

**\* HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**+ MACMA No. 1808 of 2005**

-

**% Dated 30.03.2015**

-

**# The National Insurance Company, rep. by its  
Branch Manager, Chittoor, Chittoor District.**

...Appellant

**Vs.**

**\$ Pasupuleti Subbamma and others**

...Respondents

**! Counsel for the Appellant: Sri P. Phalguna Rao**

**^ Counsel for Respondents 1 and 2: Sri Sivalanka Ramachandra  
Prasad**

**Counsel for Respondent No.3: ----**

**< Gist :**

**> Head Note:**

**? Cases Referred:**

1. (2004) 3 SCC 297 = 2004(2) ALD 36(SC) = 2004 ACJ 1
2. (2008) 12 SCC 701
3. (2004) 13 SCC 224
4. (2007) 10 SCC 650
5. (2009) 15 SCC 761
6. (2011) 6 SCC 425
7. 2013(2) ALD 233
8. AIR 2012 Ker.116

**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**MACMA No. 1808 of 2005**

**Judgment:**

The National Insurance Company, represented by its Branch Manager, Chittoor, the second respondent in MVOP No. 174 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Kadapa, is the present appellant. Aggrieved of the order, dated 16<sup>th</sup> March 2005, whereby and whereunder a sum of Rs.3,00,000/- was awarded as compensation with interest at 9% p.a., the instant appeal is preferred seeking to set aside the said award on the ground that the driving licence of the driver of the insurance vehicle had expired well before the accident and, in such a case, the owner of the vehicle/insured alone is liable to pay compensation.

2. For the sake of convenience, the parties hereinafter referred to as arrayed in the Original Petition before the Tribunal.

3. The facts, in brief, are that on 19.10.2001, one Pasupuleti Krishnaiah (hereinafter referred to as 'deceased'), the son of the first petitioner and brother of the second petitioner respectively, boarded a Jeep bearing registration No.AP-04-C-6699 along with others on their personal work to go to Kadapa, as no buses were plying on 19.10.2001, and when the said jeep reached near Kondapeta cross roads on Kadapa – Kurnool National Highway near Chennur bridge, at about 9.00 PM, a lorry came in opposite direction driven in a rash and negligent manner and dashed the jeep, due to which, he sustained injuries and he was shifted to Government Hospital, kadapa, for treatment, where he succumbed to injuries while undergoing treatment. The petitioners claim that the said Krishnaiah was aged about 45 years on the date of accident and doing Class-III contract

works earning Rs.1,00,000/- per annum and he died in unmarried status and he was contributing the entire earnings for the family and the respondents 1 and 2, who are the owner and insurer of the lorry, are responsible to pay the compensation of Rs.3,00,000/-, laid under Section 166 of the Motor Vehicles Act 1988 (for short 'the Act') read with Rule 475 of the Andhra Pradesh Motor Vehicles Rules, 1989.

4. Before the Tribunal, the first respondent – owner of the lorry remained *ex parte*.

5. The second respondent - Insurance Company opposed the claim. It is according to the second respondent that in the said accident two persons died, who were travelling in the said jeep, which shows that the jeep was heavily loaded with the passengers and there was contributory negligence on the part of the driver of the jeep and, thus, the driver of the jeep was responsible for the said accident and, therefore, the owner and Insurance Company of the jeep are proper and necessary parties. It is also specifically stated that the driver of the lorry did not possess valid and effective driving licence and, therefore, the second respondent – Insurance Company is not liable to pay the compensation.

6. The Tribunal framed the following three issues about the responsibility for the accident.

- “1. Whether the death of the deceased by name Pasupuleti Krishnaiah, S/o Subbarayudu (late) occurred on 19.10.2001 at 3.00 PM due to rash and negligent driving of lorry No.APD-9756 by its driver belonging to respondent No.1?
2. Whether the petitioners are entitled for compensation and if so to what amount and from whom?
3. To what relief.”

7. During enquiry, the first petitioner examined herself as PW.1, besides examining an eye witness to the occurrence as PW.2, and marked Exs.A1 to A5 in order to substantiate the claim laid by them.

On behalf of the second respondent – Insurance Company, two witnesses were examined and Exs.B1 to B3 were marked, even Ex.X1, which is copy of the extract of issue of driving licence, was also marked.

8. The Tribunal, on issue No.1, basing on the evidence of PW.2 supported by Exs.A1 to A4, held it in favour of the petitioners.

