HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. Nos.2844 AND 2846 OF 2006

COMMON JUDGMENT:

These appeals have been preferred by the respective petitioners aggrieved of the orders, dated 19.09.2006, in O.P.Nos.164 and 163 of 2006, respectively, on the file of the learned Chairman, Motor Accidents Claims Tribunal – cum - District Judge, West Godavari District at Eluru (for short 'the Tribunal'), whereby and where-under while granting compensation of Rs.74,317/- (Rupees seventy four thousand three hundred and seventeen only) and Rs.63,348/- (Rupees sixty three thousand three hundred and forty eight), respectively, as against the claim laid by them for Rs.1,00,000/- (Rupees one lakh) each under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989 (for short 'the Rules') for the injuries sustained by them in one and the same road accident, exonerated respondent No.3 - Insurance Company on the ground that the driver of the auto-rickshaw did not possess valid subsisting driving licence on the date of accident.

2. The appellants herein are the respective petitioners in the aforesaid O.Ps. before the Tribunal, while respondent Nos.1 to 3 herein, who are driver, owner and insurer of the auto-rickshaw bearing registration No.AP 37V 9752 are respondent Nos.1 to 3, respectively.

3. For the sake of convenience, the parties are

hereinafter referred to as they were arrayed before the Tribunal in the original petitions.

4. The fact-situation occurring in both the cases is that on 18-09-2005, the petitioners were proceeding in an auto-rickshaw bearing registration No.AP 37V 8037, and when it reached near Siddhantam Cross Road, opposite S.V.K.P. Steam Engine Rice Mill, Cherukuwada village, Penugonda Mandal, at about 5.30 P.M., another auto-rickshaw bearing registration No.AP 37V 9752 driven by its driver in a rash and negligent manner came in opposite direction and hit the aforesaid auto-rickshaw, on account of which, the petitioners sustained injuries along with some others. Projecting their ages as well as monthly earnings, they sought
a sum of Rs.1,00,000/- each against the respondents 1 to 3, who are the driver, owner and insurer, respectively, of the opposite auto-rickshaw.

5. The driver and owner of the auto-rickshaw, who were arrayed as respondent Nos. 1 and 2, did not appear before the Tribunal and, therefore, they were set *ex parte*.

6. The 3rd respondent - Insurance Company filed a detailed written statement opposing the claims. One of the main contentions of the Insurance Company has been that the driver of the accident vehicle did not possess a valid driving licence at the time when the accident had occurred, and, therefore, sought to dismiss the claims.

7. Basing on the aforesaid pleading, the Tribunal framed the following three identical issues in both the cases about the

responsibility for the accident:

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1. Whether the accident occurred due to rash and negligent driving of the auto bearing No.AP 37V 8752 driven by its driver – the 1st respondent?

2. Whether the petitioner is entitled to claim any compensation? If so, to what amount and against which of the respondents?

3. To what relief? "

8. During inquiry before the Tribunal, the petitioners respectively examined themselves as P.W.1 and Medical Officer Dr. K. Bangar Raju as P.W.2 in each of the cases by marking Exs.A.1 to A.9 in the former O.P. and Exs.A.1 to A.10 in the latter O.P. On behalf of the Insurance Company, one N. Chakrapani, Branch Manager of its local branch was examined as R.W.1 and marked Exs.B.1 to B.3 in both the O.Ps.

9. The Tribunal though, held issue No.1 in affirmative, on issue No.2, observing that the accident had occurred on 18.09.2005, whereas the driving licence of the auto driver, i.e., respondent No.1, had expired on 23.10.2003 and it was only renewed on 19.09.2005 that was on the immediate day of the accident and, while determining the compensation of Rs.74,317/- in the former O.P. and Rs.63,348/- in the latter O.P., fixed the liability on respondents 1 and 2 while exonerating respondent No.3 mainly on the ground that on the date of accident, there was no effective driving licence held by the driver of the auto-rickshaw, who is respondent No.1.

10. Aggrieved of the aforesaid order, the instant appeals have been preferred by the respective petitioners raising identical grounds. It is their stand that the Tribunal ought not to have believed Ex.B.2 – copy of driving licence of respondent No.1, as it is not substantiated by adducing legally acceptable evidence and, thereby the 3rd respondent failed to prove the breach of policy conditions by the insured. It is also stated that as per the principles laid down by the Hon'ble Apex Court in **National Insurance Co. Ltd. v. Swaran Singh and others**[1]**,** the insurer would not be allowed to avoid its liability merely on the ground that the driver of the vehicle does not possess valid driving licence at the time of the accident and that the Insurance Company cannot escape from its liability to pay compensation to third parties without there being any fault on their part and, therefore, sought to fasten liability on 3rd respondent by enhancing the compensation with interest at 12% as against 7.5% granted by the Tribunal.

