S.Iyyapan vs M/S United India Insurance Co.Ld.& Anr on 1 July, 2013

Equivalent citations: AIR 2013 SUPREME COURT 2262, 2013 AIR SCW 3941, 2013 (5) ABR 385, (2013) 4 RAJ LW 2804, (2013) 3 TAC 392, (2013) 4 PUN LR 409, (2013) 2 WLC (SC) 293, (2013) 3 KER LJ 306, (2013) 4 MPLJ 259, (2013) 5 ANDHLD 62, (2013) 3 RECCIVR 654, (2013) 100 ALL LR 663, (2013) 3 CURCC 97, (2013) 56 OCR 65, (2013) 3 CPR 478, (2013) 4 JCR 65 (SC), (2014) 5 MPHT 344, (2013) 3 ACC 19, (2013) 6 MAH LJ 1, (2013) 4 MAD LW 340, 2013 (7) SCC 62, (2013) 7 SCALE 637, (2013) 130 ALLINDCAS 176 (SC), (2013) 3 ACJ 1944, (2013) 4 ALL WC 4039, (2013) 4 CIVLJ 398, 2013 (3) SCC (CRI) 11, (2014) 1 CPR 299, (2014) 1 CURCC 12, 2013 (3) KLT CN 33 (SC), (2013) 5 BOM CR 102

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Bench: M.Y. Eqbal

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO… 4834 OF 2013
(Arising out of Special Leave Petition (Civil) No.5091 of 2009)

S. IYYAPAN Appellant (s)

VERSUS

M/S UNITED INDIA INSURANCE
COMPANY LTD. AND ANOTHER Respondent(s)

JUDGMENT

M.Y. Eqbal, J.:

Leave granted.

2. The right of the victim of a road accident to claim compensation is a statutory one. The Parliament in its wisdom inserted the relevant provisions in the Motor Vehicles Act in order to

protect the victims of road accident travelling in the vehicle or using the road and thereby made it obligatory that no motor vehicle shall be used unless the vehicle is compulsorily insured against third party risk. In this background, can an Insurance Company disown its liability on the ground that the driver of the vehicle although duly licensed to drive light motor vehicle but there was no endorsement in the licence to drive light motor vehicle used as commercial vehicle. This is the sole question arises for consideration in this appeal.

3. This appeal by special leave arises in the following circumstances.

4. On 23.5.1998, at about 8.30 P.M., when the deceased named Charles was riding his bicycle from east to west and reached in front of one house, one Sivananayaitha Perumal (driver of the vehicle who remained ex parte in the proceedings) came from west to east direction driving a Mahindra van at high speed and dashed against Charles and ran away without stopping the vehicle. Charles, who was admitted in a hospital, succumbed to the injuries sustained by him. It is evident from the Motor Vehicle Inspector's Report that the accident did not occur due to mechanical defect. On the claim petition filed by deceased's wife (respondent No.2 herein), the Motor Accidents Claims Tribunal (Principal District Judge) at Kanyakumari (in short, "Tribunal"), after considering the evidence on record, awarded a compensation of Rs.2,42,400/- with interest at 12% p.a. from the date of petition – to be paid by the respondents before the Tribunal jointly and severally. The Tribunal was of the view that the person possessing licence to drive light motor vehicle is entitled to drive Mahindra maxi cab.

5. Insurance company preferred an appeal before the High Court challenging the judgment and award of the Tribunal. The Insurance Company did not dispute the quantum of compensation, but questioned the liability itself submitting that the driver of the vehicle was not having a valid driving licence to drive the vehicle on that day. Insurance company referred the decisions of this Court in New India Assurance Company Ltd. v. Prabhu Lal 2008 (1) SCC 696 and Sardari & Ors. v. Sushil Kumar & Ors. 2008 ACJ 1307 and submitted that a person having licence to drive light motor vehicle is not authorized to drive a commercial vehicle.

