Madras High Court
The Oriental Insurance Co. Ltd. ... vs Sivammal And Ors. on 31 May, 2007
Equivalent citations: (2007) 6 MLJ 384
Author: S Manikumar
Bench: S Manikumar
JUDGMENT S. Manikumar, J.

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1. The Civil Miscellaneous Appeals are filed by the Insurance Company challenging the finding of the Tribunal with regard to the liability of the Company to pay compensation. C.M.A. No. 1163 of 2005 is filed against the award passed in M.C.O.P.No. 1285 of 2003 on the file of the Motor Accident Claims Tribunal (Additional District Judge/Fast Track Court No. 2) Tirunelveli, dated 20.09.2005. C.M.A. Nos. 8 to 12 of 2004 are filed against the award passed in respect of M.C.O.P. Nos. 369 to 373 of 2002 on the file of the Motor Accident Claims Tribunal (Sub Court) Tenkasi dated 29.09.2005. Since the question of law and the facts involved are one and the same, all the appeals are taken up together and disposed of by a common judgment.

2. Brief facts leading to the appeal are as follows: On 14.07.2002 at 8.45 a.m., when Velsamy (since deceased) and five others were travelling in an Autorickshaw bearing Registration No. TN-72-U-1175, owned by the second respondent and insured with the appellant-Insurance Company, near Kandasamy Sand Quarry, the driver of the Autorickshaw drove the vehicle in a rash and negligent manner and capsized it. The said Velsamy died on the spot and the rest of the passengers sustained injuries. Legal representatives of the deceased filed M.C.O.P. No. 1285 of 2005 and other injured passengers filed separate claim petitions in M.C.O.P. Nos. 369 to 373 of 2002 and claimed compensation.

3. The appellant-Insurance Company resisted the claim petition, contending inter alia that the driver of the Autorickshaw did not possess valid and effective licence for driving a transport vehicle at the time of accident and the insured has violated the policy condition. Therefore, the appellant-Insurance Company is not liable to pay compensation.

4. Before the Tribunal, in M.C.O.P. No. 1281 of 2002, one of the legal representative of the deceased was examined as PW.1 and another witness was examined as PW.2. On behalf of the appellant-Insurance Company, an Officer of Regional Transport Office was examined as RW.1. In M.C.O.P. Nos. 369 to 373 of 2002, the injured persons examined themselves as Pws. Page 1711 1 to 5 and Exs.P1 to P10 were marked. On behalf of the appellant-Insurance Company, the driver of the Autorickshaw was examined as RW.1 and an Officer of Regional Transport Office was examined as RW.2.

5. On evaluation of pleadings and evidence, both the Tribunals have fixed the negligence on the part of the driver of the Autorickshaw and held that the appellant-Insurance Company and owner of the vehicle were jointly or severely liable to pay compensation. Aggrieved by the finding with regard to the liability, the Insurance Company has preferred the above appeals.

6. Learned Counsel for the appellants submitted that it is evident from Ex.B1 - Driving licence of RW.1, driver of the Autorickshaw that he had licence only to drive light motor vehicle and not a transport vehicle. He further submitted that RW.1 did not possess valid licence to drive the transport vehicle (Autorickshaw) at the time of accident and therefore, there is violation of policy condition, for which, the Insurance Company is not liable to pay compensation. He further submitted that in the absence of specific endorsement in the licence, one could not plead that the driver had valid driving licence to drive an Autorickshaw. He further submitted that mere perusal of licence of driver (light motor vehicle) itself would disclose that the driver was not authorised to drive an autorickshaw and under such circumstances, the owner of the vehicle has failed to exercise due care and caution in engaging the driver to drive transport vehicle, without valid licence. He further submitted that the Insurance Company has discharged its burden of proving that the insured, viz., owner of the vehicle had violated the policy condition by engaging a person, who did not possess a valid licence to drive the transport vehicle (Autorickshaw) and therefore, it is open to the insurer to raise a defence, as per Section 149(2)(ii) of the Motor Vehicles Act. He therefore submitted that the finding of the Tribunal with regard to liability has to be set aside and consequently the insurer is not liable to pay compensation to the claimants. In support of his contention, learned Counsel for the appellant placed reliance on the following decisions, viz.,

(i) Kashiram Yadav and Anr. v. Oriental Fire and General Insurance Co and Ors. .