11. Heard Sri K. Ramesh Babu, learned counsel for the respective appellants – petitioners, and Mrs. A. Jayanthi, learned counsel for the 3rd respondent. Though, notices were sent to respondent Nos.1 and 2, the same were not yet returned.

12. It is the submission of the learned counsel for the appellants that renewal of licence would relate back to the date of expiry and, therefore, it cannot be construed as a violation, more particularly, violation of fundamental nature in view of the decision in **Swaran Singh's Case** (Supra 1), since the Hon'ble Supreme Court laid down the principles comprehensively dealing with various situations where violations have been complained by the

Insurance Companies and, therefore, absence of valid and effective driving licence on the date of accident, ought not to be considered as violation of terms and conditions of the policy and, consequently, the Tribunal was not right in exonerating the Insurance Company from its liability. Placing reliance on the judgment of this Court in **Bajaj Allianz General Insurance Co.Ltd., v. Mojes and another**[2], the learned counsel contends that this Court considered the decisions of the Hon'ble Supreme Court in **Ram Babu Tiwari v. United India Insurance Co.Ltd. and others**[3] and held that the Insurance Company cannot be exempted from its liability to indemnify the owner, though, driver was not possessing subsisting driving licence on the date of accident. The learned counsel relied on paragraph Nos.'9' and '10' of the judgment of this Court thus:

> "9. From the above legal principles and in the factual matrix of case, the fact that the accident was the result of the rash and negligent driving of the driver of the crime auto bearing No.AP
> 21 Y 0204 insured with the 2nd respondent covered by Ex.B-1 policy is proved from the evidence of PW.1 with reference to Ex.A-1 FIR and Ex.A-2 charge sheet. Thus the only thing to be seen is whether the owner and insurer are liable to pay compensation if so to what amount and with what liability respectively. R.Ws.1 to 3 are the witnesses examined on behalf of 2nd respondent insurer of the crime vehicle to say that as per Ex.B-3,
> a notice was issued to furnish particulars and not complied by the owner despite acknowledged and even no reply given by him and it is suffice to say the non-furnishing of the particulars despite required by notice served is for the reason that but for no valid licence, he could have furnished

> so to draw the adverse inference, which lends support to the factum of the driver has no valid driving licence proved from the evidence of R.Ws-1 to 3 supra. However, there is nothing to say the owner willfully and deliberately with such conscious knowledge allowed the driver to drive so to exonerate totally. It is also from the fact that once there is policy covering the risk for violation, the insurer cannot be exonerated but for to pay and recover under Section 168 read with 149 of the Act. In the factual matrix, it is a fit case for pay and recover including from the above expressions of the Apex Court in **Swaran Singh** (supra), **Lehru** (supra), **Nanjappan** (supra), **Kusumlata** (supra) and **S.Iyyappan** (supra).
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> 10. Having regard to the above, it is the insurer also along with the insured owner of the crime vehicle jointly and severally liable to pay compensation to the claimant and then it is for the insurer to recover from the owner of the vehicle by filing execution petition in the same award without need of any separate proceedings. Accordingly Point No.1 is answered."

13. The learned counsel for the 3rd respondent – Insurance Company, on the other hand, placed reliance on a decision of Hon'ble Supreme Court in **Ram Babu Tiwari's Case (**Supra 3), contending that the Hon'ble Supreme Court while deciding similar controversy held that the Insurance Company is not liable to indemnify the insured when driver of the offending vehicle had no effective driving licence on the date of accident. It is his submission that the Hon'ble Supreme Court has considered the judgment in **Swaran Singh's Case** (Supra 1) while answering the question as to what would be the effect of not having a licence at the time of accident, more particularly, when driver did not have a

licence for quite a long time.

14. The question that arises for consideration is,

> Whether exempting the Insurance Company by the Tribunal in the absence of effective driving licence on the date of accident, can be sustained?

15. It would be appropriate to advert to the decision relied on by the learned counsel for the 3rd respondent – Insurance Company in **Ram Babu Tiwari's Case** (Supra 3). The facts therein would reveal that the driver was not possessing driving licence for the period from 11-02-1993 to 06-02-1996. The accident had taken place on 27-01-1996. The licence taken by the driver had expired on 10-02-1993. While referring to paragraph Nos.33 to 38 in **Swaran Singh's Case** (Supra 1), having held in paragraph Nos.'13' and '14', which run thus,

> "13. This Court, no doubt, laid down general principles in the aforementioned paragraphs but a bare perusal of the said judgment would clearly show that the court considered the effect of various fact situations therein separately. While considering the question as regards the liability of the insurer when, admittedly, no licence was obtained by a driver, it was held:
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> > "(77) 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 v. Oriental Insurance Co.Ltd., 2003 ACJ 1441 (SC)].”*

