*** THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**

+ C.M.A.No.872 OF 2005

% 14.10.2015

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 # The United India Insurance Co. Ltd

Appellant

VERSUS

$ Sri Mohd. Khaleel Khan & Others

Respondents

! Counsel for Appellants : Sri V Sambasiva Rao

^ Counsel for the respondents : Sri G. Narender Reddy

<GIST:

> HEAD NOTE:

? Cases referred

2011 (4) ALD 215

[2] 2004 (4) ALD 15

[3] 2007 ACJ 64

[4] 2007 ACJ 1617

[5] 2005 (5) ALD 185

[6] 2003 ACJ 1274

[7] AIR 2004 SC 1531

[8] 2001 ACJ 538

[9] 2014 ACJ 2873

[10] (2013) 7 SCC 62

[11] (1999) I CLR 1192

[12] 2009 ACJ 1049

[13] 2006 ACJ 40

[14] 2004 ACJ 900

[15] 2004 (2) LLN 469

[16] 2006 (108) FLR 467 : 2006 ACJ 1357

[17] 2009 ACJ 2458

[18] 2005 (5) ALD 137

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.872 OF 2005

JUDGMENT:

This civil miscellaneous appeal is preferred under Section 30 of the Workmen's Compensation Act, 1923, assailing the order dated 12.5.2005 in W.C. No.133 of 2004 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour–I, Hyderabad.

2. For the sake of convenience, the parties to this appeal will hereinafter be referred to as they are arrayed before the lower authority.

3. The factual matrix leading to filing of the present appeal is succinctly as follows: The claimants filed the application under the provisions of Workmen's Compensation Act claiming a compensation of Rs.3,50,000/- for the death of K.Yadagiri (hereinafter referred to as, the deceased) in a motor vehicle accident that occurred on 04.7.2004 out of and in the course of his employment. Opposite party No.1 engaged the deceased as a driver on the auto bearing No.AP 23V 4351 on a

monthly wages of Rs.3,500/-. The auto, which belongs to opposite party No.1, was insured with opposite party No.2; therefore, opposite party Nos.1 and 2 are jointly and severally liable to pay compensation to the applicants, who are dependents on the income of the deceased.

4. The opposite party No.1 filed counter admitting the averments made in the application, *inter alia*, stating that the deceased was having valid and effective driving licence as on the date of the accident. The auto bearing No.AP 23V 4351 was insured with opposite party No.2 at the relevant point of time; therefore, opposite party No.2 alone is liable to pay compensation, if any, to the claimants. Hence, the application may be dismissed against this opposite party.

5. The opposite party No.2 filed counter denying all the averments made in the application including the manner of the accident, age and income of the deceased, inter alia, contending that there was no employer-employee relationship between opposite party No.1 and the deceased; therefore, the application is not maintainable under the provisions of the W.C. Act. It is also denied that the driver of the auto was having valid and effective driving licence at the time of the accident. The applicants failed to furnish the proof to show that the deceased was employed with opposite party No.1 and the alleged accident occurred only during the course of his employment. Mere statement, without any documentary proof, has to be treated as false. Hence, the application may be dismissed against this opposite party.

6. Basing on the rival contentions, the learned Commissioner framed the following issues:

> (1) Whether the deceased workman late Sri K.Yadagiri, met with an accident on 04.7.2004, which arose out of and in the course of his employment as a driver on the auto bearing No.AP 23V 4351 in the employment of the 1st opp. Party and died due to the injuries sustained in the accident?
>
> (2) If yes, who are liable to pay compensation to the applicants? And
>
> (3) What is the amount of compensation entitled by the applicants?

7. During the course of trial, on behalf of the applicants, A.Ws.1 and 2 were examined and Exs.A1 to A9 were marked. On behalf of opposite party Nos.1 and 2, no oral evidence was let in but Ex.D1 policy was marked on behalf of opposite party No.2.

8. On analysing the oral, documentary evidence and other material available on record, learned Commissioner arrived at a conclusion that the deceased died out of and in the course of his employment and allowed the application in part by awarding compensation of Rs.3,29,300/- with interest at 9% per annum from the date of filing of the application, if the opposite parties failed to deposit the awarded amount within 30 days from the date of receipt of the order. Feeling aggrieved by the order of the learned Commissioner, opposite party No.2–Insurance Company preferred the present appeal.

