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IN THE HIGH COURT OF JUDICATURE AT BILASPUR
CHHATTISGARH

Single Bench

MISC. APPEAL. NO. 1196 OF 2003

APPELLANT/
INSURER

National Insurance Co. Ltd.
through it's Branch
Manager, Branch Office,
Bilaspur (Chhattisgarh).

P. R. No. 1294/03
Presented by Shri Prateek Singh
dated 16-06-2003

VERSUS

RESPONDENTS/
[DRIVER]

1. Kashi Das @ Mohandas, S/o
Ramkhilawan, aged about 25
years, R/o Village Salampuri,
Police Station Hirri, District
Bilaspur [Chhattisgarh]

RESPONDENT/
[OWNER]

2. Akarshan Travellers, Prop.
Uttamdan Minz, S/o Ajay
Minz, aged about 35 years,
R/o Near Balram Talkies,
Nehru Nagar, P. S. Civil lines
Tahsil & Dist. Bilaspur [CG]

RESPONDENT/
[CLAIMANT]

3. Smt. Urmila Bai, Wife of
Lokeshwar Prasad, aged about
32 years, R/o E-92, MPEB
Colony, P. O. Vidyut Nagar
Darri, Tahsil Katghora, Distt.
Korba [Chhattisgarh]

4. Lankeshwar, S/o Siyaram, aged about 38 yrs,
R/o Borasi, Pamgarh Distt. Janjgir (C.G.)

APPEAL UNDER SECTION 173 OF MOTOR VEHICLE ACT 1988

Claim in Appeal valued at Rs. 62,500/-

Being aggrieved by the award dated 25-03-2003 passed by
Second Additional Motor Accident Claims Tribunal, Korba,



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HIGH COURT OF CHHATTISGARH, BILASPUR'

MA No. 496 of 2003

National Insurance Comp. Ltd., Bilaspur

--- Appellant

Versus

Kashi Das @ Mohan Das And Others

--- Respondents

CAV JUDGMENT

POST ON 3rd MAY, 2016

Sd/-
Manindra Mohan Shrivastava
Judge

105/2016



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AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 496 of 2003

National Insurance Comp. Ltd., Bilaspur

---- Appellant

Versus

Kashi Das @ Mohan Das And Others

---- Respondents

For Appellant	:	Shri Qamrul Aziz, Advocate
For Respondent No.2/Owner	:	Shri K.K. Dewangan, Advocate
For Respondent No.3/Claimant	:	Shri Pawan Kesharwani, Advocate

S.B: Hon'ble Shri Justice Manindra Mohan Shrivastava

C A V Order

03/05/2016

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "*the MV Act*") arises out of award dated 25th March, 2003 passed by the 2nd Motor Accident Claims Tribunal (in short "*the Tribunal*"), by which the claimant/mother of the victim, dying in a road accident, has been awarded compensation. By the impugned award, the Tribunal has held the Insurer, Insured (Owner) and Driver jointly and severally liable to pay Rs.60,000/- to the mother of the deceased and Rs.2500/- to Lenkeshwar, father of the deceased along with interest @ 9 per cent from the date of application.
2. The award has been challenged by the appellant-insurance company to the extent it fastens liability, jointly and severally with the Owner and Driver, to pay the amount of compensation. The submission of learned counsel for the appellant is that the Tribunal clearly recorded the finding that the Driver of

the offending vehicle was not having any valid and effective licence to drive the heavy vehicle -bus, which resulted in accident. Not only this, it is contended that the Tribunal categorically held in para-18 of the award that in the absence of valid and effective driving licence held by the Driver of the vehicle and consequent proof of breach of policy conditions, yet the insurance company is liable to indemnify the ensured by paying compensation to the third party and recover the same from the Owner, but while passing the award, in para-28, joint and several liability without any right of recovery has been ordered.

