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

FAO No.2299 of 2016 (O&M)
Date of decision: May 03, 2016

The Oriental Insurance Company Ltd. ...Appellant

Versus

Smt. Archana and others ...Respondents

CORAM:HON'BLE MR.JUSTICE HARINDER SINGH SIDHU
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Present: Mr. D.P. Gupta, Advocate
for the appellants.

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HARINDER SINGH SIDHU, J.

The Insurance Company has challenged the award dated 1.12.2015 of the Motor Accidents Claim Tribunal, Gurdaspur, whereby, the Claim Petition filed by claimant – Respondent No.1 has been accepted and the appellant Insurance Company (insurer) has been directed to pay the compensation in the first instance and then recover the same from respondents No.2 and 3 (driver and owner).

As per the claim petition, on 04.11.2014 at about 1.15 pm claimant Archana Salaria @ Archana along with her husband Dinesh Singh was going on motor cycle No.PB-06-R-5026 from Jhabkra to Dinanagar to meet their relatives. Dinesh Singh was driving the motor cycle and the claimant was the pillion rider. When they reached near Government High School, Jhabkra the offending car bearing No.PB-10-S-7888 which was being driven in a rash and negligent manner and at a high speed by its driver came from the side of Bhammni and struck against the motor cycle with great force, due to which the motor cycle hit against a *safaida* tree. Both the occupants of the motor cycle Dinesh Singh and Archana Salaria received severe injuries. They were taken to Chauhan Medicity, Kotli where Dinesh Singh succumbed to the injuries few hours after the accident.

Ld. Tribunal on the basis of the evidence brought on record concluded that the accident has occurred due to the rash and negligent driving of the car by respondent No.2. Compensation of Rs.83,000/- with interest was awarded to injured – respondent No.1 for the injuries suffered by her.

On the question of liability of the appellant Insurance Company, the Ld. Tribunal noted that the driving licence of the driver of the offending car, Vijay Kumar (Ex.P-2) was issued on 13.11.2014 which was valid upto 2034. Before that he had been issued Learner's Licence (Ex.R-4) which was valid from 18.07.2014 to 17.01.2015. Thus, at time of the accident on 4.11.2014, respondent No.2 possessed only a learner's licence. Rule 3 of the Central Motor Vehicle Rules, 1989 prohibits the holder of learner's licence from driving any motor vehicle, unless he has beside him a person duly licensed to drive the vehicle. Respondent No.2 had not stepped into the witness box nor was any other evidence led to show that at the time of accident respondent No.2 was driving under the supervision of a licensed person. Hence, it was concluded that at the time of the accident the offending car was not being driven by a duly licensed person.

It was, however, held that even in this situation the Insurance Company could not be absolved from its liability to pay the amount of compensation to the claimant in the first instance, though it had right to recover the same from the owner and driver of the offending vehicle.

Ld. Counsel for the appellant has argued that once the Tribunal had come to a finding that at the time of accident the vehicle was not being driven by a duly licensed person, then no liability at all could have been fastened on the Insurance Company. Hence, the direction to first pay and then recover from the insured is illegal and cannot be sustained. He argues that no liability could be fastened on the appellant if there was any breach of policy condition with regard to requirement of the vehicle being driven by a person holding valid driving licence.

Reliance has been placed on the judgement of Karnataka High Court in **The Oriental Insurance Co. Ltd. v. Sri K.C. Subramanyam & another M.F.A. No.2596/2007 (MV) .** In this case, a Division Bench of the Karnataka High Court had held that the condition precedent for the application of the rule `pay and recover' is that there should be a valid policy of insurance and that there is no breach of the terms of the policy. It was held that if the grounds for avoiding liability as specified in Section 149(2) of the Motor Vehicles Act, 1988 are established, then there is no liability on the part of the insurer to pay the amount decreed or awarded under Section 149(1). Consequently, when the liability is avoided on one of the grounds mentioned in Section 149(2), there is no liability to pay the amount decreed or awarded and consequently the question of directing the insurer, in these circumstances, to pay and then recover would not arise.

This contention of the Ld. Counsel cannot be accepted.

First, the aforementioned judgment of the Karnataka High Court has not attained finality. **Civil Appeal No.13329 of 2015** titled **'K.C.**

Subramanyam (D) LRs Vs. Oriental Insurance Company Ltd. and another', against the decision is pending in the Supreme Court.