(ii) New India Assurance Co. v. Kamala and Ors. ,

(iii) National Insurance Co. Ltd. v. Swaran Singh Page 1712

(iv) New India Assurance Co. Ltd. v. Dharmu and Ors. ,

(v) National Insurance Co. Ltd. v. Kanti Devi and Ors. ,

(vi) National Insurance Co. Ltd. v. Kusum Rai and Ors.

7. Per contra, learned Counsel appearing for the owner of the Autorickshaw, third respondent herein submitted that the accident had occurred only due to the poor maintenance of the road and not due to the negligence of the driver of the Autorickshaw and therefore, the appellant-Insurance Company is liable to pay compensation to the third parties and recover it from the Government. He further submitted that non-joinder of Government in the claim petition is the mistake of the claimants, for which, the insured should not be made liable.

8. Learned Counsel for the third respondent submitted that in the absence of a decision taken by the Tribunal as to whether the non-possession of licence for the particular type of vehicle was the main or contributory cause of accident and since the accident occurred due to poor maintenance of the road condition, which was unforeseen, having no nexus with the driver in not possessing the requisite type of licences, the insured is not liable for the technical breach of conditions, concerning Driving licence. He further submitted that the driver is qualified to drive light motor vehicle and mere endorsement on the licence will not make him more qualified and therefore, it has no nexus

with driving and under such circumstances, it cannot be said that he did not possess the requisite type of licence. He further submitted that the alleged breach of condition, if any, concerning driving licence would only be technical and that by itself would not absolve the Insurance Company from paying compensation. In support of his contention, learned Counsel for the third respondent placed reliance on the decision in National Insurance Corporation Ltd. v. Kanti Devi and Ors. .

9. As regards the contention of the appellant that an Autorickshaw carrying passengers is a public transport vehicle and for which, specific licence is required, learned Counsel for the third respondent submitted that an Autorickshaw is only a 'motorcab', which falls under the category light motor vehicle. As the laden weight of the Autorickshaw is lesser than the weight of the light motor vehicle, which weighs 7,500 kilograms, Page 1713 autorickshaw is only a light motor vehicle and therefore, the driver who had light motor vehicle licence at the time of accident can drive an autorickshaw and therefore, there is no violation of policy.

10. Placing reliance on the decisions in Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd. , New India Assurance Co. Ltd. v. R. Jeyalakshmi , National Insurance Co. Ltd. v. Sm. Maisy Alex reported in II (1999) ACC 175 (Mad) and Oriental Insurance Co. Ltd. v. Rajani Parida reported in III (2004) ACC 623 (Ori.), learned Counsel for the third respondent submitted that it is sufficient that the driver of the Autorickshaw, possessed licence to drive light motor vehicle and that there is no need to obtain specific endorsement.

11. Without prejudice to the above contention, learned Counsel for the third respondent submitted that the appellant-Insurance Company has failed to let in evidence to discharge their onus to prove that the driver was not having a valid licence at the time of accident and to avoid its liability, the appellant-Insurance Company ought to have proved that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the conditions of the policy with regard to the use of vehicle by duly licenced driver (or) one was not disqualified at the time of accident. He further submitted that the Tribunal has found that the driver had valid licence under Ex.B1 and therefore, the contention of the appellant-Insurance Company that the driver did not possess a valid driving licence is not acceptable. In support of his contention, learned Counsel for the third respondent cited the following decisions, viz., Oriental Insurance Co. Ltd. v. Munshi Ram , National Insurance Corporation Ltd. v. Kanti Devi and National Insurance Co. Ltd. v. Swaran Singh and Ors. .

