



CNR: KAHC010310212017

NC: 2026:KHC:40562-DB
MFA No. 3855 of 2017
C/W MFA.CROB No. 45 of 2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF AUGUST, 2026

PRESENT

HON'BLE MR. JUSTICE JAYANT BANERJI

AND

HON'BLE MS. JUSTICE TARA VITASTA GANJU

MISCELLANEOUS FIRST APPEAL NO.3855 OF 2017

(MV-I)

C/W

MFA CROSS OBJECTION NO.45 OF 2020 (MV-I)

IN MFA No. 3855/2017

BETWEEN:

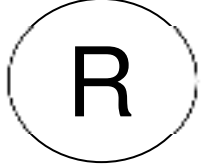
THE BRANCH MANAGER
UNITED INDIA INSURANCE CO. LTD.
KUNDAPURA BRANCH, SHREE
NARASIMHA COMPLEX, NH-66,
OPP: KSRTC DEPOT, VODER HOBLI,
KUNDAPURA BY
DIVISIONAL MANAGER,
UNITED INDIA INSURANCE CO. LTD.,
JEWEL PLAZA, 1ST FLOOR,
MARUTHI VEETHIKA, UDUPI – 576 101
ITS BRANCH MANAGER

...APPELLANT

(BY SRI. O MAHESH, ADVOCATE)

AND:

1. MANJUNATHA NAIK
AGED ABOUT 44 YEARS,



Digitally signed by
SUMATHY
KANNAN
Location: HIGH
COURT OF
KARNATAKA



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S/O NARASIMHA NAIK,
R/O BADABALU, JANSALE,
SIDDAPURA VILLAGE,
KUNDAPURA TALUK
SINCE THE RESPONDENT IS STATED
UNCONSCIOUS AND BED RIDDEN AND
HE IS REPRESENTED BY HIS WIFE GUARDIAN
SMT. SUJATHA M. NAIK,
AGED ABOUT 36 YEARS
SIDDAPURA VILLAGE,
KUNDAPURA TALUK – 576 214

2. IVAN MASCARAENHAS
MAJOR
S/O JERALD MASCARENHAS,
R/O H.NO.2-57, AMMUNJE POST,
UPPOOR VILLAGE, UDUPI TALUK,
UDUPI DISTRICT – 576 105

...RESPONDENTS

(BY SRI. NAGARAJ HEGDE., ADVOCATE FOR R1;
SRI. N.S.BHAT, ADVOCATE FOR R2)

THIS MFA IS FILED U/S 173(1) OF MV ACT PRAYING TO
ALLOW THE APPEAL AS PRAYED FOR BY THE JUDGMENT
AND AWARD DATED 18.02.2017 PASSED IN MVC
NO.398/2015 ON THE FILE OF THE SENIOR CIVIL JUDGE
AND ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL,
KUNDAPURA, SETTING ASIDE WITH COSTS IN THE
INTERESTS OF JUSTICE AND EQUITY.

IN MFA.CROB NO.45/2020:

BETWEEN:

SRI. MANJUNATHA NAIK
S/O NARASIMHA NAIK,



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AGED ABOUT 46 YEARS
R/O BADABALU, JANSale,
SIDDAPURA VILLAGE,
KUNDAPURA TALUK – 576 201
SINCE THE PETITIONER IS STATED
UNCONSCIOUS AND BED RIDDEN AND
HE IS REPRESENTED BY HIS WIFE GUARDIAN
SMT. SUJATHA M. NAIK,
AGED ABOUT 38 YEARS
R/O BADABALU, JANSale,
SIDDAPURA VILLAGE,
KUNDAPURA TALUK – 576 201

...CROSS OBJECTOR

(BY SRI. NAGARAJA HEGDE, ADVOCATE)

AND:

1. SRI. IVAN MASCARENHAS
S/O JERALD MASCARENHAS,
AGE IN MAJOR
R/AT H.NO.2-57, AMMUNJE POST,
UPPOOR VILLAGE, UDUPI TALUK,
UDUPI DISTRICT – 576 105
2. UNITED INDIA INSURANCE CO. LTD.,
BRANCH OFFICE: KUNDAPURA
SHREE NARASIMHA COMPLEX
NH-66, OPP: KSRTC DEPOT
VODERHOBOLI, KUNDAPURA – 576 201
REP BY ITS
BRANCH MANAGER

...RESPONDENTS

(BY SRI. N.S.BHAT, ADVOCATE FOR R1;
SRI. O.MAHESH, ADVOCATE FOR R2)



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THIS MFA CROB. IN MFA.NO.3855/2017 IS FILED UNDER ORDER XLI RULE 22(1) OF CPC R/W SECTION 173(1) OF MV ACT, PRAYING THE AFTER PERUSING THE RECORDS ENHANCE THE COMPENSATION BY MODIFYING THE JUDGMENT AND AWARD DATED 18.02.2017, PASSED IN MVC NO.398/2015, ON THE FILE OF THE SENIOR CIVIL JUDGE AND MEMBER, ADDITIONAL MACT, KUNDAPURA AND AWARD JUST AND REASONABLE COMPENSATION THE GRAVITY OF THE INJURY, PERMANENT DISABILITIES AND OTHER SURROUNDING CIRCUMSTANCES.

