



NC: 2026:KHC:28375-DB
MFA No. 8642 of 2019
C/W MFA No. 1366 of 2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF JUNE, 2026

PRESENT

HON'BLE MR. JUSTICE JAYANT BANERJI

AND

HON'BLE MS. JUSTICE TARA VITASTA GANJU

MISCELLANEOUS FIRST APPEAL NO. 8642 OF 2019 (MV-D)

C/W

MISCELLANEOUS FIRST APPEAL NO. 1366 OF 2020 (MV-D)

IN MFA No. 8642/2019 :

BETWEEN:

1. THE MANAGER
HDFC ERGO GIC LTD.,
25/1, 2ND FLOOR,
SHANKARA NARAYANA BUILDING,
M G ROAD,
BENGALURU-01.

...APPELLANT

(BY SRI. A N KRISHNA SWAMY, ADVOCATE)

AND:

1. SMT HUSNA BANU
W/O LATE T ZAHIR HUSSAIN,
AGED ABOUT 46 YEARS,
2. NASEEM BANU Z,
D/O LATE T ZAHIR HUSSAIN,
AGED ABOUT 21 YEARS,

Digitally signed by
SUMATHY KANNAN
Location: HIGH
COURT OF
KARNATAKA



3. NAFISA BANU Z
D/O LATE T ZAHIR HUSSAIN,
AGED ABOUT 18 YEARS,
4. NALIMA Z
D/O LATE T ZAHIR HUSSAIN,
AGED ABOUT 13 YEARS,
5. KURSHIDBEGAUM THAJUDEEN
W/O LATE THAJUDEEN,
AGED ABOUT 62 YEARS,
RESIDING AT NO.5,
PANCHAYATH COLONY,
KUNDRATHUR, KANCHIPURAM,
TAMILNADU-600044.

PETITIONERS NO.1 TO 4
ARE RESIDING AT NO. 5,
NO.B-31, 2ND FLOOR,
BAZAR STREET, NEELASANDRA,
VIVEKNAGAR,
BANGALORE-560047.

PETITIONER NO.3 AND 4 ARE
MINORS REP. BY THEIR MOTHER PETITIONER NO.1
AS NATURAL GUARDIAN.

6. M/S XCHANGE LEASING INDIA PVT. LTD.
NO 36/3, 1245, 2ND SECTOR,
HSR LAYOUT,
SOMASUNDRA PALYA,
NEAR POWER STATION,
BANGALORE 560102,

RESPONDENT NO.6 – SINCE MERGED WITH
UBER INDIA SYSTEMS PVT. LTD.,
LEVEL 13, PLATINUM TECHNO PARK,



NC: 2026:KHC:28375-DB
MFA No. 8642 of 2019
C/W MFA No. 1366 of 2020

PLOT NO.17/18, SEC-30A,
VASHI, NAVI MUMBAI,
THANE-400 705.

...RESPONDENTS

(BY SRI. A.K.BHAT, ADVOCATE
FOR SRI SREENIVASIAH A., ADVOCATE FOR C/R-1 TO 5
SRI GAURAV SINGH, ADVOCATE FOR R-6)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE
JUDGMENT AND AWARD DATED 26.07.2019, PASSED IN MVC
NO.7390/2017, ON THE FILE OF THE IX ADDITIONAL SMALL
CAUSES JUDGE AND ACMM, COURT OF SMALL CAUSES,
MEMBER, MACT-7, BENGALURU (SCCH-7), AWARDED
COMPENSATION OF RS.17,45,000/- WITH INTEREST AT
6 PERCENT P.A FROM THE DATE OF PETITION TILL
REALIZATION.

IN MFA NO. 1366/2020 :

BETWEEN:

THE MANAGER
HDFC ERGO GIC LTD.,
NO.25/1, 2ND FLOOR,
SHANKARA NARAYANA BUILDING,
M.G. ROAD, BENGALURU-560 001.

