

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1165 of 2024

**United India Insurance Company Limited
Versus
Rizwana Parwin & Ors.**

For the appellant/insurance Co.	:	Mr. Sanjay Paul, Ms. Jaita Ghosh
For the respondent nos. 1 & 2	:	Mr. Saikat Sen
For the respondent no. 3	:	Mr. Durga Prasad Dutta, Mr. Souvik Sen

Heard & Judgment on : 06th January, 2025

Ananya Bandyopadhyay, J:

1. The Learned Advocates representing the respective parties are present.
2. The instant appeal had been filed against the judgment and award dated 31st March, 2023 passed by the learned Additional District & Sessions Judge, 1st Court, Asansol cum Judge, M.A.C. Tribunal, Paschim Bardhaman in M.A.C. Case No. 118 of 2015.
3. An application under Section 166 of the Motor Vehicles Act, 1988 had been filed on account of accident which occurred on 16.5.2014 at about 13.30 hours near Dhemomain Main Gate G.T. Road, Asansol, while commuting in a maruti car bearing registration no. MH-02/NA/5392 which was hit by a mini bus bearing registration no. WB – 37A-7081 and as a result the maruti car dashed an auto rickshaw approaching from the opposite direction. The victim sustained severe injuries and was transmitted to District Hospital,

Asansol wherefrom he was shifted to Mission Hospital, Durgapur and on 19.5.2014 the victim succumbed to his injuries.

4. Learned Advocate representing the appellant/Insurance Company did not dispute the occurrence of the accident, the Insurance policy as well as the other ancillary issues including the computation of the compensation awarded satisfying the elementary aspects following the guidelines of the Hon'ble Supreme Court decision in National insurance Co. Ltd. Vs. Pranay Sethi & Ors.
5. Learned Counsel representing the appellant/Insurance Company further submitted that the driver of the offending vehicle did not possess a valid driving license on the relevant date of accident since the documents marked as exhibit- B reflected the validity gap period which stipulated the time period. After expiry of the effectivity of the driving license the same had not been renewed.
6. The learned Advocate representing the appellant/Insurance Company further submitted that the appellant/Insurance Company was not liable to pay the compensation amount since the driver of the offending vehicle did not possess a valid and effective driving license on the date of the accident. It was further submitted if at all the appellant/Insurance Company was directed to pay the compensation amount an equivalent right to recover the same from the owner of the offending vehicle be granted to the appellant/Insurance Company correspondingly.
7. The learned Advocate representing the respondent Nos.1 and 2/claimants submitted to be interested only in receiving the compensation amount expressing no objection if at all the Insurance Company would be successful in recovering the same from the owner of the vehicle upon proving of its claim that the driver of the

offending vehicle on the relevant date of the accident did not possess a valid driving license.

8. Since the occurrence of the accident and the observation and computed by the learned Tribunal disposing the issues framed and granting the compensation awarded have not been disputed by either of the parties, this Court restrict itself only to the extent of considering as to whether the appellants/ Insurance Company can be granted the benefit to recover the compensation amount from the owner of the offending vehicle upon payment of the same to the respondent No.1 and 2/claimants and subsequently to prove that the driving license was not disputed. The evidence of D.W. in his chief examination stated as follows :-

"In this driving license the validity gap period is mentioned. Validity gap period means the period mentioned therein is not valid for driving license. On 16.5.2014 the driving license within the validity gap period. The driving is transport category license."

9. The documents marked as exhibit –B inter alia delineated the following information under D.L transaction history as well as validity gap period (if any) amongst others which required replicated as follows :-

"It is evident from the documents issued by the Transport Department, Government of West Bengal, marked as exhibit – B that from 6.3.2014 till 1.7.2014 a valid driving license was not possessed by the driver of the offending vehicle since the effectivity of the driving license expired to 6.3.2014 and which was not renewed till 1.7.2014 in the interregnum the accident occurred on 16.5.2014 concurring the fact that within the validity gap period the driving license was ineffective after expiry of the period of validity

which was required to be renewed accordingly.” However, in view of

The Hon’ble Supreme Court held the following in **IFFCO Tokio**

General Insurance Co. Ltd. v. Geeta Devi¹

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, 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.

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

¹, 2023 SCC OnLine SC 1398

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. Lehu⁴ 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 Lehu (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....

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 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*

²(2022) 15 SCC 572

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.

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 Lehu 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*

³(2004) 3 SCC 297

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 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.

10. In view of the aforesaid decisions, the appellant/Insurance Company is liable to pay the compensation as awarded by the learned Tribunal and subject to prove of its claim that the driving license was either not possessed by the driver of the offending vehicle or the same to be invalid during the period including the relevant date of accident. The appellant/ Insurance Company can

recover the same from the owner of the offending vehicle in view of the aforesaid judgment of the Hon'ble Apex Court cited above.

11. It was further submitted by the learned Advocates representing both the parties that the amount of compensation awarded by the learned Tribunal is flawless in terms of its assessment and this Court is not inclined to interfere with the same.
12. It was further submitted by the Learned Advocate for the appellant/insurance company that the Appellant/Insurance Company had already deposited the entire awarded sum of Rs.18,06,048/-. The same must have carried some interest.
13. The respondent Nos. 1 and 2/claimants are entitled to receive the balance amount of Rs. Rs. 12,58,156/- interest at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.
14. The office of the Registrar General, High Court, Calcutta shall encash the cheques and thereafter disbursed the same to the present respondent No.1 and 2 /claimants as mentioned in the award passed by the learned Additional District & Sessions Judge, 1st Court, Asansol cum Judge, M.A.C. Tribunal, Paschim Bardhaman in M.A.C. Case No. 24 of 2016 on proof of proper identification of the respondent Nos.1 and 2/claimants subject to payment of ad valorem Courts fees.
15. The interest generated on the sum of money deposited by the appellant/insurance company at the office of the Learned Registrar General, High Court at Calcutta which has already been deposited in the nationalized bank by the office of the Learned Registrar General, High Court at Calcutta is to be apportioned and the sum of interest

accrued on the aforesaid amount is to be disbursed in favour of the respondent No.1 and 2/claimants.

16. The instant appeal is disposed of accordingly.

17. The interim order if any stand vacated.

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

Srimanta/c.m.

(Ananya Bandyopadhyay, J.)