

CASE NO.:
Appeal (civil) 3055 of 2008

PETITIONER:
Oriental Insurance Co. Ltd

RESPONDENT:
Zaharulnisha & Ors

DATE OF JUDGMENT: 29/04/2008

BENCH:
S. B. Sinha & Lokeshwar Singh Pantia

JUDGMENT:
J U D G M E N T
REPORTABLE

CIVIL APPEAL NO. 3055 OF 2008
[Arising out of SLP (C) No.21038 of 2006]

Lokeshwar Singh Pantia, J.

1. Leave granted.
2. This appeal is against the judgment dated 1st July, 2006 passed by the High Court of Judicature at Allahabad whereby and whereunder, appeal filed by the Oriental Insurance Company Limited challenging the award dated 26.04.2006 of the Motor Accident Claims Tribunal/Additional District Judge Khushi Nagar in MAC No. 98/2002, has been dismissed.
3. Briefly stated the facts leading to the filing of the appeal are as under:-
On 23.07.2001 at about 6:00 p.m. one Shukurullah was going from Kasya Courts to his village Shivpur on a bicycle. A two wheeler scooter, bearing registration No. UP 57 - 5901, being driven by one Ram Surat in a rash and negligent manner hit Shukurullah near Sapha P.S. Kasya and as a result thereof, Shurkurullah sustained grievous injuries and died. The ill-fated scooter was owned by Vakilarao \026 respondent No. 8 herein. The legal representatives of deceased Shukurullah lodged a Claim Petition No. 98/2002 before the Motor Accident Claims Tribunal, Khushi Nagar/Additional District Judge and they claimed compensation for the death of their sole bread earner.
4. By its award dated 26.04.2006, Motor Accident Claims Tribunal held that the accident was due to rash and negligent driving of the scooter by Ram Surat. It awarded a sum of Rs. 3,01,500/- as compensation with interest at 9% per annum in favour of the claimants and against the second respondent, owner of the scooter and appellant - insurance company. The appellant \026 insurance company was directed to pay the amount of compensation. The appellant \026 insurance company filed an appeal before the High Court. Before the High Court it was contended that as the driver Ram Surat was holding licence for driving Heavy Motor Vehicle (HMV) only, therefore, he had no valid licence to drive a two wheeler scooter which is totally a different class of vehicle in terms of Section 10 of the Motor Vehicles Act, 1988 [hereinafter referred to as 'the MV Act']. It was contended that in view of the breach of the provisions of the MV Act, the appellant \026 insurance company cannot be held liable to satisfy the award in terms of Section 149(2) of the MV Act.
5. The High Court without noticing the contention of the

appellant \026 insurance company passed short and unreasoned order, which reads as under:-

"Heard Sri S.C. Srivastava, learned counsel for the appellant and perused the record.

Having considered the submission of the learned counsel for the appellant, we are of the view that this appeal has got no force and is dismissed summarily. However, the statutory deposits so made before this Court be remitted to the Claims Tribunal within three weeks."

6. Hence, the insurance company has filed this appeal.

7. Despite service of notice, respondent No. 2 \026 owner of the vehicle has chosen not to put in appearance and contest the appeal.

8. Shri M.K. Dua, learned counsel for the appellant \026 insurance company contended that the High Court grossly erred in dismissing the statutory appeal of the insurance company without considering the legal question involved in the present case. He contended that the insurance company cannot be held liable to pay the amount of compensation for the default of the driver of the scooter who was not holding a valid licence and the liability to indemnify claimants is the responsibility of the owner of the vehicle involved in the accident.

9. Shri Girijesh Kumar Mall, learned counsel appearing on behalf of the claimants, contended that the claimants should not be made to suffer for the inter se dispute between the appellant \026 insurance company and respondent No. 8 \026 owner of the vehicle in regard to their liability to pay the amount of compensation to the claimants. According to the learned counsel, the amount of compensation as directed by the Tribunal has to be released to the claimants and the appellant \026 insurance company can realise the said amount from the owner of the vehicle in accordance with law.

10. In order to appreciate the rival contentions of the learned counsel for the parties, the legal question that needs to be considered by us is : Whether the appellant \026 insurance company could be held liable to pay the amount of compensation for the default of the scooterist who was not holding licence for driving two wheeler scooter but had driving licence of different class of vehicle in terms of Section 10 of the MV Act?

11. For the purpose of determination of the above said issue, we may notice relevant provisions of the MV Act. Section 2 of the MV Act deals with definitions. Sub-section 9 of Section 2 defines 'driver' to include \026 'in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle.'

Sub-section (10) of Section 2 defines 'driving licence' to mean - 'the licence issued by a competent authority under Chapter II authorizing the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description.'

Section 3 in Chapter II of the MV Act prescribes necessity for driving licence which reads as under:-

"(1) No person shall drive a motor vehicle in any public place unless 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 entitled him to do so.

(2) The conditions subject to which sub-section (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.

