

IN THE HIGH COURT OF BOMBAY AT GOA  
**FIRST APPEAL NO. 50 OF 2011**

National Insurance Co. Ltd.

Subraya Chambers, 1<sup>st</sup> Floor,  
Francisco Luis Gomes Road, Vasco- ... Appellant  
da-Gama, Goa.

Versus

- 1 Shri Yuraj Yadu Sawant  
S/o. Yadu Sawant, aged 28  
years, r/o. H. No. 547,  
Rambhuvan- Wada,  
Kumbharjua, Ilhas- Goa.
- 2 Shri Shantaram Ganesh  
Gawade,  
S/o. Ganesh Gawade, aged 45  
years, r/o. H. No.211/A,  
Ganpati- Wada, Candola, Marcel  
– Goa.
- 3 Shri Raghunath Jaiwant Sawant,  
s/o. Jaiwant Sawant, aged 34  
years, r/o. H. No.40, Surla,  
Rumad Wada, Bicholim – Goa.
- 4 Shri Devanand alias Devendra J.

Phadte alias Shirodkar,

Prop. Of Shrikant Motor Driving  
School, s/o. Jaiwant Phadte,  
aged 32 years, R/o. H.No.637,  
Thapan- Wada, Kumbharjua, ... Respondents  
Ilhas- Goa.

Shri E. Afonso, Advocate for the appellant.

Shri J. Godinho, Advocate for the respondent no.2.

**Coram:- SMT. M.S. JAWALKAR, J.**

**Reserved on : 17<sup>th</sup> September,2020.**

**Pronounced on : 29<sup>th</sup> September,2020.**

### **JUDGMENT :**

1. The present appeal is filed by the Insurance Company against the Judgment and Award in Claim Petition No.14 of 2008 dated 07/01/2011 of Motor Accident Claims Tribunal, North, Panaji holding the appellant Insurance Company along with the respondent no.2 driver of the vehicle at the time of accident, the respondent no.3- the instructor and the respondent no.4

owner liable to pay the compensation to the claimant i.e. the respondent no.1.

2. Shri Afonso, learned Counsel for the appellant Insurance Company submitted that the driver respondent no.2 was the driver of the vehicle at the time of accident, who was not holding an effective license at the time of the accident. As such there was breach of terms and conditions of the policy and therefore, the appellant would not be liable to pay any compensation.

3. It is pointed out that the accident took place at around 8.45 hours on 28/02/2007 and the respondent no.2 secured the learning license on the same day from Mahiti Ghar. The office of Mahiti Ghar itself used to open at around 10.00a.m.. This position is not disputed. However, attempts were made by the claimant for no reason to dispute the time of accident in oral evidence as

8.45a.m. He deposed in cross that the accident took place at 10.30 hours when no question to that effect about the time of accident put to him. It was pointed out that the time mentioned in the FIR, Complaint and in the Claim Petition itself which is at page No.15 of the paper book is 8.45hours and deliberately in evidence the claimant deposed that the accident took place at 10.30 hours just because to claim the amount against the Insurance Company and to show that there was no breach of any conditions of the policy. It is submitted that the respondent no.2 was not having effective license at the time of accident though he was having the license on that day and therefore, the appellant cannot be held liable to pay the compensation.

4. The learned Counsel for the appellant pointed out the terms/conditions from the policy that person entitled to drive including Insured provided that a person driving

holds an effective driving license at the time of the accident and is not disqualified from holding or obtaining such a license. Provided also that the person holding an effective Learner's License may also drive the vehicle and such a person satisfies the requirements of Rule 3 of Central Motor Vehicle Rules, 1989.

5. It is further contended that the respondent no.2 was the driver of the vehicle at the time of accident learning to drive the vehicle. Therefore, he was required to hold an effective learning license authorising him to drive the vehicle as required under Rule 3 of the Central Motor Vehicle Rules, 1989. Such learner's license is to be granted under Section 8 of the Motor Vehicles Act, 1988 by the Licensing Authority. Rule 3 laid down the essential conditions to enable a person learning to drive a vehicle. It was the duty of the owner of the vehicle respondent no.4 as well as the instructor (if it is a driving school

vehicle) to verify that the person sitting in the driver's seat is holding a valid and effective driving license. Admittedly, at 8.45 hours the respondent no.2 was not having any effective learning license. In spite of this fact the owner and the instructor allowed him to sit in the driver's seat which is contrary to the terms and conditions of the policy. He obtained the same on the same day i.e. on 28/02/2007 but after 9.30 hours or so as per the deposition of the Licensing Authority.

