The Hon'ble Sri Justice T. Sunil Chowdary
MACMA No.762 OF 2009

JUDGMENT:

1 Aggrieved by the judgment and award dated 03.10.2006 passed in MVOP No.246 of 2006 on the file of Chairman, Motor Accidents Claims Tribunal-cum- Principal District Judge, Vizianagaram, wherein and whereby an amount of Rs.66,000/- was awarded to the petitioner as compensation as against a claim of Rs.1,20,00,0 the 2nd respondent - insurer has filed the present appeal.

2 For the sake of convenience, the parties to this appeal are hereinafter referred to as they are arrayed before the Tribunal.

3 The facts leading to the filing of the present appeal are briefly as follows:

4 On 30.07.2005 the petitioner boarded an auto bearing No.AP 35 U 692 at Mangalaveedhi to go to railway station. When the auto reached near State Bank of India main branch, Vizianagaram, the driver of the auto drove it in a rash and negligent manner due to which it turned turtle, which resulted injuries to the petitioner. In connection with the said accident, the Station House Officer, Vizianagaram registered a case in Cr.No.122 of 2005 under Sections 337 and 338 against the driver of the auto. The petitioner took treatment in District Headquarters Hospital, Vizianagaram as inpatient and later in Venkateswara Nursing Home at Vizianagaram and spent huge amount towards medicines and treatment. At the time of accident, the petitioner was aged about 40 years and tailor by profession. The petitioner did not attend the work for long time thereby lost his income. The accident occurred due to the rash and negligent driving of the auto by its driver. As on the date of accident, the auto, which belongs to the first respondent, was validly insured with the second respondent. Hence the petitioner filed the claim petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.1,20,000/- from the respondents.

5 First respondent remained ex *parte*. Second respondent-insurance company filed counter inter alia denying the manner of accident and the nature of injuries sustained by the petitioner. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. The first respondent violated the terms and conditions of the policy as he was having licence to drive light motor vehicle non-transport vehicle only. Therefore, this respondent is not liable to pay compensation to the petitioner. Hence the petition may be dismissed.

6 Basing on the above pleadings, the Tribunal framed the following issues for trial:

i. Whether the pleaded accident occurred resulting in injuries to the petitioner due to the rash and negligent driving of the Auto bearing No.AP 35 U 692 by its driver – 1st respondent?

ii. Whether the petitioner is entitled to any compensation? And if so, what quantum and what is the liability of the respondents?

iii. To what relief?

7 During the course of trial, on behalf of the petitioner P.Ws.1 and 2 were examined and Exs.A.1 to A.7 were marked. On behalf of the respondents R.Ws.1 and 2 were examined and Exs.B.1 to B.4 were marked.

8 The Tribunal, after appreciating the oral, documentary evidence and other material available on record, arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the Auto i.e. first respondent and allowed the petition in part by granting Rs.66,000/- with interest at 9% p.a. as compensation to the petitioner. As stated supra, feeling aggrieved by the judgment and award passed by the Tribunal, the second respondent – insurance company filed the present appeal.

9 Sri Naresh Byrapaneni, the learned standing counsel for the 2nd

respondent / appellant submitted that the Tribunal committed grave error in fastening the liability on the appellant/insurance company even though the owner of the vehicle had violated the terms and conditions of the policy. He further submitted that the Tribunal ought to have permitted the second respondent to recover the awarded amount from the first respondent after satisfying the award.

10 *Per* contra, Sri Venkateswara Rao Gudapati, the learned counsel for the petitioner submitted that the first respondent was having valid and effective driving licence as on the date of accident, hence there is no violation of terms and conditions of the policy.

11 A perusal of Ex.A.1-FIR and Ex.A.3-charge sheet clearly reveals that the accident occurred due to the rash and negligent driving of the auto by the first respondent. Further, a perusal of the record clearly reveals that the Tribunal awarded only just and reasonable compensation to the petitioner. Viewed from any angle, the compensation awarded by the Tribunal is not in higher side.

13 In such circumstances, the point for consideration in this appeal is

> "Whether the first respondent had violated the terms and conditions of the policy so as to absolve the liability of the second respondent?

POINT:

14 The oral testimony of R.Ws.1 and 2 coupled with Ex.B.2 reveals that the first respondent was having driving licence to drive light motor vehicle non-transport as on the date of accident. It is not in dispute that the auto is a light motor vehicle.

15 The contention of the learned counsel for the second respondent is that a driver having licence to drive light motor vehicle non-transport is not entitled to drive light motor vehicle transport. As per the testimony of R.W.2, the driver of the crime vehicle is entitled to drive vehicle in question in view of Ex.B.2-true copy of the extract of the driving licence. If

the testimony of R.W.2 is taken into consideration, the owner of the crime vehicle has not violated the terms and conditions of the policy.

16 The crucial question that falls for consideration at this juncture is whether driving of light motor vehicle – transport by a driver having licence to drive light motor vehicle non – transport amounts to fundamental breach of terms and conditions of the policy so as to absolve the liability of the insurer? The learned counsel for the second respondent has drawn my attention to various provisions of the Motor Vehicle Act to substantiate his argument.