3. On the other hand, learned counsel for respondents- Owner and Claimant submit that as the vehicle was duly insured, the alleged breach that the driver was not holding valid licence would not absolve the Insurer from its statutory liability to satisfy the award by paying compensation to the claimants. While learned counsel for the Owner submits that even in a case where breach of condition of policy that the vehicle was driven by a person having no driving license is proved, yet insurance company is liable to satisfy the award only because the vehicle was duly ensured and premium was regularly paid, learned counsel for the Claimant submits that issue of breach of condition may be an aspect of dispute as between the Insurer and the Insured but the statutory scheme of the MV Act fastens statutory liability on the Insurer to satisfy the award at the first instance and then to claim recovery against the Owner with which the Claimant may not have any concern.
4. Learned counsel for the parties have cited and relied upon several authorities and judicial pronouncement of the Supreme Court, this High Court and other High Court touching upon the issue not only with regard to the liability but also on the legal position as to whether in a case where insurance company is not held to be liable, because of breach of policy, still it would be its liability to satisfy the award by paying the compensation to the Claimants and then recover the same from the Owner.
5. The factual position obtaining on record of the present case is crystal clear.
Be it noted the Owner and the Driver both remained ex-parte

before the Tribunal. In appeal, however, the Owner entered appearance. Driver has chosen not to appear despite service of notice.

6. Before the Tribunal, no driving licence was produced by any of the parties as the Owner and the Driver remained ex-parte. The insurance company came out with the case that the Driver was having no licence at all. The claimants also have not produced any material on record before the Tribunal or even before this Court to prove that the Driver was possessed of licence much less proof of the fact that the Driver was having valid and effective licence. The Tribunal has taken note of the challan papers filed by the police before the criminal Court wherein the police registered a criminal case against the Driver of the vehicle on the allegation that the vehicle was being driven without any licence.

Even before this Court, none of the parties sought to raise this issue. The Owner has not chosen to file any cross appeal/cross objection, nor the Claimants or the Driver on this particular aspect of the matter.

7. Learned Tribunal has also clearly recorded a finding on this aspect, based on the pleadings, oral and documentary evidence led by all the parties that there is no proof of the fact that the Driver was possessed of the licence while driving the offending vehicle which met with an accident resulting in death of the son of the claimant. Therefore, it is proved that the Driver had no licence at the time of driving offending vehicle.

8. Insurance company produced insurance policy (Annexure D-1) and asserted in its pleadings as also by leading oral evidence of Josef Kerketta (NAW -1) who has stated with reference to specific condition of insurance policy (Ex.D-1) that one of the essential condition was that only one who is possessed of valid and effective driving licence is entitled to drive the vehicle. Therefore, on this premise, there is clear breach of condition of insurance policy. The Tribunal has recorded a very categoric finding in para 14 & 15 that the Driver was not possessed of driving licence.

9. In para-18 of its judgment, the Tribunal also proceeded to hold that once



there is breach of condition relating to driving licence, then also the insurance company would be liable to pay compensation though it may recover the same from the Owner of the vehicle. This finding clearly shows that the Tribunal having held that there was breach of policy condition as the Driver was not found to be possessed of driving licence, held that insurance company is entitled to recover from the Owner yet it in para-28 of the award there, is no clear stipulation in this regard. However, the award read as a whole clearly mean and has to be understood in the manner only that the insurance company, despite breach of policy condition, is liable to satisfy the Claimant by making payment of compensation and then recover the same from the owner.

10. Contention, however, of learned counsel for the insurance company is that once fundamental breach of policy is found to have been proved in the present case, direction for pay and recover would not be sustainable in law and the insurance company was liable to be completely exonerated. He submits that merely because the vehicle was insured and the Insurer was indemnified under the insurance policy, would not render the insurance company liable even in a case of fundamental breach of policy condition. In such cases, no direction even for pay and recover could be passed by the Tribunal and the entire liability ought to have been fastened only on the Owner and Driver.

