IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

MACA.No. 1760 of 2010 ( )

AGAINST THE AWARD IN OP(M.V)No. 1682/2007 of M.A.C.T.,KOZHIKODE DATED 26.12.2009

APPELLANT/RESPONDENT:

THE ORIENTAL INSURANCE CO. LTD.
DIVISIONAL OFFICE, KOZHIKODE, REP. BY THE
AUTHORIZED SIGNATORY, ASST. MANAGER, THE ORIENTAL
INSURANCE CO. LTD., REGIONAL OFFICE, ERNAKULAM
METRO PALACE, ERNAKULAM NORTH, KOCHI-18.

BY ADV. SRI.A.R.GEORGE

RESPONDENTS/CLAIMANTS:
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1. BABY E., W/O.VELAYUDHAN,
UNNIYALINGAL HOUSE, P.O.FEROKE COLLEGE
KOZHIKODE-673632.

2. PRADEEPKUMAR, S/O.VELAYUDHAN,
DO. DO. - 673632.

3. PREETHA, W/O.GANESHAN,
DO. DO. - 673632.

4. PRAVEEN, S/O.VELAYUDHAN,
DO. DO. - 673632.

5. SAKEENA T., W/O.USSANKUTTY,
1/215, PULLANADATH, JASHEERA
KARUVANTHURUTHI, P.O.FEROKE, KOZHIKODE-673631.

6. JAISAL, S/O.HUSSAIN,
DO. DO. - 673631.

R5 & R6 BY ADV. SRI.SUNIL V.MOHAMMED

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 9-06-2015, THE COURT ON 19.6.2015 DELIVERED THE FOLLOWING:

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T.R.RAMACHANDRAN NAIR & K.P.JYOTHINDRANATH, JJ. **C.R.**

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M.A.C.A. No. 1760 of 2010

....

Dated this the 19th day of June, 2015

JUDGMENT

K.P.Jyothindranath, J.

This appeal is preferred by the Insurance Company.

2. The point raised in this appeal is that whether the Insurance Company can be absolved from the liability in a case where the rider is holding only a learner's licence, and not accompanied by a licensed instructor as contemplated under Rule 3 of the Central Motor Vehicles Rules.

3. The facts is as follows:

4. A motor vehicle accident occurred on 27.5.2007 at about 6 p.m. at Thiruchilangadi. The vehicle involved is a motor cycle. The motor cycle hit against a pedestrian. The pedestrian sustained fatal injuries and succumbed to the injuries. The vehicle was driven by the 6th respondent, who was holding only a learner's licence at the time of the accident. The legal heirs of the deceased/claimants, alleged negligence of the rider as the cause of accident and filed the claim petition.

5. It is the case of the Insurance Company that even though a contention was raised regarding the violation of the conditions in the policy, it was neither considered by the tribunal nor absolved the Insurance Company from the liability. It is the specific case of the Insurance Company that rider was only having a learner's licence and was not accompanied by a licensed driver. The tribunal burdened the appellant with the liability to pay the compensation to the petitioners.

6. When the appeal came up for hearing, the main submission made before us is that, while holding the appellant liable to indemnify the insured and to compensate the claimants, the tribunal went wrong in not following the dictum laid down by the Hon'ble Supreme Court in **National Insurance Company Ltd.** v. **Swaran Singh and others** reported in 2004(1)KLT 781 (S.C). In **New India Assurance Company Ltd.** v. **M.M.Tambe** reported in 1996 (2) K.L.T. Short Note cases No.59, it is categorically held that where the driver had only a learner's licence, the Insurance Company would not be liable to pay the amount awarded to the claimant. It is the submission that, it is a settled law that if the rider was holding only a

learner's licence, a duly licensed person should be on pillion, then only it can be treated as a licensed driver. It is also submitted that, this aspect is categorically stated in the policy issued and if not complied with, there is contravention of the policy condition and the statutory defence available to the insurer in terms of Section 149(2) (a) of the Motor Vehicles Act will be available. This aspect is not considered by the tribunal and the Insurance Company is to be absolved from the liability.

7. The learned counsel appearing for the respondents/claimants submitted before us that it is a settled law that learner's licence is an effective licence for the purpose of insurance coverage. It is the submission that the law is settled by the **Swaran Singh's** case (supra) which is also relied upon by the appellants' counsel. Since it is a settled position, the tribunal had not adverted to elaboration in this respect.

8. Section 2(1) and Section 2(19) of the Motor Vehicles Act defines the licence :

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

xx xx

> (19) "Learner's licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive as a learner, a motor vehicle or a motor vehicle of any specified class or description;

Thus, it can be seen that the only difference is that the driving licence is issued for the purpose "otherwise than as a learner" whereas the learner's licence is to drive as a learner. The paragraphs which are banked by the appellants in the decision in **National Insurance Company Ltd.** v. **Swaran Singh and others (supra)** are 93 and 94. It is stated therein as follows:

> " 93. The Motor Vehicles Act, 1988, provides for grant of learner's licence. [See Section 4(3), Section 7(2), Section 10(3) and Section 14]. A learner's licence is, thus, also a licence within the meaning of the provisions of the said Act. It cannot, therefore, be said that when a vehicle is being driven by a learner subject to the conditions mentioned in the licence, he would not be a person who is not "duly licensed" resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said that a person holding a learner's licence is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the

vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provisions of Section 149(2) of the said Act.

