

**The Hon'ble Sri Justice T. Sunil Chowdary**

**MACMA No.1354 OF 2010**

**JUDGMENT:**

1 Dissatisfied with the compensation awarded in M.V.O.P.No.292 of 2008 on the file of Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Medak at Sangareddy whereunder and whereby an amount of Rs.3,75,000/- was awarded as against a claim of Rs.10.00 lakhs, the claimants have preferred this appeal.

2 For the sake of convenience, the parties to this appeal are hereinafter referred to as they are arrayed in the O.P.

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

4 On 03.12.2007 P. Gopal Reddy (hereinafter referred to as 'the deceased') along with one Chakali Narsimhulu and Mogulaiah was proceeding to Nallamapalli from Jahirabad on the scooter bearing registration No.AP 23 S 3580. When they reached near RTC colony of Pasthapur, Jahirabad Mandal, a tractor trolley bearing No.AP 23-T-2404 and 2405 came in opposite direction driven by its driver in a rash and negligent manner and suddenly took turn to overtake another vehicle. In that process, the rear portion of the trolley dashed the scooter being driven by the deceased. Due to the said accident, the deceased and Narsimhulu fell down and died on the spot and Mogulaiah sustained injuries. In connection with the said accident, the Station House Officer, Jahirabad police station registered a case in Cr.No.271 of 2007 under sections 304-A and 337 of IPC against the driver of the tractor. The case of the petitioners is that by the date of accident, the deceased was aged about 35 years and was earning Rs.10,000/- p.m. on agriculture. As on the date of accident, the offending vehicle which belongs to the first respondent was insured with the second respondent. First petitioner is wife, petitioner Nos.2 and 3 are children of the deceased and that they are dependants on the income of the deceased. Hence, the petitioners filed the petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.10,00,000/- from the respondents.

5 The first respondent who is the driver of the crime vehicle remained ex parte. The second respondent – insurer filed counter denying the material averments made in the petition, inter alia contending that the first respondent knowing fully well that the driver was not having valid and effective driving licence, entrusted the same to him

and thereby violated the terms and conditions of the policy. It is further contended that there was no negligence on the part of the driver of the tractor and trolley to cause the accident. As per the records, another deceased in the same accident by name Chakali Narsimhulu had driven the scooter in a rash and negligent manner and hit an unknown vehicle from behind and died. The police foisted a false case against the driver of the tractor and trolley in collusion with the petitioners. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. 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 accident occurred due to the rash and negligent driving of the driver of the crime vehicle?
- ii. Whether the petitioners are entitled to compensation? If so, at what quantum and from whom?
- iii. To what relief?

7 During the course of trial, on behalf of the petitioners P.Ws.1 to 3 were examined and Exs.A.1 to A.6 were marked. On behalf of the respondents, R.Ws.1 and 2 were examined and Exs.B.1 to B.5 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 scooter by its rider i.e. Chakali Narsimhulu the other deceased in the same accident, as well as the driver of the tractor and trolley and fastened the liability in the ratio of 25 : 75 and awarded a compensation of Rs.3,75,000/- to the petitioners. Not being satisfied with the said amount of compensation, the claimants preferred this appeal.

9 The contention of Sri Pale Sri Sri Harinath, the learned counsel for the petitioners is two fold.

- a. The finding of the Tribunal that there was contributory negligence on the part of the rider of the scooter is not sustainable either on facts or on law.
- b. The Tribunal has not properly assessed the income of the deceased and thereby granted a lesser amount of compensation under different heads.

10 On the other hand, Sri N.Mohan Krishna, the learned standing counsel for the second respondent-insurance company submitted that the Tribunal has considered

the oral and documentary evidence in right perspective and arrived at a conclusion that the driver of the scooter also contributed to the accident. He further contended that the Tribunal erred in fastening the liability on the second respondent even though the driver of the crime vehicle was not having valid and effective driving licence as on the date of accident. He further submitted that the Tribunal awarded just and reasonable compensation by considering the material available on record and hence the appeal may be dismissed.

11 Basing on the rival contentions of both parties, the following points would arise for consideration in this appeal.

- i. Is there any negligence on the part of the rider of the scooter to contribute to the accident?
- ii. Whether the Tribunal has awarded just and reasonable compensation?
- iii. Whether the Tribunal has wrongly fastened the liability on the second respondent?