9. On issue No.2, placing reliance on the decision of the Hon'ble Apex Court in **National Insurance Company Limited v. Swaran Singh<sup>[1]</sup>**, held that it was not open for the second respondent to avoid its liability on the ground that the lorry driver of the first respondent had no valid licence at the time of accident, thus, a finding was recorded to the said effect. As regards the quantum of compensation, taking the age of the deceased as 45 years and the age of PW.1 as 60 years and the income of the deceased as 75,000/- per annum, deducted 1/3<sup>rd</sup> amount towards personal expenses and taken the remainder of Rs.50,000/- as contribution to the family and applied multiplier '8' and arrived at Rs.3,00,000/- towards loss of dependency and awarded the same under all counts by fastening joint and several liability on the respondents 1 and 2.

10. It is the aforesaid order which is under challenge in the instant appeal filed by the second respondent – Insurance Company contending in the grounds of appeal that despite its specific plea and proof that the driving licence of the driver of the insurance vehicle had expired well before the date of accident, in which case the owner of the vehicle alone is liable to pay the compensation, the Tribunal went wrong in fastening liability on the Insurance Company. It is also stated that the Tribunal has not properly appreciated the evidence of RW.2, an employee summoned and examined from RTO Office, who has categorically stated that Ex.X1, the driving licence No.297/1973 was

not renewed after the year 1995 and, thus, did not possess valid driving licence at the time of accident and that the same accounted for a clear violation of terms and conditions of the policy on the part of the insured/owner of the vehicle, still, fastening entire liability on the insurer/appellant instead of fastening the same on the insured/owner of the vehicle is incorrect and, thereby, sought to set aside the order and decree passed by the Tribunal.

11. Heard Sri P. Phalguna Rao, learned Standing Counsel for the Insurance Company, and Sri Sivalenka Ramachandra Prasad, learned Counsel for the respondents 1 and 2 - claimants. Despite service of notice on the third respondent, none appears for him.

12. Perused the award and the evidence on record let in by both sides and also the authorities on which reliance was placed by respective sides.

13. So far as fact-situation is concerned, there is no dispute between the parties. Admittedly, the licence obtained by the driver of the accident vehicle had expired in 1995. In the said context, the submission of the learned counsel for the appellant is, that it amounts to a clear violation and, therefore, no liability can be fastened on the Insurance Company. In support of his contention, he placed reliance on a decision of the Hon'ble Supreme Court in **National insurance Company Limited v. Vidhyadhar Mahariwala**<sup>[2]</sup>, in the context, whether a driving licence, which had expired on a particular date and renewed subsequently, was valid in the intervening period. The Tribunal, finding from the facts therein that the driver's licence was initially valid from 15.12.1997 to 14.12.2000 and, thereafter, from 29.12.2000 to 14.12.2003 and, thereafter, it was again renewed from 16.05.2005 to 15.05.2008 and that the accident had taken place on 11.06.2004, on which date the driving licence of the driver of the offending vehicle was not valid since it was renewed on 16.05.2005

for a further period of three years, held that it cannot be said that during the intervening period, the driver was incompetent and disqualified to drive the Truck. The High Court held that the insurer was liable to indemnify the award confirming the order of the Tribunal, while advertent to the decisional law on which reliance was placed by the respective parties in the said decision. The Hon'ble Apex Court, while agreeing with the view taken in earlier decisions in **Oriental Insurance Company Limited v. Nanjappan**<sup>[3]</sup>, and **Ishwar Chandra v. Oriental Insurance Company Limited**<sup>[4]</sup>, allowed the appeal setting aside the order of the High Court, however, observing that it was open to the claimant therein to recover the amount from the second respondent – owner of the offending vehicle. It would be appropriate to refer to the contentions and the conclusion of the Hon'ble Apex Court contained in paragraphs '5' to '11', thus:

"5. In appeal by the impugned judgment the High Court referred to three judgments of this Court in National Insurance Co. Ltd. v. Swaran Singh and Ors. (supra), National Insurance Co. Ltd. v. Kusum Rai and Ors. (2006 (4) SCC 250) and Oriental Insurance Co. Ltd. v. Nanjappan and Ors. (supra) and came to hold that the insurance company, the insurer was liable to indemnify the award. It was held that merely there was a gap in the renewal of driving licence that cannot be a ground for exoneration.

6. In support of the appeal, placing reliance on the decision of this Court in Ishwar Chandra and Ors. v. Oriental Insurance Co. Ltd. and Ors. (supra), it was contended that the High Court's view is unsustainable.

