

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 1983 OF 2018

New Indian Insurance Company Ltd
Through its Authorized Signatory/
Senior Divisional Manager/In-charge Legal Hub,
Mahesh Compound, Adalat Road,
Aurangabad. ..Appellant

Versus

1. Archana Wd/o Rambhau Anjaan
Age: 28 Years, Occ: Household,
2. Shraddha d/o. Rambhau Anjaan,
Age: 7 Years, Occ.Nil,
3. Santosh @ Balaji s/o. Rambhau Anjaan,
Age: 3 Years, Occu. Nil,

[Claimants No. 2 and 3 are minors under
guardianship of real mother Respondent No.1]
4. Malanbai w/o. Achutrao Anjaan,
Age: 65 years, Occ. Household,
5. Achutrao Rambhau Anjaan,
Age: 68 years, Occu. Nil,

All R/o. Flat No.8, Building No.16,
Plot No. 47/1, Akshay Trutiya
Apartment, Sai Nagar, Bajaj
Nagar, MIDC Waluj, Aurangabad.
6. Mujeeb Khan Aref Khan,
Age: Major, Occu. Business,
R/o. Galli No. 9, Rahmaniya Colony,
Kiradpura, Aurangabad.
7. Sudhakar Vishwanath Bankar,
Age: Major, Occu. Business,
R/o. C/o. Mujeeb Khan Aref Khan,
R/o. Galli No.9, Rahmaniya Colony,
Kiradpura, Aurangabad. ..Respondents

**WITH
FIRST APPEAL NO. 1984 OF 2018**

New Indian Insurance Company Ltd
Through its Authorized Signatory/
Senior Divisional Manager/In-charge Legal Hub,
Mahesh Compound, Adalat Road,
Aurangabad. ..Appellant

Versus

1. Limbarao s/o Kisan Gadade
Age: 37 years, Occ: Service,
R/o. Plot No. 11, Gut No.12,
Bhaosingnagar, Wadadgaon,
Kothari, Waluj MIDC,
Aurangabad.
2. Mujeeb Khan Aref Khan,
Age: Major, Occu. Business,
R/o. Galli No.9, Rahmaniya Colony,
Kiradpura, Aurangabad.
3. Sudhakar Vishwanath Bankar,
Age: Major, Occu. Business,
R/o. C/o. Mujeeb Khan Aref Khan,
R/o. Galli No.9, Rahmaniya Colony,
Kiradpura, Aurangabad. ..Respondents

**WITH
FIRST APPEAL NO. 1985 OF 2018**

New Indian Insurance Company Ltd
Through its Authorized Signatory/
Senior Divisional Manager/In-charge Legal Hub,
Mahesh Compound, Adalat Road,
Aurangabad. ..Appellant

Versus

1. Ramraja s/o. Uttam Bodhle,
Age: 33 years, Occ: Service,
R/o. Plot No.38, Gut No.12,
Bhaosingnagar, Wadadgaon,
Kothari, Waluj MIDC, Aurangabad
Tq. & Dist. Aurangabad.
2. Mujeeb Khan Aref Khan

Age: Major, Occu. Business,
R/o. Galli No. 9, Rahmaniya Colony,
Kiradpura, Aurangabad.

3. Sudhakar Vishwanath Bankar
Age: Major, Occu. Business,
R/o. C/o. Mujeeb Khan Aref Khan,
R/o. Galli No.9, Rahmaniya Colony,
Kiradpura, Aurangabad. ..Respondents

**WITH
FIRST APPEAL NO. 1986 OF 2018**

New Indian Insurance Company Ltd
Through its Authorized Signatory/
Senior Divisional Manager/In-charge Legal Hub,
Mahesh Compound, Adalat Road,
Aurangabad. ..Appellant

Versus

1. Mangal Bapu Kale
Age: 38 years, Occ: Service,
R/o. Plot No.41, Gut No.12,
Bhaosingnagar, Wadadgaon,
Kothari, Waluj MIDC, Aurangabad
Tq. & Dist. Aurangabad.
2. Mujeeb Khan Aref Khan
Age: Major, Occu. Business,
R/o. Galli No. 9, Rahmaniya Colony,
Kiradpura, Aurangabad.
3. Sudhakar Vishwanath Bankar
Age: Major, Occu. Business,
R/o. C/o. Mujeeb Khan Aref Khan,
R/o. Galli No.9, Rahmaniya Colony,
Kiradpura, Aurangabad. ..Respondents

**WITH
FIRST APPEAL NO. 1988 OF 2018**

New Indian Insurance Company Ltd
Through its Authorized Signatory/
Senior Divisional Manager/In-charge Legal Hub,
Mahesh Compound, Adalat Road,
Aurangabad. ..Appellant

Versus

1. Govind Namdev Deokate
Age: 34 years, Occ: Pvt. Service,
R/o. Plot No.44, Gut No.12,
Bhagatsingnagar, Wadadgaon,
Kothari, Waluj MIDC,
Aurangabad.
2. Mujeeb Khan Aref Khan
Age: Major, Occu. Business,
R/o. Galli No. 9, Rahmaniya Colony,
Kiradpura, Aurangabad.
3. Sudhakar Vishwanath Bankar
Age: Major, Occu. Business,
R/o. C/o. Mujeeb Khan Aref Khan,
R/o. Galli No.9, Rahmaniya Colony,
Kiradpura, Aurangabad. ..Respondents