THIS MFA C/W MFA CROB. COMING ON FOR ADMISSION THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
and
HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORAL JUDGMENT

(PER: HON'BLE MS. JUSTICE TARA VITASTA GANJU)

1. The present appeals before this Court being M.F.A No.3855/2017 and M.F.A.Crob No.45/2020 have been filed impugning the Judgment and Award dated 18.02.2017 in M.V.C.No.398/2015 passed by the Senior



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Civil Judge and Member, Addl. MACT, Kundapura, (hereinafter referred to as the 'Impugned Award'). By the Impugned Award, the learned Tribunal has awarded Rs.14,56,030/- along with interest at the rate of 6% per annum from the date of petition till the date of deposit.

2. The challenge in the present case has been made by the Insurance Company (MFA No.3855/2017) as well as the petitioner/claimant (MFA Crob. No.45/2020).

3. Heard the learned counsels for the Insurance Company and the petitioner/claimant as well as the learned counsel appearing on behalf of the owner of the offending vehicle. With the consent of the parties, both the appeal and the MFA Cross Objections are taken up for final disposal at the stage of admission itself, given the long pendency of these matters.

4. The briefly facts are that on 12.02.2015 at about 08.45 a.m., the petitioner/claimant was riding his motorcycle bearing registration No.KA-20-ED-7973 from Kolagiri side



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towards K.G.Road side and when he reached a place near Salmara Society, Uppoor Village, Udupi Taluk, at that time, a Maximo Light Goods Tempo bearing registration No.KA-320-C-8034 while attempting to overtake him, lost control of his vehicle and hit the petitioner's motorcycle. Due to the impact, the petitioner fell down on the road and sustained grievous injuries. Immediately after the accident, the petitioner/claimant was shifted to Adarsha Hospital, Udupi and took treatment for more than two months.

5. A claim petition was filed by the petitioner/claimant through his wife/guardian under Section 166 of the Motor Vehicles Act, 1988. It was stated therein that even though the petitioner/claimant has been discharged, the neurosurgeon has not given any guarantee of his life and because of the injuries sustained including the major injury to his brain, there is a risk involved in petitioner's movement. It was also stated that lakhs of rupees were spent towards medical expenses and conveyance.



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5.1. Upon service of summons, respondent No.1/owner of the vehicle did not appear and was proceeded with *ex parte*. The respondent No.2/Insurance Company appeared through its counsel and filed a written statement denying that the accident had taken place due to the rash and negligent driving of the Goods Tempo and it was also stated that the driver of the offending vehicle had no valid and effective driving licence. The compensation sought for by the petitioner was also denied.

6. Based on the pleadings of the parties, the following issues were framed by the learned Tribunal:

"ISSUES

- 1) *Whether the petitioner proves that he had sustained injuries in a road traffic accident alleged to have taken place on 12.02.2015 at about 8.45 hours near Salmara Society, Uppooru Village, Udupi Taluk, due to the rash and negligent driving of the driver of the Tempo bearing Reg.No.KA-20-C-8034?*
- 2) *Whether the respondent No.2 proves that the alleged accident has taken place due to the negligence of the petitioner?*
- 3) *Whether the 2nd respondent proves that the driver of the Tempo bearing Reg.No.KA-20-C-8034 was not holding valid and effective driving licence and permit to ply the said vehicle, at the time of the accident?*



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4) *Whether the petitioner is entitled for compensation? If so, what is the quantum? From Whom?*

5) *What order or award?"*

6.1 The wife of the petitioner/claimant was examined as PW.1. In addition, PW.2 was the eyewitness while PW.3 was the doctor who treated the petitioner. The petitioner/claimant also produced the various documents which included the FIR (Ex.P1), Spot Mahazar (Ex.P2), Spot Sketch (Ex.P3) and IMV report (Ex.P5). In addition, with regard to the medical condition of the petitioner, the Wound Certificate (Ex.P4), Discharge Summary (Ex.P12), Disability Certificate (Ex.P13), Medical bills (Ex.P15), photographs and CD (Ex.P14), X-ray (Ex.P17) and medical file (Ex.P18) were filed. The petitioner/claimant also produced the licence (Ex.P10) issued by Grama Panchayath for running of a restaurant, which has been run by the petitioner. The respondents produced the driving licence as well as the insurance policy (Exs.R1 and R2) but did not adduce any oral evidence.