11. The legal position with regard to liability of the Insurer to satisfy the third party at the first instance, even in case of breach of policy, coupled with its right to recover the amount paid by it, from the Owner, has been considered in plethora of decisions by the Hon'ble Supreme Court, this High Court and various High Courts. Learned counsel for the parties placed for perusal of this Court number of judgments. I need not burden the judgments by referring to each and every judgment, because in number of judgments, the law already stated by the Apex Court has been re-stated and re-affirmed. It has to be noted that in two cases namely **National Insurance Co. Vs. Roshan Lal**, SLP(C) No.5699 of 2006, dated 19.1.2007 and **National Insurance Company Limited Vs. Parvatheneni & Anr.** (2009) 8 SCC 785, matter has been referred to



larger Bench. Learned counsel for the parties, however, could not bring to the notice of this Court, decision of the Larger Bench of Hon'ble Supreme Court in the matter of reference in aforesaid cases. Hon'ble Supreme Court in the case of **National Insurance Co. Ltd. Vs. Saju P. Paul & Anr.** (2013) 2 SCC 41, has explained in elaborate details, the question whether direction could be issued to the insurance company to first satisfy the awarded amount in favour of the Claimant and then recover the same from the Owner of the vehicle, having held that the insurance company was not liable to indemnify the Owner of the vehicle. Two earlier decisions in the cases of **National Insurance Company Vs. Baljit Kaur** (2004) 2 SCC 1 and **National Insurance Company Vs. Challa Bharathanma & Ors.** (2004) 8 SCC 517 were noticed thus:

"19. The impugned judgment—is founded on misconstruction of Section 147. The High Court was wrong in holding that the Insurance Company shall be liable to indemnify the owner of the vehicle and pay the compensation to the claimant as directed in the award by the Tribunal.

20. The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the Insurance Company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle (Respondent 2 herein).

21. In *National Insurance Co. Ltd. v. Baljit Kaur*-this Court was confronted with a similar situation. A three-Judge Bench of this Court in para 21 of the Report held as under: (SCC p. 8)

"21. The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a

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direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decision of this Court in *Satpal Singh*. The said decision has been overruled only in *Asha Rani*. We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988, in terms whereof, it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding."

The reference made to larger bench in the case of **Roshan Lal**

(supra) and **Parvatheneni**(supra) was also noticed in para-23 & 24 of the judgment as below:

"23. In *National Insurance Co. Ltd. v. Kaushalaya Devi*, in para 15 of the Report, the Court observed as follows: (SCC p. 250)

"15. For the reasons aforementioned, civil appeal arising out of SLP (C) No. 10694 is allowed and civil appeal arising out of SLP (C) No. 9910 of 2006 is dismissed. If the amount deposited by the Insurance Company has since been withdrawn by the first respondent, it would be open to the Insurance Company to recover the same in the manner specified by the High Court. But if the same has not been withdrawn the deposited amount may be refunded to the Insurance Company and the proceedings for realisation of the amount may be initiated against the owner of the vehicle. In the facts and circumstances of the case, however, there shall be no order as to costs."

24. We are informed that by an order dated 19-1-2007 in *National Insurance Co. v. Roshan Lal* in light of the argument raised before a two-Judge Bench that the direction ought not to be issued to the insurance company to discharge the liability under the award first and then recover the same from the owner, the matter has been referred to the larger Bench by the following order:

"Having regard to the submissions urged before us, we are of the view that this petition may be placed for consideration before

a larger Bench. We notice that in some of the decisions such a direction was made in cases where the compensation had already been paid by the insurer, but there are observations therein which support the view that such a direction can be made in all cases where the owner has insured his vehicle against third-party risks. In *Baljit Kaur* case which is a judgment rendered by three Hon'ble Judges, such a direction was made in the special circumstances noticed by the Court in para 21 of the Report. There are observations in *Oriental Insurance Co. Ltd. v. Ranjit Saikia*."

12. However, it has been held that pendency of consideration of the question by a Larger Bench does not mean that the course that was followed in **Baljit Kaur** (supra) and **Challa Bharathamma** (supra) should not be followed, in following words:

"26. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in *Baljit Kaur* and *Challa Upendra Rao* should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to the stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court passed on 1-8-2011 and the said amount has been invested in a fixed



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deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent 1) may be allowed to withdraw the amount deposited by the Insurance Company before this Court along with accrued interest. The Insurance Company (the appellant) thereafter may recover the amount so paid from the owner (Respondent 2 herein). The recovery of the amount by the Insurance Company from the owner shall be made by following the procedure as laid down by this Court in *Challa Upendra Rao*."

