

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

FIRST APPEAL NO. 567 OF 2019

Swapnil S/o Suresh Mandlik,
Age; 31 years, Occ; Driver,
R/o; Kasara Mumala,
Tq. Sangamner,
Dist. Ahmednagar.

...APPELLANT
(Original Opp. No. 2)

VERSUS

1. The Branch Manager,
The New India Insurance Co. Ltd.,
Sangamner, Tq. Sangamner,
Dist. Ahmednagar.

2. Sonyabapu Vitthal Kedar,
Age; 31 years, Occ; Driver,
R/o; Vasunde Shikri, Tq. Parner,
Dist. Ahmednagar.

...RESPONDENTS
(Orig. Oppn. &
Orig. Claimant)

WITH

FIRST APPEAL NO. 568 OF 2019

Swapnil S/o Suresh Mandlik,
Age; 31 years, Occ; Driver,
R/o; Kasara Mumala,
Tq. Sangamner,
Dist. Ahmednagar.

...APPELLANT
(Original Opponent
No. 2)

VERSUS

1. The Branch Manager,
The New India Insurance Co. Ltd.,
Sangamner, Tq. Sangamner,
Dist. Ahmednagar.

2. Khema d/o Waman Kedar,
Age; 46 years, Occ; Agril,
R/o; Vasunde Shikri, Tq. Parner,
Dist. Ahmednagar.

...**RESPONDENTS**

(Orig. Oppn. &
Orig. Claimant)

.....

Shri. K.M. Shermale, Advocate for Appellant
Shri. M.R. Deshmukh, Advocate for Respondent
No.1
Respondent No. 2 is served.

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CORAM : SUNIL K. KOTWAL, J.

Date of Reserving Judgment : 25/04/2019

Date of Pronouncing Judgment : 30/04/2019

JUDGMENT :

First Appeal No. 567 of 2019 is preferred against the judgment and award passed by the Motor Accident Claims Tribunal, Sangamner (hereinafter referred to as the 'Tribunal') in Motor Accident Claim Petition No. 3 of 2013, (hereinafter referred to as the 'MACP') and First Appeal No. 568 of 2019 is preferred against the judgment and award passed by the same Tribunal in MACP No. 2 of 2013. The appellant is the original Opponent No. 2, who is owner as well as driver of the tempo No. MH-17-AG-1976 (hereinafter referred to as the 'offending vehicle'). Respondent No. 1 is the

insurer of the offending vehicle and respondent No. 2 is the original claimant in both appeals. (hereinafter the parties are referred in accordance with their status in the original proceedings as Claimant, Insurer of the offending vehicle, owner as well as driver of the offending vehicle).

2. In these appeals the parties have not not disputed the quantum of compensation awarded and finding given by the Tribunal regarding the rash and negligent driving of the tempo by Opponent No. 2, as well as contributory and composite negligence of claimant in MACP No. 3 of 2013, who was the driver of the motorcycle involved in the accident. Even the parties have not disputed the date of accident as 31.12.2011, involvement of offending vehicle as well as motorcycle of claimant Sonyabapu Vitthal Kedar, in MACP No. 3 of 2013. Even the insurance of offending vehicle with original Opponent No. 1, the Insurance Company is admitted fact at the stage of appeal.

3. The only short point for consideration is that, 'Whether on the date of accident, the driver of the offending vehicle held valid and effective driving license to drive the offending vehicle and whether the insurer of the offending vehicle is liable to indemnify the owner of the offending vehicle ?'.

4. Heard Shri. K.M. Shermale, learned counsel for appellant in both appeals (owner and driver of offending vehicle) and Shri. M.R. Deshmukh, learned counsel for Respondent No.1 (insurer of the offending vehicle).

5. Learned counsel for appellant submits that the Tribunal has exonerated the insurer of the offending vehicle only for the reasons that the driver of offending vehicle did not hold valid and effective driving license, on the date of accident i.e. on 31.12.2011. He submits that the finding of the Tribunal is absolutely erroneous, because the driving license of the driver of offending vehicle placed on record, shows that on 14.9.2006, the driver obtained driving license

from the Deputy Regional Transport Officer, Shrirampur (hereinafter referred to as "Dy. RTO"), to drive Light Motor Vehicle (Transport), (hereinafter referred to as "LMV (TR)"), Motorcycle with Gear and Three Wheeler Goods Vehicle. According to learned counsel for driver and owner of offending vehicle, the driving license to drive Transport Vehicle is renewed up to 18.1.2015. The offending vehicle is the LMV (TR).