12. Section 5 prescribes that no owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of Section 3 or Section 4 to drive the vehicle. Driving licence has to be granted by the licencing authority having jurisdiction in the area to any person who is not, for the time being, disqualified of holding or obtaining a driving licence in terms of Section 9 of the MV Act. Section 10 prescribes forms and contents of the licences to drive which reads as under:-

(1) Every learner's license and driving licence, except a driving licence issued under Section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:-

- (a) motor cycle without gear;
- (b) motor cycle with gear;
- (c) invalid carriage;
- (d) light motor vehicle;
- [e] transport vehicle;
- (i) road roller;
- (j) motor vehicle of a specified description."

13. Driving licence has to be issued by the licencing authority on presentation of the application in Form IV as prescribed by Rule 14 of the Motor Vehicle Rules, 1989. The application form shall be accompanied by documents specified in the said Rule. The applicant has to apply for a licence in terms of Form IV enabling him to drive a particular vehicle of the description as specified in Section 10 of the MV Act, 1988. The licencing authority shall grant driving licence to the applicant in terms of Form VI and Rule 16(1) of the Central Motor Vehicle Rules, 1989.

14. Sub-section (1) of Section 149 casts a liability upon the insurer to pay to the person entitled to the benefit of the decree "as if he was the judgment debtor", that is, the Statute raises a legal fiction to the effect that for the said purpose the insurer would be deemed to be a judgment-debtor in respect of the liability of the insurer in respect of third party risks.

15. It is beyond any doubt or dispute that under Section 149 (1) of the MV Act, insurer, to whom notice of bringing of any proceeding for compensation has been given, can defend the action on any of the grounds mentioned therein. A three-Judge Bench of this Court in National Insurance Company

Limited v. Swaran Singh [(2004) 3 SCC 297] has extensively dealt with the meaning, application and interpretation of various provisions, including Ss. 3(2), 4(3), 10(2) and 149 of the MV Act. In paragraph 47 of the judgment, the learned Judges have held that if a person has been given a licence for a particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle which is of the same category but of different type. As for example, when a person is granted a licence for driving a light motor vehicle he can drive either a car or a jeep and it is not necessary that he must have driving licence both for car and jeep separately. In paragraph 48, it is held as under:

"Furthermore, the insurance company with a view to avoid its liabilities is not only required to show that the conditions laid down under 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. 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 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."

16. The judgment proceeds to hold that under the MV Act, holding of a valid driving licence is one of the conditions of contract of insurance. Driving of a vehicle without a valid licence is an offence. However, the question herein is whether a third party involved in an accident is entitled to the amount of compensation granted by the Motor Accidents Claims Tribunal although the driver of the vehicle at the relevant time might not have a valid driving licence but would be entitled to recover the same from the owner or driver thereof. It is trite that where the insurers, relying upon the provisions of violation of law by the assured, take an exception to pay the assured or a third party, they must prove a wilful violation of the law by the assured. In some cases, violation of criminal law, particularly violation of the provisions of the MV Act, may result in absolving the insurers but, the same may not necessarily hold good in the case of a third party. In any event, the exception applies only to acts done intentionally or "so recklessly as to denote that the assured did not care what the consequences of his act might be". The provisions of sub-sections (4) and (5) of Section 149 of the MV Act may be considered as to the liability of the insurer to satisfy the decree at the first instance. The liability of the insurer is a statutory one. The liability of the insurer to satisfy the decree passed in favour of a third party is also statutory.

17. The learned judges having considered the entire material and relevant provisions of the MV Act and conflict of decisions of various High Courts and this Court on the question of defences available to the insurance companies in defending the claims of the victims of the accident arising due to the

harsh and negligent driving of the vehicle which is insured with the insurance companies, proceeded to record the following summary of findings.

(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) Insurer is entitled to raise a defence in a claim petition filed under Section 163A 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 licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, have 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 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 disqualified to drive at the relevant time, (iv) The insurance companies are, 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 said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance 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 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 insured 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.

(ix) The claims tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(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) read 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 proviso thereunder and Sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against 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.

18. In the light of the above-settled proposition of law, the

appellant \026 insurance company cannot be held liable to pay the amount of compensation to the claimants for the cause of death of Shukurullah in road accident which had occurred due to rash and negligent driving of scooter by Ram Surat who admittedly had no valid and effective licence to drive the vehicle on the day of accident. The scooterist was possessing driving licence of driving HMV and he was driving totally different class of vehicle which act of his is in violation of Section 10(2) of the MV Act.

19. In the result, the appeal is allowed to the limited extent and it is directed that the appellant \026 insurance company though not liable to pay the amount of compensation, but in the nature of this case it shall satisfy the award and shall have the right to recover the amount deposited by it along with interest from the owner of the vehicle, viz. respondent No. 8, particularly in view of the fact that no appeal was preferred by him nor has he chosen to appear before this Court to contest this appeal. This direction is given in the light of the judgments of this Court in National Insurance Co. Ltd. v. Baljit Kaur and Others [(2004) 2 SCC 1] and Deddappa and Others v. Branch Manager, National Insurance Co. Ltd. [(2008) 2 SCC 595].

20. The appeal is, accordingly, allowed in the aforesaid terms with no order as to costs.