13. An elaborate discussion of statutory scheme of pay and recover, incorporated under the MV Act and obliging insurance company to pay and then to recover, even in case of breach of conditions of driving licence, whether it be a case of no licence, fake licence or not valid licence has been made based on survey of large number of decisions rendered earlier by Hon'ble Supreme Court and with specific reference to provision contained in Section 146, 147 & 149 of the MV Act in the case of **S. Iyyapan Vs. United India Insurance Company Limited & Anr.** (2013) 7 SCC 62. In this case, the beneficent nature of the MV Act, in the light of aim and object of making the insurance compulsory before the vehicle put on road, was considered by the Hon'ble Supreme Court in the light of its own observations in its earlier decision in the case of *Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravandan* (1987) 2 SCC 654. It was held:

"7. Time and again this Court on various occasions considered the aim and object of making the insurance compulsory before a vehicle is put on the road. Indisputably a new chapter was inserted in the Motor Vehicles Act only with an intention of welfare measure to be taken to ensure and protect the plight of a victim of a road accident. In *Skandia Insurance*

Co. Ltd. v. Kokilaben Chandravadan, this Court observed as under: (SCC pp. 662-63, para 13)

"13. In order to divine the intention of the legislature in the course of interpretation of the relevant provisions there can scarcely be a better test than that of probing into the motive and philosophy of the relevant provisions keeping in mind the goals to be achieved by enacting the same. Ordinarily it is not the concern of the legislature whether the owner of the vehicle insures his vehicle or not. If the vehicle is not insured any legal liability arising on account of third-party risk will have to be borne by the owner of the vehicle. Why then has the legislature insisted on a person using a motor vehicle in a public place to insure against third-party risk by enacting Section 94 (of the MV Act, 1939)? Surely the obligation has not been imposed in order to promote the business of the insurers engaged in the business of automobile insurance. The provision has been inserted in order to protect the members of the community travelling in vehicles or using the roads from the risk attendant upon the user of motor vehicles on the roads. The law may provide for compensation to victims of the accidents who sustain injuries in the course of an automobile accident or compensation to the dependants of the victims in the case of a fatal accident. However, such protection would remain a protection on paper unless there is a guarantee that the compensation awarded by the courts would be recoverable from the persons held liable for the consequences of the accident. A court can only pass an award or a



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decree. It cannot ensure that such an award or decree results in the amount awarded being actually recovered, from the person held liable who may not have the resources. The exercise undertaken by the law courts would then be an exercise in futility. And the outcome of the legal proceedings which by the very nature of things involve the time cost and money cost invested from the scarce resources of the community would make a mockery of the injured victims, or the dependants of the deceased victim of the accident, who themselves are obliged to incur not inconsiderable expenditure of time, money and energy in litigation. To overcome this ugly situation the legislature has made it obligatory that no motor vehicle shall be used unless a third-party insurance is in force. To use the vehicle without the requisite third-party insurance being in force is a penal offence. The legislature was also faced with another problem. The insurance policy might provide for liability walled in by conditions which may be specified in the contract of policy. In order to make the protection real, the legislature has also provided that the judgment obtained shall not be defeated by the incorporation of exclusion clauses other than those authorised by Section 96 and by providing that except and save to the extent permitted by Section 96 it will be the obligation of the insurance company to satisfy the judgment obtained against the persons insured against third-party risk (vide Section 96). In other words, the legislature has insisted and made it incumbent on the user of a motor vehicle to be armed with an insurance



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policy covering third-party risks which is in conformity with the provisions enacted by the legislature. It is so provided in order to ensure that the injured victims of automobile accidents or the dependants of the victims of fatal accidents are really compensated in terms of money and not in terms of promise. Such a benign provision enacted by the legislature having regard to the fact that in the modern age the use of motor vehicles notwithstanding the attendant hazards, has become an inescapable fact of life, has to be interpreted in a meaningful manner which serves rather than defeats the purpose of the legislation. The provision has therefore to be interpreted in the twilight of the aforesaid perspective."