WITH**FIRST APPEAL NO. 1990 OF 2018**

New Indian Insurance Company Ltd
Through its Authorized Signatory/
Senior Divisional Manager/In-charge Legal Hub,
Mahesh Compound, Adalat Road,
Aurangabad. ..Appellant

Versus

1. Vaibhav S/o. Kalyanrao Jadhav,
Age: 19 years, Occ: Education,
R/o. Chakradhar Nagar, Beed,
Tq. & Dist. Beed.
2. Damodhar S/o. Balajirao Joshi,
Age: Major, Occu. Business,
R/o. 188, Deshpande Galli, Bhokar,
Tq. Bhokar, Dist. Nanded.
3. Sonali Shankarrao Mangalrappe,
Age: Major, Occu. Driver,
R/o. Near Maruti Temple, Borgaon,
Tq. Bhokar, Dist. Nanded. ..Respondents

WITH**FIRST APPEAL NO. 1991 OF 2018**

New Indian Insurance Company Ltd
Through its Authorized Signatory/
Senior Divisional Manager/In-charge Legal Hub,
Mahesh Compound, Adalat Road,
Aurangabad. ..Appellant

Versus

1. Vishnu Bhaurao Sultane,
Age: 39 years, Occ: Pvt. Service,
R/o. Narsing Colony, Bajaj Nagar Area,
Aurangabad, Tq. & Dist. Aurangabad.
2. Mujeeb Khan Aref Khan
Age: Major, Occu. Business,
R/o. Galli No. 9, Rahmaniya Colony,
Kiradpura, Aurangabad.
3. Sudhakar Vishwanath Bankar
Age: Major, Occu. Business,
R/o. C/o. Mujeeb Khan Aref Khan,
R/o. Galli No.9, Rahmaniya Colony,
Kiradpura, Aurangabad. ..Respondents

WITH

FIRST APPEAL NO. 1992 OF 2018

New Indian Insurance Company Ltd
Through its Authorized Signatory/
Senior Divisional Manager/In-charge Legal Hub,
Mahesh Compound, Adalat Road,
Aurangabad. ..Appellant

Versus

1. Liladhar s/o. Eknath Badgujar,
Age: 35 years, Occ: Service,
R/o. Plot No.14, Piyush Vihar,
Gut No. 140, Cidco, Waluj Mahanagar,
Tq. & Dist. Aurangabad.
2. Mujeeb Khan Aref Khan
Age: Major, Occu. Business,
R/o. Galli No. 9, Rahmaniya Colony,
Kiradpura, Aurangabad.
3. Sudhakar Vishwanath Bankar

Age: Major, Occu. Business,
R/o. C/o. Mujeeb Khan Aref Khan,
R/o. Galli No.9, Rahmaniya Colony,
Kiradpura, Aurangabad. ..Respondents

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Mr. Mohit Deshmukh, Advocate for Appellant.
Mr. P.C. Mayure, Advocate for Respondent Nos. 1 to
5 (original claimants).
Ms. Shaikh Afreen, Advocate for Respondent Nos. 6 &
7 in FA/1983/2018 and for Respondent Nos. 2 & 3 in
the remaining appeals.

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CORAM : P.R. BORA, J.
RESERVED ON : 04th OCTOBER, 2018.
PRONOUNCED ON : 19th OCTOBER, 2018.

JUDGMENT: -

. These seven appeals are arising out of one accident happened on 28.05.2015 having involvement of a truck bearing Registration No. MH-20-BT-3578 owned by present respondent no.6 and insured with the appellant-insurance company. Though the Motor Accident Claims Tribunal at Aurangabad has decided each of the claim petition by a separate judgment, the defences raised by the insurance company in all those petitions were common. The appellant-insurance company though has filed separate appeals in view of the fact that every petition was decided by a separate judgment, common objections are raised by the insurance company in exception to the judgments and awards

passed in the aforesaid claim petitions. In the circumstances, I heard the common arguments in these appeals and I deem it appropriate to decide all these appeals by a common reasoning.

2. The First Appeal No.1983 of 2018 is filed against the judgment and award passed in Motor Accident Claim Petition No. 477 of 2015. The said claim petition was filed by the legal representatives of deceased Rambhau Anjaan, who suffered death in the aforesaid accident. The claimants in the remaining six petitions are the persons injured in the aforesaid accident. I deem it appropriate to note down the relevant information in tabular form showing the first appeal number and motor accident number out of which the said appeal is arising and the amount of compensation awarded in the said petition by the Tribunal.

Sr. No.	First Appeal No.	Name of the Party	MACP No.	Nature of Claim	Award amount in Rs.
1	1983/2018	New India Assurance Company Ltd. Vs. Archana Rambhau Anjaan	MACP 477/2015	Death-claim-Deceased Rambhau Anjaan	Rs. 52,66,672/- interest @ 9% p.a.

2	1984/ 2018	New India Assurance Company Ltd. Vs. Limbarao Gadade	MACP 563/2015	Injury Claim	Rs.2,07,208 /- with interest @ 9%
3	1985/ 2018	New India Assurance Company Ltd. Vs. Ramraja Uttam Bodhale	MACP 566/2015	Injury Claim	Rs. 1,48,000/- with interest @ 9%
4	1986/ 2018	New India Assurance Company Ltd. Vs. Mangal Bapu Kale	MACP 565/2015	Injury Claim	Rs. 89,188/- along with 9% interest
5	1988/ 2018	New India Assurance Company Ltd. Vs. Govind Devkate	MACP 564/2015	Injury Claim	Rs. 49,000/- along with interest @ 9% p.a.
6	1991/ 2018	New India Assurance Company Ltd. Vs. Vishnu Sultane	MACP 561/2015	Injury Claim	Rs. 73,124/- along with interest @ 9% p.a.
7	1992/ 2018	New India Assurance Company Ltd. Vs. Liladhar Badgujar	MACP 562/2015	Injury Claim	Rs. 1,70,528/- along with interest @ 9% p.a.