Secondly, the question of circumstances when directions to `pay and recover' can be issued has been considered by Hon'ble the Supreme Court in a large number of cases and the consistent view has been that in case there is a breach of the policy with regard to the requirement of the vehicle being driven by a person having a valid driving licence, the Insurance Company may justifiably be required to pay to the claimant in the first instance and then recover from the insured. Following the Supreme Court, this has also been the preponderant view in various High Courts including this Court.

In **New India Assurance Co. v. Kamla, (2001) 4 SCC 342,** the Supreme Court held that when a valid insurance policy has been issued in respect of a vehicle then 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 if, as per the policy conditions, the insurer had no liability to pay such sum to the insured, then the amount so paid to third parties can be allowed to be recovered from the insured.

The relevant portion of the report is extracted hereunder:

> *"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. 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.*
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> *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 Company Limited v. *Kokilaben Chandravadan, (1987) 2 SCC 654. 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 Judge 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 suffers 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'etre 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, (1996) 5 SCC 21.*

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………"

In **United India Insurance Company Ltd. v. Lehru, (2003) 3 SCC 338,** the Supreme Court after referring to some earlier decisions including *Kamla (supra),* held that even where it is proved that there was a conscious or willful breach as provided under Section 149(2)(a)(ii) of the Motor Vehicle Act, the Insurance Company would still remain liable to the innocent third party but may recover the compensation paid from the insured. The relevant observations are extracted hereunder:

> ***"18.*** *Now let us consider Section 149(2). Reliance has been placed on Section 149(2)(a)(ii). As seen, in order to avoid liability under this provision it must be shown that there is a "breach". As held in Skandia and Sohan Lal Passi cases the breach must be on the part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief is caught and it is ascertained that he had no licence. Can the insurance company disown liability? The answer has to be an emphatic "No". To hold otherwise would be to negate the very purpose of compulsory insurance. The injured or relatives of the person killed in the accident may find that the decree obtained by them is only a paper decree as the owner is a man of straw. The owner himself would be an innocent sufferer. It is for this reason that the legislature, in its wisdom, has made insurance, at least third-party insurance, compulsory. The aim and purpose being that an insurance company would be available to pay. The business of the company is insurance. In all businesses there is an element of risk. All persons carrying on business must take risks associated with that business. Thus it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time innocent parties must not be made to suffer or loss. These provisions meet these requirements. We are thus in agreement with what is laid down in the aforementioned cases viz. that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The insurance company must establish that the breach was on the part of the insured.*
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> ***19.*** *Section 3 of the Motor Vehicles Act, 1988 prohibits driving of a motor vehicle in any public place unless the driver has an effective driving licence. Further, Section 180 of the Motor Vehicles Act makes an owner or person in charge of a motor vehicle punishable with imprisonment or fine if he causes or permits a person without a licence to drive the vehicle. It is clear that the punishment under Section 180 can only be imposed if the owner or person in charge of the vehicle "causes or permits" driving by a person not duly licensed. Thus there can be no punishment if a person without a licence drives without permission of the owner. Section 149(2)(a)(ii) merely recognises this condition. It therefore only absolves the insurance company where there is a breach by the insured.*
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> ***20****. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he*

will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The insurance company would not then be absolved of liability. If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. ***More importantly, even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured.*** *This is the law which has been laid down in Skandia, Sohan Lal Passi and Kamla cases. We are in full agreement with the views expressed therein and see no reason to take a different view."*

A three Judge Bench of the Supreme Court considered the question once again in **National Insurance Company Limited v. Swaran Singh, (2004) 3 SCC 297**. It was emphasized that the liability of the insurer to satisfy the decree passed in favour of the third party was statutory. Relying on the earlier decisions in *Sohan Lal Passi* , *Kamla* (supra) and *Lehru* (supra) it was observed as under:

"*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.*

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104. *It is, therefore, evident from the discussions made hereinbefore that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time.*

105. *Apart from the reasons stated hereinbefore, the doctrine of stare decisis persuades us not to deviate from the said principle.*

106. *It is a well-settled rule of law and should not ordinarily be deviated from. (See Bengal Immunity Co. Ltd. v. State of Bihar, SCR at pp. 630-32, Keshav Mills Co. Ltd. v. CIT, SCR at pp. 921-22, Union of India v. Raghubir Singh, SCR at pp. 323, 327, 334, Gannon Dunkerley and Co. v. State of Rajasthan, Belgaum Gardeners Coop. Production Supply and Sale Society Ltd. v. State of Karnataka and Hanumantappa Krishnappa Mantur v. State of Karnataka.)*