14. The defence which the Insurer is entitled to take in case for compensation arising out of motor vehicles accident, provided under Section 96 of the Motor Vehicles Act, 1939, which is now Section 149 of the Motor Vehicles Act, 1988 was also examined as below:

"8. The defence which the insurer is entitled to take in a case for compensation arising out of the motor vehicles accident was provided under Section 96 of the old Act (1939) which is now Section 149 of the 1988 Act. Section 149 of the Motor Vehicles Act, 1988 made it mandatory on the part of the insurer to satisfy the judgments and awards against persons insured in respect of third-party risk. For better appreciation, Section 149 is reproduced hereinbelow:

"149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third-party risks.—(1) If, after a certificate of insurance has been issued under

sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any 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) or under the provisions of Section 163-A is obtained against any person insured by the policy then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely—

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely—

(i) a condition excluding the use of the vehicle—

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

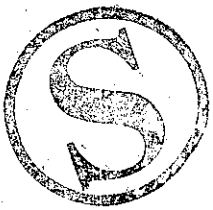
(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where any such judgment as is referred to in sub-section (1) is obtained from a court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of Section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating



country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment were given by a court in India:

Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the judgment is given, the insurer had notice through the court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

(4) Where a certificate of insurance has been issued under sub-section (3) of Section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of Section 147, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

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Section 149(2)(a)(ii) gives a right to the insurer to take a defence that person driving the vehicle at the time of accident was not duly licensed. In other words, Section 149(2)(a)(ii) puts a



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condition excluding driving by any person who is not duly licensed.

The Hon'ble Supreme Court further noticed that the question which arose for consideration in *Skandia Insurance* (supra) was-

"As to whether the insurance company can repudiate its liability to pay the compensation in respect of the accident by a vehicle taking a defence that at the relevant time it was being driven by a person having no licence."

It was considered in following manner:

"9. The question arose before this Court as to whether the insurance company can repudiate its liability to pay the compensation in respect of the accident by a vehicle taking a defence that at the relevant time it was being driven by a person having no licence. While considering this point, this Court in *Skandia Insurance Co. Ltd.* observed: (SCC pp. 661-62, para 12)

"12. The defence built on the exclusion clause cannot succeed for three reasons viz.:

(1) On a true interpretation of the relevant clause which interpretation is at peace with the conscience of Section 96, the condition excluding driving by a person not duly licensed is not absolute and the promisor is absolved once it is shown that he has done everything in his power to keep, honour and fulfill the promise and he himself is not guilty of a deliberate breach.

(2) Even if it is treated as an absolute promise, there is substantial compliance therewith upon an express or implied mandate being given to the licensed driver not to allow the vehicle to be left unattended so that it happens to be driven by an unlicensed driver.

(3) The exclusion clause has to be 'read down' in order that it is not at war with the 'main purpose' of the provisions enacted for the protection of victims of accidents so that the promisor is exculpated when he does everything in his power to keep the promise."

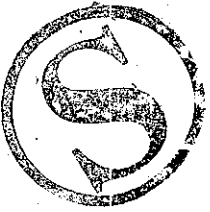
(emphasis
in original)

15. The view taken in *Skandia Insurance* (supra) and subsequent judgments on the issue of pay and recover was considered by the Hon'ble Supreme Court undertaking survey through its own earlier decisions in large number of cases as below :

"10. To examine the correctness of the aforesaid view in *Skandia case*, the matter was referred to a three-Judge Bench because of the stand taken by the Insurance Company that the insurer shall be entitled to defend the action on the ground that there has been a breach of specified condition of policy i.e. the vehicle should not be driven by a person who is not duly licensed and in that case the Insurance Company cannot be held to be liable to indemnify the owner of the vehicle. The three-Judge Bench of this Court in *Sohan Lal Passi v.*

P. Sesh Reddy after interpreting the provisions of Section 96(2)(b)(ii) of the 1939 Act corresponding to Section 149 of the new Act (1988), observed as under: (SCC p. 32, para 12)

"12. ... According to us, Section 96(2)(b)(ii) should not be interpreted in a technical manner. Sub-section (2) of Section 96 only enables the insurance company to defend itself in respect of the liability to pay compensation on any of the grounds mentioned in sub-section (2) including that there has been a contravention of the condition excluding the vehicle being driven by any person who is not duly licensed. This bar on the face of it operates on the person insured. If the person who has got the vehicle insured has allowed the vehicle to be driven by a person who is not duly licensed then only that clause shall be attracted. In a case where the person who has got insured the vehicle with the insurance company, has appointed a duly licensed driver and if the accident takes place when the vehicle is being driven by a person not duly licensed on the basis of the authority of the driver duly authorised to drive the vehicle whether the insurance company in that event shall be absolved from its liability? The expression 'breach' occurring in Section 96(2)(b) means infringement or violation of a promise or obligation. As such the insurance company will have to establish that the insured was guilty of an infringement or violation of a promise. The insurer has also to satisfy the