3. The claim petitions were resisted by all the three respondents i.e. driver, owner and insurer of the offending truck. In each of the claim petition, respondent no.1 was the insurance

company, respondent no.2 was the owner and respondent no.3 was the driver of the offending truck. Respondent nos. 2 and 3 i.e. owner and driver of the truck had filed their joint written statement denying the contentions raised in the petition. Respondent no.1-insurance company had raised the defence of the breach of policy conditions by owner of the offending truck alleging that he allowed respondent no.3 to drive the offending truck though having knowledge that on the date of accident, said respondent no.3 was not holding the valid and effective driving licence. In the circumstances, according to the insurance company, it was not liable to indemnify the insured i.e. owner of the offending truck (respondent no.2).

4. In addition to the statutory defence raised as above the insurance company has also disputed the salary income of the deceased in Motor Accident Claim Petition No. 477 of 2015 and in other petitions has disputed the medical expenses allegedly claimed by the respective claimants in said petitions as well as the disability allegedly claimed to have incurred by the respective

claimants.

5. The material on record reveals that in Motor Accident Claim Petition No. 477 of 2015 claimant no.1 in the said petition namely Archana testified before the Tribunal and one more witness namely Amol Kedare, the Assistant Manager Endurance Technologies Ltd., Aurangabad was examined in order to prove the fact that deceased Rambhau was in the employment of Endurance Technologies Ltd., and also to prove his salary income. In the other petitions which are admittedly the claims filed by the injured persons, the injured claimants deposed before the Court and the concerned Medical Officers were examined to prove the disability incurred by the respective claimants out of injuries respectively caused to them in the alleged accident.

6. In none of the claim petitions, original respondent nos. 2 and 3 cross-examine the witnesses examined in the said petitions for the claimants. The learned counsel for the insurance company did cross-examine all said witnesses. Respondent nos. 2 and 3 also did not enter into the witness box nor

examined any witness on their behalf. Respondent no.3-insurance company examined Shri Milind Sasane, Junior Clerk from the RTO Office at Aurangabad in each of the claim petitions in order to substantiate its defence that on the date of accident, respondent no.2 Sudhakar Vishwanath Bankar , the driver of the offending truck was not holding any driving licence.

7. The learned Tribunal after having considered the evidence brought on record before it, decided each of the claim petition separately and awarded the compensation as has been noted herein above in the tabular chart. Aggrieved by, the insurance company has filed present appeals.

8. Shri M.R. Deshmukh, the learned counsel appearing for the appellant-insurance company assailed the impugned judgments and awards mainly on the ground that the Tribunal has manifestly erred in not properly appreciating the defence raised and proved by the appellant-insurance company, as about the breach of policy conditions committed by the owner of the offending truck by allowing Sudhakar Vishwanath Bankar to drive the

offending truck though, he was not holding driving licence on the date of accident and though the said fact was well within his knowledge.

9. The learned counsel further submitted that a concrete and specific defence was raised by the appellant-insurance company in its written statement filed in all the seven claim petitions that owner of the offending truck had knowledge of the fact that the driver was not holding valid driving licence and still he handed over the vehicle to the said driver and allowed him to drive the said truck and thus committed willful breach of the terms and conditions of the contract of insurance. The learned counsel submitted that in order to prove that the driver of the of the offending truck was not holding the driving licence on the date of accident, the appellant-insurance company has examined witness by name Milind Sasane, Junior Clerk from RTO Office at Aurangabad. The learned counsel submitted that through his evidence the insurance company has satisfactorily proved that Sudhakar Bankar, who was driving the offending truck at the relevant time was not holding valid driving licence on the date of

accident.

10. The learned counsel submitted that in spite of the evidence brought on record as above, the Tribunal has recorded an erroneous conclusion that the mere fact that respondent no.3 had not renewed the licence was not sufficient to hold that the owner of the offending truck had committed the breach of terms and conditions of the policy. The learned counsel relying upon the judgment of the Hon'ble Apex Court in the case of **"National Insurance Co. Ltd Vs. Vidyadhar Mahariwala and Ors, AIR 2009 SC 208"** submitted that since the driving licence of driver of offending vehicle was not in force on the date of accident, the appellant-insurance company was liable to be exonerated from its liability to indemnify the insured and to pay the amount of compensation on his behalf.

11. The learned counsel also relied upon the judgment of the Hon'ble Apex Court in the case of **"National Insurance Company Limited Vs. Jarnail Singh and Ors, (2007) 15 SCC 28,** to buttress his contention that once it is proved by the insurance

company that on the date of accident, the driver of the offending truck was not holding the driving licence, the breach of terms and conditions of policy by the owner of the offending truck shall be held to be proved.