> Section 2 (21): “light motor vehicle” means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms.
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> Section 2 (35): “public service vehicle” means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage.
>
> Section 2 (47): “transport vehicle” means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;

17 Section 2 of the Act defines various types / classes of the vehicle. The word ‘light motor vehicle’ as defined in Section 2 (21) includes a transport vehicle. Section 3 of the Act mandates that one has to obtain valid and effective driving licence to drive vehicle in public place. A combined reading of Sections 2 and 3 of the Act demonstrates that a person having licence to drive a particular type / class of vehicle is not entitled to drive different type of vehicles. Section 10 of the Act deals with forms and contents of the licences. It is not out of place to extract Section 10 (2) of the Act, which reads as follows:

> 10 (2) A learner’s licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely: —
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> (a) motor cycle without gear;
> (b) motor cycle with gear;
> (c) invalid carriage;
> (d) light motor vehicle;

(e) transport vehicle
(i) road-roller;"
(j) motor vehicle of a specified description.

18 A perusal of Sub-Section 2 of Section 19 of the Act postulates that in order to drive the vehicles set out therein one has to obtain driving licence of that particular type of vehicle. The word 'transport vehicle' was substituted by Act 54 of 1994 to medium type goods vehicle and heavy goods vehicle. The definition of light motor vehicle either in Section 2 (21) or Section 10 (2) (d) of the Act remains unaltered even after amendment.

19 Section 14 of the Act deals with 'currency of driving licence'. The currency of the licence to drive a transport vehicle is 3 years. The currency of the licence to drive light motor vehicle is 20 years. The definition of light motor vehicle encompasses in it transport as well as non-transport vehicle. The word 'transport vehicle' as used in section 10 of the Act refers to medium goods vehicle and heavy goods vehicle only.

20 To substantiate the argument, the learned counsel for the second respondent has drawn my attention to the following decisions:

Oriental Insurance Co. Ltd Vs. Syed Ibrahim and others[1] and ***National Insurance Co. Ltd, Vs. Kaushalaya Devi and Others***.[2]

Wherein the Hon'ble apex Court held at para No.9 as follows:

> "The High Court, however, held that the driving licence of the Driver Shyam Lal was not valid, stating:
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> "Since I am of the opinion that the endorsement permitting Shyam Lal to drive heavy goods vehicle was ante dated and was not existing on the date of accident it is clear that the owner could not have handed over the vehicle to a person who held a valid driving lience. On 16.3.2000 Shyam Lal only held a licence to drive a light transport vehicle and the owner could not have checked or verified the licence for driving a heavy goods vehicle. In fact in this case the owner has not even stepped into the witness box to say anything in this regard. Therefore, I hold that the insurance company was wrongly held liable to pay compensation."
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> As regards to the question as to whether the deceased was an unauthorized passenger, it accepted the plea of the insurance company."

21 As per the principle enunciated in the cases cited supra, a driver having licence to drive light motor vehicle is not entitled to drive the heavy goods vehicle. Allowing a person to drive heavy goods vehicle who has licence to drive only light motor vehicle would amount to breach of terms and conditions of the policy. Therefore, there is no obligation on the part of the insurer to indemnify the insured.

New India Assurance Co. ltd, Tirupati Vs. G. Sampoorna and Others [3]

22 As per the ratio laid down in the case cited supra, if the insured entrusts the vehicle to a driver whose licence is not in force at the relevant point of time, the insurer is not liable to pay compensation to third parties. The facts of the case on hand are entire different to the facts of the cases cited supra. Therefore, I am of the considered view that the principle laid down in the cases cited supra is not applicable to the facts of the case on hand.

Oriental Insurance Company Ltd Vs. Angad Kol and others [4]

New India Assurance Co. Ltd, Vs. Roshanben Rahemansha Fakir and Anr. [5]

National Insurance Co. Ltd Vs. Kusum Rai [6]

23 As per the principle enunciated in the cases cited supra, driving of light motor vehicle transport by a driver having licence to drive light motor vehicle non-transport vehicle would amount to violation of terms and conditions of the policy thereby absolves the liability of the insurer. The facts of the case on hand are almost identical to the facts of the cases cited supra.

24 The crucial question that falls for consideration at this juncture is whether mere non-obtaining of necessary endorsement/badge by the driver by itself would amount to fundamental breach of the terms and conditions of the policy or whether it is a technical or minor lach?

25 As observed earlier, the definition of light motor vehicle under Section 2 (21) and Section 10 (d) remains intact even after 1994 amendment. The word 'transport vehicle' was substituted by medium goods and heavy goods vehicle.

26 For better appreciation of rival contentions, this Court is placing reliance on the following decisions.

National Insurance Company Limited Vs. Annappa Irappa Nesaria[7] wherein the Hon'ble apex Court observed as under:

> From what has been noticed hereinbefore, it is evident that 'transport vehicle' has now been substituted for 'medium goods vehicle' and 'heavy goods vehicle'. The light motor vehicle continued, at the relevant point of time, to cover both, 'light passenger carriage vehicle' and 'light goods carriage vehicle'. A driver who had a valid licence to drive a light motor vehicle, therefore, was authorised to drive a light goods vehicle as well.