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6.2 Based on the evidence placed before Tribunal and the police records, the learned Tribunal found that a case was registered for rash and negligent driving against the owner of the Goods Tempo and although the eyewitness was cross-examined, the accident could not be disputed. It was also not disputed that the accident had taken place on the left side of the road and given that the width of the road was 18 feet, the Tempo had sufficient space to pass the motorcycle. Since there was no rebuttal evidence, and relying on the evidence of the petitioner, on the aspect of rash and negligent driving, the learned Tribunal answered the issue in the affirmative. The learned Tribunal also found that there was no endorsement on the driving licence to drive a transport vehicle as on the date of the accident.

6.3 In addition, on the aspect of compensation, the learned Tribunal examined the disability certificate and all the evidence placed on record and after examining the injuries in great detail, found that the petitioner/claimant was suffering from head injuries and at the time of his



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discharge, he was in a semi-conscious state and had lost his memory. Due to the injuries sustained, the petitioner/claimant was unable to sit or stand, walk without assistance and he was completely bed ridden and dependent on others for his day-to-day activities.

6.4 The learned Tribunal awarded income at the rate of Rs.10,000/- per month and took the disability of the petitioner/claimant at 45% to award the loss of future earnings. Since the petitioner/claimant was 43 years old, the multiplier was taken at '14'. Thus, the loss of earning capacity was calculated as follows:

$$[\text{Rs.}10,000 \times 12 \times 14 \times 45/100 = \text{Rs.}7,56,000/-]$$

6.5 In addition, amounts were awarded under various heads including pain and suffering, medical expenses, loss of earning during laid up period, loss of amenities and future medical expenses, totaling to Rs.14,56,030/- as per the table below:

Sl. No.	Heads of Compensation	Amount
1)	Pain and suffering	Rs. 1,25,000/-



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2)	Medical expenses	Rs. 2,95,030/-
3)	Food and Nourishment charges	Rs. 20,000/-
4)	Conveyance Charges	Rs. 20,000/-
5)	Attendant charges	Rs. 25,000/-
6)	Loss of earning during laid up period	Rs. 1,20,000/-
7)	Loss of future earning capacity	Rs. 7,56,000/-
8)	Loss of amenities	Rs. 75,000/-
9)	Future medical expenses	Rs. 20,000/-
	Total	Rs.14,56,030/-

6.6 Thus, an amount of Rs.14,56,030/- along with interest at the rate of 6% per annum was awarded by the learned Tribunal. The Tribunal, however, has held that the respondents were jointly and severally liable to pay the compensation, given the fact that there was no valid endorsement on the driving licence to drive the offending vehicle.

6.7 As stated above, the challenge has been made by the petitioner/claimant as well as the Insurance Company.

7. Learned counsel appearing for the Insurance Company submits that on account of the endorsement not being present on the driving licence, the insurance policy was breached and thus no liability could be fixed on the



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Insurance Company. In addition, he contends that the amounts awarded were on the higher side.

8. Learned counsel appearing for the owner of the vehicle contends that the owner had a valid driving licence to drive a light goods vehicle and that no endorsement was requisite, as was contended by the learned counsel for the Insurance Company.

9. Learned counsel for the petitioner/claimant on the other hand contends that so far as concerns the liability, the law in this behalf is settled by the Supreme Court in ***Mukund Dewangan Vs. Oriental Insurance Company Limited.***¹

However, his challenge is primarily on the ground of non-award of adequate compensation. Learned counsel submits that the petitioner/claimant was previously running a restaurant at Siddapura Village and that he had produced a licence from the Grama Panchayath as per Ex.P10 in this behalf. He further submits that given the nature of injuries

¹(2017) 14 SCC 663



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sustained and the disability including neurological, the learned Tribunal erred in awarding 45% functional disability. Reliance in this behalf is placed on the evidence of the doctor as well as the evidence given by PW1- the wife of the petitioner/claimant and the disability certificate of the petitioner/claimant, which was produced. Thus, it was contended by the learned counsel for the petitioner/claimant that since the petitioner/claimant was unable to do any work whatsoever and could not even attend to his daily activities and requires an attendant for his life, the functional disability of the petitioner was 100%.

10. Based on the contentions of the parties, the following points arise for determination:

- (i) Whether the disability calculated/the amounts awarded by the Tribunal were in accordance with the evidence on record?
- (ii) Whether the liability could have been fastened on the owner by the Tribunal?



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11. In the present case, the undisputed facts are that the Insurance company has admitted the existence of a valid insurance policy. However, it has been contended that the driving license [Ex.R1/Ex.P6] does not have an endorsement for driving a Goods vehicle but is for a Light Motor Vehicle. Thus it is contended that liability could not be fastened on the Insurance Company at all.