12. The learned counsel also placed reliance on the judgment of this Court (Coram: P.R. Borkar, J.) in the case of **"New India Assurance Company Limited Vs. Karbhari s/o Hiralal Shinde and Anr, (2010) 6 Mh.L.J. 606**, wherein it is held that no person can drive the vehicle unless his driving licence specifically entitles him to do so and if it is proved that the person driving the offending vehicle was not holding the valid driving licence to drive the said vehicle, the breach of insurance policy shall be deemed to be proved.

13. The learned counsel submitted that the finding recorded by the learned Tribunal that non-renewal of licence is not sufficient to hold that there is breach of terms and conditions of policy is thus completely against the law laid down by the Hon'ble Apex Court. The learned counsel further submitted that in the facts and circumstances of

the case and in view of the evidence which had come on record, the Tribunal could not have held the insurance company jointly and severally liable to pay the amount of compensation to the claimants in the respective claim petitions. According to the learned counsel, the Tribunal at the most could have passed order directing the insurance company to first pay the amount of compensation to the claimants and then to recover the same in the same proceeding from the insurer i.e. owner of the offending truck. By not passing such order, the learned counsel submitted that the Tribunal has committed a gross mistake.

14. Shri P.C. Mayure, the learned counsel appearing for the claimants supported the impugned judgments and awards. The learned counsel submitted that even if the Tribunal had recorded the conclusion that the driver of the offending vehicle was not holding driving licence on the date of accident and would have further held that by allowing such person to drive the offending vehicle, the owner of the offending vehicle committed the breach of policy condition, the insurance company could not have avoided the

liability of paying compensation to the claimants who admittedly fall in the category of 'third party'. In the circumstances, in so far as the objection raised by the insurance company as about the absence of the driving licence, it was the contention of the learned counsel that even if the said issue is decided in favour of the appellant-insurance company, it cannot be absolved from its liability to pay the amount of compensation to the claimants though it may also have right to recover the said amount from the owner of the offending vehicle. The learned counsel, therefore, prayed for passing of appropriate orders.

15. Learned counsel Smt. Afreen Shaikh, appearing for respondent nos. 6 and 7 i.e. owner and driver of the offending truck supported the impugned judgments and awards. The learned counsel submitted that the insurance company has failed in bringing on record any unimpeachable evidence to substantiate the defence raised by it that the driver of the offending vehicle viz. Sudhakar Bankar was not holding valid driving licence to drive the offending vehicle on the date of the accident. Learned counsel further submitted that

the Tribunal has passed a well reasoned order. She, therefore, prayed for dismissal of the appeals.

16. As noted herein above, though objections are also raised by the appellant-insurance company about the quantum of compensation, first I would deal with the objection as about the driving licence and the alleged breach of policy conditions on the said ground.

17. It is not in dispute that the insurance company had raised a specific defence in its written statement that respondent no.3 in all the aforesaid claim petitions namely Sudhakar Vishwanath Bankar, who was driving the offending truck at the time of accident, was not holding driving licence on the date of accident. It is further averred by the insurance company in its written statement that by allowing the said person to drive the insured truck, respondent no.2 Mujeeb Khan s/o Aref Khan, the owner of the offending truck has committed intentional and willful breach of the terms of contract of the insurance. It is the matter of record that respondent nos.2 and 3

i.e. owner and driver of the offending truck had submitted their joint written statement refuting almost all averments in the claim petition. As has been observed by the Tribunal it was also contended by respondent nos. 2 and 3 in their joint written statement that, respondent no.3 was having valid and effective driving licence. It is further the matter of record that though the owner and driver of the offending truck filed their joint written statement in each of the claim petition, did not cross-examine any of the witness examined in the respective petitions either by the claimants or by the respondent-insurance company. The owner and driver of the offending truck admittedly did not adduce any oral or documentary evidence on their behalf.

18. As against it, in order to prove the specific defence raised by it, the appellant-insurance company examined a witness by name Milind Sasane, Junior Clerk from the Office of RTO Aurangabad. As has come on record through the evidence of said Milind Sasane, the driver of the offending truck namely Sudhakar Vishwanath Bankar had obtained the driving licence no. 085/299 from

RTO Aurangabad. The driving licence was issued to him on 24.01.1985. It was valid till 17.01.2014. As has further come on record through the evidence of said witness, the aforesaid licence was not renewed after 17.01.2014. The said witness has further specifically deposed that till 28.05.2015 i.e. till the date of accident, the driving licence of said Sudhakar Bankar was not renewed. The aforesaid witness was not cross-examined by the owner or the driver of the offending vehicle. In his cross-examination by the claimants, the said witness has stated that Sudhakar Bankar had not submitted application for renewal of licence in the RTO Office at Aurangabad. Further suggestion was given to the said witness by the learned counsel appearing for the claimants that Sudhakar Bankar had submitted the application for renewal of licence but the said suggestion was flatly denied by the said witness.

19. By adducing the evidence of witness Milind Sasane and by bringing on record the particulars as about the driving licence of Sudhakar Vishwanath Bankar at Exhibit-48, the insurance company has sufficiently proved the

defence raised by it that on the date of accident i.e. on 28.05.2015, Sudhakar Vishwanath Bankar was not holding the driving licence.