6. His contention is that once license to drive LMV (TR) is obtained, it includes license to drive LMV (NT), which is valid up to 13.09.2016 under Section 14 (2)(b) of the Motor Vehicles Act. Therefore, in view of the law settled by the Apex Court in **"Mukund Dewangan v. Oriental Insurance Company Limited"** [(2017) 14 SCC 663], the driver of the offending vehicle being holder of license to drive LMV (TR) vehicle, did not commit breach of condition of policy of the insurance on 31.12.2011 i.e. on the date of accident. Relying on **"Compaq International and another v. Bajaj**

Allianz General Insurance Company Limited and Another" [(2018) 6 Supreme Court Cases 342], he submits that though driving license was issued on 14.9.2006, it would be valid till 2026, in view of law settled by the Apex Court in above cited authorities. He also placed reliance on **"National Insurance Company Ltd., v. Swaran Singh and Others"** [(2004) 3 Supreme Court Cases 297], to substantiate his contention even in the event of breach of condition of policy of insurance, on account of non holding of valid driving license, order to pay and recover order can be passed against the insured and the insurer of the offending vehicle. He has also placed reliance on **"M.S.Bhatt v. National Insurance Company Ltd., [Civil Appeal 3322 of 2019 decided by Supreme Court in Civil Appeals on 29.03.2019]"**.

7. Learned counsel for insurer of the offending vehicle has drawn my attention towards the evidence of Nishikant Bhaskar Donde (DW 1), who is employee of RTO Office, Shriramplur and submits that from the evidence of Nishikant Donde

(DW 1), it becomes clear that driving license issued in favour of driver of offending vehicle on 14.9.2006, was valid only up to 13.9.2009 and it was renewed only on 19.01.2012. Therefore, on the date of accident i.e. 31.12.2011, the driver of the offending vehicle did not hold valid and effective driving license.

8. Next contention of the learned counsel for the insurer is that the Opponent No. 2 is the owner as well as driver of the offending vehicle, therefore, he was well aware that on the date of accident, he did not hold valid and effective driving license to drive LMV. Thus, the owner of the offending vehicle has committed 'fundamental breach of policy of the insurance'. So also this appeal being filed by the owner of the offending vehicle and not by the third party claimant, therefore, the ratio of **"National Insurance Company Ltd., v. Swaran Singh and Others"** [supra] is not applicable in the case at hand.

9. The next contention of the learned counsel for insurer is that in the case at hand,

the ratio of **"Mukund Dewangan v. Oriental Insurance Company Limited"**[supra], is not applicable, as on the date of accident, the driver of offending vehicle did not hold valid and effective driving license to drive LMV of any category. He has pointed out that even in **"M.S.Bhatt v. National Insurance Company Ltd."**[supra] and **"Compaq International and another v. Bajaj Allianz General Insurance Company Limited and Another"**[supra], the matter before the Supreme Court was against the judgment and order passed by the State Consumer Disputes Reddressal Commission, therefore the ratio of these both cases is distinguishable on facts. He placed reliance on **"Pappu and Others v. Vinod Kumar Lamba and Another"** [(2018) 3 Supreme Court Cases 208].

10. In the case at hand, the only point for consideration is 'whether on the date of accident, the owner & driver of the offending vehicle held valid and effective driving license, to drive the said tempo and if, the finding is "No", then what would be its effect ?. In the case at hand, on

behalf of the owner and driver of the offending vehicle by filing Written Statement, only defence was raised by the owner and driver that as the driver of offending vehicle held valid and effective driving license on the date of accident, the entire liability to pay compensation shall be fastened on the insurer of the vehicle.

11. It is to be noted that in the case at hand, neither the owner cum driver has examined any witness, to substantiate his contention, nor he himself entered into the witness box. The evidence of claimant himself in both petitions is of no help to the owner of the offending vehicle to prove that on the date of accident the driver held valid and effective driving license. The only extract of driving license is issued by Dy. RTO, Shrirampur (Exh. 25), is placed on record by Opponent No. 2. After going through the copy of the extract of driving license, it becomes clear that the date of birth, of Opponent No. 2 is 27.4.1986. On 14.9.2006, driving license was issued by Dy. RTO, Shrirampur, which authorizes Opponent No. 2 to drive 1) Motorcycle with gear,