6. Per contra, on behalf of the claimant, this Court's decisions in Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd. AIR 1999 SC 3181 and National Insurance Co. Ltd. v. Annappa Irappa Nesaria alias Nesaragi and ors., 2008 (3) SCC 464 were referred and it was contended that a person who is having a licence to drive light motor vehicle can drive the commercial vehicle also.

7. After hearing the learned counsel on either side and considering the aforesaid decisions, the High Court relying upon Sardari's case (supra), observed that since the vehicle was being used as a taxi, which is a commercial vehicle, the driver of the said vehicle was required to hold an appropriate licence. Hence, there being a breach of the condition of the contract of insurance, the Insurance Company is not liable to pay any compensation to the claimant. The view taken by the High Court is quoted hereinbelow:-

> "It has not been disputed that the vehicle was being used as a taxi, which is a commercial vehicle. The driver of the said vehicle was required to hold an

> appropriate license therefore. The third respondent herein, who was driving the said vehicle at the relevant time, was holder of a license to drive a light motor vehicle only. He did not possess any license to drive a commercial vehicle. In the present case, R.W.2 has deposed that the driver of the vehicle was not having the license to drive a commercial vehicle on the date of accident. Therefore, it is clear that the driver was not having the driving license to drive commercial vehicle on the date of accident. Evidently, therefore, there was a breach of the condition of the contract of insurance. Having tested the present case in the light of the Supreme court Judgment in the case of Sardari and Others v. Sushil Kumar and Others, cited supra, this court is of the considered view that, since the driver was not possessing the driving license to drive a commercial vehicle, the Insurance Company is not liable to pay any compensation to the claimant and the owner of the vehicle is alone liable to pay the compensation to the claimant."

8. Time and again this Court on various occasions considered the aim and object of making the insurance compulsory before a vehicle is put on the road. Indisputably a new chapter was inserted in the Motor Vehicles Act only with an intention of welfare measure to be taken to ensure and protect the plight of a victim of a road accident. In Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan, (1987) 2 SCC 654, this Court observed as under:-

> "13. In order to divine the intention of the legislature in the course of interpretation of the relevant provisions there can scarcely be a better test than that of probing into the motive and philosophy of the relevant provisions keeping in mind the goals to be achieved by enacting the same. Ordinarily it is not the concern of the legislature whether the owner of the vehicle insures his vehicle or not. If the vehicle is not insured any legal liability arising on account of third party risk will have to be borne by the owner of the vehicle. Why then has the legislature insisted on a person using a motor vehicle in a public place to insure against third party risk by enacting Section 94? Surely the obligation has not been imposed in order to promote the business of the insurers engaged in the business of automobile insurance. The provision has been inserted in order to protect the members of the community travelling in vehicles or using the roads from the risk attendant upon the user of motor vehicles on the roads. The law may provide for compensation to victims of the accidents who sustain injuries in the course of an automobile accident or compensation to the dependants of the victims in the case of a fatal accident. However, such protection would remain a protection on paper unless there is a guarantee that the compensation awarded by the courts would be recoverable from the persons held liable for the consequences of the accident. A court can only pass an award or a decree. It cannot ensure that such an award or decree results in the amount awarded being actually recovered, from the person held liable who may not have the resources. The exercise undertaken by the law courts would then be an exercise in futility. And the outcome of the legal proceedings which by the very nature of things involve the time cost and money cost invested from the scarce resources of the community would make a mockery of the injured victims, or the dependants of the deceased victim of the accident, who

