THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

C.M.A.No.322 of 2014

JUDGMENT:

This appeal by the appellant/second opposite party under Section 30 of the Employees' Compensation Act, 1923 is directed against the order dated 25.04.2013 in E.C.No.1 of 2011 passed by the learned Commissioner for Employees' Compensation and Assistant Commissioner of Labour, Dharmavaram.

2. I have heard the submissions of the learned counsel for the appellant/second opposite party ('the second opposite party' for brevity) and the learned counsel for the respondents 1 to 3/applicants ('the applicants', for brevity). None appeared for the 4th respondent/first opposite party, though the said respondent was served with notice. I have perused the material record.

3. The basic facts, in brief, are as follows: - 'The applicants, who are the wife and two minor children of the deceased, Shaik Abdul Wadood, ('the deceased', for brevity) had filed the compensation case claiming compensation under the provisions of the Employees' Compensation Act, 1923 ('the Act', for short) against the employer/first opposite party-cum-owner of the Van bearing registration number AP 03 U 7877 ('the Van', for brevity) and the second opposite party-cum-insurer of the said Van claiming *inter alia* that the said deceased had succumbed on the spot to the injuries sustained in an accident that had occurred on 12.10.2010 while he was driving the said Van during the course and out of his employment under the first opposite party. The first opposite party-cum-owner of the Van had remained *ex parte* before the learned Commissioner. The second opposite party having filed a counter had resisted the claim of the applicants. At trial, the 1st applicant and a supporting witness i.e., the 1st opposite party, were examined as AWs1 and 2 and exhibits A1 to A9 were marked on the side of the applicants. RWs1 and 2were examined and exhibits B1 to B4 were marked on the side of the second opposite party. On merits, the learned Commissioner had awarded a total compensation of Rs.6,03,320/- to the applicants and had held that both the opposite parties are jointly and severally liable to pay the said compensation; and, had directed them to deposit, within 30 days from the date of the receipt of the order, the said amount with interest at 12% per annum from the date of the petition i.e., 19.02.2011 till the date of realisation. However, it is observed in the said impugned orders that the 1st opposite party alone is liable to pay the interest, but, not the 2nd opposite party. Aggrieved of the said orders, the second opposite party had preferred this appeal.

4. The learned counsel for the second opposite party would contend as follows: - 'The learned Commissioner had erred in treating the deceased as a driver within the meaning of Section 2(dd) of the Act in spite of the fact that the driving licence of the said deceased did not permit him to drive the Van. The learned Commissioner had erred in not looking into the provisions of Section 2(dd) of the Act and Sections 2(9) and 2(10) of the Motor Vehicles Act (the 'MV Act' for short). The learned Commissioner was incorrect in treating the deceased as a driver and in making the second opposite party liable to pay the compensation. The learned Commissioner ought to have seen that there is no employee and employer relationship between the deceased and the 1st opposite party as the deceased was not holding a valid and effective driving licence and as he cannot be treated as a driver as per the provisions of the Act and the MV Act. The learned Commissioner ought to have dismissed the claim against the second opposite party as the second opposite party cannot be made liable in a case where the deceased cannot be treated as a driver as per the provisions of the Act. The learned Commissioner had erred in taking into consideration the Wage of the deceased as Rs.4,520/-per month, which is the basic wage for Medium Motor Transport Drivers under GO Ms No. 90, Labour Employment and Factories (Lab-II) Dated 28.09.2007 published in Gazette No.618 dated 26.10.2007. Instead, the learned Commissioner ought to have taken the basic wage applicable to the drivers authorised to drive Light Motor Vehicles (LMVs) since the deceased held at the relevant time a valid driving licence to drive a LMV only and not the Van, which is a MMV.'

5. Per contra, the learned counsel for the applicants would contend as follows: "That the learned Commissioner had framed appropriate issues and had accurately considered the facts and properly appreciated the evidence and had answered all the five issues correctly. The learned Commissioner had rightly held that at the time of accident, the deceased was having valid and effective driving license to drive the Van and that the 2nd opposite party had failed to prove any breach and that the 1st opposite party had knowledge about the details of the driving licence of the deceased and that there is a fundamental breach of the terms and conditions of the policy. The learned Commissioner had rightly held that the deceased is an employee within the meaning of the provisions of the Act and had rightly determined the basic wage by taking into consideration the fact that, at the time of accident, the deceased was driving the subject Van during the course and out of his employment on the subject Van of the 1st opposite party. The compensation awarded with interest is just and fair. The contentions of the second opposite party in this appeal are devoid of merit and are contrary to the settled legal position."