12. The last contention of the learned Counsel for the third respondent is that the cause of accident is not due to overloading of the passengers in the Autorickshaw and it was only due to the poor maintenance of the road. Placing reliance on the decisions in and 1998 (1) LW 59, learned Counsel for the third respondent submitted that if no evidence is available to prove that the cause of accident was due to Page 1714 overloading of the vehicle, then the Insurance Company cannot escape from its liability to pay compensation, as the Autorickshaw is a motor vehicle constructed or adapted to carry passengers not more than 6 persons, including driver, for hire or reward.

13. The rival contentions of the learned Counsel appearing for the contesting parties have to be considered in the light of the latest decisions of the Supreme Court dealing with the right of the Insurance Company to take up defences under Section 149(2)(a)(ii) of the Motor Vehicles Act and

on facts whether the insurer has discharged its burden to prove that the insured has been guilty of negligence and failed to take care and caution in engaging the driver to drive an autorickshaw, which caused the accident.

14. In National Insurance Corporation Ltd. v. Kanti Devi , the stand of the insurer before the Tribunal was that the driver did not possess a valid driving licence, as the driving licence authorised driving of light motor vehicles (private), while driver was driving a transport vehicle (Tata Truck-407). Aggrieved by the finding that the insured has to satisfy the award, the company filed an appeal to the High Court and the same was confirmed. While testing the correctness of the judgment, the Supreme Court considered the scope and ambit of Section 149(2)(a)(ii) vis-a-vis the proviso appended to Sub-section 4 and Sub-section 5 thereof and also the observations made in Swaran Singh's case, dealing with the cases where the driver had licence for one type of vehicle at the relevant time, was driving another type of vehicle. Their Lordships of the Supreme Court, in Paragraph 8 of the judgment held as follows:

Obviously, defence can be raised by the insurer about the licence being fake. By analogy, the insurer can also take a defence that the driver did not have the requisite driving licence to drive a particular type of vehicle. Such defence can be raised and it will be for the insurer to prove that the insured did not take adequate care and caution to verify genuineness or otherwise of the licence held by the driver. The effect of the evidence in this regard has to be considered by the concerned Tribunal.

15. In National Insurance Co. Ltd. v. Kusum Rai's case , the Supreme Court considered the defences available to the insurer against the claim made by a third party, where a commercial vehicle driven by a person not possessing appropriate licence, met with an accident resulting in the death of a minor girl. The vehicle which involved in the accident was a Jeep used as a Taxi. The driver had a licence for driving light Page 1715 motor vehicle. One of the issues raised before the Tribunal was as to whether the driver of the said Jeep was having a valid and effective licence. The question was not considered by the Tribunal and the award passed by the Tribunal was confirmed by the High Court with the observations, it will, therefore, be open to the insurer appellant to initiate an appropriate proceeding for the refund of the amount paid by it to the claimants and establish the breach of the terms and conditions subject to which the insurance policy had been issued.

On appeal, the Insurance Company contended that the violation of the terms and conditions of the contract of insurance is a matter which comes within the purview of any of the "statutory defences" which can be raised by an insurer under Sub-section (2) of Section 149 of the Act. The Supreme Court after considering the earlier decisions of the Court and Section 149(2) of the Motor Vehicles Act categorically held that the Insurance Company could raise a defence that there is breach of condition of contract of insurance, where the holder of a light motor vehicle causes an accident while driving a commercial vehicle. Extracting the relevant Paragraphs 10, 11, 12, 14 and 16 of the reported judgment would be useful for deciding the present appeals,

10. In a proceeding arising out of a claim petition filed under Section 166 of the Motor Vehicles Act, the Insurance Company is a necessary party as it is required to indemnify the owner or driver of the vehicle. Even in a case where the owner colludes with the claimants or is not otherwise represented,

the Insurance Company can contest the matter on merits of the claim petition upon obtaining leave of the Court as is provided under Section 170 of the Act. However, there does not exist any embargo in raising a defence which comes within the purview of Sub-section (2) of Section 149 of the Act which reads as under:

149. Duty of insurer to satisfy judgments and awards against persons insured in respect of third-party risks.- (1) ...

(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 Page 1716

(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 motorcycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licenced, 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.