...APPELLANT

(BY SRI. A N KRISHNA SWAMY, ADVOCATE)

AND:

1. SMT QUARATH UI AIN TARANNUM
W/O. LATE MOHAMMED FAKRUDDIN,
AGED ABOUT 34 YEARS,
2. MOHAMMED IFTEKHAR
S/O. LATE MOHAMMED FAKRUDDIN,
AGED ABOUT 15 YEARS,



3. SABREEN BANU
D/O. LATE MOHAMMED FAKRUDDIN,
AGED ABOUT 12 YEARS,
4. MOHAMMED YASEEN
S/O. LATE MOHAMMED FAKRUDDIN,
AGED ABOUT 9 YEARS,

ALL ARE RESIDING AT NO.66,
RAJAMUDALIYAR STREET,
NEAR CEMENT LANE,
AUSTIN TOWN,
BANGALORE-560 047.

PETITIONER NOS.2 TO 4 ARE MINORS,
REPRESENTED BY THEIR MOTHER PETITIONER NO.1
AS NATURAL GUARDIAN.

5. M/S. XCHANGE LEASING INDIA PVT. LTD.,
NO. 36/3, 1245, 2ND SECTOR,
HSR LAYOUT, SOMASUNDRA PALYA,
NEAR POWER STATION,
BANGALORE-560 102.

RESPONDENT NO.6 – SINCE MERGED WITH
UBER INDIA SYSTEMS PVT. LTD.,
LEVEL 13, PLATINUM TECHNO PARK,
PLOT NO.17/18, SEC-30A,
VASHI, NAVI MUMBAI,
THANE-400 705.

...RESPONDENTS

(BY SRI. A.K.BHAT, ADVOCATE
FOR SRI SREENIVASAIAH A., ADVOCATE FOR C/R-1 TO 4
SRI GAURAV SINGH, ADVOCATE FOR R-5)

THIS MFA IS FILED U/S.173(1) OF MV ACT, AGAINST THE
JUDGMENT AND AWARD DT.26.07.2019, PASSED IN MVC



NC: 2026:KHC:28375-DB
MFA No. 8642 of 2019
C/W MFA No. 1366 of 2020

NO.7391/2017, ON THE FILE OF THE IX ADDITIONAL SMALL CAUSES JUDGE AND ACMM, COURT OF SMALL CAUSES, MEMBER, MACT-7, BENGALURU (SCCH-7), AWARDING COMPENSATION OF RS.17,45,000/- WITH INTEREST AT 6 PERCENT P.A. FROM THE DATE OF PETITION TILL REALIZATION OF ENTIRE AMOUNT.

MFA.No.8642/2019 COMING ON FOR ADMISSION AND MFA.NO.1366/2020 COMING ON FOR HEARING, 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. Both these appeals seek to challenge a Judgment and Award dated 26.07.2019, passed in MVC.No.7390/2017 and MVC.No.7391/2017, by the learned IX Addl.Small Causes and Addl.MACT, Bengaluru [hereinafter referred to as the "Impugned Award"]. By the Impugned Award, the learned Tribunal has granted compensation in a sum of Rs.17,45,000/- each in both the cases, along with interest at the rate of 6% per annum, from the date of petition till realization.



2. Against the Impugned Award, MFA No.8642/2019 and MFA No.1366/2020 have been filed by the appellant/Insurance Company.

3. While MFA No.1366/2020 is admitted, MFA No.8642/2019 is not yet admitted. However, with the consent of the learned counsel for the parties, both the appeals are taken up for final hearing and disposed off today.

4. The brief facts are that, one T. Zahir Hussain was riding the motorcycle bearing registration No.KA-03-EM-621 along with his brother-in-law Mohammed Fakruddin, near Hosur main road and when they reached near Bosch Company, Bommanahalli, at that time, the driver of the car bearing registration No.KA-01-AF-8965 while driving the vehicle at a high speed, collided with the motorcycle from the rear portion. As a result of the collusion, both Zahir Hussain and Mohammed Fakruddin sustained grievous injuries and died on the spot. Claim petitions were filed by the legal representatives of both the deceased before the



learned Tribunal under Section 166 of Motor Vehicles Act, 1988.