> themselves are obliged to incur not inconsiderable expenditure of time, money and energy in litigation. To overcome this ugly situation the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force. To use the vehicle without the requisite third party insurance being in force is a penal offence. The legislature was also faced with another problem. The insurance policy might provide for liability walled in by conditions which may be specified in the contract of policy. In order to make the protection real, the legislature has also provided that the judgment obtained shall not be defeated by the incorporation of exclusion clauses other than those authorised by Section 96 and by providing that except and save to the extent permitted by Section 96 it will be the obligation of the insurance company to satisfy the judgment obtained against the persons insured against third party risk (vide Section 96). In other words, the legislature has insisted and made it incumbent on the user of a motor vehicle to be armed with an insurance policy covering third party risks which is in conformity with the provisions enacted by the legislature. It is so provided in order to ensure that the injured victims of automobile accidents or the dependants of the victims of fatal accidents are really compensated in terms of money and not in terms of promise. Such a benign provision enacted by the legislature having regard to the fact that in the modern age the use of motor vehicles notwithstanding the attendant hazards, has become an inescapable fact of life, has to be interpreted in a meaningful manner which serves rather than defeats the purpose of the legislation. The provision has therefore to be interpreted in the twilight of the aforesaid perspective."

9. The defence which the insurer is entitled to take in a case for compensation arising out of the motor vehicles accident was provided under Section 96 of the old Act which is now Section 149 of the Act of 1988. Section 149 of the Motor Vehicles Act, 1988 made it mandatory on the part of the insurer to satisfy the judgments and awards against persons insured in respect of third party risk. For better appreciation, Section 149 is reproduced herein below:-

> "(1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (l) of section 147 (being a liability covered by the terms of the policy) or under the provisions of section 163A is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.
>
> (2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the

judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—

(i) a condition excluding the use of the vehicle—

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non- disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where any such judgment as is referred to in sub-section (1) is obtained from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment were given by a Court in India:

Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the judgment is given,

> the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).
>
> (4) Where a certificate of insurance has been issued under sub-

section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 147, be of no effect:

> Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.
>
> (5). .....
>
> (6). ....."

10. Section 149(2)(a)(ii) gives a right to the insurer to take a defence that person driving the vehicle at the time of accident was not duly licensed. In other words, Section 149(2)(a)(ii) puts a condition excluding driving by any person who is not duly licensed. The question arose before this Court as to whether the Insurance Company can repudiate its liability to pay the compensation in respect of the accident by a vehicle taking a defence that at the relevant time it was being driven by a person having no licence. While considering this point, this Court in the case of Skandia Insurance Co. Ltd. (supra) observed:-

> "12. The defence built on the exclusion clause cannot succeed for three reasons, viz.:
>
> (1) On a true interpretation of the relevant clause which interpretation is at peace with the conscience of Section 96, the condition excluding driving by a person not duly licensed is not absolute and the promisor is absolved once it is shown that he has done everything in his power to keep, honour and fulfil the promise and he himself is not guilty of a deliberate breach.
>
> (2) Even if it is treated as an absolute promise, there is substantial compliance therewith upon an express or implied mandate being given to the licensed driver not to allow the vehicle to be left unattended so that it happens to be driven by an unlicensed driver.
>
> (3) The exclusion clause has to be "read down" in order that it is not at war with the "main purpose" of the provisions enacted for the protection of victims of accidents so that the promisor is exculpated when he does everything in his power to keep the

promise."

11. To examine the correctness of the aforesaid view, the matter was referred to a 3-Judge Bench because of the stand taken by the Insurance Company that the insurer shall be entitled to defend the action on the ground that there has been a breach of specified condition of policy i.e. the vehicle should not be driven by a person who is not duly licensed and in that case the Insurance Company cannot be held to be liable to indemnify the owner of the vehicle. The 3-Judge Bench of this Court in the case of Sohan Lal Passi v. P. Sesh Reddy & Ors., (1996) 5 SCC 21 after interpreting the provisions of Section 96(2)(b)(ii) of the Act corresponding to Section 149 of the new Act, observed as under:-

"12. ....

