismissed on the ground that on the day of alleged accident the driver/rider of the offending pulsar bike had no valid driving license rather the claimant petitioner who was the rider of the Scooty bearing No.TR01-E-8615 was solely responsible for the alleged accident. Upon the pleadings of the parties Learned Tribunal below framed the following issues :

- “(i) Is the suit maintainable in its present form and nature?
- (ii) Whether the claimant petitioner sustained injuries out a vehicular accident occurred on 01.05.2020 at about 10.00 am near Sonamura BOC, on Sonamura-Melaghar road involving the vehicle bearing registration No.TR07D7714(Pulsar)?
- (iii) Whether such accident occurred due to rash and negligent driving by the driver of vehicle No.TR07D7714(Pulsar)?
- (iv) Whether claimant petitioner is entitled to get compensation as prayed for, if so then to what extent?
- (v) Who is responsible for payment of compensation as prayed for?”

[11] To substantiate the issues, both the parties have adduced oral/documentary evidence on record :

APPENDIX

Claimant Witness :-

PW.1 –Sri Baharul Islam Khan

Claimant Exhibits:-

- Ext.1(as a whole):-Certified copy of FIR (5 sheets).
- Ext.2:-Certified copy of ejahar (two sheets).
- Ext.3:-Certified copy of seizure list.
- Ext.4:-Certified copy of MVI report.
- Ext.5(as a whole):-Certified copy of final report.
- Ext.6(sheets):-Certified copy of injury report.
- Ext.7:-Discharge certificate dated 27.05.2020 issued from Bhowmik Poly Clinic and Nursing Home.
- Ext.8 series:-Cash memos, money receipts, bills/invoices(21 sheets).
- Ext.9 series:- Test report, prescriptions (6 sheets).
- Ext.10:-Salary certificate dated 03.01.2022.
- Ext.11 series (SO):- two original bills in reference to the maintenance cost of damaged vehicle bearing No.TR01E8615.

Opposite party's Witness:-

OPW.1:-Mir Hossain.

OPW.2:-Abhishek Chatterjee.

Exhibits by Opposite party:-

- Ext.A:-one Xerox copy of registration certificate.
- Ext.B:-One Xerox copy of the insurance policy.
- Ext.C:-one Xerox copy of the form 24.
- Ext.D:-one Xerox copy of the driving licence.

Ext.E:-Extract copy of driving licence.

Ext.F(series):-Insurance Policy of Bajaj Alliance GIC.

Ext.G:-Certified copy of seizure list.

[12] Finally, on conclusion of enquiry, Learned Tribunal below allowed the claim petition and fasten the liability of payment of compensation upon the appellant Insurance Company. The operative portion of the judgment/order of the Learned Tribunal below runs as follows :

"20. It is ordered that, a total amount of Rs.3,17,000/- (Rupees three lakh seventeen thousand) is awarded in favour of the petitioner as compensation. The OP No.2, the Noticee, Bajaj Allianz Insurance Company Ltd., the insurer of the offending motor bike bearing No.TR07D-7714(Pulsar) is hereby directed to pay the compensation as awarded. The OP No.2, the Noticee is also directed to pay the interest @ 8% per annum on total awarded sum from the date of filing of this petition i.e. on 16.04.2021 till the date of realization."

Challenging the judgment and award, both the appeals have been preferred before this Court by the Insurance Company as well as by the claimant petitioner.

[13] I have heard detailed arguments of both the sides and gone through the records of Learned Tribunal below including the judgment/award delivered by the Learned Tribunal below. It is the admitted position that Learned Tribunal below at the time of delivery of judgment/award fastened the liability of payment of compensation upon the appellant-Insurance Company. It is also the admitted position that on the day of alleged accident the owner/driver of the offending pulsar bike had no driving license, although, the offending vehicle had valid Insurance Certificate. On perusal of the judgment/award of the Learned Tribunal below it appears that in para No.9 it was clearly written that on behalf of the Insurance Company one Senior Legal executive appeared who was examined as OPW-2 and he clearly stated that on the day of alleged occurrence the rider of

the offending pulsar bike had no valid driving license, although the offending vehicle had valid Insurance Certificate. As such, the Company was not responsible for making payment of compensation. In para No.18 of the judgment/award Learned Tribunal below on perusal of Exbt.D observed that the driver of the offending bike had valid driving license w.e.f. 06.07.2020 to 31.01.2037 covering the date of accident on 01.05.2020 but it is surprising as to how the Learned Tribunal below came to such observation when there was no such evidence on record like that and furthermore the owner/driver/rider of the said bike also could not produce any other earlier driving license to draw attention of the tribunal below that he earlier possessed driving license but the validity was expired. However, on conclusion of the proceeding, Learned Tribunal below fastened the liability of payment of compensation upon the Insurance Company which in my considered view was not proper.

[14] Furthermore, on perusal of the said judgment/award it also appears that at the time of delivery of judgment in para No.16 the Learned Tribunal below awarded cost of attendant charges w.e.f. 21.05.2020 to 27.05.2020 for a period of seven days for two attendances per day showing cost of each attendant @ Rs.500 each. Thus, determined the cost of attendant charges amounting to Rs.7000/- which in my considered view was also not proper because it is on record that on and from the date of accident i.e. w.e.f. 01.05.2020 to 20.05.2020 the victim was admitted in AGMC and GBP Hospital when there was severe Covid across the world. So, naturally in absence of any support person it was very difficult on the part of the claimant-petitioner to survive and as such, for the said period he is also entitled to get the cost of attendant charges

which the Learned Tribunal below failed to consider and as such for the period w.e.f. 01.05.2020 to 20.05.2020 for a period of twenty days he will be further entitled to get more Rs.20,000/- showing two attendant charges @ Rs.500 each per attendant (Rs.500 x 2 x 20). Thus, towards cost of attendant charges the claimant petitioner would get Rs.27,000/- in place of Rs.7000/-.