11.1 On the issue of liability being fastened on the respondent/ Owner of the offending vehicle, on account of driver not having a valid endorsement on the driving licence, the Supreme Court in the judgment of ***Mukund Dewangan's*** case while considering whether a holder of a light motor vehicle licence is required to obtain a separate endorsement for driving a transport vehicle, has held that a licence is issued with reference to the class of vehicle and not its use and that a holder of an LMV licence is competent to drive a transport vehicle falling within the LMV class without a separate endorsement. The relevant extract is set out below:



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"58. "Transport vehicle" has been defined in Section 2(47) of the Act, to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. "Public service vehicle" has been defined in Section 2(35) to mean any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward and includes a maxi cab, a motor cab, contract carriage and stage carriage. "Goods carriage" which is also a transport vehicle is defined in Section 2(14) to mean a motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. **It was rightly submitted that a person holding licence to drive light motor vehicle registered for private use, who is driving a similar vehicle which is registered or insured, for the purpose of carrying passengers for hire or reward, would not require an endorsement as to drive a transport vehicle, as the same is not contemplated by the provisions of the Act.** It was also rightly contended that there are several vehicles which can be used for private use as well as for carrying passengers for hire or reward. **When a driver is authorised to drive a vehicle, he can drive it irrespective of the fact whether it is used for a private purpose or for purpose of hire or reward or for carrying the goods in the said vehicle. It is what is intended by the** provision of the Act, and Amendment Act 54 of 1994.

59. Section 10 of the Act **requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles.** In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, **no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles.** It was pre-amended position as well the post-amended position of Form 4 as amended on 28-3-2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in Section 2(21) and the provisions of Section 10(2)(d), Rule 8 of the 1989 Rules, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of "light



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motor vehicles” and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in **Section 10(2)(e) of the Act “Transport Vehicle” would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in Sections 10(2)(e) to (h)** and our conclusion is fortified by the syllabus and rules which we have discussed.

60. Thus, we answer the questions which are referred to us thus:

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XXX

XXX

60.2. A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg would be a light motor vehicle and also motor car or tractor or a roadroller, “unladen weight” of which does not exceed 7500 kg and holder of a driving licence to drive class of “light motor vehicle” as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg or a motor car or tractor or roadroller, the “unladen weight” of which does not exceed 7500 kg. **That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under Section 10(2)(d) continues to be valid after Amendment Act 54 of 1994 and 28-3-2001 in the form.”**

[Emphasis Supplied]

12. The Supreme Court in ***National Insurance Company Vs. Swaran Singh***² case while examining the defence of the Insurance Company that the offending vehicle was not

² (2004)3 SCC 297



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driven by an authorized person or a person not having a valid driving licence, has held that it is obligatory on the part of the Insurance company to substantiate its defence and a mere plea would not suffice. The insurer must prove that the owner of the offending vehicle was guilty of wilful default of the terms and conditions of insurance. The relevant extract of the **Swaran Singh** case is set out below:

"84. We have analysed the relevant provisions of the said Act in terms whereof a motor vehicle must be driven by a person having a driving licence. **The owner of a motor vehicle in terms of Section 5 of the Act has a responsibility to see that no vehicle is driven except by a person who does not satisfy the provisions of Section 3 or 4 of the Act. In a case, therefore, where the driver of the vehicle, admittedly, did not hold any licence and the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in its defence and avoid liability. The matter, however, may be different where a disputed question of fact arises as to whether the driver had a valid licence or where the owner of the vehicle committed a breach of the terms of the contract of insurance as also the provisions of the Act by consciously allowing any person to drive a vehicle who did not have a valid driving licence. In a given case, the driver of the vehicle may not have any hand in it at all e.g. a case where an accident takes place owing to a mechanical fault or vis major.** (See Jitendra Kumar [(2003) 6 SCC 420 : JT (2003) 5 SC 538].

xxx

xxx

ZXC xxx

90. **We have construed and determined the scope of sub-clause (ii) of sub-section (2) of Section 149 of the Act. Minor breaches of licence conditions, such as want of medical fitness certificate, requirement**



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about age of the driver and the like not found to have been the direct cause of the accident, would be treated as minor breaches of inconsequential deviation in the matter of use of vehicles. Such minor and inconsequential deviations with regard to licensing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance to the third parties.

91. On all pleas of breach of licensing conditions taken by the insurer, it would be open to the Tribunal to adjudicate the claim and decide inter se liability of insurer and insured; although where such adjudication is likely to entail undue delay in decision of the claim of the victim, the Tribunal in its discretion may relegate the insurer to seek its remedy of reimbursement from the insured in the civil court.