94. The provisions contained in the said Act provide also for grant of driving licence which is otherwise a learner's licence. Section 3(2) and 6 of the Act provide for restriction in the matter of grant of driving licence. Section 7 deals with such restrictions on granting of learner's licence. Sections 8 and 9 provide for the manner and conditions for grant of driving licence. Section 15 provides for renewal of driving licence. Learner's licence are granted under the Rules framed by the Central Government or the State Governments in exercise of their rule-making power. Conditions are attached to the learner's licence granted in terms of the statute. A person holding learner's would, thus, also come within the purview of “duly licensed” as such a licence is also granted in terms of the provisions of the Act and the Rules framed thereunder. It is now a well-settled principle of law that rules validly framed become part of the statute. Such rules are, therefore required to be read as a part of the main enactment. It is also a well-settled principle of law that for the interpretation of statute an attempt must be made to give effect to all provisions under the rule. No provision should be considered as surplusage”.

9. It is the case of the appellant that the Rules are required to be treated as part of the main enactment and it is the view of the Hon'ble Supreme Court that it is a well-settled principle of law that for the interpretation of the statute an attempt must be made to give effect to all provisions under the rules. The stand of the appellant is that the law laid down by the Honourable Apex Court is not conceived in its right perspective by the tribunal.

10. On a first glance, there may be an impression that Rule is also to be read as a part of the main enactment which requires a pillion rider with a driving licence, when there is only a learner's licence. But it is pertinent to note that in paragraph 96 of the same decision, **National Insurance Company Ltd.** v. **Swaran Singh and others (supra)** it is stated therein as follows:

> "The question which arises for consideration in these petitions did not arise there. Neither was the same argued at the Bar nor were the binding precedents considered. Mandar Madhav Tambe case therefore, has no application to the facts of these cases nor creates any binding precedent. The view we have taken is in tune with the judgments rendered by different High Courts consistently.

(See for example New India Assurance Co. Ltd. v. Latha Jayaraj)".

From the above said paragraph it can be seen that the Supreme Court is categorical in that the view the Supreme Court had taken is in tune with the judgments rendered by different High Courts consistently and as example a decision of this Court is highlighted viz., **New India Assurance Company Ltd** v. **Latha Jayaraj** (1991 ACJ 298 (Ker) = 1990 (2) KLT 883.

11. In **New India Assurance Company Ltd**. v. **Latha Jayaraj** (supra) in paragraph -4- of the said decision, it is categorically held that "holding only a learner's licence was duly licenced to drive the vehicle and that there has not been any violation of the conditions in the policy of insurance". Thus a person holding a learner's licence is also entitled to drive the vehicle. A licence is issued under the provisions of the Motor Vehicles Rules. The 'Rules' referred in Swaran Singh's case (supra) can only be considered as rules framed for issuance of licence. For all practical purposes, a person holding a learner's licence is a person duly licensed to drive a vehicle. This finding is approved by the Honourable Supreme Court in Swaran Singh's case (supra).

12. It can be seen that the main contention of the Insurance Company is that if the rider is only having learner's licence, there should be a pillion rider, who is possessing a valid driving licence as contemplated in the Rule. In that aspect, as long as the pillion rider cannot be made a joint tort-feaser for an accident involving the said motor bike, the argument that it is a fundamental breach for causing the accident will not lie. In other words, as long as the pillion rider cannot be termed as a driver covered by the policy, the absence of a licensed driver in pillion cannot be treated as a fundamental breach of the policy condition which will enable the insurer to avoid the liability.

13. Thus, it can be seen that the absence of a pillion rider with a valid driving licence can be considered only as purely technical and cannot be said to be a fundamental breach. The dictum laid down in **National Insurance Company Ltd.** v. **Jisha** [2015(1) KLT 1 (F.B)], wherein one of us (T.R.Ramachandran Nair, J.) was also in the Bench, held that mere technical violation like absence of a badge could not lead to such a situation whereby the insurer can avoid liability of the third party. In this case, there is nothing to show that the

accident occurred only because there was no licensed driver on the pillion.

14. It is pertinent to note that in **National Insurance Company Ltd.** v. **Swaran Singh (supra),** while concluding, in paragraph 102(viii), the Apex Court held as follows:

> "If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree".

15. On the very same day of the pronouncement of the judgment, the Supreme Court in another case in unequivocal terms declared that the learner's licence is also a valid licence. (**National Insurance Co. Limited** v. **Bhagwani and others** reported in A.I.R. 2004 S.C. 2874). It will be only helpful to quote the judgment herein which states as follows:

> "This special leave petition is covered by a judgment of this court in S.L.P. (Civil) 9027/2003, National Insurance Company v. Swaran Singh and others delivered today, where it has been held that the learners licence is also a valid licence. It is accordingly dismissed.

Thus, it can be seen that learner's licence is a valid licence for the purpose of determining whether the Insurance Company is liable or not.

16. The quantum is also under challenge. The deceased was a peon and his salary certificate is also seen produced which shows that his income is Rs.10,000/- per month. The age of the deceased was 55. The number of claimants are four. Tribunal granted only Rs.4,40,000/- towards loss of dependency. The total compensation awarded is Rs. 4,98,711/-. It is not an exorbitant amount.

Thus, it is found that Insurance Company is liable and there is no merit in the appeal and hence appeal is dismissed. Parties shall bear their costs in the appeal.

Sd/-
T.R.RAMACHANDRAN NAIR
JUDGE

Sd/-
K.P.JYOTHINDRANATH
JUDGE

rka /true copy/

P.S. To Judge