6. It is further submitted that the learned Tribunal totally erred in answering the issue no.4 regarding non-holding of the learner's license at the time of accident in the negative. It came on record that Mahiti Ghar opens at around 9.30am and therefore there was no question of the respondent no.2 having effective learning license at around 8.45 hours i.e. at the time of accident. It is submitted that the learned Tribunal failed to appreciate

that learner's driving license should be at the time of the accident and not on the day of accident. From the documents it is clearly established that the accident took place at 8.45am. There is a vast difference between "time of accident" and "on the day of accident". It is vehemently argued that if such interpretation is allowed then every person not having learner's license at the time of accident may then run to obtain the learner's license after the accident. In such circumstances, the learned Tribunal ought to have passed an order to pay and recover but not to hold liable jointly and severally along with the respondent nos.2, 3 and 4. Accordingly, it is submitted that the appeal be allowed to the extent of payment of compensation payable to the claimant by the appellant be allowed to pay and then to recover the same from the respondent nos.2 and 4- the owner and driver of the vehicle. He relied on the citation of **Oriental Insurance Company Limited v/s. Nanjapan** [(2004)

13 SCC 224] in support of his contention that Insurance Company is entitled to recover the amount from the driver and owner, if there is breach of terms and conditions of the policy.

7. As against this, Shri J. Godinho, learned Counsel for the respondent no.2 submitted that Section 3(2) of the Motor Vehicle Act,1988 is not applicable to a person who is learning or receiving instructions. For the sake of convenience Sections 3(1) and 3(2) of the Motor Vehicle Act are reproduced as below:

*3(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than [a motor cab or motor cycle] hired for his own use or rented under any scheme made under sub-section (2)*

*of section 75] unless his driving licence specifically entitles him so to do.*

*3(2) The conditions subject to which subsection (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.*

8. He also pointed out that Section 8 in regard to grant of learner's license which reads as under :

*"Any person who is not disqualified under Section 4 for driving a motor vehicle and who is not for the time being disqualified for holding or obtaining a driving licence may, subject to the provisions of Section 7, apply to [any of the licensing authority in the State] for the issue of learner's license in the prescribed manner."*

9. He further pointed out Rule 3 of The Central Motor Vehicle Rules, 1989, which provides that

*The provisions of sub-section (1) of section 3 shall not apply to a person while receiving instructions or gaining experience in driving with the object of presenting himself for a test of competence to drive, so long as—*

*(a) such person is the holder of an effective learner's licence issued to him in Form 3 to drive the vehicle;*

*(b) such person is accompanied by an instructor holding an effective driving License to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle; and*

*(c) -----*

He further submitted that the instructor was holding valid driving license which has come on record. As Section 3(1) is not applicable to a person receiving instructions, no question of his or owner's liability to pay.

Moreover, the "Training School" vehicle is having peculiar features. The instructor is having a control of vehicle. As the instructor was having effective driving license there is no breach of terms of policy.

10. Conjoint reading of these Sections and Rules of The Motor Vehicle Act and The Central Motor Vehicle Rules, it is abundantly clear that a learner is excluded from the Act. In view thereof, the Insurance Company cannot claim that the respondent no.2 was driving a vehicle at a particular time for the purpose of indemnifying the insurance claim towards the third party.

11. The learned Counsel for the respondents further submitted that it is not disputed that the respondent no.3 instructor was instructing the respondent no.2 on the date of accident. It is not disputed that the car used to impart the instructions is specifically made and designed

for the purpose of learning, which is insured. The instructor is always in control of the vehicle wherever and whenever required. It is also not disputed that the respondent no.3 - instructor was holding a valid and effective driving license for more than 20 years, which is evident from his driving license and records [page 98 of the paper book]. Therefore, for all practical reasons and purposes the respondent no.3 was the driver, driving the vehicle, having valid driving license to drive and to instruct and control the vehicle. As the learner license was granted by the authority on the date of the accident, it is evident that he was not disqualified or ineligible to receive instructions to learn the motor vehicle. He relied on the citation **The Oriental Insurance Company v/s. Smt. K. Sundaramma Alias Sundara** [IV (2005) SCC 169].

12. So far as the citation relied by the respondents in **Ram Babu Tiwari v/s. United India Insurance Co. Ltd. and others** [(2008) 8 SCC 165], is about the license obtained on the day of the accident and not always at the time of accident, since any license obtained based on the previous license and if time to time is not mentioned, it begins from the 00.00 hours or midnight. It is submitted that the Judgment and Award passed by the Tribunal is perfectly justified and there is no reason to interfere or to modify the same.

13. Now the rival contentions fall for my determination. It is a matter of record that the respondent no.2 was holding learner's license previously from 16/01/2004 to 15/07/2004 and then from 16/07/2004 to 15/01/2005. From the deposition of the Assistant Director of Transport, Ponda it also reveals that earlier he was passed in the test on 16/01/2004 meant for issuance of learner's

license. However, from Exhibit 74 page no. 127 of the paper book it is not clear whether it was a renewal of the learning license or it was a new learner's license issued by the authority. It is not disputed as appears from the submissions made by the respondent no.2 that the accident took place at 8.45 hours. Moreover, the said timing is therein FIR, complaint as well as the Claim Petition. Hence, there is no substance what claimant deposed about timing of accident as against ample documentary evidence on record.

