**THE HONOURABLE JUSTICE SMT. T.RAJANI**

**MACMA No.757 and 759 of 2008**

**COMMON JUDGMENT**:

Since these appeals have arisen out of the same accident filed by the National Insurance Company Limited against the order dated 30.10.2007 made in O.P. Nos.1154 and 1153 of 2005 of I Additional District Judge, Rajahmundry, they are being disposed of by this common judgment.

These appeals have been filed on the grounds that the orders of the lower Court are erroneous so far as granting of compensation of Rs.52,000/- (Rupees fifty two thousand only) and Rs.32,000/- (Rupees thirty two thousand only), respectively, and the fixing of liability of paying half of the awarded amount in spite of observing that the driver of the car collided with Tata Sumo does not have valid driving license and violated the policy conditions by allowing more passengers in the vehicle.

The case is of head on collision. P.W.2, who is an eye witness for the accident attributed negligence to both the vehicles equally. No contrary evidence is adduced by the respondent on that aspect. R.W.1 is Assistant Branch Manager of appellant's Insurance Company and he is obviously not an eye witness to the accident. R.W.2 is the Senior Assistant in the office of the RTO, Tirupathi, through whom only the driving license of the driver of the Ambassador car was proved as per which, he was competent to drive only light motor vehicle but not transport, while the vehicle involved in this case is transport vehicle. But irrespective of the nature of the driving license the negligence of both the vehicles, as spoken by P.W.2, stands proved beyond all reasonable doubt. This is a case of composite negligence where the negligence of both the vehicles is proved. In the absence of any evidence on the extent of negligence of each of the vehicles and in the background of the fact that it is a case of head on collision, there can be no other option for the

Court except to apportion the negligence equally to both the vehicles, involved in the accident, which the lower Court has rightly done.

The lower Court observed that no evidence with regard to overloading of the vehicle is adduced. A perusal of the evidence adduced on behalf of the respondent does not speak about the overloading of the vehicle and R.W.1, as already observed, is not an eye witness to the incident and his evidence in that regard is only hearsay and does not come up for consideration. With regard to respondent No.1 having driving license only to drive the light motor vehicle but not transport the lower Court observed that it is only minor technicality on which appellant cannot escape its liability. Respondent No.1 is stated to have been holding light motor vehicle driving license prior to the accident but on the relevant date he did not have any driving license as his license expired by that date. The law is well settled that unless it is proved by the Insurance Company that the driver is disqualified from driving the vehicle for which, he was holding driving license prior to the accident the claim of the claimants cannot be declined on that ground. Apart from that ruling reported in **S. IYYAPAN Vs. UNITED INDIA INSURANCE COMPANY LIMITED AND ANOTHER**[1] would also support the view taken by the lower Court. The Hon'ble Apex Court relied on the ruling made in **NATIONAL INSURANCE CO. LTD. V. SWARAN SINGH**[2] wherein it is held that if a person has been given a license for a particular type of vehicle as specified therein he cannot be said to have no license 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 license 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 license both for car and jeep separately. It is further observed that the breach of policy condition e.g. disqualification of the driver or invalid driving license of the driver,

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1 (2013) 7 Supreme Court Cases 62
2 (2004) 3 SCC 297

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 license 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. The Apex Court concluded by saying that the insurer cannot disown its liability on the ground that although the driver was holding a license to drive a light motor vehicle. 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. In the light of the above ruling, there need not be any demur in concluding that the Insurance Company has to satisfy the award and if the above aspects are proved he would be entitled for recovery of the amount from the insured.

In this case, the owner of the car is also made a party. Through RW.2 it was proved that respondent No.1 was granted only driving license to drive light motor vehicle but not transport. But he did not speak about expiry of the driving licence. Ex.B5, which is driving license extract shows that the validity of the driving license for non transport vehicle is upto 2024 and it was granted on 08.04.2004, which period covers the date of accident.

With regard to the driver holding the driving license to drive light motor vehicle, non transport driving a light motor vehicle, transport vehicle, the Supreme Court in Swaran Singh's case (one supra) held that insurer cannot disown its liability on the ground that although the driver was holding a license to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained on the driving license. 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. The Supreme Court, however, made the insurance company also liable in that case though there was no such endorsement. The observation of the Supreme Court with regard to granting liberty to the insurer to proceed against insured is in respect of violation, which the Court considers as material. The Supreme Court reminded itself of the theme of the enactment by referring to a two Judge bench judgment of the Supreme Court in ***SKANDIA INSURANCE CO. LTD. v. KOKILABEN CHANDRAVADAN***[3], wherein it was observed as hereunder:

> "... 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."

The principle laid down in the aforesaid decision has been following by a three-Judge Bench of this Court in ***SOHAN LAL PASSI v. P. SESH REDDY***[4]. By summing up the position, the Supreme Court observed as follows:

> "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

[3] (1987) 2 SCC 654
[4] (1996) 5 SCC 21

> 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."

The definition of various vehicles is made under Section 2 of the Act according to which under Clause 21 light motor vehicle incldes a transport the laden weight by which, does not exceed 7500 kilo grams. Hence, transport vehicle is also included in the definition of light motor vehicle unless the appellant proves that the said transport vehicle is beyond laden weight of 7500 kilo grams it falls under the category of light motor vehicle for which the driver was shown to be holding valid driving license. The Apex Court in the case of three supra did not exonerate the insurer from liability though there was no endorsement in the driving license to drive Mahindra Max cab, which was considered to be a light motor vehicle. Hence, in this case also the same principle applies.

This appeal is accordingly, dismissed. As a sequel, miscellaneous petitions, if any, stand closed. There shall be no order as to costs.

**JUSTICE SMT. T.RAJANI**

**Date: 03.02.2017**
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