6. In view of the contentions, the points that arise for determination in this appeal are:

1. Whether there is no employee and employer relationship between the deceased and the 1st opposite party as contended by the 2nd opposite party? Whether the deceased had succumbed to the injuries sustained during the course and out of his employment under the first opposite party who is the owner-cum-insured of the said vehicle bearing registration no. AP 03 U 7877? Whether the deceased held a valid and effective driving license to drive the said Van?
2. Whether the second opposite party is not liable to pay the compensation and is entitled to be exonerated from the liability in the facts and circumstances of the case?
3. What is the amount of compensation to which the applicants are entitled to?

7. <u>POINTS Nos.1 and 2:</u>

7.1. The deceased worked as a driver on the Van of the first opposite party is not in dispute. It is also not in dispute that on 12.10.2010 while the deceased was driving the said Van in the capacity of its driver, the said Van was involved in an accident with a lorry bearing registration no. AP 20 V 1467 and that said lorry came from the opposite direction and had dashed the Van. It is also not in dispute that the deceased had succumbed on the spot to the injuries sustained in the said accident.

The attested copy of the FIR, the attested copies of the Post Mortem and the Inquest reports of the deceased, the copy of the notice got issued to the opposite parties, the two acknowledgments received, the Photostat copy of the Insurance policy, the Photostat copy of the RC of the Van and the driving licence of the deceased were exhibited as exhibits A1 to A9. The copy of the Insurance Policy of the Van, the authorisation letter filed by the Witness-AW1, 'B'-extract of the Van issued by the RTA, Hindupur and the extract of the DL of the deceased issued by the Additional Licencing Authority, Hindupur were exhibited as B1 to B4.

7.2 Now the first vital question is – 'Whether the deceased held a valid and effective driving licence to drive the Van at the time of the accident?' Admittedly, the deceased was holding a licence. The said driving licence is exhibit A9 and it was issued on 21.03.1998 by the Licensing Authority, [RTA] Hindupur. The said licence authorised the deceased to drive a non transport light motor vehicle and it is valid up to 20.03.2018 is not in dispute. The said licence also authorised him to drive Transport LMV from 24.08.1999 and the validity in that regard is up to 04.08.2012. The said facts are also evident from exhibit B4, the extract of Driving licence of the deceased, issued by the RTA, Hindupur. The subject accident had occurred on 12.10.2010. Therefore, it is evident that the deceased was authorised to drive LMV (non-transport) and LMV (transport) i.e., both transport and non-transport (LMVs) as on the date of the accident. Exhibit A8 is the copy of the Registration Certificate of the Van and exhibit B3 is the extract of Registration Certificate of the Van. The same on a perusal would show that the Van is a goods carriage-MMV [Medium Motor Vehicle] and is registered in the name of the first opposite party. The learned counsel for the second opposite party having placed reliance on exhibit B3 (=A8) would contend that as per the certificate of registration of the vehicle and the policy of insurance, the subject insured vehicle/Van is a goods carriage Medium Motor Vehicle (MMV) and to drive the said Van the deceased did not possess a valid and effective driving licence and that, therefore, the deceased was not authorised to drive the Van, and that both the deceased as well as the first opposite party are aware of the said fact that the deceased was not having a valid and effective driving licence to drive the Van and that despite such knowledge the 1st opposite party had wilfully and knowingly handed over possession of the said Van to the deceased and hence, there was a contravention of the provisions of the Act as well as the MV Act and the Rules framed there under and that, therefore, the deceased cannot be treated as a driver within the meaning of Section 2(dd) of the Act and Section 2(9) and 2(10) of the MV Act and as a sequel, it must follow that there is no employee and employer relationship between the deceased-driver and the first opposite party. On the other hand, the learned counsel for the applicants had supported the order of the learned Commissioner basing on the contents of exhibit B3 (=A8) in regard to the unladen weight of the Van, which is 3130 Kgs.

7.3 In the light of the facts and the contentions, it is necessary to refer to the provisions of Section 2(dd) of the Act and Sub-Sections (9) and (10) of Section 2 of the MV Act which are as under:

2(dd): "employee" means a person, who is –

(i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II; or

(ii) (a) a master, seaman, or other member of the crew of a ship;

b. **a captain or other member of the crew of an aircraft;**

c. **a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle;**

d. **a person recruited for work abroad by a company,**

and who is employed outside India in any such capacity as is specified in Schedule II and the shop, aircraft or motor vehicle, or company, as the case may be, is registered in India; or

iii. **employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been injured shall, where the employee is dead, include a reference to his dependants or any of them."**

Sections 2(9) and 2(10) of the MV Act read as under:

(9) "driver" includes, in relation to a motor vehicle which is drawn by

another motor vehicle, the person who acts as a steersman of the drawn vehicle;

(10) "driving licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description;

7.4 It is not in dispute and it is also evident from exhibit B3 (=A8) that the insured vehicle/Van is a goods carriage-MMV; It is also not in dispute that as per the contents of exhibit B1-Insurance Policy the Van is a 'Goods carrying Commercial vehicle-Open'. Be that as it may, it is pertinent to note that exhibit B3 on a perusal discloses that the unladen weight of the Van is 3130 Kgs.

