Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Ananya Bandyopadhyay

FMA 850 of 2012

Ashadebi Paul & Anr.
Versus
National Insurance Company Limited & Anr.

For the Appellants	:	Mr. Krishanu Banik, Mr. Tathagata Banik.
For the Respondents	:	Mr. Afroz Alam.
Heard & Judgment on	:	13th February, 2025.

Ananya Bandyopadhyay, J:

1. Both the Learned Advocates representing the appellants/claimants and the respondent No.1/Insurance Company are present.
2. The instant appeal had been filed against the judgment and award dated 19.07.2010 passed by the Learned Judge, Motor Accident Claims Tribunal, Special Court, Asansol in M.A.C. Case No. 4/125 of 2008/2007.
3. An application under Section 166 of the Motor Vehicles Act was filed by the appellants/claimants due to the death of the victim in an accident which occurred on 4th May, 2007 at about 3.30 A.M. within the premises of a factory, namely, Mark Steels Limited in the village - Jagannathdihi in the district of Purulia with the involvement of the offending vehicle being a 'Dumper' bearing registration no. OR/02/X/5504 which at an exceeding speed rashly and negligently hit the victim resulting in severe injury sustained by him to which he

ultimately succumbed on his way to the Sub-Divisional Hospital where he was declared '**brought dead**'.

4. The learned Advocate representing the appellants/claimants submitted that the learned Tribunal had erroneously directed the owner of the vehicle to disburse the amount of compensation since the driver of the offending vehicle did not possess a valid driving license. Moreover, the victim being a bachelor and the claimants being the parents of the victim were entitled to 50% deduction towards personal expenses instead of 1/3rd deduction. Further the age of the victim at the time of the accident was 24 years and, therefore, a multiplier of 18 should have been applied. The learned Advocate representing the appellants/claimants further submitted that the learned Tribunal should have passed an order directing the Insurance Company to pay the compensation amount and thereafter recover the same from the owner of the offending vehicle.

5. The learned Advocate representing the respondent No.1/Insurance Company submitted that the owner of the offending vehicle did not appear to contest before the Learned Tribunal and in absence of valid driving license being possessed by the driver of the offending vehicle the respondent No.1/Insurance Company was not liable to pay the compensation awarded and the learned Tribunal had justifiably directed the compensation amount to be paid by the owner of the offending vehicle.

6. Since, the occurrence of the accident, involvement of the offending vehicle, the driving license, Insurance certificate etc. are not disputed by the learned advocate representing the appellant/insurance company, this Court restricts itself only to the extent of considering the multiplier with regard to the age of the

victim, the compensation to be granted towards general damages, the percentage towards deduction of personal expenses in case of a bachelor and the scope of the respondent No.1/Insurance Company to pay the compensation awarded and to recover the same from the owner of the offending vehicle. The age of the victim at the relevant date of the accident appeared to be 24 years and, therefore, the multiplier of 18 should have been applied for computing the compensation amount. Moreover, since the victim had expired as a bachelor 50% of the annual income should have been deducted. The appellants/claimants could not prove the income of the victim or his avocation and, therefore, the learned Tribunal was justified in considering the monthly income of the victim to be Rs.3,000/- and the Court is not inclined to interfere with the same.

7. in view of The Hon'ble Supreme Court held the following in **IFFCO Tokio General Insurance Co. Ltd. v. Geeta Devi**[1]

8. 12. Thereafter, in National Insurance Co. Ltd. v. Swaran Singh[3]*, a 3-Judge Bench of this Court dealt with the interpretation of Section 149 of the Act of 1988. The cases before the Bench involved, amongst others, instances where the driving licence produced by the driver or owner of the vehicle was a fake one. The Bench noted that Section 149(2)(a) opened with the words:'that there has been a breach of a specified condition of the policy', which would imply that the insurer's defence of the action would depend upon the terms of the policy. It was observed that an insurance company which wished to avoid its liability is not only required to show that the conditions laid down in Section 149 (2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. Such a breach on the part of the insured must be established by the insurer to show that the insured used or caused or permitted to be used the insured vehicle in breach of the provisions. The Bench went on to state that where the insurer,*

[1]**, 2023 SCC OnLine SC 1398**

relying upon the violation of law by the assured, takes exception to pay the assured or a third party, it must prove a willful violation of the law by the assured. Noting that the proposition of law is no longer res integra that the person who alleges breach must prove the same, the Bench observed that an insurance company would be required to establish the said breach by cogent evidence and in the event an insurance company fails to prove that there has been breach of the conditions of the policy on the part of the insured, such an insurance company cannot be absolved of its liability.