**Point No.1:**

12 To prove the negligence on the part of the driver of the crime vehicle, the first petitioner was examined as P.W.1 and Exs.A.1 to A.6 were marked. P.W.2 is the eyewitness to the incident. To disprove the case of the petitioners, the second respondent examined R.W.1. As seen from the testimony of P.W.1, R.W.1, they are not eyewitnesses to the accident. As seen from the testimony of P.W.2, the driver of the tractor drove the same in a rash and negligent manner and while overtaking another vehicle suddenly took turn due to which the rear portion of the trolley dashed the scooter. If the testimony of P.W.2 is taken into consideration, the accident occurred due to the rash and negligent driving of the driver of the tractor and trolley. In the cross-examination of P.W.2 nothing is elicited to shake his testimony so far as the manner of accident is concerned. The testimony of R.W.1 is no way helpful to establish the negligence, if any, on the part of the rider of the scooter. Nothing is elicited in the cross-examination of P.W.2 to establish the contributory negligence or to disprove the manner of accident as pleaded by the petitioners. As per the recitals of Ex.A.4 M.V. Inspector's report, there was no mechanical defect in the crime vehicle at the time of accident. The oral testimony of P.Ws.1 and 2 coupled with Exs.A.1, A.2 and A.4 it is clearly manifest that the accident occurred due to the rash and negligent driving of the driver of the tractor and trolley.

13 No issue has been framed by the Tribunal with regard to the contributory negligence on the part of the rider of the scooter. The respondent has not adduced any evidence to establish the contributory negligence on the part of the deceased. The Tribunal, basing on the decision reported in ***United India Insurance Company Limited Vs. K. Anjaiah & Others*** arrived at a conclusion that because of the triple riding of the scooter, the driver of the scooter was also responsible to cause the accident. At this juncture, the learned counsel for the petitioners has drawn my attention to the following judgments:

i. ***Kumari K. Pushpa Latha Vs. E. Murali Manohar Rao and Another*** wherein this Court held as follows:

Section 128 (1) of the Act is an independent provision under the Motor Vehicles Act and is not one which is in Chapter XII of the Motor Vehicles Act, 1988 dealing with Claims Tribunals. Violation of safety measures provided under Section 128 (1) of the Act may result in challenging or charge sheeting rider of the motor cycle and imposing penalty on him/her. Violation of Section 128 (1) of the Act cannot be ipso facto taken as a mitigating factor in determining quantum of compensation payable to an injured or dependants of the deceased in a motor accident case. Whether there was triple riding or not, in case there is no negligence on the part of two wheeler rider, then it cannot be a mitigating factor for disallowing certain percentage of compensation towards contributory negligence on the part of the motor cycle rider. It all depends upon facts and circumstances of that case and evidence let in by the parties in that case. This Court intends to make it clear that violation of safety measures contained either in Section 128 (1) of the Act or in any other provision cannot be taken into consideration to disallow compensation payable for an injured or dependants of the deceased in a motor accident case or any part thereof.

ii. ***Syed Sadiq Vs. Divisional Manager, United India Assurance Company*** wherein the Hon'ble apex Court held as follows:

The High Court without assigning any reason concurred with the findings of the Tribunal with respect to contributory negligence. We find it pertinent to observe that both the Tribunal and the High Court erred in holding the appellants/ claimants in these appeals liable for contributory negligence. The Tribunal arrived at the above conclusion only on the basis of the fact that the accident took place in the middle of the road in the absence of any evidence to prove the same. Therefore, we are inclined to hold that the contribution of the appellants/claimants in the accident is not proved by the respondents by producing evidence and therefore, the finding of the Tribunal regarding contributory negligence, which has been upheld by the High Court, is set aside.

iii. ***Meera Devi and another Vs. Himachal Pradesh Road Transport Corporation and others*** wherein the Hon'ble apex Court held as follows:

10. To prove the contributory negligence, there must be cogent evidence. In the instant case, there is no specific evidence to prove that the accident has taken place due to rash and negligent driving of the deceased scooterist. In the absence of any cogent evidence to prove the plea of contributory negligence, the said doctrine of common law cannot be applied in the present case. We are, thus, of the view that the reasoning given by the High Court has no basis and the compensation awarded by the Tribunal was just and reasonable in the facts and circumstances of the case.

14 The facts of the case on hand are almost similar 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 cases cited supra, I am of the considered view that the finding of the Tribunal that there was contributory negligence on the part of the rider of the scooter to the extent of 25% is not sustainable either on facts or on law and the said finding is hereby set aside. In the light of the foregoing discussion, I have no hesitation to hold that the accident occurred only due to the rash and negligent driving of the driver of the crime vehicle only. Even otherwise, the deceased in the instant case was pillion rider on the scooter. So question of contributory negligence on the part of the deceased does not arise. The point is answered accordingly.

**POINT No.2:**

15 As per the testimony of P.W.1, her husband used to earn Rs.10,000/- per month as an agriculturist. The oral testimony of P.W.2 coupled with Ex.A.6 clearly reveals that the deceased was having Ac.3-37 gts of land. As per the recitals of Ex.A.6, the deceased used to raise Banana crop in the land. Except the self-serving testimony of P.W.1, there is no other convincing evidence to establish that the deceased used to earn Rs.3.00 lakhs to Rs.4.00 lakhs p.a It is not uncommon to exaggerate the income of the deceased so as to claim more compensation. Some times, it may not be possible for the claimants to produce the documents to prove the avocation and income of the deceased.