From the award of the Learned Tribunal it appears that Learned Tribunal below at the time of determination of compensation awarded Rs.1,80,000/- towards expenditure incurred for treatment, hospitalization, medicine etc. also awarded Rs.1,00,000/- towards pain, sufferings and trauma and for future medical expenses also awarded Rs.30,000/-. Thus, after calculation Learned Tribunal below determined the total amount of compensation amounting to Rs.3,17,000/-. At the time of hearing, Learned counsel for the appellant claimant petitioner also submitted that after the accident till today the claimant petitioner also undergoing treatment and taking medicines. So, the amount of Rs.30,000/- needs to be enhanced. Learned counsel for the Insurance Company did not submit anything before this Court. So, considering all it appears to me that towards that head the appellant claimant petitioner also would get Rs.50,000/- in place of Rs.30,000/- as future medical expenses. So, after calculation the appellant claimant petitioner is now entitled to get enhanced compensation of Rs.1,80,000 + 27,000 + 1,00,000 + 50,000 =Rs.3,57,000/-.

[15] Now, here I would like to discuss what would be the position if the driver does not possess any valid driving license on the day of alleged accident in any case in spite of having valid Insurance certificate. In this regard, I would like to rely upon one citation of our Hon'ble Supreme Court of India in

Singh Ram versus Nirmala and Others reported in **(2018) 3**

SCC 800 wherein in para Nos.6 to 8 Hon'ble the Apex Court observed as under :

"6. In National Insurance Co. Ltd. v. Swaran Singh(2004)3 SCC 297, this Court held that the holder of a driving licence has a period of thirty days on its expiry, to renew it:

"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 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."

The following conclusion has been recorded in summation in the judgment:

"(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. 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 licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged,

inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case".

7. In the present case it is necessary to note, as observed by the Tribunal, that the owner did not depose in evidence and stayed away from the witness box. He produced a licence which was found to be fake. Another licence which he sought to produce had already expired before the accident and was not renewed within the prescribed period. It was renewed well after two years had expired. The appellant as owner had evidently failed to take reasonable care (proposition (vii) of Swaran Singh) since he could not have been unmindful of facts which were within his knowledge.

8. In the circumstances, the direction by the Tribunal, confirmed by the High Court, to pay and recover cannot be faulted. The appeal is, accordingly, dismissed. There shall be no order as to costs."

Further, Hon'ble the Apex Court in another case in

Parminder Singh versus New India Assurance Company

Limited and Others reported in **(2019) 7 SCC 217** in para

No.7 observed as under :

"7. On the issue of liability to pay the compensation awarded, we affirm the view taken by the High Court that the Respondent – Insurance Company is absolved of the liability to bear the compensation, as evidence has been produced from the office of the Regional Transport Office to prove that the drivers of the two offending trucks were driving on the basis of invalid driving licenses. It is also relevant to note that the owners and drivers of the offending trucks have not appeared at any stage of the proceedings, including this Court.

7.1. This Court in *Shamanna v. Oriental Insurance Co. Ltd.* : (2018) 9 SCC 650 held that if the driver of the offending vehicle does not possess a valid driving license, the principle of 'pay and recover' can be ordered to direct the insurance company to pay the victim, and then recover the amount from the owner of the offending vehicle.

7.2. We deem it just and fair to direct the Respondent – Insurance Company to pay the enhanced amount of compensation as indicated in Para. 6 above, to the Appellant within a period of 12 weeks from the date of this judgment. The Respondent – Insurance Company is directed to make out a Demand Draft in the name of the Appellant, which can be used for his care for the rest of his life. The Respondent – Insurance Company is entitled to recover the amount from the owners and drivers of the two offending trucks.”

From the aforesaid citations of law it appears to me that in such a situation Hon'ble the Apex Court have been pleased to observe that principle of pay and recovery be followed and the respondent-Insurance Company would be entitled to recover the amount from the owner/driver of the offending bike. Relying upon the principle it appears to me that here in the case at hand since it is the admitted position that on the alleged day of accident the driver/owner of the offending pulsar bike had no valid driving license although the vehicle had valid Insurance certificate and as such, the appellant-Insurance Company shall pay the amount of compensation to the claimant petitioner and shall recover the amount from the owner/rider of the offending bike.

[16] In the result, both the appeals are disposed of with the following observations :

The appellant claimant petitioner shall be entitled to get compensation amounting to Rs.3,57,000/- with 8% p.a. (8% interest) from the date of filing the claim petition to till the date of realization. The appellant Insurance Company shall pay the aforesaid amount to the appellant claimant petitioner in MAC.APP.No.121 of 2024 within a period of 6(six) weeks from today to the Registry of the High Court deducting the amount if anything being paid and

shall recover the amount from the owner/rider of the offending pulsar bike bearing registration No. TR07-D-7714.

Send down the LCR along with a copy of this judgment/award passed by this Court. Supply copy of judgment/award free of cost to Learned counsels for the Insurance Company and the claimant petitioner.

With this observation, both the appeals are disposed of.

JUDGE

SABYASACHI
BHATTACHA
RJEE

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BHATTACHARJEE
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