

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

**F.M.A. T.(MV) No. 724 of 2023
National Insurance Co. Ltd.**

Versus

Raju Sadhukhan & Ors.

With

COT 96 of 2024

Raju Sadhukhan & Anr.

Vs.

The National Insurance Co. Ltd & Anr.

Ms. Sucharita Paul

...for the Appellant/Insurance Company.

Mr. Amit Ranjan Roy

...for the Respondents/Claimants.

Heard on: 05.09.2024 and 01.10. 2024.

Judgment on: October 07, 2024.

Ananya Bandyopadhyay, J:- Both the Learned Advocates for the appellant/insurance company and the respondents/claimants are present.

The instant appeal has been filed against the judgment and award dated 12th July, 2023 passed by the Learned Motor Accident Claims Tribunal, Additional District Judge, Fast Track, 1st Court, Krishnagar, Nadia in M.A.C. Case No. 336 of 2016.

The Learned Advocate for the appellant/insurance company submitted that the Learned Tribunal did not consider the driver of the offending vehicle

to have been granted “learner licence” which could not be construed to be a valid driving licence issued by the Motor Vehicles Department.

The Learned Advocate for the appellant/insurance company further referred to “Rule 3 of the Central Motor Vehicles Rules, 1988”. The said Rule is quoted below:

- (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 licence to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle; and*
- (c) There is painted, in the front and the rear of the vehicle or on a plate or card affixed to the front and the rear, the letter “L” in red on a white background as under : -*

“ L ”

It was further emphasised that the Learned Tribunal did not grant the liberty to the appellant/insurance company to recover the compensation amount payable to the claimants from the owner of the offending vehicle.

The Learned Advocate for the respondents/claimants did not contradict the submission of the Learned Advocate for the appellant/insurance company on the ground of compensation amount to be recovered from the owner of the offending vehicle. The Learned Advocate for the claimants/respondents submitted that the Learned Tribunal erred in not granting the interest from the date of filing of the claim application under Section 166 of the Motor

Vehicles Act till its actual realisation contrary to the observation of the Learned Tribunal with regard to the mode and manner of payment of interest in the impugned judgment and award.

An application under Section 166 of the Motor Vehicles Act was filed stating the victim aged 51 years to have incurred an accident on 30.05.2016 at about 12.30 hours near Dakhineswar Island on the Belgharia Express Highway with the involvement of the offending vehicle bearing registration No. WB/03C/0800(Tata Ace). The offending vehicle approaching from Nibedita Bridge hit the victim in a rash and negligent manner who eventually, sustained injuries and succumbed to the same.

The Learned Advocate for the appellant/insurance company did not dispute the occurrence of the accident, the involvement of the offending vehicle, the route permit, the insurance policy, etc.

In ***National Insurance Co. Ltd. V. Swaran Singh and Ors.***¹, the following has been *inter alia* observed by the Hon'ble Supreme Court as follows:

“Learner's licence

93. *The Motor Vehicles Act, 1988 provides for grant of learner's licence. [See Section 4(3), Section 7(2), Section 10(3) and Section 14.] A learner's licence is, thus, also a licence within the meaning of the provisions of the said Act. It cannot, therefore, be said that when a vehicle is being driven by a learner subject to the conditions mentioned in the licence, he would not be a person who is not “duly licensed” resulting in conferring a right on the insurer*

¹ (2004) 3 SCC 297

to avoid the claim of the third party. It cannot be said that a person holding a learner's licence is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provisions of Section 149(2) of the said Act.

94. *The provisions contained in the said Act provide also for grant of driving licence which is otherwise a learner's licence. Sections 3(2) and 6 of the Act provide for restriction in the matter of grant of driving licence, Section 7 deals with such restrictions on granting of learner's licence. Sections 8 and 9 provide for the manner and conditions for grant of driving licence. Section 15 provides for renewal of driving licence. Learner's licences are granted under the Rules framed by the Central Government or the State Governments in exercise of their rule-making power. Conditions are attached to the learner's licences granted in terms of the statute. A person holding learner's licence would, thus, also come within the purview of "duly licensed" as such a licence is also granted in terms of the provisions of the Act and the Rules framed thereunder. It is now a well-settled principle of law that rules validly framed become part of the statute. Such rules are, therefore, required to be read as a part of the main enactment. It is also a well-settled principle of law that for the interpretation of statute an attempt must be made to give effect to all provisions under the rule. No provision should be considered as surplusage.*

95. *Mandar Madhav Tambe case [(1996) 2 SCC 328 : 1996 SCC (Cri) 307] , whereupon the learned counsel placed reliance, has no application to the fact of the matter. There existed an exclusion clause in the insurance policy wherein it was made clear that the insurance company, in the event of an accident, would be liable*

only if the vehicle was being driven by a person holding a valid driving licence or a permanent driving licence “other than a learner's licence”. The question as to whether such a clause would be valid or not did not arise for consideration before the Bench in the said case. The said decision was rendered in the peculiar fact situation obtaining therein. Therein it was stated that “a driving licence” as defined in the Act is different from a learner's licence issued under Rule 16 of the Motor Vehicles Rules, 1939 having regard to the factual matrix involved therein.

96. *The question which arises for consideration in these petitions did not arise there. Neither was the same argued at the Bar nor were the binding precedents considered. Mandar Madhav Tambe case [(1996) 2 SCC 328 : 1996 SCC (Cri) 307] therefore, has no application to the facts of these cases nor creates any binding precedent. The view we have taken is in tune with the judgments rendered by different High Courts consistently. (See for example New India Assurance Co. Ltd. v. Latha Jayaraj [1991 ACJ 298 (Ker)] .).....*

Summary of findings

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 the driver or invalid driving licence 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 licence 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.

(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 wherefor 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 circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence 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 licence 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 licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.....”

This Court restricts itself only to the point of the liability of the insurance company in view of the aforesaid judgment in ***National Insurance Co. Ltd. V. Swaran Singh and Ors.*** to compensate the victim and thereafter recover the same from the owner of the offending vehicle.

It was further submitted by the Learned Advocate for the appellant/insurance company that the Appellant/Insurance Company had deposited the entire awarded amount with an interest of 6 % per annum from the date of filing of the claim application i.e. 32,89,483/- as per the challan filed by the Learned Advocate for the Appellant/Insurance company. The respondents/claimants are entitled to receive the balance amount of Rs. 23,09,849/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.

The office of the Registrar General, High Court at Calcutta is to deduct the entire amount inclusive of the awarded amount as aforesaid along with an interest of 6 % per annum on the same from the date of filing of the claim application till the date of realization, from the deposited amount in this Court and disburse the same to the present respondents/claimants in equal proportion as mentioned in the

award passed by the Learned Motor Accident Claims Tribunal, Additional District Judge, Fast Track, 1st Court, Krishnagar, Nadia in M.A.C. Case No. 336 of 2016 on proof of proper identification of the respondents/claimants subject to payment of ad valorem Court's fees and refund the balance amount through a cheque to the Learned Advocate for the insurance company for the accounts of the insurance company. The sum of interest accrued on the aforesaid amount is to be disbursed in favour of the respondents/claimants and the balance sum of interest to be refunded to the insurance company through distinct account payee cheques.

The instant appeal and COT are disposed of accordingly.

The interim order if any stand vacated.

Copy of the order be sent to the Department as well as the concerned Tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)