107. *We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction* *upon consideration of the facts and circumstances of each case and in the event such a direction has been issued, despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given an opportunity to defend at all. Such a course of action may also be resorted to when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage.*

***108.** Although, as noticed hereinbefore, there are certain special leave petitions wherein the persons having the vehicles at the time when the accidents took place did not hold any licence at all, in the facts and circumstances of the case, we do not intend to set aside the said awards. Such awards may also be satisfied by the petitioners herein subject to their right to recover the same from the owners of the vehicles in the manner laid down therein. But this order may not be considered as a precedent."*

In paragraph 110 the Supreme Court gave the summary of findings, and the relevant two sub paras are as under:

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

(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."*

In **National Insurance Co. Ltd. v. Savitri Devi, (2004) 1 SCC 596,** it had been established that the driver of the vehicle in question did not have a valid and effective licence on the date of the accident. Though, the Insurance Company was held to be not liable to make the payment, but it had been directed to make the payment and recover from the owner of the vehicle. The SLP filed by the Insurance Company was dismissed by observing as under:

> **"***1. This special leave petition is directed against a judgment and order dated 7-10-2002 passed by the High Court of Punjab and Haryana at Chandigarh whereby and whereunder the appeal filed by the petitioner herein questioning an award made by the Motor Accidents Claims Tribunal, Ambala was dismissed. The High Court passed the said order on the ground that the petitioner has been permitted to recover the amount from the owner of the offending vehicle. On a perusal of the award impugned before the learned Tribunal, it appears that a finding of fact has been arrived at, that the vehicle in question was driven by the first respondent without valid and effective licence as on the date of the accident. While answering Issue 3 as to whether the Insurance Company is not liable to make any payment of compensation on account of the preliminary objections taken by it in its written statement, the learned Tribunal observed that although the petitioner is liable to pay compensation to the claimant, it may recover the same from the owner of the offending vehicle.*
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> *2. Having regard to the facts and circumstances of this case, we do not find any merit in this petition and it is dismissed. No costs."*

In **Samundra Devi v. Narendra Kaur, (2008) 9 SCC 100,** it was not even disputed before the Supreme Court that in certain situations while opining that the insurance company would not be liable to reimburse the insured, a direction to the insurance company to pay the amount of compensation to a third party and recover the same from the owner of the vehicle is permissible.

> "***15.*** *A contract of insurance as is well known is a contract of indemnity. In a case of accident, the primary liability under law for payment of compensation is that of the driver. The owner of the vehicle also becomes vicariously liable therefor. In a case involving a third party to the contract of insurance in terms of Section 147 of the Motor Vehicles Act, 1988 providing for a compulsory insurance, the insurer becomes statutorily liable to indemnify the owner. Indisputably, the insurance company would be liable to indemnify the insured in respect of loss suffered by a third party or in respect of damages of property. In a case, therefore, where the liability is fastened upon the insurer, the insurer would be bound to indemnify the insured unless the exceptions contained in Section 149 of the Act are attracted.*
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> ***16.*** *It has not been disputed before us that in certain situations while opining that the insurance company would not be liable to reimburse the insured, a direction upon the insurance company to pay the amount of compensation to a third party and recover the same from the owner of the vehicle is permissible. Such a direction has been issued by the High Court. The said directions are not under challenge."*

In **National Insurance Co. Ltd. v. Geeta Bhat, (2008) 12 SCC 426,** where the licence was fake, it was observed that it would be in the interest of justice if the Insurance Company is directed to pay the amount awarded with liberty to recover the same from the owner.

> ***"14.*** *We would, therefore, assume that the licence possessed by the 6th respondent, Gopal Singh was a fake one. Only because the same was fake, the same, having regard to the settled legal position, as noticed hereinbefore, would not absolve the insurer to reimburse the owner of a vehicle in respect of the amount awarded in favour of a third party by the Tribunal in exercise of its jurisdiction under Section 166 of the Motor Vehicles Act, 1988.*
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> ***15.*** *Nobody has appeared on behalf of the respondents despite*

service of notice.