20. In the case of "**National Insurance Co. Ltd Vs. Vidyadhar Mahariwala and Ors**" (cited supra), the accident had occurred on 11.06.2004. The licence of the driver in the said case was initially valid for the period from 15.12.1997 to 14.12.2000 and thereafter from 29.12.2000 to 14.12.2003. Thereafter, it was again renewed from 16.05.2005 to 15.05.2008. The objection was raised in the said matter before the Motor Accident Claims Tribunal taking the stand that since the driving licence was not valid on the date of accident, the insurance company had no liability. The Tribunal turned down the plea raised by the insurance company. According to the said Tribunal though on the date of accident the driving licence was not valid, since the drivers licence was renewed on 16.05.2005 for a further period of three years, it cannot be said that during the intervening period the driver was incompetent or disqualified to drive the truck. It was held by the said Tribunal that at the time of accident, the driver was competent

to drive the vehicle involved in the said accident. The insurance company challenged the decision of the Tribunal in the High Court (Rajasthan High Court), however, the High Court did not cause any interference in the decision of the Tribunal. The matter was therefore taken to the Hon'ble Apex Court by the insurance company whereupon the Hon'ble Apex Court while allowing the appeal filed by the insurance company held that the insurance company would have no liability in the case since the driving licence of the driver of the offending vehicle was not in force on the date of accident.

21. In the instant matter also the driver of the offending vehicle namely Sudhakar Vishwanath Bankar had obtained the driving licence to drive the heavy goods vehicle bearing MDL No. 085/299 on 24.01.1985. The validity of the said licence was upto 23.01.1988. It was then renewed upto 23.01.1991 and thereafter till 19.02.1994. Then it was renewed on 03.12.1994 till 02.12.1997. Lastly it was renewed on 18.01.2011 till 17.01.2014. As has come on record in the evidence of Milind Sasane, the driving licence was not renewed thereafter. From the evidence on record it is thus

established that on the date of accident, the driving licence of Sudhakar Bankar was not in force. In the instant matter though in the joint written statement submitted by the owner and driver of the offending truck, they have contended that respondent no.3 i.e. Sudhakar Bankar was having valid and effective driving licence, neither the copy of the said licence is produced on record by them nor any other evidence has been produced to show that the driving licence of Sudhakar Bankar was renewed after 17.01.2014.

22. In the above circumstances, the finding recorded by the learned Tribunal to the effect that "merely because respondent no.3 had not renewed licence is not sufficient to hold that there is breach of terms and conditions of policy" cannot be sustained.

23. In the case of "*National Insurance Co. Ltd Vs. Vidyadhar Mahariwala and Ors*" (cited supra), the driving licence of driver in the said case was renewed on 16.05.2005 for the further period of three years when the accident in the said case had occurred on 11.06.2004. Thus, on

the date of accident admittedly driving licence was not valid since it was not renewed. The arguments was advanced in the said matter before the Tribunal that since the driving licence was renewed after the date of accident for the further period of three years, it cannot be said that during the intervening period the driver was incompetent or disqualified to drive the truck. The said arguments was accepted by the Tribunal as well as by the High Court. Ultimately the Hon'ble Apex Court set aside the said finding and ruled that the insurance company would have no liability in the case wherein the driving licence of the driver of the offending vehicle was not in force on the date of accident.

24. In the instant matter, the learned Tribunal has also recorded the same finding that non-renewal of driving licence by respondent no.3 is not sufficient to hold that there is breach of terms and conditions of policy. In the matter before Hon'ble Apex Court, the driving licence was atleast renewed after the date of accident. In the instant matter there is no evidence showing that after the date of accident the driving

licence of respondent no.2 has been renewed for the subsequent period. In the circumstances, the finding recorded by the Tribunal is apparently erroneous and contrary to the law laid down by the Hon'ble Apex Court and hence cannot be sustained.

25. Relying on the judgment of the Hon'ble Apex Court in the case of "Pappu and Ors Vs. Vinod Kumar Lamba and Anr" in Civil Appeal No. 20962 of 2017 delivered on 19.01.2018 it was submitted by Shri Deshmukh that the insurance company is entitled to take defence that the offending vehicle was driven by an unauthorized person or that the person driving the vehicle did not have a valid driving licence. In the aforesaid case, the point at issue was 'whether the fact that the offending vehicle was duly insured by respondent no.2 insurance company would *per se* make the insurance company liable'. The Hon'ble Apex Court in the said judgment has held that the onus would shift on the insurance company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorized by him to drive the vehicle and was having a valid

driving licence at the relevant time. In the said case, the owner of the offending vehicle had merely raised the vague plea in the written statement that the offending vehicle was being driven by a person having valid driving licence however, he did not disclose the name of the driver and his other details. Besides, the owner did not enter into the witness box or examined any witness in support of his said plea. The insurance company in its written statement had raised a specific plea that the offending vehicle was being driven by a person not holding valid driving licence.

26. In the case of *"Pappu and Ors Vs. Vinod Kumar Lamba and Anr"* (cited supra), the driver of the said truck was not made party nor his name was disclosed in the petition. The owner of the offending truck had placed on record only the copy of the driving licence of one Joginder Singh. The Motor Accident Claims Tribunal in the aforesaid circumstances though held the claimant entitled for the compensation, exonerated the insurance company from its liability to pay the compensation and allowed the petition only against owner of the

offending truck. The claimants therefore preferred the appeal before the Allahabad High Court. The only question which was urged before the High Court was about the correctness of the view taken by the Tribunal in absolving the respondent-insurance company even though the offending truck was duly insured by the said insurance company. The High Court affirmed the view taken by the Tribunal that there was no pleading or any evidence adduced by the owner of the offending truck to substantiate the fact that the truck was driven by one Joginder Singh whose licence was produced on record. The Hon'ble Allahabad High Court also noted that there can be no presumption that Joginder Singh was driving the offending vehicle. The matter was therefore taken to the Hon'ble Apex Court.