5. The claim petitions were contested by the appellant/Insurance Company of the offending vehicle. Although owner of the offending vehicle M/s. Xchange Leasing India Pvt. Ltd., was served, they did not appear before the learned Tribunal and proceeded with *ex parte*.

6. On the basis of the pleadings, the learned Tribunal framed the following issues:

"Issues in MVC.No.7390/2017:

1. Whether the Petitioners prove that, they are the legal heirs and dependants of deceased Sri.Zahir Hussain T?
2. Whether the Petitioners prove that the accident occurred due to rash and negligent act of driver of Car bearing registration No.KA.01.AF.8965 and as a result Zahir Hussian T., sustained fatal injuries and succumbed to the injuries?
3. Whether the Petitioners are entitled for compensation? If so, how much and from whom?
4. What Order or Award?

Issues in MVC No.7391/2017 :

1. Whether the Petitioners prove that, they are the legal heirs and dependants of deceased Sri. Mohammed Fakhruddin?



2. *Whether the Petitioners prove that the accident occurred due to rash and negligent act of driver of Car bearing registrationNo.KA.01.AF.8965 and as a result Mohammed Fakhruddin sustained fatal injuries and succumbed to the injuries?*

3. *Whether the Petitioners are entitled for compensation? IF so, how much and from whom?*

4. *What Order or Award?"*

7. On behalf of claimants/respondents, the wives of both the deceased were examined as P.W.1 and P.W.2. Several documents, including the FIR (Ex.P1), charge sheet (Ex.P5), IMV report (Ex.P6), post mortem report (Ex.P7), bank statement extract (Ex.P18), identity documents, were marked as Exs.P1 to Ex.P30 in evidence. The appellant/Insurance Company examined two witnesses as R.W.1 being the Legal Manager and R.W.2, an eye witness to the accident, who is Traffic Inspector and produced documents at Exs.R1 to R10.

8. Based on the evidence produced, the learned Tribunal has held that on the aspect of rash and negligent driving, the oral and documentary evidence reflected that the rash driving was on the part of the driver of the car bearing registration No.KA-01-AF-8965 and in the accident,



husbands of both the claimants had sustained fatal injuries. The learned Tribunal also found that deceased T. Zahir Hussan was survived by wife, three children and mother, while deceased Mohammed Fakruddin was survived by wife and three minor children. Both deceased were 42 years of age at the time of the accident. Thus, the loss of dependency was calculated after deducting 1/4th of the income for personal expenses of both deceased in the following manner:

*"Hence, the loss of dependency would be Rupees 9,375/-
x 12 x 14 = Rupees 15,75,000/-."*

8.1 In addition, the Award was made for loss of estate, funeral expenses, loss of consortium and loss of love and affection by the learned Tribunal. Accordingly, in both MVC No.7390/2017 and MVC No.7391/2017, the following amounts were awarded as compensation:

Sl.No.	Particulars	Amount (Rs.)
1	For Loss of estate	15,000/-
2	For funeral, obsequies ceremony and conveyance	15,000/-
3	For loss of consortium	40,000/-
4	Loss of love and affection	1,00,000/-
5	Loss of dependency	15,75,000/-
	Total	17,45,000/-



9. The learned Tribunal also found that since driver of the offending vehicle did not have valid driving licence and that was not disputed, in terms of the settled law, it directed that respondent No.1 therein being the owner and respondent No.2 being the Insurance Company (appellants herein) were jointly and severally liable to pay compensation of Rs.17,45,000/- in both MVC.No. 7390/2017 and MVC No.7391/2017 along with interest at the rate of 6% per annum.

9.1. The challenge in the present appeals is by the appellant/Insurance Company.

10. Learned counsel for the appellant/Insurance Company submits that the award imposing liability jointly on both the owner/driver of the vehicle, as well as the appellant/Insurance Company, is not in accordance with law.

11. Learned counsel for the respondents/claimants, on the other hand, submits that it is a settled law that where there is absence of driving licence, the appellant/Insurance



Company cannot escape from the liability. In addition, he contended that the award on non-pecuniary heads is not in accordance with law.

12. The question that arises for determination before this Court is, whether in the absence of a valid driving licence, can the liability be fastened on the Insurance Company?