Section 2(21) of the MV Act reads as under:

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 [2][7500] kilograms.

Section 2(22) of the MV Act reads as under:

2(22) "Maxicab" means any motor vehicle constructed or adopted to carry more than six passengers, but not more than twelve passengers excluding the driver, for hire or reward.

Section 2(23) of the MV Act reads as under:

2(23) "medium goods vehicle" means any goods carriage other than a light motor vehicle or a heavy goods vehicle.

Section 147 of the MV Act reads as under:

147. Requirements of policies and limits of liability.—

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which--

(a) is issued by a person who is an authorized insurer; and

(b) insures the person or classes of persons specified in the policy

to the extent specified in Sub-section (2)--

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required--

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee--

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation.--For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to Sub-section (1), a policy of insurance referred to in Sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely--

(a) save as provided in Clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

Section 147 came to be amended by the Motor Vehicles (Amendment) Act, 1994.

7.5 In **National Insurance Company Ltd., v. Balakrishna and Anr**. the Supreme Court while dealing with the distinction between "Act policy" and "comprehensive policy/package policy" had considered the question as to what would be the liability of the insurer if the policy is a "comprehensive/package policy" and had held as follows:

> **We are absolutely conscious that the matter has been referred to a larger Bench, but, as is evident, the Bench has also observed that it would depend upon the view of the Tariff Advisory Committee pertaining to enforcement of its decision to cover the liability of an occupant in a vehicle in a "comprehensive/package policy" regard being had to the contract of insurance.**
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> **17. At this stage, it is apposite to note that when the decision in *Bhagyalakshmi* (supra) was rendered, a decision of High Court of Delhi dealing with the view of the Tariff Advisory Committee in respect of "comprehensive/package policy" had not come into the field. We think it apt to refer to the same as it deals with certain factual position which can be of assistance. The High Court of Delhi in *Yashpal Luthra and Anr. v. United India Insurance Co. Ltd. and Anr.[* 2011 ACJ 1415], after recording the evidence of the competent authority of Tariff Advisory Committee (TAC) and Insurance Regulatory and Development Authority (IRDA), reproduced a circular dated 16.11.2009 issued by IRDA to CEOs of all the Insurance Companies restating the factual position relating to the liability of Insurance companies in respect of a pillion rider on a two-wheeler and occupants in a private car under the comprehensive/package policy. The relevant portion of the circular which has been reproduced by the High Court is as follows:**
>
> **IRDA**
>
> **Ref: IRDA/NL/CIR/F&U/073/11/2009**
>
> **16.11.2009**
>
> **To**
>
> **CEOs of all general insurance companies**
>
> **Re: Liability of insurance companies in respect of occupants of a Private car and pillion rider on a two-wheeler under Standard Motor Package Policy (also called Comprehensive Policy).**
>
> **Insurers' attention is drawn to wordings of Section (II) 1 (ii) of Standard Motor Package Policy (also called Comprehensive Policy) for private car and two-wheeler under the (erstwhile) India Motor Tariff. For convenience the relevant provisions are reproduced**

hereunder:

Section II-Liability to Third Parties

1. Subject to the limits of liabilities as laid down in the Schedule hereto the company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of-

(i) death or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured.

It is further brought to the attention of insurers that the above provisions are in line with the following circulars earlier issued by the TAC on the subject:

(i) Circular M.V. No. 1 of 1978-dated 18th March, 1978 (regarding occupants carried in Private Car) effective from 25th March, 1977.

(ii) MOT/GEN/10 dated 2nd June, 1986 (regarding pillion riders in a two-wheeler) effective from the date of the circular.

The above circulars make it clear that the insured liability in respect of occupant(s) carried in a private car and pillion rider carried on two-wheeler is covered under the Standard Motor Package Policy. A copy each of the above circulars is enclosed for ready reference.