***16.** We, therefore, are of the opinion that interest of justice shall be subserved if the appellant is directed to pay the awarded amount in favour of Respondents 1 to 5 with liberty to recover the same from the owner and the driver of the vehicle, Respondents 6 and 7 in an appropriate proceeding in accordance with law."*

In **Oriental Insurance Co. Ltd. v. Zaharulnisha, (2008) 12 SCC 385,** where the driver had no effective and valid licence to drive the scooter it was directed that the Insurance Company, though not liable to pay the amount of compensation, in view of the nature of the case would satisfy the award and shall have the right to recover the amount deposited by it along with interest from the owner of the vehicle

*"**16.** Sub-section (1) of Section 149 casts a liability upon the insurer to pay to the person entitled to the benefit of the decree as if he was the judgment-debtor, that is, the statute raises a legal fiction to the effect that for the said purpose the insurer would be deemed to be a judgment-debtor in respect of the liability of the insurer in respect of third-party risks.*

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***21.** In the light of the above settled proposition of law, the appellant Insurance Company cannot be held liable to pay the amount of compensation to the claimants for the cause of death of Shukurullah in road accident which had occurred due to rash and negligent driving of scooter by Ram Surat who admittedly had no valid and effective licence to drive the vehicle on the day of accident. The scooterist was possessing a driving licence of driving HMV and he was driving a totally different class of vehicle, which act of his is in violation of Section 10(2) of the MV Act.*

***22.** In the result, the appeal is allowed to the limited extent and it is directed that the appellant Insurance Company though not liable to pay the amount of compensation, but in the nature of this case it shall satisfy the award and shall have the right to recover the amount deposited by it along with interest from the owner of the vehicle viz. Respondent 8, particularly in view of the fact that no appeal was preferred by him nor has he chosen to appear before this Court to contest this appeal. This direction is given in the light of the judgments of this Court in National Insurance Co. Ltd.* v. *Baljit Kaur* and *Deddappa* v. *National Insurance Co. Ltd."*

In **Sardari v. Sushil Kumar, (2008) 17 SCC 208,** the Supreme

Court once again recognized that, in certain situations, the court while fastening the liability on the owner of the vehicle may direct the insurance company to pay the awarded amount to the claimants with liberty to it to recover the same from the owner. It was observed:

> ***"9.*** *This Court, time and again made a distinction between a case where a third party is involved vis-à-vis where the owner of the vehicle was involved in the accident. The matter relating to grant of licence is dealt with in the Act. There are provisions in terms whereof despite expiry of the period of licence, the same can be renewed. There are also provisions providing for grant of a fresh licence. In certain situations, the authorities are also entitled to refuse to renew the licence.*
> ***10.*** *Although, in terms of a contract of insurance, which is in the realm of private law domain having regard to the object for which Sections 147 and 149 of the Act had been enacted, the social justice doctrine as envisaged in the Preamble of the Constitution of India has been given due importance. The Act, however, itself provides for the cases where the insurance company can avoid its liability. Avoidance of such liability would largely depend upon violation of the conditions of contract of insurance. Where the breach of conditions of contract is ex facie apparent from the records, the court will not fasten the liability on the insurance company.* ***In certain situations, however, the court while fastening the liability on the owner of the vehicle may direct the insurance company to pay to the claimants the awarded amount with liberty to it to recover the same from the owner."***

In **New India Assurance Co. Ltd. v. Kusum, (2009) 8 SCC 377,** the Supreme Court considered earlier decisions in which such directions to pay and recover were given. It was noted that such orders had been passed by the Courts keeping in view the social justice objectives of the enactment and also the interests of the claimants. It was held that the Insurance Company which is directed to pay the amount may recover the same through an execution petition and no separate suit is necessary.

As in this case, the earlier case law on the subject is referred to, the relevant paragraphs from the judgment are being extracted in extenso:

"***7.*** *An owner of a vehicle in terms of the provisions of the Motor Vehicles Act is legally obligated to get the vehicle insured. The rights and liabilities of the parties to the contract of insurance would be governed thereby subject to the provisions of the Motor Vehicles Act. One of the conditions which would make the insurance company liable to reimburse the owner of the vehicle in respect of payment of the amount of compensation in favour of a claimant is that the driver of the vehicle must possess a valid driving licence. The owner has a duty to see that a vehicle is driven by a person having a valid driving licence. The licence of the driver of the said bus was proved to be invalid. The owner did not raise any contention that he has used due diligence in allowing the driver to drive the vehicle.*

8. *The courts, however, keeping in view the social justice doctrine in mind wherefor the Act was enacted and in the interest of the claimants had been passing such orders. The High Court has noticed the decision of this Court in Nanjappan, wherein it was held: (SCC p. 226, para 8)*

> *"8. Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur case that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned 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. Before release of the amount to the claimants, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the Regional Transport Authority concerned. The executing court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the executing court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."*

9. *As noticed hereinbefore, similar directions were also issued in National Insurance Co. Ltd. v. Baljit Kaur in the following terms: (SCC p. 8, para 21)*

> *"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 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."

