

## **National Insurance Co. Ltd vs Tulna Devi & Ors on 8 April, 2008**

**Equivalent citations: AIRONLINE 2008 SC 108, (2008) 4 ACC 779, (2008) 3 TAC 748, (2009) 1 ACJ 581**

**Bench: P.P. Naolekar, V.S. Sirpurkar**

CASE NO. :

Appeal (civil) 5137 of 2006

PETITIONER:

NATIONAL INSURANCE CO. LTD

RESPONDENT:

TULNA DEVI & ORS

DATE OF JUDGMENT: 08/04/2008

BENCH:

P.P. Naolekar & V.S. Sirpurkar

JUDGMENT:

JUDGMENT O R D E R CIVIL APPEAL NO.5137 OF 2006 WITH CIVIL APPEAL NOS.5139/2006, 5140/2006, 5141/2006, 5142/2006

1. These appeals are being disposed of by this common order as the question of law involved in the appeals is common.
2. At the relevant time when the accident occurred, the driver of the vehicle was holding the driving licence of light motor vehicle added with goods vehicle whereas the vehicle which met with an accident was passengers vehicle.
3. It is submitted by Mr. Joy Basu, learned counsel for the appellants that the Insurance Company is not challenging the award in regard to the payment of compensation to the third parties. However, as the driver was not holding a valid driving licence to drive the passengers vehicle at the relevant time, the Insurance Company has a right to recover the payment of the award amount given to the third parties from the owner of the vehicle.
4. The Insurance Company had entered appearance before the Motor Accidents Claims Tribunal and filed its written statement. In the written statement, the defence taken by the respondent-Insurance Company to the claim petition is as under:

"That the driver of the vehicle did not have a valid driving licence and the liability, if any, is, therefore, of the owner of the vehicle or its driver. The replying respondent, however, reserves its right to ascertain the factual position in case the particulars

about the driving licence are supplied by the co-respondent to prove its defence."

No amendment was made in the written statement at a later stage nor did the Insurance Company lead any evidence except that the Licensing Authority was called to prove the driving licence of the driver at the relevant time. As a matter of fact, it has been proved that the driver was not holding a licence to drive the passengers vehicle at the time of the accident. The Insurance Company had not led any evidence to prove that the accident was caused due to the negligence of the driver and the cause of the accident was disqualification of the driver to drive a passengers vehicle as he was holding a different type of driving licence whereas he was driving a different category vehicle.

5. In our view, the case is fully covered by a decision of this Court in the case of National Insurance Co. Ltd. v. Swaran Singh rendered by a 3-Judge Bench of this Court reported in (2004) 3 SCC 297, wherein this Court in paragraph No.110(iii) at page 341 has held as under:-

"(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."

6. In the absence of any evidence to prove that the owner had not taken any care before the vehicle was given to the driver to drive it and that he was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of the vehicle by a duly licensed driver, the liability of the Insurance Company to pay the compensation qua the owner of the vehicle cannot be doubted.

7. For the aforesaid reasons, the appeals are dismissed. However, there shall be no order as to costs.