92. It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of the wilful breach of the conditions of the insurance policy or the contract of insurance. In *Lehru* case [(2003) 3 SCC 338 : 2003 SCC (Cri) 614] the matter has been considered in some detail. **We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of the law in terms whereof the insurer is to establish wilful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or for the owners to be absolved from any liability whatsoever. We would be dealing in some detail with this aspect of the matter a little later.**

[Emphasis Supplied]

12.1 The ***Swaran Singh*** case clarified that merely stating that the driver of a vehicle did not have a licence or had an invalid or fake licence by itself is not enough to avoid liability



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by an Insurance Company. They must also establish breach on the part of the owner of the vehicle. Unless the breach is so fundamental that it has contributed to the cause of the accident, the Insurance Company cannot avoid its liability.

The relevant extract is set out below:

"110. The summary of our findings to the various issues as raised in these petitions are as follows:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition, eg disqualification of driver or invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, have 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 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



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by duly licensed driver or one who was not disqualified to drive at the relevant time,

(iv) The insurance companies are, 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 where for would be on them.

(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of the 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 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 insured 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....."

[Emphasis Supplied]

12.2. In ***Shamanna and another Vs. The Divisional Manager, Oriental Insurance Co.Ltd. and others***³, the

³ (2018) 9 SCC 650



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Supreme Court has held that in cases involving third-party risks, even where there is a breach of policy conditions relating to driving licence, the appropriate course is to direct the insurer to 'pay and recover'. The relevant extract is set out below.

*"6. As per the decision in Swaran Singh case [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] , **onus is always upon the insurance company to prove that the driver had no valid driving licence and that there was breach of policy conditions. Where the driver did not possess the valid driving licence and there are breach of policy conditions, "pay and recover" can be ordered in case of third-party risks. The Tribunal is required to consider "as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver ... does not fulfil the requirements of law or not will have to be determined in each case"**.*

7. The Supreme Court considered the decision of Swaran Singh case [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] in subsequent decision in National Insurance Co. Ltd. v. Laxmi Narain Dhut [National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700 : (2007) 2 SCC (Cri) 142] , wherein this Court held that: (SCC p. 705, para 5)

"5. The decision in Swaran Singh case [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] has no application to cases other than third-party risks and in case of third-party risks the insurer has to indemnify the amount and if so advised, to recover the same from the insured."

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XXX

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11. In the present case, to deny the benefit of "pay and recover", what seems to have substantially weighed with the High Court is the reference to larger Bench made by the two-Judge Bench in National Insurance Co. Ltd. v. Parvathneni [National Insurance Co. Ltd. v. Parvathneni, (2009) 8 SCC 785 : (2009) 3 SCC (Civ) 568 : (2009) 3 SCC (Cri) 943] which doubted the correctness of the decisions which in exercise of jurisdiction under Article 142 of the Constitution of India directing insurance company to pay the compensation amount even though insurance company has no liability to pay. In Parvathneni case [National Insurance Co. Ltd. v. Parvathneni, (2009) 8 SCC 785 : (2009) 3 SCC (Civ) 568 : (2009) 3 SCC (Cri) 943] , the Supreme Court pointed out that Article 142 of the Constitution of India does not cover such type of cases and that: (SCC p. 786, para 5)

"5. If the insurance company has no liability to pay at all, then, it cannot be compelled by order of the court in exercise of its jurisdiction under Article 142 of the Constitution of India to pay the compensation amount and later on recover it from the owner of the vehicle."

12. The above reference in Parvathneni case [National Insurance Co. Ltd. v. Parvathneni, (2009) 8 SCC 785 : (2009) 3 SCC (Civ) 568 : (2009) 3 SCC (Cri) 943] has been disposed of on 17-9-2013 [National Insurance Co. Ltd. v. Parvathneni, (2018) 9 SCC 657] by the three-Judge Bench keeping the questions of law open to be decided in an appropriate case.

13. Since the reference to the larger Bench in Parvathneni case [National Insurance Co. Ltd. v. Parvathneni, (2009) 8 SCC 785 : (2009) 3 SCC (Civ) 568 : (2009) 3 SCC (Cri) 943] has been disposed of by keeping the questions of law open to be decided in an appropriate case, **presently the decision in Swaran Singh case [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] followed in Laxmi Narain Dhut [National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700 : (2007) 2 SCC (Cri) 142] **and other cases hold the field. The award passed by the Tribunal directing the insurance company to pay the compensation****



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amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question, is in accordance with the judgment passed by this Court in Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] and Laxmi Narain Dhut [National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700 : (2007) 2 SCC (Cri) 142] cases. While so, in our view, the High Court ought not to have interfered with the award passed by the Tribunal directing the first respondent to pay and recover from the owner of the vehicle. The impugned judgment [Shamanna v. Laxman, 2016 SCC OnLine Kar 6928] of the High Court exonerating the insurance company from its liability and directing the claimants to recover the compensation from the owner of the vehicle is set aside and the award passed by the Tribunal is restored.”