14. It is also not disputed that the vehicle was insured as a driving school vehicle as per the Insurance Policy (Exh.77 page 129 of paper book). Against column "mark" it is described as "Driving Tuition Car". It is obvious that the said vehicle must follow Rules and conditions prescribed to run such a driving school institution. Such Rules are not before me but being a driving school car the

control may also be with the instructor of the vehicle as claimed by the respondent no.2.

15. As per Section 3(2) of the Motor Vehicle Act, sub-Section (1) of Section 3 is not applicable to a person receiving instructions to drive a motor vehicle. However, Rule 3 of the Central Motor Vehicle Rules, 1989 if perused non-applicability of Section 3(1) to a person while receiving instructions is available only in the condition that such person is the holder of an effective learner's license issued to him in Form III to drive the vehicle and secondly such person is accompanied by an instructor holding an effective driving license to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle. So in my considered opinion, it is not a case that Section 3(1) is not applicable at all to a person receiving instructions or learning to drive the vehicle. It is mandatory for availing such exemption of

Section 3(1) only if he satisfies two conditions mentioned in Rule 3 of the Central Motor Vehicle Rules. As there was no effective learner's driving license with the respondent no.2 at the time of accident there is clear cut breach of terms and conditions of the policy. Therefore, in my considered opinion the Insurance Company is not liable to pay the compensation.

16. So far as the citation **Smt. K. Sundaramma** (supra) relied on by the learned Counsel for the respondent no.2 the license was "renewed" on the subsequent date. However, in the present matter it is not clearly established that the license was renewed or fresh learner's license is obtained. On the contrary, it appears from the record that the learning license was there for a period from 16/01/2004 to 15/07/2004 and from 16/07/2004 to 15/01/2005 and thereafter, it was obtained on the day of accident i.e. on 28/02/2007 as

such there is a gap of around two years in between in obtaining learner's license. Rw2 person from RTO Office specifically deposed that it is not a renewal since earlier license expired on 15/01/2005 and he applied on 28/02/2007. Even the details supplied about the test is of date 16/01/2004 as such there are no clear documents showing that the license was renewed. Considering the gap of two years it has to be held that it was a new license.

17. There was a clear cut breach of conditions of the Insurance Policy. The learned Tribunal ought to have held considering the provisions of Sections 3(1) and 3(2) as well as Section 8 and Rule 3 of the Central Motor Vehicle Rules that there is a breach of terms and conditions of the Policy and ought to have ordered to pay and recover in view of the citation reported in **Nanjapan**(supra).

Insurance Policy is a contract of indemnity. One of the condition of policy runs as under:

*"Persons or classes of Persons entitled to drive:*

*Any person including Insured provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence. Provided also that the person holding an effective Learner's Licence may also drive the vehicle and such a person satisfied the requirements of Rule 3 of Central Motor Vehicle Rules,1989."*

18. Even Legislature also cast duty on the owner of vehicle that it should be driven by a person having effective driving license. True it is that where it is a vehicle meant to learn driving, the instructor as well as learner must hold the effective driving license and effective learner's license respectively. Failure to which

owner as well as driver are liable for payment of compensation. As such owner contrary to the terms and conditions allowed a person to sit on a driving seat to receive instructions without there being effective learner's license which is contrary to the terms and conditions of the policy. Hence, the respondent nos.1 to 3 ( in original claim) are liable to pay the compensation and not Insurance Company.

19. Accordingly, the appeal is liable to be allowed.

### **ORDER**

1. The appeal is allowed.

2. The Order dated 07/01/2011 passed by the learned Tribunal, Panaji in Claim Petition No. 14 of 2008 is modified as under:

- i) The claim petition is partly allowed with proportionate cost.
- ii) The respondent nos.1, 2 and 3 jointly and severally liable to pay the amount of compensation in the sum of ₹1,41,120/- (Rupees One Lakh Forty One Thousand One Hundred Twenty only) (including amount awarded to the claimant under Section 140 of the Act), which shall carry interest @9% p.a. from the date of filing of application till its realization.
- iii) The amount so awarded towards compensation is directed to be paid by the respondent nos.1 and 3 within one month from today, failure to deposit the amount so awarded by the respondent nos.1 to 3, Insurance

Company – Respondent no.4 shall pay the amount of compensation to the claimant first and recover the same from the respondent nos.1 to 3.

iv) Award be drawn accordingly.

3. The present Appeal is accordingly disposed off.
4. No orders as to costs.

**SMT. M. S. JAWALKAR, J.**