9. *13. Further, in the context of cases where the driver's licence was found to be fake, the Bench observed that the question would be whether the insurer could prove that the owner was guilty of willful breach of the conditions of the insurance policy. It was pointed out that the defence to the effect that the licence held by the person driving the vehicle was a fake one would be available to the insurance company but whether, despite the same, the plea of default on the part of the owner has been established or not would be a question which would have to be determined in each case. The earlier decision in United India Insurance Co. Ltd. v. Lehru[4] was considered and the Bench observed that the ratio therein must not be read to mean that an owner of a vehicle can, under no circumstances, have any duty to make an inquiry with regard to the genuineness of the driving licence and the same would again be a question which would arise for consideration in each individual case. The argument that the decision in Lehru (supra) meant that, for all intent and purport, the right of the insurer to raise a defence that the licence was fake was taken away was, however, rejected as not being correct and it was held that such a defence can certainly be raised, but it will be for the insurer to prove that the insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver. The findings summed up by the Bench, to the extent presently relevant, are as under….*

10. The Hon'ble Supreme Court held the following in ***Beli Ram v. Rajinder Kumar***[2]**:-**

10. *We consider it appropriate to first commence with the view of this Court in Swaran Singh case [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] , which examined the meaning of the expression "duly licensed", as used in Section*

[2]**(2022) 15 SCC 572**

149(2)(a)(ii) of the Motor Vehicles Act, 1988 (hereinafter referred to as "the MV Act"). The factual matrix dealt with the claim of a third party and the different eventualities considered were : (a) licence not held; (b) fake licence held; (c) licence held but validity whereof has expired; (d) licence not held for type of vehicle being driven; and (e) learner's licence held. We may note here that the facts of the present case relate to eventuality (c) above. A liberal view was taken considering the intent of the legislation in question and that it was a case of a third party claim. In an endeavour of the insurance company to absolve itself of liability the following observations were made : (SCC pp. 323-25, paras 41-45 & 48)

"41. However, clause (a) opens with the words 'that there has been a breach of a specified condition of the policy', implying that the insurer's defence of the action would depend upon the terms of the policy. The said sub-clause contains three conditions of disjunctive character, namely, the insurer can get away from the liability when (a) a named person drives the vehicle; (b) it was being driven by a person who did not have a duly granted licence; and (c) driver is a person disqualified for holding or obtaining a driving licence.

42. We may also take note of the fact that whereas in Section 3 the words used are "effective licence", it has been differently worded in Section 149(2) i.e. "duly licensed". If a person does not hold an effective licence as on the date of the accident, he may be liable for prosecution in terms of Section 141 of the Act but Section 149 pertains to insurance as regard third-party risks.

43. A provision of a statute which is penal in nature vis-à-vis a provision which is beneficent to a third party must be interpreted differently. It is also well known that the provisions contained in different expressions are ordinarily construed differently.

44. The words "effective licence" used in Section 3, therefore, in our opinion, cannot be imported for sub-section (2) of Section 149 of the Motor Vehicles Act. We must also notice that the words "duly licensed" used in sub-section (2) of Section 149 are used in the past tense.

45. Thus, a person whose licence is ordinarily renewed in terms of the Motor Vehicles Act and the Rules framed thereunder, despite the fact that during the interregnum period, namely, when the accident took place and the date of expiry of the licence, he did not have a valid licence, he could during the prescribed period apply for renewal thereof and could obtain the same automatically without undergoing any further *test or without having been declared unqualified therefor. Proviso appended to Section 14 in unequivocal terms states that the licence remains valid for a period of thirty days from the day of its expiry.*

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48. Furthermore, the insurance company with a view to avoid its liabilities is not only required to show that the conditions laid down under Sections 149(2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. By reason of the provisions contained in the 1988 Act, a more extensive remedy has been conferred upon those who have obtained judgment against the user of a vehicle and after a certificate of insurance is delivered in terms of Section 147(3). After a third party has obtained a judgment against any person insured by the policy in respect of a liability required to be covered by Section 145, the same must be satisfied by the insurer, notwithstanding that the insurer may be entitled to avoid or to cancel the policy or may in fact have done so. The same obligation applies in respect of a judgment against a person not insured by the policy in respect of such a liability, but who would have been covered if the policy had covered the liability of all persons, except that in respect of liability for death or bodily injury."