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Tribunal or the Court that such violation or infringement on the part of the insured was wilful. If the insured has taken all precautions by appointing a duly licensed driver to drive the vehicle in question and it has not been established that it was the insured who allowed the vehicle to be driven by a person not duly licensed, then the insurance company cannot repudiate its statutory liability under sub-section (1) of Section 96."

11. In *Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd.*, the appellant was the owner of a truck weighing less than the maximum limit prescribed in Section 2(21) of the Motor Vehicles Act. The said truck was, therefore, a light motor vehicle. It was registered with the respondent insurer for a certain amount and for a certain period. Within the period of insurance, the truck met with an accident and got completely damaged. The appellant's claim against the respondent was rejected by the National Consumer Disputes Redressal Commission. The National Commission accepted the respondent's contention that the truck was a goods carriage or a transport carriage and that the driver of the truck, who was holding a driving licence in Form 6 to drive light motor vehicles only, was not authorized to drive a transport vehicle and, therefore, the insured having committed breach of the terms of insurance policy and the provisions of the Act, the respondent insurer was not liable to indemnify the insured. Allowing the appeal, this Court held as under: (SCC pp. 626-27, para 14)

14. Now the vehicle in the present case



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weighed 5920 kg and the driver had the driving licence to drive a light motor vehicle. It is not that, therefore, the insurance policy covered a transport vehicle which meant a goods carriage. The whole case of the insurer has been built on a wrong premise. It is itself the case of the insurer that in the case of a light motor vehicle which is a non-transport vehicle, there was no statutory requirement to have a specific authorisation on the licence of the driver under Form 6 under the Rules. It has, therefore, to be held that Jadhav was holding an effective valid licence on the date of the accident to drive a light motor vehicle bearing Registration No. KA 28 567."

12. In *New India Assurance Co. v. Kamla*, a fake licence had happened to be renewed by the statutory authorities and the question arose as to whether the Insurance Company would be liable to pay compensation in respect of motor accident which occurred while the vehicle was driven by a person holding such a fake licence. Answering the question, this Court discussed the provisions of Sections 146, 147 and 149 of the Act and observed: (SCC pp. 349-50, paras 21-25)

"21. A reading of the proviso to sub-section (4) as well as the language employed in sub-section (5) would indicate that they are intended to safeguard the interest of an insurer who otherwise has no liability to pay any amount to the insured but for the provisions contained in Chapter XI of the Act.

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This means, the insurer has to pay to the third parties only on account of the fact that a policy of insurance has been issued in respect of the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy.

22. To repeat, the effect of the above provisions is this: when a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to the third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured.

23. It is advantageous to refer to a two-Judge Bench of this Court in *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan*⁶. Though the said decision related to the corresponding provisions of the predecessor Act (Motor Vehicles Act, 1939) the observations made in the judgment are quite germane now as the corresponding provisions are materially the same as in the Act. Learned Judges pointed out that the insistence of the legislature that a motor vehicle can be used in a public place only if that vehicle is covered by a policy of insurance is not for the purpose of promoting

the business of the insurance company but to protect the members of the community who become sufferers on account of accidents arising from the use of motor vehicles. It is pointed out in the decision that such protection would have remained only a paper protection if the compensation awarded by the courts were not recoverable by the victims (or dependants of the victims) of the accident. This is the *raison d'être* for the legislature making it prohibitory for motor vehicles being used in public places without covering third-party risks by a policy of insurance.

24. The principle laid down in the said decision has been followed by a three-Judge Bench of this Court with approval in *Sohan Lal Passi v. P. Sesh Reddy*.