14. The question as to whether the owner of a vehicle had taken care to inform himself as to whether the driver entrusted to drive the vehicle was having
a licence or not is essentially a question fact. However, in this case, it stands admitted that as on the date of accident, namely, on 27.1.1996, the driver did not hold any licence. Furthermore, it is beyond dispute that he had a licence only for one year and for about 3 years thereafter, he failed and neglected to renew his licence. His licence was renewed only on and from 7.2.1996.”

considered the effect of not having a licence for such a long period referring to the provisions of Sub-section (1) of Section 15 and the first proviso appended thereto, and also the effect of sub-section (4) thereof in paragraph Nos.16 and 17 thus:

“16. Section 15 of the Motor Vehicles Act provides for renewal of a driving licence. Sub-section (1) of Section 15 and the first proviso appended thereto read as under:

> “15. ***Renewal of driving licences-*** (1) Any licensing authority may, on application made to it, renew a driving licence issued under the

> provisions of this Act with effect from the date of its expiry:
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> Provided that in any case where the application for the renewal of a licence is made more than thirty days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal:
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> Provided further that where the application is for the renewal of a licence to drive a transport vehicle or where in any other case the applicant has attained the age of forty years, the same shall be accompanied by a medical certificate in the same form and in the same manner as is referred to in Sub-section (3) of Section 8, and the provisions of Sub-section (4) of Section 8 shall, so far as may be, apply in relation to every such case as they apply in relation to a learner's licence."

17. Sub-section (4) of Section 15 of the Act provides that where an application for the renewal of a driving licence is made more than 30 days after the date of its expiry, the fee payable for such renewal shall be such amount as may be prescribed by the Central Government. The second proviso appended thereto whereupon strong reliance has been placed by Mr. Gupta reads as under:

> "Provided further that if the application is made more than five years after the driving licence has ceased to be effective the licensing authority may refuse to renew the driving licence unless the applicant, undergoes and passes to its satisfaction the test of competence to drive referred to in Sub-section (3) of Section 9." "

The Hon'ble Supreme Court while observing that the second proviso appended to sub-section (4) of Section 15 is of no assistance to the appellants therein, as it merely enables the Licensing Authority to take a further test of competent driving and passing thereof to its satisfaction within the meaning of sub-section (3) of section 9 and does not say that the renewal would be automatic and, thus, accounts for breach of contract of insurance held in paragraph No.'18' thus:

> "18. It is beyond any doubt or dispute that only in the event an application for renewal of licence is filed within a period 30 days from the date of expiry thereof, the same would be renewed automatically which means that even if an accident had taken place within the aforementioned period, the driver may be held to be possessing a valid licence. The proviso appended to Sub-section (1) of Section 15, however, clearly states that the driving licence shall be renewed with effect from the date of its renewal in the event the application for renewal of a licence is made more than 30 days after the date of its expiry. It is, therefore, evident that as, on renewal of the licence on such terms, the driver of the vehicle cannot be said to be holding a valid licence, the insurer would not be liable to indemnify the insured. The second proviso appended to Sub-section (4) of Section 15 is of no assistance to the appellant. It merely enables the licensing authority to take
> a further test of competent driving and passing thereof to its satisfaction within the meaning of Sub-section (3) of Section 9. It does not say that the renewal would be automatic. It is, therefore, a case where a breach of the contract of insurance is established. This aspect of the matter has been considered by this Court in National Insurance Co. Ltd. v. Kusum Rai, 2006 ACJ 1336 (SC) holding:
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> > "(9) It has not been disputed before us that the vehicle was being used as a taxi. It was, therefore, a commercial vehicle. The driver of the said vehicle, thus, was required to hold an appropriate licence therefor. Ram Lal who allegedly was driving the said vehicle at the relevant time, as noticed hereinbefore, was holder of a licence to drive a light motor

vehicle only. He did not possess any licence to drive
a commercial vehicle. Evidently, therefore, there was a breach of condition of the contract of insurance. The appellant, therefore, could raise the said defence."