11. *We may next advert to the judgment in Nirmala Kothari case [Nirmala Kothari v. United India Insurance Co. Ltd., (2020) 4 SCC 49 : (2020) 2 SCC (Civ) 572 : (2020) 2 SCC (Cri) 14 (authored by one of us, Krishna Murari, J.)] . The judgment was sought to be canvassed in support of the proposition by the learned counsel for the appellant and we reproduce the relevant paragraphs in addition to the one reproduced above, as under : (SCC pp. 52-53, paras 10-11)*

"10. While the insurer can certainly take the defence that the licence of the driver of the car at the time of accident was invalid/fake, however, the onus of proving that the insured did not take adequate care and caution to verify the genuineness of the licence or was guilty of wilful breach of the conditions of the insurance policy or the contract of insurance lies on the insurer.

11. The view [United India Insurance Co. Ltd. v. Nirmala Kothari, 2018 SCC OnLine NCDRC 1903] taken by the National Commission that the law as settled in Pepsu case [Pepsu RTC v. National Insurance Company, (2013) 10 SCC 217 : (2013) 4 SCC (Civ) 713 : (2013) 4 SCC (Cri) 768 : (2014) 1 SCC (L&S) 750] is not applicable in the present matter as it related to third-party claim is erroneous. It has been *categorically held in National Insurance Co. Ltd. v. Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] that : (SCC p. 341, para 110)*

'110. (iii) … 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.' "

(emphasis in original)

The Hon'ble Supreme Court held the following in ***National Insurance Co. Ltd. v. Swaran Singh***[3]:-

Where the driver's licence is found to be fake

92. *It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of the wilful breach of the conditions of the insurance policy or the contract of insurance. In Lehru case [(2003) 3 SCC 338 : 2003 SCC (Cri) 614] the matter has been considered in some detail. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of the law in terms whereof the insurer is to establish wilful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or for the owners to be absolved from any liability whatsoever. We would be dealing in some detail with this aspect of the matter a little later.*

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 to avoid the claim of the third party. It cannot be said that*

[3] **(2004) 3 SCC 297**

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.*

(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.

Considering the observations of the Hon'ble Apex Court in National insurance company Ltd. Vs. Pranay Shetty & Anr4 and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.5 The impugned award of Rs. 3,64,500/- is modified as follows:

Monthly Income Annual Income Future Prospect to be added(40%)	Rs. 3000/- Rs. 36,000/- Rs. 14,400/-
	Rs. 50,000/-
1/2 Deduction Personal Expenses	Rs. 25,200/- ---------------- Rs. 25,200/-
Multiplier to be "18"	X 18 Rs. 4,53,600/-
General Damages Entitlement	Rs. 36,000/- Rs. 4,89,600/-

11. The Learned Advocate for the appellants/claimants submitted that the appellants/claimants are entitled to a sum of Rs. 4,89,600/- along

1 2017(4)TAC 673(S.C)

[5] (2009) 6 SC 121

with 6% interest per annum to be paid from the date of filing of the application i.e. 02.08.2007 till the date of its actual realization.

12. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 4,89,600/- along with interest as aforesaid before the office of the learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order .

13. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellants/claimants in equal proportion as mentioned in the award passed by the Learned Judge, Motor Accident Claims Tribunal, Special Court, Asansol in M.A.C. Case No. 4/125 of 2008/2007 on proof of proper identification of the appellants/claimants subject to payment of *ad valorem* Court's fees.

14. The instant appeal is disposed of accordingly.

15. The pending applications, if any, stands disposed of.

16. The TCR be sent down to the concerned tribunal forthwith.

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

(Ananya Bandyopadhyay, J.)

Srimanta, A.R./c.m. Ar. Ct.