9. Sri V.Sambasiva Rao, learned counsel for the opposite party No.2 attacked the legality of the order of the learned Commissioner on the following grounds: (1) the finding of the Tribunal that the deceased was working as a driver on the auto bearing No.AP 23V 4351, which belongs to opposite party No.1, is not sustainable in view of non-production of driving licence of the deceased; (2) the deceased will not fall within the definition of 'workman' as postulated in Section 2(1)(n) of the Act; and (3) even if the version putforth by the applicants is taken to be true and correct, by the time of the alleged accident the deceased was out of the course of his employment; hence, the application is not maintainable under the W.C. Act.

10. Refuting the arguments advanced by the learned counsel for opposite party No.2, Sri G.Narender Reddy, learned counsel for the applicants submitted that the findings recorded by the learned Commissioner are supported by the material available on record. He further submitted that once the factum of employer-employee relationship is established, the applicants are entitled to compensation regardless of production of driving licence. He further submitted that in order to get exoneration from its liability, the insurer has to establish that the insured intentionally and wilfully violated the terms and conditions of the policy by engaging a person, who has no driving licence, as a driver.

11. Basing on the rival contentions, the substantial questions of law that arises for consideration in this appeal are:

> (1) Whether there exists employer-employee relationship between opposite party No.1 and the deceased by the time of the death of the deceased?
>
> (2) Whether non-production of driving licence of the deceased-workman by itself is a valid ground to dismiss the application *in limine*?

Question Nos.1 and 2:

12. Both the questions are intertwined with each other; hence, I am inclined to answer them simultaneously in order to avoid recapitulation of facts and evidence.

13. Establishment of following conditions is *sine qua non* in order to claim compensation by the applicants under the provisions of the W.C. Act.

1. There exists employer-employee relationship;
2. The accident arose out of and in the course of employment of the deceased; and
3. The policy issued by the insurer covers the risk of the workman in question.

14. To substantiate the case, fourth and first applicants examined themselves as A.Ws.1 and 2 respectively and got marked Exs.A1 to A9. No oral evidence was adduced on behalf of opposite party Nos.1 and 2 but Ex.D1 policy was marked on behalf of opposite party No.2.

15. As seen from the testimony of A.Ws.1 and 2, on 04.7.2004 the deceased was proceeding to Hyderabad from Bhongir while driving auto bearing No.AP 23V 4351 along with passengers. When the auto reached near Surya Vamshi Spinning Mill at the outskirts of Bhongir, the deceased stopped the auto on the extreme left side of the road and attending the calls of nature. In the meanwhile, rider of the motor cycle bearing No.AP 29 5287, while coming from Alair side driven the same in a rash and negligent manner and dashed the deceased. Their testimony further reveals that due to the head injury sustained in the accident, the deceased died on the way to the hospital. If the testimony of these witnesses is taken into consideration, the deceased died in a motor vehicle accident that occurred on 04.7.2004 at the outskirts of Bhongir. As per the recitals of Exs.A1 (F.I.R.), A2 (charge sheet) and A3 (M.V.I. Report), the rider of the motor cycle dashed the deceased. As per the recitals of Ex.A5 (scene of offence panchanama), the accident occurred near Surya Vamshi Spinning Mill at the outskirts of Bhongir. In the cross-examination of A.Ws.1 and 2, nothing is elicited to shake their testimony so far as the manner of the accident and the factum of the death of the deceased are concerned. The oral testimony of A.Ws.1 and 2 coupled with the recitals of Exs.A1 to A6 clearly manifests that the deceased died of the head injury sustained in the motor vehicle accident. Therefore, I am fully

agreeing with the findings recorded by the learned Commissioner with regard to the manner of the accident and the factum of death of the deceased are concerned.