7. Learned counsel for respondent No.2 the owner of the vehicle on the other hand supported the judgment of MACT.

8. In Swaran Singh's case (supra) whereupon the respondent No.2 relied, it was held as follows:

"45. Thus, a person whose licence is ordinarily renewed in terms of the Motor Vehicles Act and the Rules framed thereunder, despite the fact that during the interregnum period, namely, when the accident took place and the date of expiry of the licence, he did not have a valid licence, he could during the

prescribed period apply for renewal thereof and could obtain the same automatically without undergoing any further test or without having been declared unqualified therefor. Proviso appended to Section 14 in unequivocal terms states that the licence remains valid for a period of thirty days from the day of its expiry.

46. Section 15 of the Act does not empower the authorities to reject an application for renewal only on the ground that there is a break in validity or tenure of the driving licence has lapsed, as in the meantime the provisions for disqualification of the driver contained in Sections 19, 20, 21, 22, 23 and 24 will not be attracted, would indisputably confer a right upon the person to get his driving licence renewed. In that view of the matter, he cannot be said to be delicensed and the same shall remain valid for a period of thirty days after its expiry."

9. In Kusum Rai's case (supra) it was held as follows:

"14. This Court in Swaran Singh (supra) clearly laid down that the liability of the Insurance Company vis-a-vis the owner would depend upon several factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle. The question as regards the liability of the owner vis-a-vis the driver being not possessed of a valid licence was considered in Swaran Singh stating: (SCC pp. 336-37, para 89)

"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."

10. Nanjappan's case (supra) was referred to in Kusum Rai's case (supra).

11. In Ishwar Chandra's case (supra) the three decisions referred to by the High Court were considered and it was held that the insurance company would have no liability in the case of this nature. We are in agreement with the view. The appeal deserves to be allowed which we direct. The impugned order of the High Court is set aside. It is open to the claimant to recover the amount from respondent No.2."

14. In **New India Assurance Company Limited v. Suresh**

**Chandra Aggarwal**<sup>[5]</sup>, the facts would reveal that the driving licence was expired four months prior to the accident and renewed 25 days after the accident. Holding that the proviso to Section 15(1) attracted as the renewal could not be held to be from the date of expiry as per

the said proviso and that the same amounted to violation of special condition 5 of the insurance policy, while rejecting the contention that the driver was not disqualified from holding valid driving licence on the ground that it was irrelevant, the Hon'ble Supreme Court held in paragraphs '26' and '27' thus.

“26. The claim of the insured having been rejected by the Insurance Company which was upheld by the National Commission, the complainant in Ashok Gangadhar ((1999) 6 SCC 620) approached this Court. Allowing the appeal, it was held that the driver of the vehicle was holding a valid driving licence for driving a Light Motor Vehicle and there was no material on record to show that he was disqualified from holding an effective and valid driving licence at the time of accident. On those facts, the Court held that the policy, which was not even placed on record, did not insist on the driver to have a licence to drive a transport vehicle by obtaining a specific endorsement and therefore, the Insurance Company was not justified in rejecting the claim by the insured. It was observed that the Insurance Company had neither pleaded nor proved that the vehicle was a transport vehicle. The permit issued by the transport authority had not been placed on record.

27. In the present case, it stands proved that the driver did not have an effective and valid driving licence on the date of accident. For the aforesaid reasons, in our opinion, the decision of the National Commission cannot be sustained. Accordingly, the appeal is allowed and the impugned order is set aside. There will, however, be no order as to costs.”

15. On the other hand, learned counsel for the respondents 1 and 2 – claimants placed reliance on the decision of the Hon'ble Apex Court in **Jawahar Singh v. Bala Jain**<sup>[6]</sup>. It can be gathered from the observations contained in paragraph '13' that the Hon'ble Apex Court had limited the controversy to the question regarding liability to pay compensation on account of contributory negligence of the deceased who was riding the scooter, who has caused the accident to happen. It is further clear from the observations made by the Hon'ble Apex Court in paragraph '16' that the Special Leave Petition was confined to the

question of contributory negligence, if any, on the part of the deceased, thus.

“16. Accordingly, since the notice on the special leave petition was confined to the question of contributory negligence, if any, on the part of the deceased, we see no reason to interfere with the award of the Motor Accidents Claims Tribunal, as confirmed by the High Court. The special leave petitions are, accordingly, dismissed, but without any order as to costs.”