..... According to us, Section 96(2)(b)(ii) should not be interpreted in a technical manner. Sub-section (2) of Section 96 only enables the insurance company to defend itself in respect of the liability to pay compensation on any of the grounds mentioned in sub-section (2) including that there has been a contravention of the condition excluding the vehicle being driven by any person who is not duly licensed. This bar on the face of it operates on the person insured. If the person who has got the vehicle insured has allowed the vehicle to be driven by a person who is not duly licensed then only that clause shall be attracted. In a case where the person who has got insured the vehicle with the insurance company, has appointed a duly licensed driver and if the accident takes place when the vehicle is being driven by a person not duly licensed on the basis of the authority of the driver duly authorised to drive the vehicle whether the insurance company in that event shall be absolved from its liability? The expression 'breach' occurring in Section 96(2)(b) means infringement or violation of a promise or obligation. As such the insurance company will have to establish that the insured was guilty of an infringement or violation of a promise. The insurer has also to satisfy the Tribunal or the Court that such violation or infringement on the part of the insured was wilful. If the insured has taken all precautions by appointing a duly licensed driver to drive the vehicle in question and it has not been established that it was the insured who allowed the vehicle to be driven by a person not duly licensed, then the insurance company cannot repudiate its statutory liability under sub-section (1) of Section 96. ...."

12. In the case of Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd., 1999 (6) SCC 620, the appellant was the owner of a truck weighing less than the maximum limit prescribed in Section 2(21) of the Motor Vehicles Act. The said truck was, therefore, a light motor vehicle. It was registered with the respondent insurer for a certain amount and for a certain period. Within the period of insurance, the truck met with an accident and got completely damaged. The appellant's claim against the respondent was rejected by the National Consumer Disputes Redressal Commission. The National Commission accepted the respondent's contention that the truck was a goods carriage or a transport carriage and that the driver of the truck, who was holding a driving licence in Form 6 to drive light motor vehicles only, was not

authorized to drive a transport vehicle and, therefore, the insured having committed breach of the terms of insurance policy and the provisions of the Act, the respondent insurer was not liable to indemnify the insured. Allowing the appeal, this Court held as under:-

"14. Now the vehicle in the present case weighed 5920 kilograms and the driver had the driving licence to drive a light motor vehicle. It is not that, therefore, the insurance policy covered a transport vehicle which meant a goods carriage. The whole case of the insurer has been built on a wrong premise. It is itself the case of the insurer that in the case of a light motor vehicle which is a non-transport vehicle, there was no statutory requirement to have a specific authorisation on the licence of the driver under Form 6 under the rules. It has, therefore, to be held that Jadhav was holding an effective valid licence on the date of the accident to drive a light motor vehicle bearing Registration No. KA-28-567."

13. In the case of New India Assurance Company, Shimla v.

Kamla & Others, (2001) 4 SCC 342, a fake licence had happened to be renewed by the statutory authorities and the question arose as to whether Insurance Company would be liable to pay compensation in respect of motor accident which occurred while the vehicle was driven by a person holding such a fake licence. Answering the question, this Court discussed the provisions of Sections 146, 147 and 149 of the Act and observed:-

"21. A reading of the proviso to sub-section (4) as well as the language employed in sub-section (5) would indicate that they are intended to safeguard the interest of an insurer who otherwise has no liability to pay any amount to the insured but for the provisions contained in Chapter XI of the Act. This means, the insurer has to pay to the third parties only on account of the fact that a policy of insurance has been issued in respect of the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy.

22. To repeat, the effect of the above provisions is this:

when a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to the third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured.

23. It is advantageous to refer to a two-Judge Bench of this Court in Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan (1987)2 SCC 654. Though the said decision related to the corresponding provisions of the predecessor Act (Motor

Vehicles Act, 1939) the observations made in the judgment are quite germane now as the corresponding provisions are materially the same as in the Act. Learned Judges pointed out that the insistence of the legislature that a motor vehicle can be used in a public place only if that vehicle is covered by a policy of insurance is not for the purpose of promoting the business of the insurance company but to protect the members of the community who become sufferers on account of accidents arising from the use of motor vehicles. It is pointed out in the decision that such protection would have remained only a paper protection if the compensation awarded by the courts were not recoverable by the victims (or dependants of the victims) of the accident. This is the raison d'être for the legislature making it prohibitory for motor vehicles being used in public places without covering third-party risks by a policy of insurance.