The Authority vide circular No. 066/IRDA/F&U/Mar-08 dated March 26, 2008 issued under File & Use Guidelines has reiterated that pending further orders the insurers shall not vary the coverage, terms and conditions wording, warranties, clauses and endorsements in respect of covers that were under the erstwhile tariffs. Further the Authority, vide circular No. 019/IRDA/NL/F&U/Oct-08 dated November 6, 2008 has mandated that insurers are not permitted to abridge the scope of standard covers available under the erstwhile tariffs beyond the options permitted in the erstwhile tariffs. All general insurers are advised to adhere to the afore-mentioned circulars and any non-compliance of the same would be viewed seriously by the Authority. This is issued with the approval of competent authority.

Sd/-
(Prabodh Chander)

Executive Director

(Emphasis supplied)

18. The High Court has also reproduced a circular issued by IRD dated 3.12.2009. It is instructive to quote the same:

IRDA

IRDA/NL/CIR/F&U/078/12/2009

3.12.2009.

To

All CEOs of All general insurance companies (except ECGC, AIC, Staff Health, Apollo)

Re: Liability of insurance companies in respect of occupant of a private car and pillion rider in a two-wheeler under Standard Motor Package Policy (also called Comprehensive Policy).

Pursuant to the Order of the Delhi High Court dated 23.11.2009 in MAC APP No. 176/2009 in the case of Yashpal Luthra v. United India and Ors., the Authority convened a meeting on November 26, 2009 of the CEOs of all the general insurance companies doing motor insurance business in the presence of the counsel appearing on behalf of the Authority and the leaned amicus curie.

Based on the unanimous decision taken in the meeting by the representatives of the general insurance companies to comply with the IRDA circular dated 16th November, 2009 restating the position relating to the liability of all the general insurance companies doing motor insurance business in respect of the occupants in a private car and pillion rider on a two wheeler under the comprehensive/package policies which was communicated to the court on the same day i.e. November 26, 2009 and the court was pleased to pass the order (dt. 26.11.2009) received from the Court Master, Delhi High Court, is enclosed for your ready reference and adherence. <u>In terms of the said order and the admitted liability of all the general insurance companies doing motor insurance business in respect of the occupants in a private car and pillion rider on a two-wheeler under the comprehensive/package policies, you are advised to confirm to the Authority, strict compliance of the circular dated 16 th November, 2009</u> and orders dt. 26.11.2009 of the High Court. Such compliance on your part would also involve:

(i) withdrawing the plea against such a contest wherever taken in the cases pending before the MACT, and issue appropriate instructions to their respective lawyers and the operating officers within 7 days;

(ii) with respect to all appeals pending before the High Courts on

this point, issuing instructions within 7 days to the respective operating officers and the counsel to withdraw the contest on this ground which would require identification of the number of appeals pending before the High Courts (whether filed by the claimants or the insurers) on this issue within a period of 2 weeks and the contest on this ground being withdrawn within a period of four weeks thereafter;

(iii) With respect to the appeals pending before the Hon'ble Apex Court, informing, within a period of 7 days, their respective advocates on record about the IRDA Circulars, for appropriate advice and action. Your attention is also drawn to the discussions in the CEOs meeting on 26.11.2009, when it was reiterated that insurers must take immediate steps to collect statistics about accident claims on the above subject through a central point of reference decided by them as the same has to be communicated in due course to the Honourable High Court. You are therefore advised to take up the exercise of collecting and collating the information within a period of two months to ensure necessary & effective compliance of the order of the Court. The information may be centralized with the Secretariat of the General Insurance Council and also furnished to us.

IRDA requires a written confirmation from you on the action taken by you in this regard.

This has the approval of the Competent Authority.

Sd/-
(Prabodh Chander)

Executive Director

(Emphasis added)

19. It is extremely important to note here that till 31st December, 2006 the Tariff Advisory Committee and, thereafter, from 1st January, 2007, IRDA functioned as the statutory regulatory authorities and they are entitled to fix the tariff as well as the terms and conditions of the policies by all insurance companies. The High Court had issued notice to the Tariff Advisory Committee and the IRDA to explain the factual position as regards the liability of the insurance companies in respect of an occupant in a private car under the "comprehensive/package policy". Before the High Court, the Competent Authority of IRDA had stated that on 2nd June, 1986, the Tariff Advisory Committee had issued instructions to all the insurance companies to cover the pillion rider of a scooter/motorcycle under the "comprehensive policy" and the said position continues to be in vogue till date. It had also admitted that

the "comprehensive policy" is presently called a "package policy". It is the admitted position, as the decision would show, the earlier circulars dated 18th March, 1978 and 2nd June, 1986 continue to be valid and effective and all insurance companies are bound to pay the compensation in respect of the liability towards an occupant in a car under the "comprehensive/package policy" irrespective of the terms and conditions contained in the policy. The competent authority of the IRDA was also examined before the High Court who stated that the circulars dated 18th March, 1978 and 2nd June, 1986 of the Tariff Advisory Committee were incorporated in the Indian Motor Tariff effective from 1st July, 2002 and they continue to be operative and binding on the insurance companies. Because of the aforesaid factual position, the circulars dated 16th November 2009 and 3rd December, 2009, that have been reproduced hereinabove, were issued.