National Insurance Co. Ltd, Vs. Swaran Singh[8] wherein the Hon'ble apex Court held as follows:

> 47. If a person has been given a licence for a particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle which is of the same category but of different type. As for example, when a person is granted a licence for driving a light motor vehicle, he can drive either a car or a jeep and it is not necessary that he must have driving licence both for car and jeep separately.
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> 88. Section 10 of the Act provides for forms and contents of licences to drive. The licence has to be granted in the prescribed form. Thus, a licence to drive a light motor vehicle would entitle the holder there to drive the vehicle falling within that class or description.
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> 89. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section (2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are: (*a*) motorcycle without gear, (*b*) motorcycle with gear, (*c*) invalid carriage, (*d*) light motor vehicle, (*e*) transport vehicle, (*f*) road roller, and (*g*) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10. They are "goods carriage", "heavy goods vehicle", "heavy passenger motor vehicle",

"invalid carriage", "light motor vehicle", "maxi-cab", "medium goods vehicle", "medium passenger motor vehicle", "motor-cab", "motorcycle", "omnibus", "private service vehicle", "semi-trailer", "tourist vehicle", "tractor", "trailer" and "transport vehicle". In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence for "motorcycle without gear", [*sic* may be driving a vehicle] for which he has no licence. Cases may also arise where a holder of driving licence for "light motor vehicle" is found to be driving a "maxi-cab", "motor-cab" or "omnibus" for which he has no licence. In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.

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.

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

(*i*) xxxx
(*ii*) xxxx

(*iii*) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2) (*a*)(*ii*) of Section 149, has 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 the 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 a duly licensed driver or one who was not disqualified to drive at the relevant time.

(*iv*) xxxx
(*v*) xxxx

(*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 the 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 insurer under Section 149(2) of the Act.

27 In the instant case it is not in dispute that the vehicle in question is a light motor vehicle. At the time of accident, the vehicle in question was being driven by a driver having licence to drive a light motor vehicle non-transport. The vehicle in question was classified as light motor vehicle. Undoubtedly, the driver was having a licence to drive the same class/type of vehicle i.e. light motor vehicle. The driving skill required to drive the light motor vehicle non-transport and light motor vehicle transport is one and the same. The currency of the licence period may be different. Absolutely there is no material on record to establish the proximate cause for the accident was non having of valid and effective driving licence. It is not the case of the second respondent that the driver of the vehicle was not disqualified to obtain a licence. Mere absence of obtaining necessary endorsement/badge on the licence by itself would not amount to fundamental breach of terms and conditions of the policy so as to absolve the liability of the insurer. If the insured entrusted the vehicle to the driver to drive different class of vehicle than the vehicle for which he is having licence to drive, then it would amount to fundamental breach of terms and conditions of the policy. Section 10 (2) (d) of the Act does not specifically provide different forms of licences in respect of the light motor vehicle. In ***S.Iyyapan Vs. United India Insurance Co.***[9] the Hon'ble apex Court held as follows:

17. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely,

(*i*) the vehicle was not driven by a named person,

(*ii*) it was being driven by a person who was not having a duly granted licence, and

(*iii*) person driving the vehicle was disqualified to hold and obtain a driving licence.

Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

18**.** 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[5] is, therefore, liable to be set aside.

19**.** We, therefore, allow this appeal, set aside the impugned judgment[5] of the High Court and hold that the insurer is liable to pay the compensation so awarded to the dependants of the victim of the fatal accident. However, there shall be no order as to costs.

Kulwant Singh and others Vs. Oriental Insurance Co. Ltd[10]

wherein the Hon'ble apex Court held as follows:

> 10. In S. Iyyapan (supra), 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:
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> > "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.

28 The facts of the case on hand are almost identical to the facts of the cases cited supra. Having regard to the facts and circumstances of the case and also the principle enunciated in the recent judgments of the apex Court, this Court is of the view that the owner of the vehicle has not violated the terms and conditions of the policy so as to absolve the liability of the insurance company or to enable the insurer to recover the amount of compensation from the insured, after satisfying the award passed by the Tribunal.

29 The first respondent being the owner of the crime vehicle is vicariously liable to the wrongful acts done by his employee. The crime vehicle was insured with the second respondent insurance company as on the date of accident. Hence the second respondent has to indemnify the liability of the first respondent. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners.

30 In the result, the appeal is dismissed. Parties are directed to bear their own costs in this appeal. As a sequel, the miscellaneous petitions, pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 16th February, 2015.

Kvsn

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[1] 2007 ACJ 2816

[2] 2008 ACJ 2144

[3] 2010 (5) ALT 105

[4] (2009) 11 SCC 356

[5] 2008 ACJ 2161

[6] 2006 ACJ 1336

[7] (2008) 3 SCC 464

[8] (2004) 3 SCC 297

[9] (2013) 7 SCC 62

[10] 2014 ACJ 2873