

# **New India Assurance Co.Ltd vs Roshanben Rahemansha Fakir & Anr on 12 May, 2008**

**Equivalent citations: AIR 2008 SUPREME COURT 2266, 2008 (8) SCC 253, 2008 AIR SCW 4048, 2008 (7) SRJ 112, 2008 (3) SCC(CRI) 476, 2008 (8) SCALE 572, (2008) 4 GAU LR 412, (2008) 3 ALL WC 2477, (2009) 1 ACC 716, (2009) 1 MAH LJ 572, (2009) 1 MPLJ 270, (2008) 41 OCR 763, (2008) 3 TAC 20, (2008) 8 SCALE 572, (2008) 4 ACC 759, (2008) 4 ACJ 2161, (2008) 3 SIM LC 249, (2008) 3 RECCIVR 267**

**Author: S.B. Sinha**

**Bench: Lokeshwar Singh Panta, S.B. Sinha**

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDCITION

CIVIL APPEAL NO. 3496                      OF 2008  
(Arising out of SLP (C) No.3142 of 2007)

New Indian Assurance Co. Ltd.

... Appellant

Versus

Roshanben Rahemansha Fakir & Anr.

... Respondents

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. This appeal is directed against a judgment and order dated 13.11.2006 passed by a Division Bench of the High Court of Gujarat at Ahmedabad in First Appeal No.3441 of 2006 whereby and whereunder an appeal preferred by the appellant herein from a judgment and order dated 5.5.2006 passed by the Motor Accident Claims Tribunal (Main), Rajkot in MPCP No.1211 of 2005 has been dismissed.

3. One Majothee Salim Amadbhai was holder of a licence of a three wheeler. The licence was not meant to be used to drive transport vehicle. The vehicle was owned by one Rashmikan Natvarlal Joshi, Respondent No.2. The Tribunal correctly noticed the description of the class of vehicle, i.e., an Autorikshaw Delivery Van. It was not being used for a private purpose. It was a commercial vehicle. Respondent No.2, admittedly, entered into a contract of insurance in respect of the said vehicle. Certificate of insurance shows that the vehicle was a goods carrying public carrier within the meaning of Rule 51 of the Central Motor Vehicles Rules, 1989.

4. One of the contentions raised by the appellant was that the driver of the said vehicle being not holder of a legal, valid and effective driving licence, it was not liable to reimburse the claim of the claimants. Learned Tribunal negated the said plea.

5. On an appeal preferred by the appellant before the High Court under Section 173 of the Motor Vehicles Act, 1988 the High Court held as under :

"Section 41 of the Act provides for registration of motor vehicles and sub-section (4) thereof provides as under :

`(4) In addition to the other particulars required to be included in the certificate of registration, it shall also specify the type of the motor vehicle, being a type as the Central Government may, having regard to the design, construction and use of the motor vehicle, by notification in the official Gazette, specify.' In exercise of the aforesaid powers, the Central Government issued notification vide S.O.451 (E), dated 19th June, 1992 published in the Gazette of India, Extra Pt.II, Section 3(ii) dated 19th June, 1992 specifying the types of motor vehicles. Relevant portion of the said notification reads as under :

`In exercise of the power conferred by sub-Section (4) of Section 41 of the Motor Vehicles Act, 1988 (59 of 1988) and in supersession of the Notification No.S.O.436(E), dated the 12th June, 1989 except or respects things done or omitted to be done before such supersession, the Central Government hereby specifies the types of Motor Vehicles mentioned in column 2 of the Table below as the type and respect of Motor vehicles specified in the corresponding entry in column 1 thereof for the purposes of sub-section(4) :

TABLE Transport Vehicle Non-Transport Vehicle (1) (2)

(i)... (i)...

(ii) to (ix)...	(ii) to (iv)...
(x) Three-wheeled vehicles transport of passenger/goods	(v) Three-wheeled vehicles for personal use.

We find that the same classification is maintained in the subsequent notification dated 5th November 2004 published in the Gazette of India, Extra-ordinary, Part-II, Section 3(ii) dated 5th November, 2004 in exercise of the same powers under sub-section (4) of Section 41 of the Act. The relevant entries therein read as under :

Transport Vehicle Non-Transport Vehicle (1) (2)

(i) to (iv) (i) to (iii)...

(v)	Three-wheeled	(iv)	Three-wheeled
vehicles for transport		vehicles for personal	
of passenger/goods		use.	

8. A bare perusal of the above statutory orders would clearly show that an auto rickshaw being a three wheeled vehicle will fall in the same category whether it is for transporting goods or for transporting passengers. There is nothing on record to show that the licence in question was for a three wheeled vehicle for personal use and that it was not for an auto rickshaw for carrying passengers or for carrying goods."