27. It was the contention of the appellants before the Hon'ble Apex Court that insurance company did not produce any evidence before the Tribunal and as such it was not open to the insurance company to extricate itself from the liability having duly insured the offending vehicle, which fact has been substantiated by the

production of the insurance policy. It was also contended that it was obligatory on the part of the insurance company to substantiate the defence taken by it that the vehicle was not driven by authorized person and/or a person not having valid driving licence. It was also argued that the insurance company was expected to substantiate the defence and more particularly was to rebut the plea taken by owner of the offending vehicle that the offending vehicle was driven by a authorized person having a valid driving licence. The Hon'ble Apex Court declined to accept the plea so raised by the appellant. I deem it appropriate to reproduce herein below the observations made and the conclusion recorded by the Hon'ble Apex Court in Para 11 and 12 of the said judgment which read thus:

*“11. The question is: whether the fact that the offending vehicle bearing No.DIL-5955 was duly insured by respondent No.2 Insurance Company would per se make the Insurance Company liable? This Court in the case of **National Insurance Co. Ltd.** (supra), has noticed the defences available to the Insurance Company under Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988. The Insurance Company is entitled to take a defence that the offending vehicle was driven by an*

unauthorised person or the person driving the vehicle did not have a valid driving licence. The onus would shift on the Insurance Company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorised by him to drive the vehicle and was having a valid driving licence at the relevant time. In the present case, the respondent No.1 owner of the offending vehicle merely raised a vague plea in the Written Statement that the offending vehicle DIL-5955 was being driven by a person having valid driving licence. He did not disclose the name of the driver and his other details. Besides, the respondent No.1 did not enter the witness box or examine any witness in support of this plea. The respondent No.2 Insurance Company in the Written Statement has plainly refuted that plea and also asserted that the offending vehicle was not driven by an authorised person and having valid driving licence. The respondent No.1 owner of the offending vehicle did not produce any evidence except a driving licence of one Joginder Singh, without any specific stand taken in the pleadings or in the evidence that the same Joginder Singh was, in fact, authorised to drive the vehicle in question at the relevant time. Only then would onus shift, requiring the respondent No.2 Insurance Company to rebut such evidence and to produce other evidence to substantiate its defence. Merely producing a valid insurance certificate in respect of the offending Truck was not enough for the respondent No.1 to make the Insurance Company liable to discharge his liability arising from rash and negligent driving by the driver of his vehicle. The

Insurance Company can be fastened with the liability on the basis of a valid insurance policy only after the basic facts are pleaded and established by the owner of the offending vehicle - that the vehicle was not only duly insured but also that it was driven by an authorised person having a valid driving licence. Without disclosing the name of the driver in the Written Statement or producing any evidence to substantiate the fact that the copy of the driving licence produced in support was of a person who, in fact, was authorised to drive the offending vehicle at the relevant time, the owner of the vehicle cannot be said to have extricated himself from his liability. The Insurance Company would become liable only after such foundational facts are pleaded and proved by the owner of the offending vehicle.

12. In the present case, the Tribunal has accepted the claim of the appellants. It has, however, absolved the respondent No.2 Insurance Company from any liability for just reasons. The High Court has also affirmed that view. It rightly held that there can be no presumption that Joginder Singh was driving the offending vehicle at the relevant time."

28. Considered the facts involved in the present case in light of the facts involved in the aforesaid case before the Hon'ble Apex Court, the case of the insurance company appears to be on a better footing. In the case before the Hon'ble Apex Court, the insurance company had just raised a plea that the offending vehicle was not driven

by a person having valid licence and except denying the said plea, no more evidence was adduced on its behalf. In the said matter the owner of the offending vehicle had placed on record the driving licence of one Joginder Singh and except that there was no pleading or any evidence from the side of the owner of the offending truck in the said matter. In the facts of the said case it has been held by the Hon'ble Apex Court that the owner was under an obligation to prove the basic facts within his knowledge that the driver of the offending vehicle was authorized by him to drive the vehicle and he was having a valid driving licence at the relevant time. The Hon'ble Apex Court has further held that the onus would shift on the insurance company only after the owner of the offending vehicle pleads and proves that the driver of the offending vehicle was authorized by him to drive the vehicle and was having a valid driving licence at the relevant time. In the said matter a very vague plea was raised by the owner in it written statement that the offending vehicle was driven by a person having valid driving licence. He, however, did

not disclose the name of the driver and his other details. Besides, he did not enter the witness box or examined any witness in support of his plea. In the above circumstances, the Hon'ble Apex Court held that the owner of the offending truck did not produce any evidence except a driving licence of one Joginder Singh without any specific stand taken in the pleading or in the evidence that the same Joginder Singh was in fact authorized to drive the vehicle in question at the relevant time. The Hon'ble Apex Court further held that had the owner brought on record any such evidence only then the onus would have been shifted on the insurance company to rebut such evidence and produce other evidence to substantiate its defence.

29. In the instant matter, as I noted herein above, a specific plea was raised by the insurance company in its written statement that respondent no.3 Sudhakar Vishwanath Bankar, who was driving the vehicle at the time of the accident was not holding the valid and effective driving licence. No doubt in the joint written statement submitted by the owner and the driver of the offending

truck, it has been averred that at the time of accident, respondent no.3 was having valid and effective driving licence. As has been elaborately discussed by me herein above, in order to prove the defence raised by it, the insurance company examined Shri Milind Sasane, Junior Clerk from the RTO Office at Aurangabad and brought on record through his evidence the fact that on the date of accident, respondent no.3 was not holding any driving licence and that his driving licence was not renewed after 17.01.2014.