11. It has not been disputed before us that the vehicle was being used as a taxi. It was, therefore, a commercial vehicle. The driver of the said vehicle, thus, was required to hold an appropriate licence therefor. Ram Lal who allegedly was driving the said vehicle at the relevant time, as noticed

hereinbefore, was holder of a licence to drive a light motor vehicle only. He did not possess any licence to drive a commercial vehicle. Evidently, therefore, there was a breach of condition of the contract of insurance. The appellant, therefore, could raise the said defence.

12. We have noticed herein before that the Tribunal has not gone into the said question. It proceeded on the basis that the case was covered by Kamla 1. The correctness of the said decision came up for consideration before this Court in National Insurance Co. Ltd. v. Swaran Singh wherein this Court clearly held: (SCC p. 335, para 84) The owner of a motor vehicle in terms of Section 5 of the Act has a responsibility to see that no vehicle is driven except by a person who does not satisfy the provisions of Section 3 or 4 of the Act. In a case, therefore, where the driver of the vehicle, admittedly, did not hold any licence and the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in its defence and avoid liability. The matter, however, may be different where a disputed question of fact arises as to whether the driver had a valid licence or where the owner of the vehicle committed a breach of the terms of the contract of insurance as also the provisions of the Act by consciously allowing any person to drive a vehicle who did not have a valid driving Page 1717 licence. In a given case, the driver of the vehicle may not have any hand in it at all e.g. a case where an accident takes place owing to a mechanical fault or vis major. (See Jitendra Kumar 5.)

14. This Court in Swaran Singh clearly laid down that the liability of the Insurance Company vis-a-vis the owner would depend upon several factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle. The question as regards the liability of the owner vis-a-vis the driver being not possessed of a valid licence was considered in Swaran Singh 4 stating: (SCC pp. 336-37, para 89)

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.

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15. The matter came up for consideration again before a Division Bench of this Court in National Insurance Corporationn Ltd. v. Kanti Devi wherein this Court upon consideration of the observations made in Swaran Singh 4 opined: (SCC p. 792, para 12)

12. The decision in Swaran Singh case was not before either MACT or the High Court when the respective orders were passed. Therefore, we think it proper to remit the matter to MACT for fresh consideration. It shall permit the parties to lead such further evidence as they may intend to lead. The matter shall be decided keeping in view the principle enunciated by this Court in Swaran Singh case.

16. In a case of this nature, therefore, the owner of a vehicle cannot contend that he has no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or not.

16. In the background of the above settled legal position, this Court deems it fit to consider the following points:

i. Whether Ex.B1 - Driving licence to drive tight motor vehicle is appropriate to drive an Autorickshaw, which is used or adapted for carrying passengers for hire or reward?

ii. Whether non-holding of valid licence by the driver of the Autorickshaw is a violation of policy condition and the Insurance Company is exonerated from its liability to pay compensation?

iii. Whether the insurance Company has discharged its burden to prove that the insured was guilty of negligence and failed to exercise due, care and caution in allowing the driver to drive the vehicle without requisite licence?

17. A cursory look at the provisions of the Motor Vehicles Act relating to driving licence, category of vehicles and provisions relating to liability of the Insurance Company to pay compensation, would be relevant for the purpose of deciding the point involved in this case.

18. As per Section 2(7), "contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate etc.,

19. As per Section 2(10), "driving licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description.

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20. Section 3 of the Motor Vehicles Act deals with necessity for driving licence and the same is extracted hereuner:

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 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 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.

21. Section 10 of the Motor Vehicle Act deals with the forms of licence, which reads as follows:

10. Form and contents of licences to drive:

(1) Every learner's licence 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

(f) road-roller

(g) motor vehicle of a specified description Amendments: In Section 10, in Sub-section (2), Clause (e) was substituted for Clauses (e) to (h) by Act 54 of 1994 w.e.f. 14.11.1994.