13. From the facts of the case, it has not been disputed that the driver of the offending vehicle did not possess a valid driving licence. This aspect has been reflected in the FIR (Ex.P-1), as well as the charge sheet (Ex.P-5). The learned Tribunal also examined this issue in great detail. The learned Tribunal has held that the defence taken by the appellant/Insurance Company was that, at the time of the accident, the driver had no driving licence and hence, the terms and conditions of the insurance policy were violated. In addition, the learned Tribunal found that it was admitted by the respondents' witness RW-1 that the charge sheet was filed against the driver of the offending vehicle. Reliance was also placed by the learned Tribunal on the



charge sheet (Ex.P5), Spot Mahazar (Ex.P3), police notice (Ex.R7) and notice issued under Section 91 of Cr.P.C., (Ex.R8) along with voluntary statement of the accused before the police authorities (Ex.R-10), to give a finding that the driver of the offending vehicle did not have a driving licence as on the date of the incident.

14. It is apposite to set out the relevant extract of the Impugned Award in this behalf:

"29. In the case on hand the Insurance Company has taken a defence that at the time of accident there was no driving licence to the driver of insured vehicle, hence the owner of vehicle has violated the terms and conditions of the Insurance Policy, therefore they are not liable to indemnify the owner of insured vehicle. In this regard the respondent No.2 Insurance Company adduced the evidence of witness by name G. Suresh, Manager of Respondent No.2 Insurance Company as RW-1. He deposed that, there was no driving licence to the driver of insured vehicle. R.W.1 stated that, the policy was issued subject to terms and conditions and the insured has to comply Section 3 of IMV Act and Rule 3 of Motor Vehicle Rules. RW.1 stated that the driver was not having Driving Licence at the time of accident as such the Respondent No.1 violated condition of policy, therefore the Insurance Company is not liable to pay compensation the petitioners. RW.1 has produced Ex.R.1 True copy of Insurance Policy. Ex.R.2 Office copy of Notice dated 30.01.2018 and Ex.R.3 Postal Acknowledgment. In the cross-examination by the counsel for petitioner RW.1 admitted that Charge Sheet is filed against the driver of Car bearing registration No.KA-01-AF-8965. He denied the suggestion that the driver had valid driving licence,



however in order to avoid the liability the Insurance Company taken up false defence.

30. In support of their case the Insurance Company got examined witness by name R.N. Puttamadaiah, Traffic Police Inspector, Mico Layout Police Station, Bangalore as RW.2. **He deposed that in Madivala Traffic Police Station Crime No.111/2017 he has conducted investigation and filed charge sheet. RW.2 stated that, he has issued notice to the owner of Car bearing registration No.KA-01-AF-8965 under Section 133 of IMV Act and after investigation he filed charge sheet against the driver of car for the offence punishable under Section 279 and 304(A) of IPC and Section 134 (A & B) R/w Section 181 of IMV Act and Section 3(1) and Section 5 R/w. Section 180 of IMV Act.** RW.2 has produced Ex.R.4 charge sheet, Ex.R.5 spot mahazar, Ex.P.6 Requisition sent to the JMFC Court, Ex.P.7 Police notice, Ex.R.8 Notice issued under Section 91 of Cr.P.C., Ex.P.9 Reply to the Notice and Ex.R.10 Voluntary statement of accused. **In the cross-examination by the counsel for petitioner RW.2 stated that he has not issued notice to the driver of Car and not verified in RTO whether driver of car had driving licence. He denied other formal suggestions of counsel for petitioner. On going through the documents, it is clear that the Investigating Officer filed charge sheet against driver of Car bearing registration No.KA-01-AF-8965 for the offence punishable under Section 279 and 304(A) of IPC and Section 134 (A & B) R/w Section 187, Section 3(1) R/w Section 181 and Section 5 R/w. Section 180 of IMV Act. The Respondent No.1 not appeared before the court and petitioners have not produced any evidence to show that, at the time of accident the driver of offending vehicle had driving licence. Under the circumstances the evidence on record makes clear that the driver of offending vehicle was not having Driving Licence as on the date of accident. There is no dispute as on the date of accident the policy was in force. In view of decision laid down in ACJ 2018 page 2163 Shamanna and another V/s Divisional Manager, Oriental Insurance Company Limited and others, the Respondent No.2 being the insurer is liable to make payment of compensation to the Petitioners at the first instance and then the Respondent No.2 Insurance Company has to recover the award amount from the owner of offending vehicle as per law.** This Court gone through the decision