[Emphasis Supplied]

12.3 The judgment in the **Swaran Singh** case has been followed time and again including in the recent judgment of **Rama Bai** case, wherein the Supreme Court has held that since the driver had no valid license, the Insurance Company has a valid defence under Section 149(2)(a)(ii), the grant of pay in recovery order can be passed. The relevant extract is below:

"6. In the present case as stated above, on the date of accident, the driver had no valid license and the licence was not renewed. The insurance company was entitled to take a valid defence in that regard under Section 149 (2)(a)(ii) as the driver of the offending vehicle was not duly licensed, to avoid its liability to pay the compensation. The conditions in law are satisfied to absolve the insurance company from the payment of compensation.



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*6.1 The High Court in the impugned judgment relied upon the decision in Ram Babu Tiwari³ to find that as per the specific provisions of the Motor Vehicles Act, if the driver does not possess a valid and effective driving licence, it results in a breach of conditions of the insurance policy, exonerating the insurer from its liability. **But while affirming the order of the High Court, absolving the liability for breach of conditions in the policy, this Court refused to interfere with orders of 'pay and recover' as directed by the High Court."***

[Emphasis supplied]

13. Concededly, no evidence was placed before the Tribunal to show that the accident was caused on account of the breach of the insurance policy. Thus, given the settled position of law, the plea of not having a driving licence which has been placed before this Court by the Insurance Company cannot be sustained. Since the driver had no valid licence and in breach, the Insurance Company would be liable to make payment of the awarded amount and recover the amount from the owner.

14. On the aspect of compensation awarded by the learned Tribunal, this Court has examined in detail the evidence produced *qua* the injuries sustained by the appellant/claimant. The record reflects that after the



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accident, the petitioner/claimant was hospitalized for a period from 12.02.2015 to 14.03.2015 and at the time of his discharge, he was not able to stand, was in a semi-conscious state with an oxygen pipe. He was subsequently admitted to hospital as an inpatient and discharged, for a period of more than 15-20 times thereafter. Due to the injuries sustained, the petitioner/claimant was unable to sit, stand and had lost memory.

14.1 The wife of the petitioner/claimant has been examined as PW.1 before the Tribunal. Ex.P4 which is the wound certificate also shows several injuries sustained by the petitioner. The discharge summary and the photographs also reflect the nature of the injuries. The evidence of PW3, the neurosurgeon at Adarsha Hospital, Udupi, is also relevant to be noted in this behalf. The doctor found that the petitioner/claimant sustained head injury and he required an open surgery of his left sub-occipital craniotomy, which was carried out. At the time of discharge, his recovery was slow and he had to visit the hospitals



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thereafter for 15 to 20 times more due to multiple problems like pain, loss of body balance, memory, dysarthric, drowsiness and even seizures. The total neurological disability of the petitioner was 85% and an appropriate disability certificate was issued. It was also deposed by PW.3- the doctor that the petitioner/claimant would be unable to do any kind of labour or work in any restaurants and he would require an attendant throughout his life. The relevant extract of the evidence of PW3 is set out below:

"2. I say that, above named petitioner was admitted to Adarsha Hospital Udupi on 12-02-2015 due to alleged history of Road Traffic Accidental injuries on same day and on examination by me he has sustained following injury.

1. Head injury with Left cerebellar and midline cerebellar contusion with diffuse subarachnoid haemorrhage (Grievous)

3. That petitioner's head injuries was treated by me by open surgery on 13-02-2015 viz. Underwent - Left sub occipital craniotomy and evacuation of contused /oedematous cerebellum and left frontal burhole. That petitioner was inpatient in Adarsha Hospital, Udupi from 12-02-2015 to 14-03-2015 (32 days).

4. At the time of discharge petitioner's recovery was slow and was in semi conscious and advised for continuation of 3 gardinal tablets for the period of 3 years and follow up treatment.



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5. That petitioner was on regular follow up treatment in Adarsha hospital around 15 to 20 times for multiple problems like pain, loss of body balance, memory, dysarthric, drowsiness and seizurers.

6. I say that, on 23-05-2015 **I have clinically examined the petitioner as per guidelines given by WHO manual of Disability assessment and found following problems.**

1. **Inability to walk without support due to ataxia-25%.**
2. Dysarthric speech -20%.
3. **Inability to fix gaze - 15%.**
4. **Ptosis right side-5%.**
5. Integrated functional disturbance and cannot take care of self independently-20%.

Total Neurological disability of petitioner Manjunath Naik is - 85%, Accordingly I have issued disability certificate.

7. I say that, due to above said disability and problems petitioner could not able to do any kind of work in Restaurants or any labour works or any other kind of labour activities. That as a labourer petitioner loss 100% earning capacity. I say that petitioner requires help of attendants for his daily routine works for life time.

I say that, petitioner requires to be continue gardinal tablets and treatment for his life time.

I say that, above is my name and address and contents of this affidavit are all true and correct."