22. Section 2(35) defines public service vehicle and Section 2(47) defines transport vehicle and the same are re-produced hereunder:

Section 2(35): 'public service vehicle' means "any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, motorcab, contract carriage and stage carriage."

Section 2(47): 'transport vehicle' means "a public service vehicle, a goods carriage and educational institution bus or a private service vehicle.

23. At the outset, on facts and evidence on record, it has to be decided whether the vehicle involved in the accident was a commercial vehicle which required appropriate licence. Judicial notice can be taken that autorickshaws permitted to carry passengers are treated as contract carriage, as per Rule 171 of the Motor Vehicle Rules. It does not fall under the definition of "motorcab" as contended by the owner of the vehicle. It is a Page 1720 public service vehicle falling under the definition of Section 2(35) of the Motor Vehicle act. The averments of the claimants that they sustained injury when they travelled as passengers were not disputed by the owner of the vehicle, as he had remained exparte in the Tribunal. Therefore, considering the averments made in the claim petition and the evidence on record, I have no hesitation to hold that the vehicle was used for commercial purpose.

24. Let me now consider some of the cases cited by the learned Counsel for both parties with reference to the facts of the case.

25. In Kashiram Yadav v. Oriental Fire and General Insurance Co. , the question that was considered by the Apex Court was whether the insurer had discharged the burden to prove that the owner had committed a breach of policy condition in allowing the vehicle to be driven by a person who did not have a valid licence at the time of accident. The insured took a positive defence stating that he was not the owner of the vehicle, since he had already sold the same to the third party. But it was not proved. The other contention of the insured that the vehicle was driven by the licenced driver at the relevant time, was proved to be false. Analysing the evidence, the Apex Court held that the onus of the insurer has been discharged from the evidence of the injured himself.

26. In National Insurance Co. Ltd. v. Sundar Raj reported in I(2000) ACC 452 (Mad), this Court considered the case where the driver had licence to drive the light motor vehicle, but he did not have an endorsement for driving an Autorickshaw. The Court, considering the evidence on record, held that the Tribunal has erroneously fastened the liability on the Insurance Company. This Court further held that the licence required valid endorsement. The Company was exonerated from its liability and the owner of the vehicle was held liable to pay compensation to the claimants.

27. In I (2000) ACC 384, the Madhya Pradesh High Court considered a case, where the driver had licence to drive light motor vehicle, but he drove a Tempo van and caused the accident. The tempo van was a "public service vehicle" which requires specific endorsement. The Court held that driving a vehicle without specific endorsement leads to violation of policy condition and the finding of the Tribunal, exonerating the Insurance Company was held to be proper.

28. In a decision in Oriental Insurance Co. Ltd. v. G. Ramasamay and Anr. reported in 2000(3) LW 613, where the owner of the vehicle pleaded that he had sold away the vehicle and licencees should not be made liable. The Insurance Company contended that the driver did not have a valid licence with an endorsement to drive a two wheeler. Licence of the motorcyclist was produced by the Insurance Company. An officer from the Regional Transport Office was examined to prove that was no endorsement or issuance of licence in favour of the driver of the vehicle to drive a two wheeler.

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29. In Paragraph 15 of the judgment, the Court has held that, Having regard to the facts and circumstances of this case, the Insurance Company having produced licence which does not disclose the required endorsement, I am inclined to hold that the Insurance Company had discharged its burden. Apart from producing the licence, a staff of the Regional Transport Office has also been examined to show that no endorsement has been granted by the office which had issued the licence. It is impossible and unrealistic to expect anything more to be done by the Insurance Company. To expect the Insurance Company to verify from all the Regional Transport Offices throughout the State or the country in order to establish that the driver had no licence, would be an impossible and impractical expectation. It should be remembered that the Insurance Companies are public institutions and imposition of any unreasonable burden of proof would only result in the claimants and the owner of the vehicles colluding together and placing the Insurance Company in a very impossible situation. Such a situation cannot at all be appreciated. It has to borne in mind that under normal circumstances, it is for the person who claims to have a valid licence to produce the same. Motor Vehicles Act imposes a duty on the Insurance Company to furnish sufficient material to show that the driver has no proper licence, which burden would be discharged either by producing a licence which does not contain any endorsement to drive a particular type of vehicle, or a report or an official witness from the local Regional Traffic Office. Therefore, I am unable to agree with the findings of the Tribunal.