*laid down by the Hon'ble High Court of Karnataka in M.F.A.No.103557/2015 (MV). In the said Judgment the Hon'ble High Court of Karnataka observed that the rate of interest is to be 6% p.a., keeping in line with statutory ceiling limit. **Under the circumstances, Respondent No.1 being the owner and Respondent No.2 being the insurer of offending vehicle are jointly and severally liable to pay compensation to the Petitioners in M.V.C.No.7390/2017 and M.V.C.No.7391/2017 with interest at the rate of 6% P.A. from the date of petition till realization. Accordingly, Issue No.3 in M.V.C.No.7390/2017 and M.V.C.No.7391/2017 is answered partly in the Affirmative.***

[Emphasis Supplied]

14.1. Thus, the learned Tribunal has directed an order of 'pay and recovery' and apportioned the joint liability on both the driver/owner, as well as Insurance Company.

15. The law on the liability of the Insurance Company in the case of a fake, invalid or non-existent driving licence is no longer *res integra*. The Supreme Court in the ***National Insurance Company Vs. Swaran Singh***¹ case while examining the defence of the Insurance Company that the offending vehicle was not driven by an authorized person or a person not having a valid driving licence held that it is obligatory on the part of the appellant/Insurance

¹ (2004) 3 SCC 297



Company to substantiate the defence and a mere plea would not suffice. The relevant extract 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].

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xxx

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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 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 willful 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]

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

17. The Supreme Court in ***Pappu and Others Vs. Vinod Kumar Lamba and another***,² while relying on a judgment of a Co-ordinate Bench in ***Swaran Singh's*** case has held that in order for an insurance company to avoid its liability towards the insured, it has to prove that the insured was

² (2018) 3 SCC 208



guilty of negligence or failed to exercise reasonable care in a matter of fulfilling the condition of policy regarding use of vehicles by a licensed driver. It has further been held that the mere absence, fake or invalid driving licence or disqualification of the driver at the relevant times are not in themselves, defenses available to the insured against either the insured or the third party.

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

³ (2018) 9 SCC 650



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 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]

18.1. Thus, it was held that where there was a breach established by the Insurance Company, it would be



appropriate that the Insurance Company to pay the compensation and recover the same from the Insured/owner of the vehicle.

19. The judgment in the ***Swaran Singh*** case has been followed time and again including in the recent judgment of ***Rama Bai Vs. Amit Minerals***,⁴ 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 as void its liability to pay the compensation.* The conditions in law are satisfied to absolve the insurance company from the payment of compensation.

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*

⁴ 2025 INSC 1162



Court refused to interfere with orders of 'pay and recover' as directed by the High Court."

[Emphasis supplied]

20. In the present case as well, other than alleging that the driver did not possess a valid driving licence, no other evidence was led by the appellant/Insurance Company. RW-2 admitted in his cross-examination that no notice was issued to the owner of the offending vehicle nor was any attempt made to obtain the relevant documents from the RTO.

21. Thus, in view of the law settled in this regard, this Court finds no reason to interfere with the Impugned Award on the aspect of '*pay and recovery*'.

22. Accordingly, this Court finds no ground to interfere with the Impugned Judgment. Both the appeals are ***dismissed***. All pending applications stand closed.

23. The appeals filed by the respondents/claimants against the same Impugned Award in MFA.No.2474/2020 and MFA.No.2475/2020, which were connected to these



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appeals, stand disconnected and will be heard separately
on 18.06.2026.

Sd/-
(JAYANT BANERJI)
JUDGE

Sd/-
(TARA VITASTA GANJU)
JUDGE

BK : List No.: 1 Sl No.: 10