24. The principle laid down in the said decision has been followed by a three-Judge Bench of this Court with approval in Sohan Lal Passi v. P. Sesh Reddy (1996) 5 SCC 21.

25. The position can be summed up thus:

The insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence. Learned counsel for the insured contended that it is enough if he establishes that he made all due enquiries and believed bona fide that the driver employed by him had a valid driving licence, in which case there was no breach of the policy condition. As we have not decided on that contention it is open to the insured to raise it before the Claims Tribunal. In the present case, if the Insurance Company succeeds in establishing that there was breach of the policy condition, the Claims Tribunal shall direct the insured to pay that amount to the insurer. In default the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimant third parties) from the insured person."

14. In the case of National Insurance Co. Ltd. v. Swaran Singh & Ors., (2004) 3 SCC 297, a 3-Judge Bench of this Court held as under:-

"47. 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.

48. 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 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.

xxx xxx xxx

73. 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.

xxx xxx xxx

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.

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

15. In the case of National Insurance Co. Ltd. v. Kusum Rai and Others, (2006) 4 SCC 250, the respondent was the owner of a jeep which was admittedly used as a taxi and thus a commercial vehicle. One Ram Lal was working as a Khalasi in the said taxi and used to drive the vehicle some times. He had a driving licence to drive light motor vehicle. The taxi met with an accident resulting in the death of a minor girl. One of the issues raised was as to whether the driver of the said jeep was having a valid and effective driving licence. The Tribunal relying on the decision of this Court in New India Assurance Co. v. Kamla (supra) held that the insurance company cannot get rid of its third party liability. It was further held that the insurance company can recover this amount from the owner of the vehicle. Appeal preferred by the insurance company was dismissed by the High Court. In appeal before this Court, the insurance company relying upon the decision in Oriental Insurance Co. Ltd. v. Nanjappan, 2004 (13) SCC 224 argued that the awarded amount may be paid and be recovered from the owner of the vehicle. The Insurance Company moved this Court in appeal against the judgment of the High Court which was dismissed.

16. In the case of National Insurance Company Ltd. v. Annappa Irappa Nesaria alias Nesaragi and Others, 2008 (3) SCC 464, the vehicle involved in the accident was a matador having a goods carriage permit and was insured with the insurance company. An issue was raised that the driver of the vehicle did not possess an effective driving licence to drive a transport vehicle. The Tribunal held that the driver was having a valid driving licence and allowed the claim. In appeal filed by the insurance company, the High Court dismissed the appeal holding that the claimants are third parties and even on the ground that there is violation of terms and conditions of the policy the insurance company cannot be permitted to contend that it has no liability. This Court after considering the relevant provisions of the Act and definition and meaning of light goods carriage, light motor vehicles, heavy goods vehicles, finally came to conclusion that the driver, who was

holding the licence duly granted to drive light motor vehicle, was entitled to drive the light passenger carriage vehicle, namely, the matador. This Court observed as under:

> "20. From what has been noticed hereinbefore, it is evident that "transport vehicle" has now been substituted for "medium goods vehicle" and "heavy goods vehicle". The light motor vehicle continued, at the relevant point of time to cover both "light passenger carriage vehicle" and "light goods carriage vehicle". A driver who had a valid licence to drive a light motor vehicle, therefore, was authorized to drive a light goods vehicle as well."

17. The heading "Insurance of Motor Vehicles against Third Party Risks" given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of 1939 Act) itself shows the intention of the legislature to make third party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force.

18. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

19. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside.

20. We, therefore, allow this appeal, set aside the impugned judgment of the High Court and hold that the insurer is liable to pay the compensation so awarded to the dependants of the victim of the

fatal accident. However, there shall be no order as to costs.

.....J. (Surinder Singh Nijjar) .....J. (M.Y. Eqbal) New Delhi, July 1, 2013.