20. It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated thus:

In view of the aforesaid, it is clear that the comprehensive/package policy of a two wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case.

21. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act Policy" stands on a different footing from a "Comprehensive/Package Policy". As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "Comprehensive/Package Policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act Policy" which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a "Comprehensive/Package Policy", the liability would be covered. These aspects were not noticed in the case of *Bhagyalakshmi* (supra) and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as

the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same.

It is not in dispute and it is sufficiently established, by filing exhibit A9 (= B4), that at the relevant time the deceased was authorised to drive a light motor vehicle (both non-transport and transport categories). It is borne out by record that the deceased was driving the Van since twelve years; therefore, it follows that he is sufficiently experienced and is otherwise having competency to drive the Van. It is to be next noted that admittedly, there is a valid insurance policy in respect of the Van at the relevant time and the said policy, which is a Package policy, was valid from 19.07.2010 to 18.07.2011 and that under the said policy premium was also collected to cover the risk of two employees, though no premium was collected to cover the risk of the driver. Though the vehicle/Van in the instant case is a goods carriage (MMV), it is established that the deceased is an employee and an occupant of the vehicle, though not a passenger or a driver holding valid licence, at the time of the accident and the "comprehensive/package policy covers the liability of the insurer/2nd opposite party for payment of compensation for the deceased who is an employee and the occupant of the Van irrespective of the terms and conditions contained in the policy; and the only restriction may be that the compensation shall be determined as per the entitlement of the claimant/s under the provisions of the Act and not the M V Act. Further, in **National Insurance Co. Ltd. V. Prembai Patel**, which is a decision rendered on 18.04.2005 by a three-judge Bench of the Supreme Court, the facts and the ratio are as follows:

'In a motor vehicle accident one Sunder Singh, the driver of the truck, had died when an accident had occurred on account of breaking of the arm bolt of the truck; and, the High Court had held that the owner of the vehicle had not taken adequate care in maintaining the vehicle and in keeping it in a road worthy condition. The said finding has become final since not assailed before the Supreme Court and as nor was there any reason to take a contrary view. The High Court had held that the insurance company was liable to satisfy the whole award and a direction was given to it to pay the entire amount of compensation awarded to the claimants (respondents 3 to 6). The appellant/insurer challenged the judgment of the High Court in the Civil Appeal before the Supreme Court. The truck was comprehensively insured. The owner/2nd respondent, while getting his vehicle insured, had paid only that much amount of premium as was required to cover the liability under the Act and he had not paid any premium to cover the entire amount of liability *qua* an employee; and, therefore, it was contended that the liability of the insurer would be a restricted one and it need not satisfy the entire award made in favour of the claimants.

Therefore, the question before the Supreme Court was this: ‘Having regard to the policy taken by the owner of the vehicle and the provisions of Sections 147 and 149 of the M.V.Act, whether the insurer’s liability is restricted to that, which is provided under the Act and, if so, whether the insurer is not liable to satisfy the entire award made in favour of the claimants?’

In the afore-stated facts and circumstances of the case, the Supreme Court considered the interpretation of relevant provisions of Sections 147 and 149 of the M.V. Act and had held as follows:

> **12. The heading of Chapter XI of the Act is Insurance Of Motor Vehicles Against Third Party Risks and it contains Sections 145 to 164. Section 146(1) of the Act provides that no person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of Chapter XI. Clause (b) of sub-section (1) of Section 147 provides that a policy of insurance must be a policy which insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him in respect of death of or bodily injury to any person or passenger or damage to any property of a third party caused by or arising out of the use of the vehicle in public place. Sub-clauses (i) and (ii) of clause (b) are comprehensive in the sense that they cover both 'any person' or 'passenger'. An employee of owner of the vehicle like a driver or a conductor may also come within the purview of the words 'any person' occurring in sub-clause (i). However, the proviso (i) to clause (b) of sub-Section (1) of Section 147 says that a policy shall not be required to cover liability in respect of death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Act if the employee is such as described in sub-clauses (a) or (b) or (c). The effect of this proviso is that if**

an insurance policy covers the liability under the Workmen's Act in respect of death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b), it will be a valid policy and would comply with the requirements of Chapter XI of the Act. Section 149 of the Act imposes a duty upon the insurer (insurance company) to satisfy judgments and awards against persons insured in respect of third party risks. The expression - "such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy)" - occurring in sub- section (1) of Section 149 is important. It clearly shows that any such liability, which is mandatorily required to be covered by a policy under clause (b) of Section 147(1), has to be satisfied by the insurance company. The effect of this provision is that an insurance policy, which covers only the liability arising under the Workmen's Act in respect of death of or bodily injury to any such employee as described in sub-clauses (a) or (b) or (c) to proviso (i) to Section 147(1)(b) of the Act is perfectly valid and permissible under the Act. Therefore, where any such policy has been taken by the owner of the vehicle, the liability of the insurance company will be confined to that arising under the Workmen's Act.