16 The learned counsel for the petitioners relied on the ratio laid down in 1) ***Rajesh and others Vs. Rajbir Singh and others***, 2) ***Kalpanaraj and others Vs. Tamil Nadu State Road Corporation*** and 3) ***Sanobanu Nazirbhai Mirza and Others Vs. Ahmedabad Municipal Transport Service***. As per the principle enunciated in all these cases, the Court or the Tribunal has to award just and reasonable compensation by assessing the income of the deceased. In the absence of documentary evidence, some guess work is inevitable to determine the income of

the deceased. In the instant case, the accident occurred in the year 2007. The Tribunal has to take into consideration the prevailing conditions in the particular year. The Tribunal has taken the income of the deceased as Rs.4,000/- p.m. In view of the ratio laid down in **Sarla Verma Vs. Delhi Transport Corporation** if the claimants are 3 in number, 1/3<sup>rd</sup> has to be deducted towards the personal expenses of the deceased. Thus the contribution of the deceased to the family would be Rs.2,667/- p.m and Rs.32,004/- per annum. As per the postmortem certificate, the deceased was aged 40 years by the date of his death. So, the suitable multiplier is 15. Thus, the loss of dependency would come to Rs.32,004/- X 15 = 4,80,060/-.

17 The Tribunal awarded Rs.10,000/- to the first petitioner towards consortium. Taking into consideration the age of the first petitioner and the principle enunciated in the cases cited supra, I am inclined to award an amount of Rs.50,000/- to the first petitioner towards consortium. I am also inclined to award Rs.50,000/- to the petitioners 2 and 3 towards loss of love and affection.

18 Thus, the total compensation, which the petitioners are entitled to, under various heads, is as follows:

|                                                             |
|-------------------------------------------------------------|
| Pecuniary damages: Rs.4,80,060=00                           |
| Consortium of 1 <sup>st</sup> petitioner: Rs. 50,000=00     |
| Loss of love affection to petitioners 2 to 4: Rs. 50,000=00 |
| -----                                                       |
| TOTAL Rs.5,80,000=00                                        |
| -----                                                       |

The compensation awarded under various heads is just and reasonable to meet the ends of justice.

**POINT NO.3:**

19 The oral testimony of R.W.1 and R.W.2 coupled with Ex.B.3, the true copy extract of driving licence clearly reveals that the driver of the crime vehicle was having licence to drive a light motor vehicle non-transport as on the date of accident. 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.3. 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.

20 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.

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;

21 Section 2 of the Act defines various types / classes of the vehicles. 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:—

- (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.

22 A perusal of Sub-Section 2 of Section 10 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.

23 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.

24 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*** and ***National Insurance Co. Ltd, Vs. Kaushalaya Devi and Others***. 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:

"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 licence. 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."

As regards to the question as to whether the deceased was an unauthorized passenger, it accepted the plea of the insurance company."

25 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. Sampoorana and Others***

26 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***

***New India Assurance Co. Ltd, Vs. Roshanben Rahemansha Fakir and Anr.***

***National Insurance Co. Ltd Vs. Kusum Rai***

27 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 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.

28 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?

29 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.

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

***National Insurance Company Limited Vs. Annappa Irappa Nesaria*** 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*** 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.

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.

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.

31 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.*** 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<sup>5</sup> is, therefore, liable to be set aside.

19. We, therefore, allow this appeal, set aside the impugned judgment<sup>5</sup> 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*** 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:

"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.

32 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.

33 The interesting aspect to be considered in this appeal is that the Tribunal fastened 75% of liability on the insurer i.e. second respondent, i.e. the insurer has to pay 75% of the amount awarded to the petitioners. Admittedly, the Tribunal has given specific finding that the owner of the crime vehicle has not violated the terms and conditions of the policy. Even as per the terms and conditions of the award, the second respondent is not entitled to recover 75% of the compensation amount awarded from the insured after satisfying the award. The gist of the award is that the insurer is not entitled to recover the amount from the insured.

34 If really the award passed by the Tribunal is not legally sustainable, what prevented the second respondent to file a regular appeal? The second respondent has not taken any steps even to file cross-objections in the MACMA filed by the claimants challenging the judgment and award of the Tribunal. Without filing regular appeal or cross-objections, the insurer is not entitled to challenge the legality or otherwise of the findings recorded by the Tribunal. The finding of the Tribunal that the insurer has to pay 75% of the compensation awarded to the petitioners became final. Viewed from this angle also, the contentions raised by the learned counsel for the second respondent has no legs to stand. 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.

35 In the result, the appeal is allowed in part, enhancing the compensation from Rs.3,75,000/- to Rs.5,80,000/- with interest at 7.5% p.a. throughout. Parties are directed to bear their own costs in this appeal. Respondents 1 and 2 are jointly and severally directed to deposit the compensation amount within two months from the date of receipt of a copy of this judgment.

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**T.SUNIL CHOWDARY, J.**

Date:16<sup>th</sup> February, 2015.

***Kvsn***