25. The position can be summed up thus:

The insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence. Learned counsel for the insured contended that it is enough if he establishes that he made all due enquiries and believed bona fide that the driver employed by him had a valid driving licence, in which case there

was no breach of the policy condition. As we have not decided on that contention it is open to the insured to raise it before the Claims Tribunal. In the present case, if the Insurance Company succeeds in establishing that there was breach of the policy condition, the Claims Tribunal shall direct the insured to pay that amount to the insurer. In default the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimant third parties) from the insured person."

13. In *National Insurance Co. Ltd. v. Swaran Singh*, a three-Judge Bench of this Court held as under: (SCC pp. 324-25, 331 & 341-42, paras 47-48, 73 & 110)

"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.

48. Furthermore, the insurance company with a view to avoid its liabilities is not only required to show that the conditions laid down under Section 149(2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. By reason of the provisions contained in the 1988 Act, a more extensive remedy has been conferred upon those who have obtained



judgment against the user of a vehicle and after a certificate of insurance is delivered in terms of Section 147(3). After a third party has obtained a judgment against any person insured by the policy in respect of a liability required to be covered by Section 145, the same must be satisfied by the insurer, notwithstanding that the insurer may be entitled to avoid or to cancel the policy or may in fact have done so. The same obligation applies in respect of a judgment against a person not insured by the policy in respect of such a liability, but who would have been covered if the policy had covered the liability of all persons, except that in respect of liability for death or bodily injury.

* * *

73. The liability of the insurer is a statutory one. The liability of the insurer to satisfy the decree passed in favour of a third party is also statutory.

* * *

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

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.



(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the said Act.

(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) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(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.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement

and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in sub-section (4) with the proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims."

14. In *National Insurance Co. Ltd. v. Kusum Rai*, the respondent was the owner of a jeep which was admittedly used as a taxi and thus a commercial vehicle. One Ram Lal was working as a Khalasi in the said taxi and used to drive the vehicle sometimes. He had a driving licence to drive light motor vehicle. The taxi met with an accident resulting in the death of a minor girl. One of the issues raised was as to whether the driver of the said jeep was having a valid and effective driving licence. The Tribunal relying on the decision of this Court in *New India Assurance Co. v. Kamla* held that the Insurance Company cannot get rid of its third-party liability. It was further held that the Insurance Company can recover this amount from the owner of the vehicle. The appeal preferred by the Insurance Company was dismissed by the High Court. In appeal before this Court, the Insurance Company relying upon the decision in *Oriental Insurance Co. Ltd. v. Nanjappan* argued that the awarded amount may be paid and be recovered from the owner of the vehicle. The Insurance Company moved this Court in appeal against the judgment of the High Court which was dismissed.

15. In *National Insurance Co. Ltd. v. Annappa Irappa Nesaria*, the vehicle involved in the accident was a matador having a goods carriage permit and was insured with the Insurance Company. An issue was raised that the driver of the vehicle did not possess an effective driving licence to drive a transport vehicle. The Tribunal held that the driver was having a valid driving licence and allowed the claim. In appeal filed by the Insurance Company, the High Court dismissed the appeal holding that the claimants are third parties and even on the ground that there is violation of terms and conditions of the policy the Insurance Company cannot be permitted to contend that it has no liability. This Court after considering the relevant provisions of the Act and definition and meaning of light goods carriage, light motor vehicles, heavy goods vehicles, finally came to conclusion



that the driver, who was holding the licence duly granted to drive light motor vehicle, was entitled to drive the light passenger carriage vehicle, namely, the matador. This Court observed as under: (SCC p. 468, para 20)

"20. 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."

16. The heading "Insurance of Motor Vehicles against Third-Party Risks" given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of the 1939 Act) itself shows the intention of the legislature to make third-party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third-party insurance is in force.

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."

16. The judgment of the Supreme Court in the case of **National Insurance Company Ltd. Vs. Swarn Singh & Ors.** (2004) 3 SCC 297 and statutory liability on the insurance company to satisfy the Claimant, was taken into consideration in the case of **S. Iyyapan** (supra), as is clear from para-13 of the said judgment which has been reproduced herein-above. That covered not only a case of breach of insurance policy inasmuch as the driver was not possessed of valid and effective driving licence but also a case of no licence at all. Legal position which has been re-affirmed is that breach of policy though entitles the insurer to recover from the insured, yet the insurer has to satisfy the award at the first instance by making payment to the Claimants. Therefore, in a case where the insurance policy is effective and in existence and the accident takes place, even if policy is found to have been breached for the reason that the vehicle was being driven by the driver having no licence, yet the insurance company shall be under statutory liability, subject of course to the limits of liability in the award, to satisfy the award at the first instance by making payment to the Claimant though as against the insured, it would be entitled to recover the amount paid by it to the Claimant.