16. The next decision, on which reliance was placed by the learned counsel for the respondents 1 and 2 - claimants, is in **Oriental Insurance Company Limited, Vijayawada v. Banavathu Gopi (died)** per LRs<sup>[7]</sup>, rendered by this Court in the context of breach of conditions of policy being found, held that the insurance company should first indemnify the claimant and then recover the same from the owner of the vehicle. This Court placing reliance on the decision of a Full Bench of Kerala High Court in **Oriental Insurance Company limited v. Joseph V.V. @ Johny**<sup>[8]</sup>, wherein the insured was a third party to the proceeding, it was held that the Insurance Company was bound to satisfy the claim of the third party and, applied the said principle and directed the Insurance Company to first indemnify the claimant and then recover the same from the owner of the vehicle.

17. However, in view of the decisions of the Hon'ble Apex Court in **Vidhyadhar Mahariwala's** case (2 supra) and in **Suresh Chandra Aggarwal's** case (5 supra) and since the fact-situation therein is akin to the fact-situation occurring in the instant case and has direct bearing on the point herein for the reasons hereinafter to be mentioned, it is to observe that the decisions, on which the learned counsel for the respondents 1 and 2 – claimants placed reliance, would not assist to support the order passed by the Tribunal.

18. In Ex.B1 – copy of insurance policy, the relevant condition reads

thus:

“Any person including the insured provided that the person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such licence. Provided also that a person holding an effective learner’s licence may also drive the vehicle when not used for transport of goods at the time of the accident and such a person satisfies the requirement of rule No.3 of the Central Motor Vehicle Rule, 1989.”

19. Ex.B2 is a communication addressed to the Regional Transport Authority, Kadapa, by the Standing Counsel for the Insurance Company, dated 24.03.2003, which shows that the information in regard to driving licence of the driver of the offending vehicle was sought, by furnishing particulars against columns 1 to 5 giving relevant details, for which an endorsement was made by the Additional Licensing Authority, Kadapa, which was marked as Ex.B3, and re-transmitted it to the Standing Counsel for the Insurance Company.

The recitals are to the effect:

“The applicant is informed that the DL No.297/73 issued in favour of Sri A.S. Ameer, S/o Khasim Peera, Proddatur, is genuine. He is authorised to drive LMV only. The DL was valid from 28.08.1973 to 27.08.1976. Renewed the DL from 22.1.77 to 21.1.80. He is authorised to drive HTV w.e.f. 8.7.82 with badge No.4799. DL renewed from 8.7.82 to 7.7.85, 8.7.85 to 7.7.88, 20.12.88 to 19.12.91 and 30.3.92 to 29.3.95 as per this office records.”

20. Ex.X1 also makes it clear that the driving licence, originally granted for LMV and later HGV and later HPV transport in 1973, had expired on 29.03.1995 after periodical renewals with certain interregnums and, thus, after the last date i.e., on 29.03.1995, there was no further renewal. The said copy was issued by the Regional Transport Office, Kadapa, on 24<sup>th</sup> February 2005, which indicates that the licence obtained by the driver of the first respondent had expired on 29.03.1995 and later it was not renewed at all. These documents

have been exhibited by RWs.1 and 2 and there is nothing in their cross-examination to view anything contra to the recitals occurring in Exs.B1 to B3 and Ex.X1.

21. The accident in the instant case had taken place on 19.10.2001, on which date, admittedly, the driver of the accident vehicle did not possess valid and effective driving licence. Therefore, in view of the law laid down by the Hon'ble Apex Court in **Vidhyadhar Mahariwala's** case (2 supra) and in **Suresh Chandra Aggarwal's** case (5 supra), certainly, it has to be held that, the driver did not have valid and subsisting driving licence at the relevant time and that the same accounts for violation of conditions of policy - Ex.B1, disentitling the respondents 1 and 2 – claimants from making claim against the Insurance Company – appellant herein. Therefore, the order under challenge is liable to be set aside allowing the instant appeal.

22. Accordingly, the appeal is allowed setting aside the order and decree passed by the Tribunal in fastening liability on the appellant – Insurance Company to pay compensation to the respondents 1 and 2 – claimants for the death of the deceased is concerned, however, confirming the award in all other respects. There shall be no order as to costs.

23. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand closed.

---

**A. SHANKAR NARAYANA, J**

Date: 30.03.2015

**Note:**

LR Copy to be marked  
(B/O)  
Nsr

---

[\[1\]](#) (2004) 3 SCC 297 = 2004(2) ALD 36 (SC) = 2004 ACJ I

[\[2\]](#) (2008) 12 SCC 701

[\[3\]](#) (2004) 13 SCC 224

[\[4\]](#) (2007) 10 SCC 650

[\[5\]](#) (2009) 15 SCC 761

[\[6\]](#) (2011) 6 SCC 425

[\[7\]](#) 2013 (2) ALD 233

[\[8\]](#) AIR 2012 Ker. 116