It was furthermore held:

"(12) This Court in Swaran Singh's case, 2004 ACJ 1 (SC), clearly laid down that the liability of the Insurance Company vis-à-vis the owner would depend upon several factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle…"

It was opined:

"(14) In a case of this nature, therefore, the owner of a vehicle cannot contend that he has no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or not." "

The Hon'ble Supreme Court referring to the principle laid down in **National Insurance Co.Ltd. v. Kusum Rai's case**[4], reiterated in **Ishwar Chandra v. Oriental Insurance Co. Ltd.**[5], extracted the observations made in **Kusum Rai's Case** (Supra 3) in the context of sub section (1) of section 15 of the Act in paragraph No.'19' thus:

"19. The principle laid down in Kusum Rai's case, 2006 ACJ 1336 (SC), has been reiterated in *Ishwar Chandra v. Oriental Insurance Co.Ltd.,* 2007 ACJ 1067 (SC), referring to Sub-section (1) of Section 15 of the Act, this Court stated the law, thus:

"(9) From a bare perusal of the said provision,

> it would appear that the licence is renewed in terms of the said Act and the rules framed thereunder. The proviso appended to Section 15(1) of the Act in no uncertain terms states that whereas the original licence granted despite expiry remains valid for a period of 30 days from the date of expiry, if any application for renewal thereof is filed thereafter, the same would be renewed from the date of its renewal. The accident took place on 28-4-1995. As on the said date, the renewal application had not been filed, the driver did not have a valid licence on the date when the vehicle met with the accident." "

16. Admittedly, in the instant case, driving licence of the driver of the offending vehicle had expired on 23-10-2003. The accident had occurred on 18-09-2005. The licence was renewed only on 19-09-2005, that was immediate next day after taking place of the accident, which thus, brings out the oblique motive of respondent No.1 or his driver, as the case may be, so as to see the Insurance Company – respondent No.2 made liable to pay compensation, in an attempt to wriggle out of the breach of policy conditions.

17. Reverting to the submissions and decisions on which reliance has been placed by the learned counsel for the appellants concerning **Swaran Singh's Case** (Supra 1), the Hon'ble Supreme Court in **Ram Babu Tiwari's Case** (Supra 3) has considered the principles laid down on alike situation including the situation where driver of the offending vehicle did not possess valid driving licence at the time when the accident had taken place, this Court in **Mojes's Case** (Supra 2), in paragraph Nos. 6 (v) to 6 (vii) while referring to Ram Babu Tiwari's Case (Supra 3), observed thus:

“v) In **Ram Babu Thiwari Vs. United Insurance Company Limited [2008 ACJ 2654]** by referring to **Ishwar Chandra, Kusum Rai, Swaran Singh** (supra) among other expressions, held that when a driving license of the driver of the offending vehicle was expired about three years prior to accident and it was got renewed only subsequent to the accident it was held as violation of the terms of the policy by referring to **Kusum Rai** (supra) followed in **Ishwar Chandra** (Supra) observed that in view of the Section 15(1) of the Act even the license after period of expiry remains valid for thirty days to renew meantime any renewal subsequently would be renewed from the date of renewal only to say as on the date of accident even be subsequent renewal long after thirty days expiry of the statutory period not a valid renewal to say no valid license to exonerate the Insurer and thus exonerated the insurer.

vi) The above decisions other than **Swaran singh** (Supra) mostly speak of no valid license as on the date of accident though earlier it was from its lapse and timely non-renewal or holding one license not valid to drive other type of vehicle.

vii) On perusal of **Swaran Singh** (Supra) referring earlier expressions speaks several categories of cases as to such imperfect license or lapsed license with no license in subsistence or a fake license or even driver with no license at all. An extreme case of this type of driver having no license at all driving the vehicle knowingly without even application for license and without experience to drive even admittedly and in his saying it is to the willful and conscious knowledge of the owner as
a fundamental breach.”

18. The Hon'ble Supreme Court in **Ram Babu Tiwari's Case** (Supra 3) considered the guide-lines laid down in **Swaran Singh's Case** (Supra 1) and dealt with the effect of not failure to possess valid driving licence for more than thirty (30) days which grace period was provided by the first proviso to sub-section 1 of section 15 of the Act and the proviso to sub-section 4 of section 15 holding that the renewal beyond 30 days would not be automatic. Therefore, there is no merit in the instant appeals for the reason that the renewal was more than one year ten months after the expiry of licence held by the driver of the offending vehicle, more particularly, the driver getting his licence renewed just immediately next day after taking place of the accident, which reflects the oblique motive on the part of the driver or the owner, as the case may be, to see that the Insurance Company is fastened with liability to indemnify the 2nd respondent – owner. Therefore, both these appeals are liable to be dismissed.

19. In the result, both the appeals are dismissed. However, there shall be no order as to costs.

20. As a sequel thereto, miscellaneous applications, if any, pending in both the appeals, stand disposed of.

A. SHANKAR NARAYANA, J

February 16, 2015
Siva/Mgr

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[1]. 2004 ACJ Pg.1

[2]. Judgement in MACMA No. 2842 of 2011, dt.02-01-2014

[3]. 2008 ACJ 2654

[4]. 2006 ACJ 1336 (SC)

[5]. 2007 ACJ 1067 (SC)