17. In the case of **Jawahar Singh Vs. Bala Jain & Ors.** (2011) 6 SCC 425, it was found that the motor vehicle belonging to Owner was being driven by one who was having no licence to drive the vehicle and in fact, was a minor on the date of accident. Hon'ble Supreme Court rejected the defence of the Owner that without his notice and knowledge, the keys were taken away by the minor and while driving the motor-vehicle, the accident happened, therefore. it was not a case of Owner's negligence. It was held that it was the responsibility of the Owner to ensure that his motor-vehicle was not misused and that too by a minor who had no licence to drive the same. Having held so, the Supreme Court then proceeded to hold that the Motor Accident Claims Tribunal correctly decided and rightly saddled the liability for payment of compensation by the insurance company and thereafter to recover the same from the Owner. Thus, the aforesaid was the case where though it was held that breach of policy exonerated the insurance company from the liability, breach of policy conditions because of vehicle being driven by a person without any licence at all, the liability to make payment of compensation fastened on the Owner, yet the direction to the insurance company to first pay and then to recover from the Owner was upheld in following manner:

"11. It has been well settled that if it is not possible for an awardee to recover the compensation awarded against the driver of the vehicle, the liability to make payment of the compensation awarded fell on the owner of the vehicle. It was submitted that in this case since the person riding the motorcycle at the time of accident was a minor, the responsibility for paying the compensation awarded fell on the owner of the motorcycle. In fact, in *Ishwar Chandra v. Oriental Insurance Co. Ltd.*, it was held by this Court that in case the driver of the vehicle did not have a licence at all, the liability to make payment of compensation fell on the owner

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since it was his obligation to take adequate care to see that the driver had an appropriate licence to drive the vehicle.

12. Before the Tribunal reliance was also placed on the decision in *National Insurance Co. Ltd. v. Gh. Mohd. Wani* and *National Insurance Co. Ltd. v. Gadigewwa*, wherein it was held that if the driver of the offending vehicle did not have a valid driving licence, then the Insurance Company after paying the compensation amount would be entitled to recover the same from the owner of the vehicle. It was submitted that no interference was called for with the judgment and order of the High Court impugned in the special leave petition.

13. Having heard the learned counsel for the respective parties, we are inclined to agree with the respondents that this is not a case for interference in view of the fact that admittedly the motorcycle belonging to the petitioner was being driven by Jatin, who had no licence to drive the same and was, in fact, a minor on the date of the accident. While issuing notice on 2-4-2009, we had limited the same to the question regarding liability to pay compensation on account of contributory negligence by the deceased who was riding a scooter, in causing the accident to happen.

14. We cannot shut our eyes to the fact that it was Jatin, who came from behind on the motorcycle and hit the scooter of the deceased from behind. The responsibility in causing the accident was, therefore, found to be solely that of Jatin. However, since Jatin was a minor and it was the responsibility of the petitioner to ensure that his motorcycle was not misused and that too by a minor who had no licence to drive the same, the Motor Accidents Claims

Tribunal quite rightly saddled the liability for payment of compensation on the petitioner and, accordingly, directed the Insurance Company to pay the awarded amount to the awardees and, thereafter, to recover the same from the petitioner. The said question has been duly considered by the Tribunal and was correctly decided. The High Court rightly chose not to interfere with the same."

18. In view of the above, the law as it stands today, obliges the insurance company to first pay and then recover even in case where the breach of policy condition arose on account of vehicle being driven by a person having no licence at all.

19. However, a clarification needs to be given that even though in para -28 of the impugned award there is no specific mention, the insurance company having held to be not under the liability, it would have all the right to recover the amount under the same award by seeking its execution as if it was an award in favour of the insurance company and against the Owner also.

20. The appeal is accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge