

# National Insurance Co. Ltd vs Kaushalaya Devi & Ors on 13 May, 2008

**Equivalent citations:** AIR 2008 SUPREME COURT 2252, 2008 AIR SCW 4025, 2008 (3) SCC(CRI) 467, 2008 (8) SCALE 500, 2008 (8) SCC 246, (2009) 2 MAD LJ 953, (2008) 3 ACJ 2144, (2008) 4 MAD LW 1116, (2009) 1 MAH LJ 561, (2009) 1 MPLJ 288, (2008) 41 OCR 758, (2008) 4 PUN LR 375, (2008) 3 SIM LC 238, (2008) 3 TAC 12, (2008) 4 RECCIVR 902, (2008) 8 SCALE 500, (2009) 1 ACC 52, (2009) 1 CIVLJ 100, (2008) 4 ACC 796

**Author:** S.B. Sinha

**Bench:** V.S. Sirpurkar, S.B. Sinha

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. \_\_\_\_\_ OF 2008  
(Arising out of SLP (C) No.10694 of 2006)

National Insurance Co. Ltd. ... Appellant

Versus

Kaushalaya Devi & Ors. ... Respondents

WITH

CIVIL APPEAL NO. \_\_\_\_\_ OF 2008  
(Arising out of SLP (C) No.9910 of 2006)

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Kishan Lal (deceased) was traveling in a truck bearing registration No.HP-11-1448 on 16.3.2000. He was aged about 27 years. He was unmarried. The said truck met with an accident.

First respondent being the mother of the deceased filed an application for payment of compensation under Section 166 of the Motor Vehicles Act, 1988 (The Act). Appellant was served with a notice. One of the objections taken by it was that the driver of the truck did not possess any valid or effective driving licence and that the deceased was travelling as an unauthorized passenger on the truck which was a goods carriage.

3. The Tribunal awarded a sum of Rs.1,18,000/- by way of compensation. An appeal was preferred thereagainst before the High Court.

By reason of the impugned judgment, whereas the contention of the appellant-insurance company was upheld, having regard to the fact that the amount awarded in favour of the first respondent had already been deposited, it was directed to be released in favour of the claimant with liberty to the insurance company to recover the said amount along with interest from the owner by filing an appropriate application for execution before the Tribunal without being required to file a separate suit.

4. Both the insurance company as also the owner of the truck are, thus, before us.

5. Shri S.L. Gupta, learned counsel appearing on behalf of the insurance company, would submit that as the deceased was travelling as a gratuitous passenger and as the driver of the vehicle was not possessing an effective driving licence, the High Court should not have passed the impugned order.

6. Mr. Garg, learned counsel appearing on behalf of the owner of the vehicle, on the other hand, would contend that the deceased was a vegetable vendor and he had been travelling in the truck for collecting the empty boxes and, thus, he was not a gratuitous passenger. In any event, it was urged, as the insurance company has already deposited the amount of compensation, the right to recover the amount from the owner of the vehicle need not have been granted.

7. The Tribunal, having regard to the rival contentions of the parties, framed the following issues :

"1. Whether deceased Shri Krishan Lal had died due to the rash and negligent driving of Shri Shyam Lal, driver of truck No.HP-11-1448, as alleged? ...OPP.

2. If issue No.1 supra is proved, to what amount of compensation the petitioner is entitled to and from which of the respondents? ..OPP

3. Whether the truck driver did not have valid driving licence on the date of accident, as alleged, if so, its effect? OPR.3.

4. Whether the documents i.e. route permit, R.C. and fitness certificate of the truck, in question, were not valid on the date of accident as alleged? ...OPR.3

5. Relief."

8. It was opined by the Tribunal that the driver of the truck was driving the vehicle rashly and negligently. It was furthermore held that the truck in question was insured with the appellant insurance company, but it had not been proved that the driver was not having any valid driving licence.

With regard to the contention that the deceased was a gratuitous passenger in a goods vehicle, it was held :

"The evidence, on record, which has been led by the petitioner would go to show that the deceased was traveling in the truck, in question, for bringing empty vegetable boxes. Further, even if it is taken that the deceased was traveling in the truck as unauthorized person, even then, under the existing law, the insurance company cannot avoid the liability in question. Therefore, the plea raised by the learned Advocate for the insurance company does not have any force."

9. The High Court, however, held that the driving licence of the Driver Shyam Lal was not valid, stating :

"Since I am of the opinion that the endorsement permitting Shyam Lal to drive heavy goods vehicle was ante dated and was not existing on the date of accident it is clear that the owner could not have handed over the vehicle to a person who held a valid driving licence. On 16.3.2000 Shyam Lal only held a licence to drive a light transport vehicle and the owner could not have checked or verified the licence for driving a heavy goods vehicle. In fact in this case the owner has not even stepped into the witness box to say anything in this regard. Therefore, I hold that the insurance company was wrongly held liable to pay compensation."

As regards to the question as to whether the deceased was an unauthorized passenger, it accepted the plea of the insurance company.

10. The provisions relating to the necessity of having a licence to drive a vehicle is contained in Sections 3, 4 and 10 of the Act. As various aspects of the said provisions, vis-à-vis, the liability of the insurance company to reimburse the owner in respect of a claim of a third party as provided in Section 149 thereof have been dealt with in several decisions, it is not necessary for us to reiterate the same once over again. Suffice it to notice some of the precedents operating in the field..

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

"88. Section 10 of the Act provides for forms and contents of licences to drive. The licence has to be granted in the prescribed form. Thus, a licence to drive a light motor vehicle would entitle the holder there to drive the vehicle falling within that class or description.

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."

It was furthermore, observed :

"90. We have construed and determined the scope of sub-clause ( ii ) of sub-section (2) of Section 149 of the Act. Minor breaches of licence conditions, such as want of medical fitness certificate, requirement about age of the driver and the like not found to have been the direct cause of the accident, would be treated as minor breaches of inconsequential deviation in the matter of use of vehicles. Such minor and inconsequential deviations with regard to licensing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance to the third parties.

91. On all pleas of breach of licensing conditions taken by the insurer, it would be open to the Tribunal to adjudicate the claim and decide inter se liability of insurer and insured; although where such adjudication is likely to entail undue delay in decision of the claim of the victim, the Tribunal in its discretion may relegate the insurer to seek its remedy of reimbursement from the insured in the civil court."

The decision in Swaran Singh, however, was held to be not applicable in relation to the owner or a passenger of a vehicle which is insured.

11. In National Insurance Co. Ltd. v. Laxmi Narain Dhut [2007 (4) SCALE 36], this Court referring to Swaran Singh (supra) and discussing the law on the subject, held :

"In view of the above analysis the following situations emerge:

1. The decision in Swaran Singh's case (supra) has no application to cases other than third party risks.
2. Where originally the licence was a fake one, renewal cannot cure the inherent fatality.
3. In case of third party risks the insurer has to indemnify the amount and if so advised, to recover the same from the insured.
4. The concept of purposive interpretation has no application to cases relatable to Section 149 of the Act.

The High Courts/Commissions shall now consider the matter afresh in the light of the position in law as delineated above.

{See also Oriental Insurance Company Ltd. v. Meena Variyal & Ors. [2007 (5) SCALE 269]; Oriental Insurance Company Ltd. v. Brij Mohan & Ors. [2007 (7) SCALE 753]; and Oriental Insurance Co. Ltd. v. Prithvi Raj [2008 (1) SCALE 727]}.

12. In view of the findings arrived at by the High Court, it must be held that the owner alone was liable to pay compensation to the first respondent herein for causing death of her son by rash and negligent driving on the part of the driver of the truck. The High Court's judgment must be sustained on this ground.

13. The deceased was not the owner of any goods which were being carried in the truck. Admitted position is that he had been traveling in the truck for the purpose of collecting the empty boxes. He was a vegetable dealer. He was not traveling in the truck as owner of the goods viz. the vegetables. He was traveling in the truck for a purpose other than the one for which he was entitled to travel in a public carriage goods vehicle.

This aspect of the matter is squarely covered by the decision of this Court in Brij Mohan (supra) wherein the Bench cited with approval the decision in New India Assurance Co. Ltd. v. Asha Rani & Ors. [(2003) 2 SCC 223] wherein it was stated :

"26. In view of the changes in the relevant provisions in the 1988 Act vis-a-vis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor."

{See also Prem Kumar & Ors. v. Prahlad Dev & Ors. [2008 (1) SCALE 531] and Oriental Insurance Co. Ltd. v. Prithvi Raj [2008 (1) SCALE 727]}.

14. For the reasons aforementioned, Civil Appeal arising out of SLP (C) No. 10694 is allowed and Civil Appeal arising out of SLP (C) No. 9910 of 2006 is dismissed. If the amount deposited by the insurance company has since been withdrawn by the first respondent, it would be open to the insurance company to recover the same in the manner specified by the High Court. But if the same has not been withdrawn the deposited amount may be refunded to the insurance company and the proceedings for realization of the amount may be initiated against the owner of the vehicle. In the facts and circumstances of the case, however, there shall be no order as to costs.

.....J. (S.B. Sinha) .....J. (V.S. Sirpurkar) New Delhi.

May 13, 2008