6. An appeal preferred by the appellant was dismissed summarily. Before the High Court, a decision of this Court in *National Insurance Company v. Kusum Rai* [(2006) 4 SCC 250] was cited. The High Court opined that the said decision has no application in the instant case.

7. Dr. Meera Agarwal, learned counsel appearing on behalf of the appellant, would submit that in view of the fact that the registration certificate as also the policy of insurance having clearly mentioned that the vehicle in question was a transport vehicle and as the driver thereof was not possessing a licence which was not valid for a transport vehicle, the impugned judgment cannot be sustained.

8. Ms. Sarda Devi, learned counsel appearing on behalf of the respondent, on the other hand would submit that the driver of the vehicle was having an effective driving licence for auto rickshaw and it did not matter as to whether it was adapted for carrying passengers or goods.

9. Section 3 of the Motor Vehicles Act reads as under :

"Section 3 - Necessity for driving licence.--

(1) No person shall drive a motor vehicle in any public place unless he 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<sup>1</sup>[a motor cab or motor cycle] hired for his own use or rented under any scheme made under subsection (2) of section 75] unless his driving licence specifically entitles him so to do. (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."

10. Section 10 of the Act provides for classes of the driving licence. Different classes of vehicle have been defined in different provisions of the Motor Vehicles Act. The 'transport vehicle' is defined in Section 2 (47) of the Act to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. We have noticed hereinbefore the provisions of sub-section (4) of Section 41. We have also noticed the notification issued by the Central Government in this behalf. The said notification clearly postulates that a three wheeled vehicle for transport of passengers or goods comes within the purview of class 5 of the table appended thereto. The licence granted in favour of the said Salim Amadbhai goes to show that the same was granted for a vehicle other than the transport vehicle. It was valid from 13.05.2004 to 12.05.2024. Section 14(2)(a) provides that a driving licence issued or renewed under the Act shall, in case of a licence to drive a transport vehicle will be effective for a period of three years whereas in the case of any other vehicle it can be issued or renewed for a period of 20 years from the date of issuance or renewal. The fact that the licence was granted for a period of 20 years, thus, clearly shows that Salim Amadbhai, driver of the vehicle, was not granted a valid driving licence for driving a transport vehicle.

11. The same is also borne out from the licence in question. The attention of the High Court, however, was not drawn to these aspects of the matter.

The learned Tribunal also, in its judgment dated 5.5.2006 noticed the facts in the following terms :

"When they were proceeding on road on foot and reached near Fire brigade, a rickshaw bearing No.GRP 5432 with closed body came in fast speed, rashly and negligently from behind and dashed with the complainant Ikbala and deceased Mahamadsha as a result of which both of them fell down, sustained injuries, deceased sustained serious injuries on his head and other parts of the body, and during the course of treatment he succumbed to the injuries."

12. From the discussions made hereinbefore, it is evident that the driver of the vehicle was not holding an effective licence. Possession of an effective licence is necessary in terms of Section 10 of the Motor Vehicles Act.

13. In National Insurance Co. Ltd. v. Swaran Singh and Ors. [(2004) 3 SCC 297], this Court opined :

"89. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section (2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are: (a) motorcycle without gear,

(b) motorcycle with gear, (c) invalid carriage,

(d) light motor vehicle, (e) transport vehicle, (f) road roller, and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines

various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10.

They are "goods carriage", "heavy goods vehicle", "heavy passenger motor vehicle", "invalid carriage", "light motor vehicle", "maxi-cab", "medium goods vehicle", "medium passenger motor vehicle", "motor-cab", "motorcycle", "omnibus", "private service vehicle", "semi-trailer", "tourist vehicle", "tractor", "trailer" and "transport vehicle". In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence for "motorcycle without gear", [sic may be driving a vehicle] for which he has no licence. Cases may also arise where a holder of driving licence for "light motor vehicle" is found to be driving a "maxi-cab", "motor-cab"

or "omnibus" for which he has no licence. In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.

The said decision has been considered by this Court in Kusum Rai (supra).

14. In National Insurance Company Ltd. v. Annappa Irappa Nesaria and Ors. [(2008) 1 SCALE 642], it was noticed that the provisions of the Act have undergone a change. The definition of 'light motor vehicle' would not include a light transport vehicle. In that case, keeping in view the date on which the accident took place, it was held :

"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."

15. For the reasons aforementioned, the impugned judgment cannot be sustained. The same is set aside accordingly. However, in exercise of our jurisdiction under Article 142 of the Constitution of India, we direct that the appellant may satisfy the award in favour of the claimants to recover the same from the owner. The appeal is allowed with the aforementioned directions. No costs.

.....J. [S.B. Sinha] .....J. [Lokeshwar Singh Panta] New Delhi;

May 12, 2008