30. In Branch Manager, National Insurance Co. Ltd. v. R. Lakshmanan , the Insurance Company raised an objection that the driver of the vehicle was not in possession of the driving licence to drive Autorickshaw and hence they are not liable to pay compensation. This Court while considering the liability of the Company, in Paragraph No. 9, held as follows:

There can be no dispute over the fact that various types of licences are issued for driving different types of vehicles. It cannot also be disputed that a person should be possessed of an effective driving licence as defined under Section 3 of the Motor Vehicles Act, 1988 and the effective driving licence would mean a valid licence, both as regards the period as well as the type of vehicle. If the validity of the licence is to be determined only on the basis of weight of the vehicle, then all that would be required for a person is to obtain a licence for a heavy motor vehicle and such a person need not obtain separate licence either for light motor vehicle, autorickshaw or two-wheeler. It is appreciated that each of the said types of vehicles operate on different mechanism, driving skill, capacity to balance the vehicle, etc. A driver of a four-wheeler cannot be presumed to know how to drive a two-wheeler which essentially requires the capacity to balance the vehicle. Page 1722 Likewise, the mechanism of an autorickshaw is also different considering that the process of acceleration,

operating clutch and gear and applying brakes, etc., are totally different. That is the reason Why the Motor Vehicles Act, contemplates issuance of licence to different categories based on test before granting licence. Therefore, the mere weight of the vehicle alone cannot be a deciding factor. In the judgment of the Supreme Court in Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd. , relied on by learned Counsel for the respondents, the issue arose as regards the same type of vehicle. The driver in that particular case had a valid licence to drive a light motor vehicle and what was lacking was only an endorsement authorising him to drive a transport or commercial vehicle. There is no dispute in that case that the vehicle in question also belongs to the same category and type of light motor vehicle.

31. In a decision in Oriental Insurance Co. Ltd. v. Munshi Ram , the Company contended that the driver of the offending vehicle had no valid licence at the time of accident. The Company had produced certificate issued by the Transport Department at Varanasi, wherein the validity of the licence was shown upto 19.12.1989. The Allahabad High Court in Paragraph 4, held as follows:

Insurance Company has filed only a certificate issued by the Transport Department, Varanasi, wherein the validity of the licence has been shown upto 19.12.1989, whereas, the accident took place on 04.07.1996. The claimant has filed a photocopy of the driving licence in the name of driver, Sita Ram, who was driving the vehicle at the time of accident. The said licence was issued from Sonebhadra. Therefore, the Tribunal has rightly found that the insurance company failed to prove that the driver was not having valid licence at the relevant time. The appellant Insurance company could not bring any evidence on record to discharge the onus of proving that the driver was not having valid licence at the time of accident.

32. There is no dispute on facts of the above reported case that the Company has failed to prove and discharge the burden. In the present case, the appellant-Insurance Company has marked Ex.P1, Driving licence of the driver to prove that the driver of the Autorickshaw did not possess the appropriate licence at the time of accident. Therefore, the above judgment cited by the owner of the vehicle is not applicable to the facts of the present case.

33. The Supreme Court in National Insurance Corporation Ltd. v. Kanti Devi , in Paragraph 9 of the judgment, held as follows:

Page 1723 the insurer can also take a defence that the driver did not have the requisite driving licence to drive a particular type of vehicle. Such defence can be raised and it will be for the insurer to prove that the insured did not take adequate care and caution to verify genuineness or otherwise of the licence held by the driver. The effect of the evidence in this regard has to be considered by the Tribunal concerned.