[Emphasis Supplied]

15. The petitioner/claimant has produced the licence issued by the Grama Panchayat and no other document was produced by him with regard to proof of income. The



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learned Tribunal however took the income of the petitioner/claimant to be at Rs.10,000/-. The notional income for the year 2015 was Rs.9,000/- per month. From the examination of the disability certificate as issued by the doctor (Ex.P13) as well as the photographs which have been placed on record, it is quite clear that the petitioner/claimant is unable to take care of even his day-to-day activities. He has sustained severe injuries and his functional disability as assessed by the doctor is 100%. There is nothing shown to this Court to the contrary. The neurological disability was also held at 85%. It is apposite to set out the relevant extract of the Award, which has discussed the disability below:

"13. PW-1 the wife of the petitioner, in the deposition has deposed that petitioner has sustained grievous injuries to his head. Immediately after the accident he was shifted to Adarsha Hospital, Udupi and admitted as an inpatient and taken treatment to his head injury and under gone open surgery to his brain and remove the blood clot from the brain and given anti edema and anti covalent and after 5 days from surgery there is bleeding in C.S.F. from head and again conducted surgery by Neurosurgeon and treated the same. He has taken treatment from 12-02-2015 to 14-03-2015. At the time of discharge he was not able to sit and stand and he was in semiconscious and fixing Oxygen pipe and advised to consume 100 Mg. 3 gardinal tablets daily for a period of 3 years. Petitioner



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again admitted to the said Hospital as an inpatient and discharged after taken treatment. **He has also taken treatment as an outpatient treatment for a period of 25 times and with the advice of the Doctor, petitioner still taking 100 mg gardinal tablets. Due to the injuries sustained by the petitioner, he is unable to sit and stand and he lost memory power. He was walking with the help of walker. He is unable to do daily activities. He completely depends upon others.**

XXX XXX XXX
Ex.P.4 is the wound certificate issued by Adarsha Hospital, Udupi, which shows that petitioner sustained following injuries:-

1. Reddish contusion of 5c.m. X 4 c.m., on the left side of top of head with C.T. scan showing contusion of cerebellum with diffuse subarachnoid hemorrhage.
2. Reddish abrasion of 4 c.m., x 3 c.m., on the left elbow,
3. Reddish abrasion of 6 c.m., x 3 c.m., on the lower back,
4. Reddish abrasion of 4 c.m., x 2 c.m., back of left hand.

XXX XXX XXX
19. **PW-1 has deposed that due to the accidental injuries he was permanently disablement. He has suffered loss of future earning capacity. In this regard the petitioner has examined P.W.-3.** P.W.-3 is the Neurosurgeon, Adarsha Hospital, Udupi, has **deposed with regard to the conditions of the petitioner and deposed about neurological disability suffered by the petitioner is 85%** and produced Ex.P.18 Medical file. P.W.-3 in the evidence has stated that petitioner was treated by open surgery and underwent left sub-occipital craniotomy and evacuation of confused/oedematous cerebellum and left frontal burhole and **he has taken treatment for a period 32 days and he has taken followup treatment for a period 15 to 20 times for multiple problems like pain, loss of body balance, memory, dysarthric, drowsiness and seizurers.** He has clinically examined on 23-05-2015 and



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assessed the disabilities and found problems that petitioner has inability to walk without support due to ataxia-25%, Dysarthric speech-20%, inability to fix gaze-15%, ptosis right side-5%, Integrated functional disturbances and cannot take care of self independently-20%. He has issued disability certificate as per Ex.P.13."

[Emphasis Supplied]

16. The award of the Tribunal also reflects that the Court has conducted an enquiry and noted the condition of the petitioner/claimant in its order dated 03.06.2016 and accordingly granted permission to the guardian to give evidence on behalf of the petitioner. The relevant extract is below:

*"For the purpose of ascertaining the actual condition of the petitioner, he is brought before the court with assistance by his wife and his younger brother. **The condition of the petitioner shows that he is unable to respond only for the question put by this court. He has sustained head injury. The disability certificate shows that he has suffered 85% of the disability. As such, it is just and proper to permit the wife of the petitioner to give evidence on behalf of the petitioner by appointing the wife of the petitioner as guardian of the petitioner...**"*

[Emphasis Supplied]

16.1 However, the Tribunal worked out the compensation and assessed the loss of earning capacity at 45%.



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17. The Supreme Court in ***Raj Kumar Vs. Ajay Kumar and Another***⁴ has in detail discussed how the Court must calculate 'loss of future earning' due to a permanent disability, as a result of injuries in a motor vehicle accident. It was held that the percentage of economic loss is distinguishable from the percentage of permanent disablement. What is required to be assessed by the Tribunal is the 'loss of earning capacity' of the injured in terms of his capacity to earn. The learned Tribunal has to estimate how the disablement will affect his earning capacity. This would depend on multiple factors which include his avocation, education, age and other factors. The principles for assessment of disability have been summarized in the following manner:

"10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the

⁴ (2011) 1 SCC 343



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percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. **In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.**

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). **We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation.** (See for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. [(2010) 10 SCC 254 : (2010) 3 SCC (Cri) 1258 : (2010) 10 Scale 298] and Yadava Kumar v. National Insurance Co. Ltd. [(2010) 10 SCC 341 : (2010) 3 SCC (Cri) 1285 : (2010) 8 Scale 567]).

12. Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:



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- (i) whether the disablement is permanent or temporary;
- (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;
- (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, **it has to determine whether such permanent disability has affected or will affect his earning capacity.**

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

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15. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.

xxx

xxx

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19. We may now summarise the principles discussed above:

(i) **All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.**

(ii) **The percentage of permanent disability** with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, **the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).**

(iii) **The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.**

(iv) **The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."**

[Emphasis Supplied]



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18. This Court is unable to agree with this finding. The overwhelming evidence before this Court was that the petitioner/claimant was completely bed ridden and even unable to carry out his day-to-day activities and given that he is 43 years of age, he would require the attendant and medications throughout his life. Accordingly, so far as concerns the pain and suffering, this Court proposes to enhance the same at Rs.2.50 Lakhs. The food and nourishment charges, conveyance charges which were awarded at Rs.40,000/- (Rs.20,000/- each) would be awarded at Rs.50,000/- each given the 15 to 25 times of hospitalization of the petitioner/claimant. So far as concerns the attendant charges, the petitioner is 43 years old and would require an attendant at least for the next 25 years. Accordingly, a lump sum of Rs.7.5 Lakhs is awarded towards attendant charges.

19. So far as loss of future earning capacity is concerned, taking the notional income of Rs.9,000/- and adding the future prospects at 25% since the claimant was self-



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employed and below 50 years of age, with the appropriate multiplier '14' and taking the disability at 100%, the loss of future earning capacity is calculated as under:

Loss of future earning capacity	$\text{Rs.}9,000 + 25\% = 11,250/-$ $\text{Rs.}11,250 \times 12 \times 14 \times 100\% =$ $= \text{Rs.}18,90,000/-$
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20. Accordingly, the compensation is re-calculated as follows:

Sl. No.	Heads of Compensation	Amount
1)	Pain and suffering	Rs. 2,50,000/-
2)	Medical expenses	Rs. 2,95,030/-
3)	Food and Nourishment charges	Rs. 50,000/-
4)	Conveyance Charges	Rs. 50,000/-
5)	Attendant charges	Rs. 7,50,000/-
6)	Loss of earning during laid up period	Rs. 1,20,000/-
7)	Loss of future earning capacity	Rs. 18,90,000/-
8)	Loss of amenities	Rs. 1,00,000/-
9)	Future medical expenses	Rs. 50,000/-
	Total	Rs.35,55,030/-
	Less: awarded by the Tribunal	Rs.14,56,030/-
	Enhanced compensation	Rs.20,99,000/-

21. Hence, the petitioner/claimant is entitled to total compensation of **Rs.35,55,030/-** along with interest at the



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rate of 6% per annum as awarded by the learned Tribunal from the date of petition till the date of realization.

22. Accordingly, the Court proceeds to pass the following:

ORDER

(i) The appeal and the MFA.Crob are ***disposed off***;

(ii) The Impugned Judgment and Award dated 18.02.2017 in M.V.C.No.398/2015 passed by the Senior Civil Judge and Member, Addl. MACT, Kundapura, is modified, to the extent that the petitioner/claimant is entitled to total compensation of **Rs.35,55,030/-** along with interest at the rate of 6% per annum in addition to what has been awarded by the learned Tribunal;

(iii) The remaining portion of the Impugned Award of the learned Tribunal remains undisturbed;



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(iv) The appellant/Insurance Company shall deposit the enhanced compensation with interest applicable thereon, as awarded by the learned Tribunal, within a period of eight weeks from the date of receipt of a copy of this judgment;

(v) On such deposit of the compensation, the same shall be released in favour of the petitioner/claimant on filing of an appropriate application for withdrawal of the amount;

(vi) In terms of the order dated 07.07.2025, no interest shall be awarded on the enhanced compensation amount for the delayed period of 759 days.

(vii) The amount in deposit before this Court shall be transmitted to the Tribunal forthwith;

(viii) The Registry is directed to draw the modified Award accordingly;



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(ix) The Registry is directed to transmit a copy of this judgment and records to the concerned Tribunal;

(x) Pending application(s), if any, stand closed. No order as to costs.

**Sd/-
(JAYANT BANERJI)
JUDGE**

**Sd/-
(TARA VITASTA GANJU)
JUDGE**

YN/BMV*
List No.: 1 Sl No.: 8