10. *Yet again, in National Insurance Co. Ltd. v. Kusum Rai it was held: (SCC p. 257, para 19)*

"19. Thus, although we are of the opinion that the appellant was not liable to pay the claimed amount as the driver was not possessing a valid licence and the High Court was in error in holding otherwise, we decline to interfere with the impugned award, in the peculiar facts and circumstances of the case, in exercise of our jurisdiction under Article 136 of the Constitution but we direct that the appellant may recover the amount from the owner in the same manner as was directed in Nanjappan."

11. *Yet again in Oriental Insurance Co. Ltd. v. Zaharulnisha this Court held: (SCC p. 392, para 22)*

"22. In the result, the appeal is allowed to the limited extent and it is directed that the appellant Insurance Company though not liable to pay the amount of compensation, but in the nature of this case it shall satisfy the award and shall have the right to recover the amount deposited by it along with interest from the owner of the vehicle viz. Respondent 8, particularly in view of the fact that no appeal was preferred by him nor has he chosen to appear before this Court to contest this appeal. This direction is given in the light of the judgments of this Court in National Insurance Co. Ltd. v. Baljit Kaur and Deddappa v. National Insurance Co. Ltd."

12. *Again in Deddappa v. National Insurance Co. Ltd. it was held: (SCC p. 602, para 26)*

"26. However, as the appellant hails from the lowest strata of

> *society, we are of the opinion that in a case of this nature, we should, in exercise of our extraordinary jurisdiction under Article 142 of the Constitution of India, direct Respondent 1 to pay the amount of claim to the appellants herein and recover the same from the owner of the vehicle viz. Respondent 2, particularly in view of the fact that no appeal was preferred by him. We direct accordingly."*
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> ***13.*** *Whenever, thus, a direction has been issued by the Tribunal, it must be held to have been done in exercise of its inherent power. It would be a travesty of justice, if the Insurance Company which is directed to pay the amount and then face immense difficulties in executing a decree."*

In **Jawahar Singh v. Bala Jain, (2011) 6 SCC 425**, the motorcycle at the time of accident was being driven by a minor. The Supreme Court held that the liability was rightly fastened on the owner of the vehicle. The direction of the Tribunal to the Insurance Company to pay the awarded amount and thereafter recover the same from the owner was upheld.

> **"*10.*** *On behalf of Respondent 6, National Insurance Company Ltd., it was sought to be urged that at the time of the accident, the motorcycle was being driven in breach of the terms and conditions of the insurance policy and, accordingly, the Insurance Company could not be held liable for making payment of the compensation awarded by the Motor Accidents Claims Tribunal. Apart from the fact that Jatin, who was riding the motorcycle, did not have a valid driving licence, it had also been established that he was a minor at the time of the accident and consequently the Insurance Company had been rightly relieved of the liability of payment of compensation to the claimants and such liability had been correctly fixed on the owner of the motorcycle, Jawahar Singh.*
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> *xxx xxx xxx*
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> ***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.*
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> *xxx xxx xxx*
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> ***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."

Once again, in **Kusum Lata v. Satbir, (2011) 3 SCC 646,** where again there was a dispute about the licence, the directions of the Tribunal to the insurance company to pay the awarded amount and then recover from the owner, were upheld.

"*13.* *In respect of the dispute about licence, the Tribunal has held and, in our view rightly, that the insurance company has to pay and then may recover it from the owner of the vehicle. This Court is affirming that direction in view of the principles laid down by a three-Judge Bench of this Court in National Insurance Co. Ltd. v. Swaran Singh."*

The aforementioned decisions of the Supreme Court leave no manner of doubt, that, depending upon the facts and circumstances, in cases where the vehicle was not being driven by a duly licensed person, the Tribunal or the High Court may direct the insurer to first pay the compensation amount and thereafter to recover the same from the insured.

Accordingly, there is no merit in the appeal and the same is dismissed.

May 03, 2016 **(HARINDER SINGH SIDHU)**
gian **JUDGE**