16. As per the testimony of A.Ws.1 and 2, the opposite party No.1 engaged the deceased as a driver on his auto bearing No.AP 23V 4351. A perusal of Ex.A8 (Certificate of Registration) reveals that opposite party No.1 is the owner of auto bearing No.AP 23V 4351. In Exs.A1 (F.I.R) and A2 (charge sheet), it is mentioned that by the time of the accident, the deceased was working as a driver on the auto belonging to opposite party No.1. One of the passengers in the auto at the time of the accident, by name Abhilash, lodged a complaint to the Station House Officer, Bhongir Police Station describing the deceased as driver of the auto. If it is not true, he is under no obligation to mention the name of the deceased as driver of the auto. During the course of investigation also, it is revealed that by the time of the accident, the deceased was engaged as auto driver by the opposite party No.1. In Ex.A4 (Inquest panchanama) also, it is mentioned that the deceased was working as a driver under the control of opposite party No.1. The opposite party No.1 filed counter admitting that by the time of the accident the deceased was working as driver on his auto bearing No.AP 23V 4351. The stand taken by opposite party No.1 in his counter is supported by the recitals of Exs.A1, A2 and A4. In view of the recitals of Exs.A1, A2 and A4, the stand taken by opposite party No.1 that the deceased was engaged as driver on his auto bearing No.AP 23V 4351 cannot be doubted. As per the principle enunciated in **United India Insurance Company Limited v Obili Venkata Dasu** and **P.Narasimha Reddy v K.Ramchander**, once the employer admits the factum of employment, it is not at all open to the insurer to doubt those facts.

17. Except the general denial of employer-employee relationship between opposite party No.1 and the deceased, in the counter, opposite party No.2 has not adduced rebuttal evidence either to substantiate its stand or at least to improbablise the stand taken by the applicants. Mere general denial in the counter by itself would not amount to proof of the stand taken in the counter.

18. Having regard to the facts and circumstances of the case, I am of the considered view that there exists employer-employee relationship between opposite party No.1 and the deceased and that the deceased died of the head injury sustained in the

motor vehicle accident that occurred on 04.7.2004. The material available on record clearly reveals that the applicants have established the ingredients of Section 2(1) (n) of the W.C. Act, which consequently entitles them to file application under the provisions of the W.C. Act.

19. Learned counsel for the opposite party No.2 strenuously submitted that by the time of the accident, the deceased was attending the calls of nature and not driving the auto, which clearly demonstrates that the accident does not arise out of and in the course of his employment; therefore, that itself is a valid ground to dislodge the claim of the applicants. At the cost of repetition, it is apposite to refer few relevant facts in order to appreciate the contention of learned counsel for opposite party No.2. No doubt, A.Ws.1 and 2 are not eye witnesses to the accident. The recitals of Exs.A1, A2, A3 and A4 clearly reveal that on the ill-fated day, the deceased was proceeding to Hyderabad from Bhongir by driving the auto along with the passengers. Even as per the recitals of Exs.A1 and A2, the deceased stationed the auto on the extreme left side of the road in order to attend the calls of nature. Simply because the accident occurred when the deceased was attending the calls of nature by itself cannot be said that the accident did not occur out of and in the course of employment of the deceased. On the date of the accident, some passengers engaged the auto at Hyderabad to take them to Bhongir and again drop them at Hyderabad. In such circumstances, the deceased is said to be in the course of employment till the passengers are dropped at Hyderabad. By any stretch of imagination, it cannot be presumed that the deceased was out of employment for the simple reason that he was attending the calls of nature while returning from Bhongir.

20. In **Sr. Div.Manager, United India Insurance Co. v Mst.Noora**, High Court of Jammu & Kashmir observed that "*the aim and purpose of Workmen's Compensation Act, 1923 is to ameliorate the sufferings of the workman and to provide a remedy to the workman in order to save the victims of accident from the destitution, vagrancy and, other social evils*". In **Oriental Insurance Co. Ltd., v Davis**, High Court of Kerala at Ernakulam, at para 10, held as follows:

> 10. Section 147(1) of the M.V. Act, including its provisos, as also the provisions of Section 3 of the W.C. Act, are beneficial legislations with a social objective and are, therefore, expected to be interpreted in favour of those for whose benefit the said legislation are made, even if two views are possible. I have, therefore, no hesitation to lean in favour of the one enunciated above.

As per the principle enunciated by this court in **New India Assurance Co. Ltd., Secunderabad v P.Padmavathi**, the words "*arising out of and in the course of his employment*" used in W.C. Act has to be construed keeping in view the object of the Act, which is a beneficial legislation to workman.

21. The W.C. Act is a piece of beneficial social legislation enacted with a laudable object of safeguarding the rights as well as protecting the welfare of the workmen. It is a settled principle of law that the court has to interpret the provisions of the beneficial legislation in order to achieve the object for which it was enacted. When two views are possible, basing on the facts pleaded and proved, the court has to resort to view which is beneficial for the workmen. I am very much afraid to countenance the submission made by the learned counsel for the opposite party No.2 as, if such contention is accepted, certainly it would amount to vanquish the aims and objects of the Act.