30. In fact, as has been held by the Hon'ble Apex Court in the case of *"Pappu and Ors Vs. Vinod Kumar Lamba and Anr"* (cited supra) when a specific plea was raised by the insurance company in its written statement that respondent no.3, who was driving the offending vehicle at the time of accident was not holding valid driving licence on the date of accident, the primary burden to prove that respondent no.3 was holding a valid driving licence was on respondent no.3 himself and equally on respondent no.2 i.e. owner of the offending vehicle. As has been held by the Hon'ble Apex Court, the onus would have shifted on the

insurance company only after respondent no.2 or respondent no.3 prove that respondent no.3 was holding a valid driving licence on the date of accident.

31. To its credit, the insurance company not only took a plea but has substantiated the same by adducing the evidence of Milind Sasane, Junior Clerk from the RTO Office at Aurangabad. The said witness was not cross-examined by the owner or the driver of the offending vehicle. His evidence has thus gone unchallenged. Admittedly, neither the owner nor the driver of the offending truck i.e. respondent no.2 and 3 has adduced any evidence on their behalf. Respondent no.2 or respondent no.3, none of them did file on record the driving licence evidencing that on the date of accident respondent no.3 was holding a valid driving licence to drive the offending truck.

32. In the aforesaid circumstances, unhesitatingly it can be held that the insurance company has beyond any doubt proved that respondent no.3 Sudhakar Vishwanath Bankar who was driving the offending truck on the date of

accident was not holding a valid driving licence. The appellant-insurance company thus has sufficiently proved that respondent no.2 i.e. owner of the offending vehicle committed the breach of terms and conditions of policy.

33. The next question for my consideration is "whether the insurance company can be completely exonerated or can be asked at the first instance to pay the amount of compensation to the claimants and then to recover the same from the owner of the vehicle as was urged by Advocate Shri Mayure, the learned counsel appearing for the claimants".

34. In the case of "Pappu and Ors Vs. Vinod Kumar Lamba and Anr" (cited supra), the Hon'ble Apex Court was required to deal with the aforesaid issues also. As has been observed by the Hon'ble Apex Court in the case of **"National Insurance Co. Ltd Vs. Swarn Singh and Ors, (2004) 3 SCC 297"**, it was contended by the insurance company that once the defence taken by the insurer is accepted by the Tribunal, it is bound to discharge the insurer and fix the liability only on the owner and/or the driver of the offending vehicle. The Hon'ble Apex

Court, however held that even if the insurer succeeds in establishing its defence, the Tribunal or the Court can direct the insurance company to pay the award amount to the claimants and in turn recover the same from the owner of the vehicle.

35. In the present case, it is not in dispute that the offending truck was insured with the appellant-insurance company and the insurance policy was in force on the date of accident. In the circumstances, there shall be no doubt that the law laid down by the Hon'ble Apex Court in the case of "*National Insurance Company Ltd Vs. Swarn Singh and Ors*" (cited supra) would apply to the facts of the present case.

36. In the case of "*National Insurance Company Limited Vs. Jarnail Singh and Ors*" (cited supra), the defence of the insurance company was that the driver of the offending vehicle was not holding valid driving licence on the date of accident. The Hon'ble Apex Court has held in that matter that the insurance company had established that the policy condition was vitiated. However, relying upon its earlier

judgment in the case of **"New India Assurance Company Vs. Kamla, (2001) 4 SCC 342"**, the Apex Court held the insurance company liable to pay the compensation to third party on the strength of the valid insurance policy issued in respect of the offending vehicle and permitted the appellant-insurance company to recover the said amount from the insured. The facts in the present case since are similar to the facts in the aforesaid case, the same course has to be followed even in the present case.

37. Now about the objection raised by the appellant-insurance company as to the quantum of compensation.

38. In Motor Accident Claim Petition No. 477 of 2015, the Tribunal has awarded the compensation of Rs. 52,66,672/- to the legal heirs of deceased Rambhau Anjaan. Deceased Rambhau Anjaan was aged about 30 years on the date of accident and was serving as Junior Technician. To prove the salary income of the deceased, claimants adduced the evidence of Shri Amol Kedare, the Assistant Manager of Endurance Technologies Limited where

the deceased was serving as Junior Technician. Through the evidence of said Amol Kedare, the salary slip of deceased Rambhau was duly proved. Accordingly, the Tribunal held the income of deceased Rambhau to the tune of Rs. 22,554/-. The Tribunal, in the said proved income of deceased added 50% of the said income towards future prospects of the deceased so as to determine the amount of dependency compensation. The Tribunal deducted $1/5^{\text{th}}$ of the amount towards the personal and living expenses of deceased and by applying the multiplier of 16 arrived at the amount of dependency compensation. The Tribunal added the amount of Rs. 70,000/- towards non-pecuniary loss and eventually held the claimants entitled for compensation as mentioned herein above.