2) LMV Transport Goods Vehicle and 3) LMV Three Wheeler Goods Vehicle. Thus, the extract also shows that the validity of Non Transport Vehicle is up to 13.9.2026 and the validity of Transport Vehicle is up to 18.1.2015. However, the last column of this extract of driving license shows that the driving license was renewed on 19.1.2012. However, it cannot be ignored that under Section 14 (2)(a) of the Motor Vehicles Act, 1988, driving license issued or renewed under this Act shall, in the case of a license to drive transport Vehicle, be effective for the period of three years, and under Section 14 (2) (b) in the case of any other license, if the holder of license, has not attended 50 years, on the date of issue or renewal of the license, it will be effective for the period of 20 years, from the date of such issue or renewal or until the date on of which the person attains the age of 50 years, whichever is earlier. For clarification, Section 14 of the Motor Vehicles Act, is reproduced as under :

"14. Currency of licenses to drive motor vehicles. :-

(1) A learner's license issued under this Act shall, subject to the other

provisions of this Act, be effective for a period of six months from the date of issue of the license.

(2) A driving license issued or renewed under this Act shall, -

a) in the case of a license to drive a transport vehicle, be effective for a period of three years;

Provided that in the case of license to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus; and

(b) in the case of any other license, -

(i) if the person obtaining the license, either originally or on renewal thereof, has not attained the age of fifty years on the date of issue or, as the case may be, renewal thereof,--

(A) be effective for a period of twenty years from the date of such issue or renewal; or

(B) until the date on which such person attains the age of fifty years,

whichever is earlier;

(ii) if the person referred to in sub-clause (i) has attained the age of fifty years on the date of issue or, as the case may be, renewal thereof, be effective for a

period of five years from the date of such issue or renewal:

Provided that every driving license shall, notwithstanding its expiry under this sub-section, continue to be effective for a period of thirty days from such expiry."

12. Bare glance at Section 14 (2) (a) of the Motor Vehicles Act, 1988, makes it clear that as the driving license of Opponent No. 2 was issued on 14.9.2006, to drive LMV (TR) vehicle, it will be effective only for the period of three years, from the date of issue of license. Thus, LMV (TR) driving license expired on 13.9.2009. Only driving license to drive motorcycle with gear being for the category of vehicle, which falls under Section 14 (2) (b) of the Motor Vehicles Act, 1988, will be effective for 20 years i.e. on 13.9.2026, as the Opponent No. 2 was below the age of 50 years on the date of issuance of the license.

13. The insurer of offending vehicle on his behalf has examined one Clerk from Dy. RTO Office, Shrirampur, namely Nishikant Daunde (DW 1). This witness has duly proved the extract of driving

license of Opponent No. 2 (Exh. 55), with the transaction history. This witness has categorically made it clear that the driving license held by Opponent No. 2, to drive LMV (TR), expired after three years, from 14.9.2006 and it was renewed on 19.9.2012. This witness has made it clear that on the date of accident, Opponent No. 2 did not hold valid and effective driving license to drive LMV (TR). It is to be noted that this witness was not at all cross-examined by the learned counsel for Opponent No. 2. The extract of driving license (Exh. 55) further makes it clear that on 14.9.2006, in Non Transport category, license was issued to Opponent No. 2 only to drive motorcycle with gear, which is valid up to 13.9.2026. However, driving license to drive LMV (TR) was renewed only on 19.1.02012, which expired on 13.9.2009. This extract of driving license, no where, shows that Opponent No. 2 obtained LMV (NT) driving license on 14.9.2006. It is not acceptable that once driving license to drive LMV (TR) is obtained, it also includes license to drive LMV (NT), which is valid for next 20 years under Section 14 (2) (b) of the Motor

Vehicles Act, 1988. Therefore, in any case, it cannot be held that driving license of Opponent No. 2, to drive LMV falls under the category of Section 14 (2) (b) of the Motor Vehicles Act, to extend the validity of LMV driving license up to 13.9.2026.