22. Having regard to the facts and circumstances of the case and also the principles enunciated in the cases cited supra, I am of the considered view that the deceased died out of and in the course of his employment.

23. The copy of the insurance policy was marked by the applicants as Ex.A7 and by the opposite party No.2 as Ex.D1. A perusal of the policy reveals that auto bearing No.AP 23V 4351, which belongs to opposite party No.1, was insured with opposite party No.2 – Insurance Company with effect from 20.1.2004 to 19.1.2005. The policy was in force as on the date of the accident i.e., 04.7.2004. The policy issued by the insurer covers the risk of the driver in view of Section 147 of the M.V. Act. Thus there is statutory obligation on the part of the insurer to indemnify the liability of the insured.

24. The predominant contention of the learned counsel for opposite party No.2 is that the claimants have not produced driving licence of the deceased; therefore, the deceased cannot be treated as a driver. The opposite party No.1 in unequivocal terms admitted that the deceased was having driving licence. A.W.2 deposed that they did not produce driving licence of the deceased. Her testimony further reveals that the driving licence of the deceased was lost in the accident. It is a settled principle of law that in order to exonerate from its liability, the insurer has to establish that the insured intentionally and wilfully entrusted the vehicle to an unlicensed

driver. The burden of proof is always static. Onus of proof shifts from one party to another depending upon the facts and circumstances of each and every case. It is not out of place to extract hereunder the stand taken by opposite party No.2 in the counter, "*It is also denied that the driver of the auto was having valid and effective driving licence at the time of the accident*". It is needless to say that every allegation of fact in the petition or the application must be denied specifically. A general denial cannot be equated with specific denial. Every material fact shall be denied specifically. The liability of the insurer depends upon the proving or non-proving of driving licence of the deceased. Therefore, it is a material fact, which has to be specifically denied by the insurer in view of Rule 5 of Order VIII of CPC. The fact remains that opposite party No.2 has not specifically denied the factum of the deceased having valid and effective driving licence at the relevant point of time. A careful scanning of the evidence of A.Ws.1 and 2 reveals that opposite party No.2 has not put a specific suggestion to these witnesses, in their cross-examination, that the deceased was not having valid and effective driving licence as on the date of the accident. Had opposite party No.2 elicited positively in the cross-examination of A.Ws.1 and 2 that the deceased was not having valid and effective driving licence, there may be some justification to accept the contention of opposite party No.2. Mere statement of A.W.2 that they have not produced driving licence of the deceased would not amount to non-possessing of the driving licence by the deceased. Non-production of driving licence of the driver is entirely different to that of non-holding of the driving licence. If these two factual aspects are considered to be one and the same, certainly it would amount to miscarriage of justice. In such circumstances, it may not be possible for the learned Commissioner to arrive at a conclusion that the deceased was not having valid and effective driving licence as on the date of the accident.

25. To substantiate the contention that burden of proof lies on the applicants to establish that the deceased-workman was having valid and effective driving licence as on the date of the accident, learned counsel for the of opposite party No.2 placed reliance on the decision of High Court of Judicature at Allahabad in **National Insurance Co. Ltd., v Brij Pal Singh**. Relevant para 27 reads as under:

> 27. Sri V. P. Singh Charak, learned counsel for the respondent No. 2 (owner of the vehicle) has placed reliance on Manohar Jamatmal Sondhi v Ranguba, MANU/GJ/0221/1992 : (1993) 1 GLR 865, United India Insurance Company v. Madiq Thappeta Ramakka, MANU/AP/0060/1994 : AIR1994AP320, Surjeet Singh v. Heera Lal, IInd (1996) ACC 443 and Oriental Insurance Company v. Teerath Kaur (1994) 1 ACC 226. These are decisions of the different High Courts wherein it has been held that the onus of proof that the person driving the offending vehicle at the relevant time did not hold a valid driving licence, rests upon the insurer and the only way of discharging this onus is by the insurer leading positive evidence to the effect

> that the person driving the vehicle did not possess a driving licence. In none of these decisions, the provisions of the Motor Vehicles Act to the effect that any one above the age of 20 years can obtain a licence from a licensing authority and can drive the vehicle anywhere in India, were considered, nor the question was examined deeper that in absence of any particulars of the licence having been given by the driver or the owner of offending vehicle, it is absolutely impossible for the insurance company to lead evidence to show that the driver did not possess a valid driving licence. The holding of a valid driving licence, being especially within the knowledge of the driver, the burden lay upon him to prove the said fact in view of the clear provisions of Section 106, Evidence Act, was also not considered. For the reasons indicated earlier, we are unable to accept the principle laid down in the above mentioned cases.

26. As per the principle enunciated in the case cited supra, the burden of proof lies on the insured or the claimants to establish that the deceased was having valid and effective driving licence.

27. In **National Insurance Co. Ltd., v Swaran Singh**, the Hon'ble Apex Court, in para 106, held as under:

> (iii) The breach of policy condition, e.g. 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.

In view of the principle enunciated in **Swaran Singh**, the law laid down in **Brij Pal Singh** is no more a good law.

28. The learned counsel for opposite party No.2 has drawn my attention to the decision of High court of Orissa at Cuttack in **Divisional Manager, National Insurance Co. Ltd., v Rabi Sahoo**. As per the principle enunciated therein, driving of transport vehicle by a driver having licence to drive non-transport vehicle would amount to breach of terms and conditions of the policy, which eventually exonerates the insurer from its liability.

29. In **Kulwant Singh v Oriental Insurance Co. Ltd**, the Hon'ble Apex Court, while dealing with similar question, held as follows:

> 10. In S. Iyyapan v United India Insurance Co., the question was whether the driver who had a licence to drive 'light motor vehicle' could drive 'light motor vehicle' used as a commercial vehicle, without obtaining endorsement to drive a commercial vehicle. It was held that in such a case, the Insurance Company could not disown its liability. It was observed:

> "19. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside."

No contrary view has been brought to our notice.

> 11. Accordingly, we are of the view that there was no breach of any condition of insurance policy, in the present case, entitling the Insurance Company to recovery rights.

In view of latest decision of the Hon'ble Apex Court in **Kulwant Singh**, the decision in **Rabi Sahoo** cannot be relied upon.

30. The learned counsel for opposite party No.2 has drawn my attention to the decision in **Chhotekhan v Rajeshkumar Agrawal**. As per the principle laid down therein, "*if the insurance company proves that the driver of the vehicle was not having valid and effective driving licence, then the onus of proof shifts to the applicant that the deceased was having valid and effective driving licence as on the date of the accident*."

31. As observed supra, opposite party No.2 has not specifically denied the factum of non-holding of driving licence by the deceased, leave apart adducing of rebuttal evidence. The facts of the case on hand are entirely different to the facts of the case cited supra. This decision is no way helpful to opposite party No.2, to substantiate its stand.

32. The learned counsel for the applicants has drawn my attention to the following decisions:

(i) **Sangita v Ganesh**, wherein a Division Bench of Madhya Pradesh High Court (Indore Bench) while answering the question:

> *Whether Commissioner for Workmen's Compensation committed error of law in exonerating the insurance company on the ground that the deceased was not holding a valid driving licence?*

held as follows:

> In our view, therefore, the Commissioner was not right in exonerating the insurance company from the liability in question in toto when admittedly the policy was in force and the accident in question did occur while the deceased

was in the employment. In these circumstances, the case under the Workmen's Compensation Act against the insurance company was made out. We also notice that there is nothing on record to show that driver of vehicle had no licence. In the first place, he remained ex parte. Secondly, no evidence was adduced by the insurance company on this issue. Thirdly, owner-insured was also not examined as witness of company. In these circumstances, there was no occasion for the Commissioner to have come to a conclusion for want of proper pleading and evidence that driver had no licence. The burden being on the insurance company, it failed to discharge this burden. In this view of the matter, we answer the question No.1 in appellants' favour and reverse the finding on this issue in appellants' favour. As a necessary consequence, the award in question should have been passed jointly and severally against both, i.e., employer as also against the insurance company rather than only against the employer, i.e., NA1.

(ii) **United India Insurance Company Ltd., v Annakutty**, wherein High Court of Kerala held as follows:

When the accident has resulted in the death of the workman, necessarily clause (b)(ii) of the proviso to Section 3(1) of the Act will have no application. Wilful disobedience of an order or rule expressly framed for the purpose of securing such safety like the insistence of a driving licence will have bearing going by the said provision, only in respect of any injury not resulting in the death of the workman. Necessarily even if there was any contravention of the provisions of law, the compensation shall have to be paid by the employer wherever death occurs as a result of the accident. When there was a valid insurance policy, that liability shall be on the insurer. **Therefore absence of driving licence cannot be taken as a reason to deny the compensation, in case like this where the accident resulted, admittedly in the death of the workman**.

(emphasis supplied)

(iii) **The Oriental Insurance Co. Ltd. v Jimmy**, wherein High Court of Kerala at Ernakulam held as follows:

3. The employer and employee relationship cannot be disputed by the appellant. The accident also is not disputed. In such circumstances, whether the workman did have a proper licence or not, whether he is a Wireman, a Boiler Operator or Driver as the case may be, is not a matter for the concern of the insurer. When the insurer had undertaken the liability that had fallen upon the insured, necessarily the insurer has not discharge that burden. If there is violation of the policy conditions, the insurer can seek appropriate remedy.

(iv) **United India Insurance Company Ltd. v S.Laxmi**, wherein High Court of Judicature at Orissa held as follows:

10. In the case of **United India Insurance Company Ltd. v Lehru**, 2003 AIR SCW 1695, view taken by their Lordships of the Supreme Court is that the insurance company cannot avoid its liability towards third party on the ground that the licence of the driver of the vehicle was a fake licence. This shows that their Lordships of the Supreme Court was of the view that liability of insurance company towards third party does not get avoided. It is further seen from the decision of the Apex Court that the insurance company on proof that owner of vehicle was aware of the fact that licence was fake, can however recover the amount from insured.

(v) **Sr. Div. Manager, United India Insurance Co. v Mst.Noora** (cited supra), wherein High Court of Jammu & Kashmir at Srinagar held as follows:

8. While going through the Workmen's Compensation Act, what is required to be proved is that the deceased was workman and was employed to do an act in the course of employment and during the course of employment the workman died due to an accident.

9. The provisions of Workmen's Compensation Act no where prescribe that if a driver is employed he should possess valid licence as is required in terms of the mandate of Motor Vehicles Act 1939. This view is fortified by the judgment of Hon'ble High court of Karnatka titled Oriental Insurance Co. Ltd. v. Hazira Begum and others reported in MANU/KA/0384/1994, it is profitable to reproduce the para 9 of the judgment herein:

"9. A scan of various decisions of the High court will disclose that where a workman was engaged in the employer's business and who was doing the very thing he was employed to do, then the mere fact that he was not acting strictly by the letter of law will not make the accident any the less 'arising out of and in the course of employment.' It follows, therefore, the owner and insurance company are both liable in such an event.."

(vi) **United India Insurance Co. v Seema Devi**, wherein Himachal Pradesh High Court held as follows:

18. Taking a cue from Section 3 quoted supra it is my considered view that when an employee dies or suffers permanent total disablement in an accident arising out of and in the course of his employment, then the fact that such employee had obtained employment on the basis of false qualification would not be a defence open to the employer and consequently the insurance company. However, in case the employee only suffers injury which does not disable him permanently, then the employer can take up a defence that the employee has obtained employment on the basis of false qualifications and, therefore, wilfully disregarded the law and in such an eventuality the employer and the insurance company may not be liable. This is in consonance with the intention of the legislature that when a person dies or suffers permanent disablement then it is not only he who suffers, but his dependants suffer with him. In the case of other injuries the employee alone suffers and, therefore, he has not been given the benefit. The intention appears to be that the dependants of the employee should not be denied compensation.

20. In view of the above discussion, I answer the two substantial questions of law raised herein as follows:

(1) The insurance company has proved on record that the driving licence issued in favour of driver Gurnam Singh, was a fake driving licence.

(2) The employer and consequently the insurance company is liable to pay the compensation to the dependants of the deceased, even if it is proved that the driver had a fake driving licence.

(vii) **National Insurance Co. Ltd v Rajala Lakshmi (died) and others**, wherein this court held as follows:

12. In the present case, it is not the contention of the insurance company that the deceased was having a fake driving licence. If that is established, the position would be different. But when it is asserted by the owner as well as the applicant that the driver was having valid driving licence as on the date of accident, it is for the insurance company to prove that there was no valid driving licence. In the event of failure of the insurance company to establish the said fact, it can be safely concluded that the driver was having valid driving licence as on the date of accident and the insurance company can be made liable under the Workmen's Compensation Act as there is evidence to the effect that the deceased was under the employment of the owner of the vehicle as on the date of accident. Though there is a general denial of the allegations in the counter, there was no specific denial that the driver was not at all employed by the owner. In the cross-examination, the owner admitted that the deceased worked under him on a monthly salary of Rs.2,000. Therefore, the Assistant Commissioner rightly came to a conclusion that accident occurred during the course of employment and the driver was having valid driving licence as on the date of accident and rightly made the insurance company liable and granted compensation.

