

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No. 1242 of 2014 (O&M)

Date of decision: 14.01.2016

Virender Singh and another

... Appellants

versus

M/s IFFCO Tokio General Insurance Company Ltd. and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. B.S. Tewatia, Advocate for the appellants.

Mr. M.B. Jain, Advocate for respondent No. 1.

K.Kannan, J. (ORAL)

The appeal is brought at the instance of the owner of the vehicle who had been denied the right of indemnity on the ground that the driver who held only a learners licence and he did not have an instructor accompanying him as required under Rule 3 of the Central Rules. It was, therefore, stated that there was a breach in the terms of the policy and the insurer had been granted the right of recovery after satisfying the award.

The issue of whether the mere possession of learner's licence would secure to the insured the benefit of indemnity is no longer *res integra*. The view expressed by the Hon'ble Supreme Court in New India Assurance Co. Ltd. Vs. Madar Madhav Tambe and others, 1996 2 SCC 328 that Insurance company would not be liable

for payment of compensation if the vehicle in question was driven by a person holding learner licence was directly taken up for consideration by the Supreme Court in National Insurance Company Limited Vs. Swaran Singh and others, 2004 3 SCC 297. The Hon'ble Supreme Court in Swaran Singh's case (Supra) was considering every aspect of liability for different categories of licence starting from a fake licence to a renewal of a fake licence to learner licence, when the insurer will have a duty to pay and right to recover against the insurer. The Supreme Court was actually considering the correctness in the judgment in New India Assurance Co. Ltd. Vs. Madar Madhav Tambe and others, 1996 2 SCC 328 in paragraph Nos. 3 and 4 of the judgment which is reproduced as follows:

3. The appellant contested the said application. It was contended on its behalf that on 22nd July 1977, respondent No.3 had obtained a learner's licence, which enabled him to drive for the purpose of learning to drive. The validity of this learner's licence had expired on 21st November, 1977. When the accident took place on 4th July, 1979, respondent No.3 was neither holding a driving licence as contemplated by the Motor Vehicles Act, 1939, nor was he holding a learner's licence. It appears that soon after the accident respondent No.3 obtained a fresh learner's licence on 7th July, 1979 and thereafter, on 9th July 1979 obtained a driving licence.
4. The Motor Accident Claims Tribunal, vide its award dated 2nd June, 1984, came to the conclusion that the accident had occurred due to the negligence of respondent No.3. It found that respondent No.1 was entitled to compensation of Rs. 2,60,000/- an award was accordingly passed directing respondent nos. 1 to 3 therein, including the appellant Insurance Company, to jointly or separately pay the said amount together with interest at the rate of 6% per annum.

On the same day when the judgment in Swaran Singh's

case (supra) was disposed of, yet another Bench of the Supreme Court in National Insurance Co. Ltd. Vs. Bhagwani and others 2004 4 SCC 347, reiterated a view and cited Swaran Singh's case (Supra) as the governing consideration for liability of the insurer and holding that the learner licence was the valid licence to make the insurer liable. Still later, the point was again put to issue in Mahamooda and others Vs. United India Insurance Co. Ltd. And others, 2004 (13) SCC 684, where the judgments in New India Assurance Co. Ltd. Vs. Madar Madhav Tambe and others, 1996 2 SCC 328 and Swaran Singh's case were both considered and the Bench in Mahamooda's case (supra) preferred the dispensation in Swaran Singh's case (Supra) as the law on the subject. In the light of the above decisions, there is no scope for the insurer to plead that the liability cannot be imposed for violation of the statutory rule under Rule 3 of the Motor Vehicle Rules. requiring an instructor to present.

Learned counsel appearing for the appellant make reference of the judgment of the Karnataka High Court which I do not feel constrained to cite when there is a binding precedent of the Supreme Court. There is no scope for reopening an issue and invoke High Court's wisdom in that regard. The counsel for the insurer makes reference to the judgment in Bhuwan Singh Vs. Oriental Insurance Co. and another 2009 ACJ 1426. This was a case relating to an expiry of learner licence and a renewal applied after the accident. The Court was holding an application for renewal within 30 days which is a period

available for regular licence given under Section 15 will not apply to learners licence. Bhuwan Singh's case (supra) actually considered the case of an expiry of learner's licence after the date of the accident to examine whether the grace period of 30 days will also be applicable to learner's licence. It held that Section 15 was applicable only to regular licence and not to learner licence. The judgment in Bhuwan Singh's case (Supra) has, therefore, no applicability to the point brought before me. There are also no particular clauses in the policy of insurance issued to the insured excepting liability, if the person driving on a learner's licence was without instructor by his side. The counsel states that no such clause is even necessary because it statutorily covers a situation of what the contract of insurance through the policy did not cover. In my view, Rule 3 requires a person to be accompanied by an instructor and if it is breached, it may have other consequences if the rules provided for the same, but, they will have nothing to do with exonerating the liability of insurance unless the contractual terms of insurance policy provided for exclusion. Form 3 in the Central Motor Vehicle Rules, 1989 itself contains no more than a warning drawing attention to Rule 3. This is so because the lines of defences for the insurer cannot traverse beyond the boundaries set under Section 149 of the Motor Vehicles Act. The said provisions only allows for a condition that could exclude the driving by a person who has not duly licenced. A person who held learners licence must be taken as “duly licenced” as interpreted by the Supreme Court in Swaran Singh's case

(supra) and confirmed in subsequent rulings of the Supreme Court which I have cited above. There is no scope for importing requirement of instructor's presence for adjudging the entitlement of the insured to secure indemnity.

The judgment of the Court below providing for right of recovery to the insurer is clearly wrong and against law. It is set aside and the appeal is allowed with costs of Rs. 5,000/- against the insurer.

(K.KANNAN)
JUDGE

14.01.2016

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