13. The insurance policy being in the nature of a contract, it is permissible for an owner to take such a policy whereunder the entire liability in respect of the death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) may be fastened upon the insurance company and insurance company may become liable to satisfy the entire award. However, for this purpose the owner must take a policy of that particular kind for which he may be required to pay additional premium and the policy must clearly show that the liability of the insurance company in case of death of or bodily injury to the aforesaid kind of employees is not restricted to that provided under the Workmen's Act and is either more or unlimited depending upon the quantum of premium paid and the terms of the policy.

14. The aforesaid interpretation of the relevant provisions applicable to the case in hand is in consonance with the view expressed by a Constitution Bench in New India Assurance Co. Ltd. v. C.M. Jaya and Ors. MANU/SC/0031/2002 : [2002]1SCR298, where, while interpreting the provisions of Section 95(2) of Motor Vehicles Act, 1939, the Court held as under in para 10 of the report: -

"............................The liability could be statutory or contractual. A statutory liability cannot be more than what is required under the statute itself. However, there is nothing in Section 95 of the Act prohibiting the parties from contracting to create unlimited or higher liability to cover wider risk. In such an event, the insurer is bound by the terms of the contract as specified in the policy in regard to unlimited or higher liability as the case may be. In the absence of such a term or clause in the policy, pursuant to the contract of insurance, a limited statutory liability cannot be expanded to make it unlimited or higher. If it is so done, it amounts to rewriting the statute or the

contract of insurance which is not permissible."

The Bench also referred to earlier decisions rendered in New India Assurance Co. Ltd. v. Shanti Bai MANU/SC/0212/1995 : [1995]1SCR871 and Amrit Lal Sood v. Kaushalya Devi Thapar MANU/SC/0209/1998 : [1998]2SCR284, and observed that in case of an insurance policy not taking any higher liability by accepting a higher premium, the liability of the insurance company is neither unlimited nor higher than the statutory liability fixed under Section 95(2) of the Motor Vehicles Act, 1939. It was further observed that it is open to the insured to make payment of additional higher premium and get higher risk covered in respect of third party also. But in the absence of any such clause in the insurance policy, the liability of the insurer cannot be unlimited in respect of third party and it is limited only to the statutory liability.

15. Though the aforesaid decision has been rendered on Section 95(2) of the Motor Vehicles Act, 1939 but the principle underlying therein will be fully applicable here also. It is thus clear that in case the owner of the vehicle wants the liability of the insurance company in respect of death of or bodily injury to any such employee as is described in clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) should not be restricted to that under the Workmen's Act but should be more or unlimited, he must take such a policy by making payment of extra premium and the policy should also contain a clause to that effect. However, where the policy mentions "a policy for Act Liability" or "Act Liability", the liability of the insurance company qua the employees as aforesaid would not be unlimited but would be limited to that arising under the Workmen's Act.”

7.6 A plain reading of the above decision rendered by a Bench of three Hon’ble Judges of the Supreme Court clearly lays down that sub-clauses (i) and (ii) of clause (b) of Section 147 are comprehensive in the sense that they cover both ‘any person’ or ‘passenger’ and that an employee of owner of the vehicle like a driver or a conductor may also come within the purview of the words ‘any person’ occurring in sub-clause (i) and that however, the proviso (i) to clause (b) of sub-section (1) of Section 147 says that policy shall not be required to cover the liability in respect of death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such employee arising out of and in the course of his employment other than a liability arising under the Workmen’s Act, if the employee is such as described in sub-clauses (a) or (b) or (c). The Supreme Court had also held in this decision that the effect of this proviso is that if an insurance policy covers the liability under the Workmen’s Act in respect of death or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b), it will be valid policy and would comply with the requirements of Chapter XI of the M.V.Act and that Section 149 of the Act imposes a duty upon the insurer (insurance company) to satisfy judgments and awards against persons insured in respect of third party risks. The Supreme Court also held that the expression ‘such’ liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 (being a liability covered by a policy under clause (b) of sub-Section (1) of Section 149 is important and that it clearly shows that any such liability, which is mandatorily required to be covered by a policy under clause (b) of Section 147(1) of the M.V. Act has to be satisfied by the insurance company and that the effect of this provision is that an insurance policy, which covers only the liability arising under the workmen’s Act in respect of death of or bodily injury to any such employee as described in sub-clauses (a) or (b) or (c) to proviso (i) to Section 147 (1) (b) of the Act is perfectly valid and permissible under the said Act and therefore, where, any such policy has been taken by the owner of the vehicle, the liability of the insurance company will be confined to that arising under the Workmen’s Act. However, it is further held by the Supreme Court that it is permissible for an owner to take such a policy to cover the entire liability in respect of the death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) to proviso (i) to Section 147 (1) (b) of the M.V Act and that if policy is taken, the entire liability may be fastened upon the insurance company and insurance company may be made liable to satisfy the entire award. As already noted, the deceased succumbed to the injuries sustained in the impugned accident that had occurred during the course and out of his employment on the Van of the first opposite party and therefore it follows that there was employer and employee relationship between the deceased and the first opposite party. Therefore, in view of the facts of the case and the precedential guidance, the policy taken in respect of a vehicle by the insured covers the liability of the insurer for payment of compensation to the applicants, who are the legal heirs of the deceased driver, who is an employee of the first opposite party.

7.7 As per the contentions of the 2nd opposite party, the 1st opposite party, who was the owner-cum-insured, had knowledge that the deceased did not hold a valid and effective driving licence to drive the Van and that in spite of having such knowledge the 1st opposite party had wilfully handed over possession of the Van to the deceased who was not holding valid licence to drive the Van and that, therefore, there was a breach of the terms and conditions of the policy and hence, the 2nd opposite party is not liable to pay the compensation and is entitled to be exonerated from the liability. As already noted the learned counsel for the applicants supported the impugned orders in all respects. As per the ratio in the decision in **National Insurance Co., ltd., vs. Swaran Singh and Others**, the burden on the insurance company as regards the above stated contentions is heavy and in order to succeed in its defence, it is required to prove, inter alia, the following factual aspects viz., **"(1) The breach of the policy conditions: Example, disqualification of driver or invalid driving licence of the driver have to be proved to have been committed by the insured, (2) 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, (3) 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 conditions of the policy regarding the use of the vehicle by duly licenced driver or one who was not disqualified to drive at the relevant time, (4) The insurance company, however, with a view to avoid its liability must not only establish the available defences 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 it, (5) Even where the insurer is able to prove breach on the part of the insured concerning the policy conditions regarding holding of a valid license by the driver or his qualifications to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach/breaches of the conditions of driving license, is/are so fundamental as are found to have contributed to the cause of the accident."** Coming to the instant case, the insurance company admits that it has no personal knowledge about the entrustment of the vehicle to the deceased driver by its owner/the 1st opposite party. RW2 was examined to prove the nature and details of the driving licence of the deceased and the category and details of the Van, which are adverted to supra. The insurance company had examined RW1, who is its Officer. She had only stated that no premium was collected to cover the risk of the driver and that the Van is a Medium Motor Vehicle and that the driver held a licence which authorised him to drive Light Motor Vehicle (Transport) and that therefore, he did not possess valid driving licence to drive the van. Therefore, the insurance company did not plead and prove that the violation, if any, is by the owner, and that the breach on the conditions of the driving licence is fundamental and contributed to the cause of the accident. It was only suggested to AW1 that the deceased did not possess valid driving licence. Even to the first opposite party-AW2, it was only suggested that the deceased travelled in the van being his friend and that the deceased was not the driver and that he did not possess valid driving licence. Hence, the defence of the insurance company falls short of the required standards of pleading and proof laid down by the Supreme Court. Hence, the contention, which is not proved, does not stand the test of scrutiny. The said contention is hence rejected as having no merit. In **National Insurance Co. Ltd. v. Tulna Devi** the Supreme Court held as follows: **'In the absence of any evidence to prove that the owner had not taken any care before the vehicle was given to the driver to drive it and that he was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of the vehicle by a duly licensed driver, the liability of the insurance-company to pay the compensation qua the owner of the vehicle cannot be doubted and the insurance company is not exempted from its liability.'** In Swaran Singh's case (2 supra) the Supreme Court dealt with scope and ambit of Section 149(2)(a)(ii) vis-a-vis proviso appended to Sub-section (4) and Sub-section (5) thereof. While dealing with cases where the driver who has been granted licence for one type of vehicle at the relevant time was driving another type of vehicle, in para 89 it was observed as follows:

> **"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 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."