(viii) **Ande Naga Jyothi v Gorla Nagi Reddy**, wherein this court held as follows:

9. With reference to the above submissions, it is to be seen, in this case, that, it is not in dispute that the deceased died during the course of employment. As per the averments of the claim petition and evidence on record, it is clearly proved that the deceased died during the course of employment with the first respondent while driving the tractor, which was insured with the second respondent. The Tribunal below has not assessed the compensation only on the ground that the claimants have not proved that the deceased was possessing valid driving license at the time of accident. The plea of the second respondent that the driver was not having driving licence, is no reason to record the finding that no compensation can be awarded to the applicants. In any event, even with regard to issue, whether the driver was possessing valid driving license or not, except the report under Ex.R-1, which was prepared by an Advocate-Commissioner appointed by the insurer, no other evidence was adduced. It is not fairly well settled that the Insurance Company in order to avoid its liability towards insured, has to prove, that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling conditions of policy regarding driving of vehicle by a duly licensed driver or one who was not disqualified to drive at the relevant time. Mere absence, fake or invalid licence or disqualification of the driver for driving alone are not in themselves defences available to the insurance company. The Apex Court held so, while dealing with the provisions under the Motor Vehicles Act, 1988 in a recent judgment in the case of National Insurance Company Limited v. Swaran Singh, AIR 2004 SC 1531. Further, in the case on hand, the Insurer has also not proved by sufficient evidence to record the finding that the driver-deceased was not possessing valid driving licence. As the above aspects are not considered by the Tribunal below, and,

> further, the assessment was not done only on the ground that the driver was not possessing valid driving licence, it is evidently a fit case to set aside the judgment of the Tribunal below and remit back for reconsideration by the Tribunal. Accordingly, the judgment under appeal is set aside and the matter is remitted back to the Tribunal below for fresh consideration. However, it is open for the parties to lead any further evidence in the matter. If any compensation is paid pursuant to the award of the Tribunal below, the same shall be subject to further orders to be passed by the Tribunal below.

33. As per the principle enunciated in the cases 11 to 16 cited supra, the burden of proof lies on the insurer:- (1) to establish that the driver of crime vehicle or deceased-workman was not having valid and effective driving licence at the relevant point of time; and (2) the insured intentionally and wilfully entrusted the vehicle to the driver/ workman, who has no driving licence, at the time of the accident. As observed earlier, opposite party No.2 failed to discharge the burden shouldered on it to establish that the deceased was not having valid and effective driving licence at the relevant point of time and that the opposite party No.1 intentionally and wilfully entrusted the auto to the deceased knowing fully well that he was not having driving licence.

34. It is needless to say that the question of violation of terms and conditions of the policy would arise if the accident had occurred due to rash and negligent driving of the vehicle in question by the deceased. In the instant, the accident occurred due to the rash and negligent driving of the rider of the motor cycle. The fact remains that at the time of the accident, the deceased was attending calls of nature. In such circumstances insisting production of driving licence of the deceased has no relevancy at all in order to ascertain whether the opposite party No.1 had violated the terms and conditions of the policy. Viewed from this angle also, the stand taken by opposite party No.2 has no legs to stand.

35. Having regard to the facts and circumstances of the case and also the principles enunciated in the cases cited supra, I am unable to accede to the contention of learned counsel for opposite party No.2 that opposite party No.1 had violated the terms and conditions of the policy so as to absolve opposite party No.2 from its liability. The findings recorded by the learned Commissioner are supported by the evidence much legally admissible evidence.

36. The learned Commissioner has assigned cogent and valid reasons to his findings. There are no grounds much less valid grounds to interfere with the well-considered order of the learned Commissioner. There is no substantial question of

law in this appeal which warrants interference of this court. The appeal lacks merits and *bona fides*. Accordingly, the points are answered.

37. In the result, the civil miscellaneous appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: .10.2015.

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