39. Shri Mohit Deshmukh, the learned counsel appearing for the appellant-insurance company submitted that the Tribunal has erred in deducting $1/5^{\text{th}}$ of the monthly income of deceased towards his personal and living expenses whereas, having regard to the number of dependents on the income of deceased, $1/4^{\text{th}}$ of his total income was liable to be deducted. The learned counsel further

submitted that the Tribunal has not considered even the statutory deductions from the salary income of the deceased while determining the amount of dependency compensation. The learned counsel submitted that if the projected salary of deceased, on the basis of which the Tribunal has determined the amount of compensation is considered, the same was certainly worth to be brought in tax net. The learned counsel submitted that considering the income of deceased Rambhau, income tax at the rate of 10% of the taxable income was liable to be deducted. The learned counsel submitted that the income tax, calculated at the said rate as well as the Profession Tax at the rate of Rs. 200 per month, would be liable to be deducted from the salary income of the deceased.

40. As against it, according to Shri P.C. Mayure, the learned counsel appearing for the claimants, the Tribunal has correctly assessed the amount of compensation and no interference was required in the judgments and awards so passed.

41. From the evidence on record there seems

no dispute that the proved monthly salary of deceased Rambhau was Rs. 22,554/-. While determining the amount of dependency compensation, 50% of his said income will have to be added in his aforesaid proved monthly income towards the future prospects. The monthly income then will be Rs. 33,831/- ($22,554 + 11,277 = 33,831/-$) which annually would come to Rs. 4,05,972/-. Even if it is assumed that in the relevant period, the income tax was not liable to be charged on the income of first Rs. 1,00,000/- and some exemptions were permissible, there is reason to believe that the income tax would have been payable on the income of Rs. 2,00,000/- at the rate of 10% which comes to Rs. 20,000/-. It monthly comes to Rs. 1,667/- Profession Tax at the rate of Rs. 200/- per month was also liable to be deducted. The amount of Rs. 1,867/- per month was liable to be deducted ($1,667 + 200 = \text{Rs. } 1,867$).

42. The learned counsel for the insurance company relied upon the judgment of the Hon'ble Apex Court in the case of **"Shyamwati Sharma and Ors Vs. Karam Singh and Ors, 2010 AIR SCW 4391"** to support his contention that the income tax was

liable to be deducted from the salary income of deceased while calculating the amount of compensation. As noted above, the total amount of Rs. 1,867/- was liable to be deducted from the monthly income of Rs. 33,831/-, after deducting which monthly salary for the purpose of determining dependency compensation comes to Rs. 31,964/-. From the said amount $1/4^{\text{th}}$ of it i.e. Rs. 7,991/- would be liable to be deducted towards the personal and living expenses of deceased. After the said deduction, the amount remains of Rs. 23,973/-, on the basis of which the dependency compensation can be arrived at. Having regard to the age of deceased, the appropriate multiplier would be of 16. By applying the same, the amount of compensation comes to Rs. 46,02,816/-. In addition to this the claimants are also entitled to the compensation of Rs. 70,000/- towards non-pecuniary damages. Total amount of compensation thus comes to Rs. 46,72,816/-. In the facts and circumstances of the case, it appears to me that this will be the just and fair compensation payable to the claimants in Motor Accident Claim Petition No. 477 of 2015. The impugned award,

therefore, needs to be modified to the aforesaid extent.

43. In so far as other six petitions are concerned, which are filed by the persons injured in the alleged accident, though it was argued by Shri Deshmukh, the learned counsel appearing for the appellant-insurance company that unreasonable compensation has been awarded to them by the Tribunal without any supportive evidence therefore, on perusal of the evidence in all those matters it does not appear to me that in any of the said case amount of compensation awarded by the Tribunal is excessive or unreasonable. The objection raised by the appellant-insurance company in that regard, therefore, does not carry any substance and deserves to be rejected.

44. For the reasons recorded above, the following order is passed:

ORDER

- i) The claimants in Motor Accident Claim Petition No. 477 of 2015 are held entitled to the total compensation of Rs. 46,72,816/- instead of Rs. 52,66,672/-.

- ii) In so far as other claim petitions are concerned, the amount of compensation as has been awarded by the Tribunal is maintained as it is.
- iii) The owner and driver of the offending truck namely Mujeeb Khan s/o Aref Khan and Sudhakar s/o Vishwanath Bankar, who are respondent nos. 2 and 3 in the original claim petitions are jointly and severally held liable to pay the amount of compensation to the claimants as has been awarded by the Tribunal in the respective claim petitions and in First Appeal No. 1983 of 2018 arising out of Motor Accident Claim Petition No. 477 of 2015 as modified by this Court, together with interest at the rate of 9% p.a. from the date of filing of the petitions till the actual realization of the said amount.
- iv) The amount of compensation with interest thereon as determined by the Tribunal and as modified by this Court in First Appeal

No. 1983 of 2018 shall be paid by the appellant-insurance company at the first instance with liberty to it to recover the same in accordance with law from the owner of the vehicle i.e. respondent no.2 in all the claim petitions.

- v) The apportionment of the amount of compensation amongst the claimants in Motor Accident Claim Petition No. 477 of 2015 and the orders as about the investments of the amounts in the name of minors, is maintained as it is.
- vi) The respective claimants may withdraw the amount of compensation deposited by the appellant-insurance company in this Court as per the decision rendered by this Court in the present appeals.
- vii) Balance amount in so far as First Appeal No. 1983 of 2018 arising out of Motor Accident Claim Petition No. 477 of 2015 is concerned be refunded to the appellant-insurance company.

viii) The awards be drawn accordingly.

ix) The appeals thus stand allowed in the
aforesaid terms.

(P.R. BORA, J.)

Mujaheed//