In the instant case, as stated in the foregoing paragraphs, the insurance company did not lead the evidence which is necessary to exonerate it from the liability to pay compensation to the claimants. The accident in the instant case had occurred when a lorry came from the opposite direction and dashed the van of the deceased and there is no evidence on record much less acceptable evidence to show that the accident has nexus with the driver not possessing valid driving licence to drive the Van. Accordingly, this Court finds no absolute merit in the contention of the second opposite party that it is entitled to be totally exonerated from the liability to pay the compensation to the applicants.

7.8 The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the 2nd opposite party insurance company to first satisfy the award in favour of the applicants by paying the awarded amount and then recover the same from the owner of the vehicle/the 1st opposite party.

24. In National Insurance Co. Ltd. v. Parvathneni and Anr. [SLP (C) ... CC No. 10993 of 2009], the following two questions have been referred to the larger Bench for consideration:

(1) If an Insurance Company can prove that it does not have any liability to pay any amount in law to the claimants under the Motor Vehicles Act or any other enactment, can the Court yet compel it to pay the amount in question giving it liberty to later on recover the same from the owner of the vehicle.

(2) Can such a direction be given under Article 142 of the Constitution, and what is the scope of Article 142? Does Article 142 permit the Court to create a liability where there is none?

However, in Manager, National Insurance Company Ltd. V. Saju P.Paul and Anr., the Supreme Court having taken note of the above aspect of the matter had held in paragraph (25) of this cited decision as follows:

> **25. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in Baljit Kaur : (2004) 2 SCC 1 and Challa Bharathamma : (2004) 8 SCC 517 should not be followed, more so in a peculiar fact situation of this case.**

7.9 Coming to the instant case facts, the insurance company has already deposited the entire awarded amount. Having regard to these peculiar facts of the case in hand and the detailed discussion coupled with reasons supra and the precedential guidance in the decisions of the Supreme Court, this Court is satisfied that the applicants may be allowed to withdraw the amount deposited by the insurance company/2nd opposite party along-with accrued interest. The insurance company (Appellant) thereafter may recover the amount so paid from the owner/1st opposite party (Respondent No. 4 herein). The points are accordingly answered.

8. <u>POINT No.3:</u>

The only grievance of the second opposite party in regard to quantum of compensation is that the learned Commissioner had grossly erred in taking into consideration the Wage of the deceased as Rs.4,520/-per month, which is a basic wage for Medium Motor Transport Drivers under GO Ms No. 90, Labour Employment and Factories (Lab-II) Dated 28.09.2007 published in Gazette No.618 dated 26.10.2007. It is urged that the learned Commissioner ought to have taken into consideration the basic wage applicable to the drivers authorised to drive Light Motor Vehicles since the deceased held at the relevant time a valid driving licence to drive an LMV. However, it is already held under point numbers 1 and 2 supra that the deceased was an employee of the first opposite party. Admittedly, at the time of the accident, he was driving the Van, which is a medium motor transport vehicle. According to the evidence of AWs1 and 2, he was drawing Rs.8,000/- per month besides daily batta of Rs.200/-. The learned Commissioner is therefore, correct in taking the basic wage of the deceased as Rs.4,520/- as per the facts and the terms of the GO. Therefore, as per the formula, the amount of compensation to which the applicants are entitled to is Rs.6,03,320/-. Hence, this Court finds no reason to interfere with the amount of compensation awarded. The point is accordingly answered against the 2nd opposite party and in favour of the applicants.

9. Insofar as the interest and the rate of interest awarded on the compensation amount by the learned Commissioner, the second opposite party cannot have any grievance as the learned Commissioner had held that the 1st opposite party but not the 2nd opposite party is liable to pay the interest awarded and the 1st opposite party has not assailed the said findings.

10. I have gone through the impugned order. For the reasons assigned and the findings recorded under the points supra, this Court finds that the order impugned is liable to be modified subject to the findings on points nos. 1 and 2.

11. In the result and in view of the findings supra and considering the beneficial object of the Act, the appeal is allowed in part and the appellant/2nd opposite party is directed to first satisfy the award in favour of the applicants/respondents 1 to 3 and then recover the amount paid by it to the applicants from the owner/1st opposite party. Since the amount was already deposited, the applicants are allowed to withdraw the amount deposited by the insurance company/2nd opposite party along-with accrued interest. The recovery of the amount by the insurance company from the owner shall be made by following the procedure as laid down by the Supreme Court in the case of Challa Bharathamma [(2004) 8 SCC 517].

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M. SEETHARAMA MURTI, J

15th June, 2015

Vjl