14. Thus, by no stretch of imagination, it can be held that on the date of accident i.e. on 31.12.2011, Opponent No. 2 held effective and valid driving license to drive LMV. In the case at hand, LMV driving license of Opponent No. 2 was not in force on 31.12.2011, after its expiry on 13.9.2009. In the case at hand, the dispute is not regarding Class of offending vehicle, whether it is LMV or HMV or Transport or Non Transport Vehicle. On the other hand, un-disputedly, offending vehicle is LMV. The case in the hand is of "NO LMV license" on the date of accident. Therefore, the ratio of **"Mukund Dewangan v. Oriental Insurance Company Limited"** [supra] is not at all applicable in the case at hand. So also, in **"M.S.Bhati v. National Insurance**

Company Ltd.,[supra], it was not disputed that the driver had license to drive LMV, which was valid on the date of accident. Therefore, this authority is distinguishable on facts. So also in **"Compaq International and another v. Bajaj Allianz General Insurance Company Limited and Another"** [supra], the driving license of the driver was issued on 27.2.1998, to drive Motor Car and Jeep only. The accident occurred on 12.11.2005. The Apex Court by considering Section 14 (2) (b) of the Motor Vehicles Act, 1988, held that driving license of the driver of Car involved in that accident was valid up to 29.4.2011 as the driver would have been attained the age of 50 years on 30.4.2021. The ratio of this authority is distinguishable on facts, for the reasons that in the case at hand, since the first date of obtaining driving license on 14.9.2006, Opponent No. 2 did not obtain driving license to drive LMV (NT) category. He obtained license only to drive LMV (TR) category and Motorcycle with gear. Thus, the case of opponent no. 2 does not fall under Section 14 (2) (b) of the MV Act. I hold that the

ratio of this authority, is not at all applicable in the case at hand.

15. In the circumstances, I have no hesitation to hold that the insurer of the offending vehicle has duly proved that on the date of accident, Opponent No. 2 driver/owner of the offending vehicle did not hold valid and effective driving license to drive LMV. Therefore, the insurer of the offending vehicle was rightly exonerated. However, it cannot be ignored that **"National Insurance Company Ltd., v. Swaran Singh and Others"**[supra], the Apex Court has summarized its findings on various issues as under :

"18. Further, in para 110, the Court in National Insurance Co. Ltd. observed thus :

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

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

have to be so interpreted as to effectuate the said object.

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

(iii) The breach of policy condition e.g. disqualification of driver or invalid driving license of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving 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 duly licensed driver or one who was not qualified to drive at the relevant time.

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

(v) The Court cannot lay down any criteria as to how the said burden would be discharged, inasmuch

as the same would depend upon the facts and circumstance of each case.

(vi) Even when the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid license by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving license is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.

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

(viii) – (ix) * * *

(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) reads with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the

Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

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

16. In the case at hand, on the date of accident, the driver of the offending vehicle did not hold valid and effective driving license to driving offending vehicle. Opponent No. 2, being driver as well as the owner of the offending

vehicle, was fully aware that on the date of accident, he did not hold valid and effective driving license to drive offending vehicle. Even, then, Opponent No. 2 drove offending vehicle and gave dash to the motorcycle of the claimant. These facts on record clearly indicate that the owner of the offending vehicle was guilty of negligence and failed to exercise reasonable care, in the matter of fulfilling the condition of the policy of insurance, regarding use of vehicle by duly licensed driver. Therefore, this breach of condition of policy of insurance being "fundamental breach", the insurer of the offending vehicle, cannot be compelled to indemnify the Opponent No. 2. Therefore, "to pay and recover" order cannot be passed against the insurer of the offending vehicle. I have no hesitation to hold that the learned Tribunal has rightly exonerated the insurer of the offending vehicle from any liability to pay compensation to the claimant.

17. Before parting with the judgment, I must make it clear that the ratio in **"Pappu and Others v. Vinod Kumar Lamba and Another"**[supra], relied

on by the learned counsel for the insurer is distinguishable on facts, for the reason that in the case at hand, Opponent No. 2 has duly pleaded that the offending vehicle was being driven by the driver holding valid and effective driving license. Accordingly, I hold that the insurer has duly proved "fundamental breach" of condition of policy of the insurance of offending vehicle and therefore, no liability can be fastened against the insurer of the offending vehicle. I hold that the Tribunal has rightly fastened entire liability to pay the compensation on Opponent No. 2, who is owner and driver of the offending vehicle. In the result these First Appeal Nos. 567 of 2019 and First Appeal No. 568 of 2019 being devoid of merits are dismissed.

18. Parties to bear their respective costs of the appeals.

19. The effect and operation of the order passed by this Court in First Appeal No. 567 of 2019 and First Appeal No. 568 of 2019 is stayed for the period of ten weeks from today. The

statutory deposit amount be transmitted to the concerned Tribunal for its disbursement, after ten weeks.

(**SUNIL K. KOTWAL**)
JUDGE

mahajansb/