While applying the decision of the Apex Court to the facts of the case, it has to be seen whether the Insurance Company has let in adequate evidence to prove that the insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver.

34. In New India Assurance Co. Ltd. v. Dharmu , the Full Bench of the Himachal Pradesh Court in Paragraphs 14 and 15 has held that,

14. Adopting the aforesaid harmonious construction, therefore, interspersed as it is by reading all the aforesaid provisions of the Act together, in conjunction with each other, rather than reading them in isolation, or separetely, independent of each other, we can perhaps also venture to observe that the expression "unless his driving licence specifically entitles him so to do" occurring in Sub-section (1) of Section 3 of the Act can only lead to one interpretation and that is, if a person already is in possession of a driving licence authorising him to drive a vehicle, other than a transport vehicle, he cannot be permitted to drive a transport vehicle unless, as per Form 6 and in terms of Rule 16 of 1989 Rules, the driving licence additionally authorises and entities him to drive a transport vehicle, in addition to any other type of vehicle for which he might have already been licenced/authorised to drive. If, however, the only licence that he possesses is to drive a transport vehicle, or in otherwords such a person is already possessed of a licence which entitles/authorises him to drive a transport vehicle, there is no question of any additional entitlement or authorisation and in such an eventuality the aforesaid expression "unless his driving licence specifically entitles him so to do" occurring in Sub-section (1) of Section 3 of the Act would be rendered otiose and be treated as such.

15. Viewed in the aforesaid perspective and the legal background, the answer to the question posed to us by the Division Bench, viz., whether such a person who is already possessed of an effective driving licence, authorising him to drive a transport vehicle needs any additional endorsement authorising him to drive a particular type of vehicle will be that, insofar as all types of vehicle falling within the definition of transport vehicle are concerned, in the light of the aforesaid observations made by us, such a licence does not need any other or additional endorsement nor such a person needs any further, other or additional entitlement or authorisation to drive any vehicle which comes within the definition and scope of the term 'transport vehicle' Page 1724 as occurring in Section 2(47), encompassing within itself all the attributes of such definition, including Sub-sections (17) and (35) of Section 2 of the Motor Vehicles Act In the abovesaid judgment, the driver was driving a "heavy passenger motor vehicle" and it was a bus with stage carriage permit. The driver possessed a driving licence which carried an endorsement that he was authorised to drive a transport vehicle. Under such circumstances, the Court held that once a person is granted licence to drive a Transport vehicle, there is no necessity to get an additional endorsement authorising him to drive a particular type of vehicle, as all types of vehicles fall within the definition of Transport vehicle. In the instant case, the driver of the offending vehicle has no endorsement to drive a public service vehicle which falls within the definition of Transport vehicle and therefore, the Full Bench judgment is squarely apply to the facts of the case.

35. In New India Assurance Co. Ltd. v. R. Jayalakshmi , the driver of the vehicle possessed licence for driving heavy passenger motor vehicle, whereas, he was driving heavy goods vehicle. This Court by referring to the provisions dealing with various types of vehicle in Paragraph 7 of the judgment, which runs as follows:

The various types of vehicles in respect of which licence to ride or drive has to be obtained is listed as follows:

(a) motor cycle without gear;

(b) motor cycle with gear;

(c) invalid carriage;

(d) light motor vehicle:

(e) medium goods vehicle;

(f) medium passenger motor vehicle;

(g) heavy goods vehicle;

(h) heavy passenger motor vehicle;

(i) roadroller;

(j) motor vehicle of a specified description.

It starts with a light vehicle and goes up in the order of weight (laden weight). After listing the light ones, heavy goods vehicle is listed as item (g) and thereafter only heavy passenger motor vehicle figures. This is followed by roadroller. The listing clearly shows that the one lower down in the order requires something extra, something more than what the driver is to be equipped with for the previous one. A person who drives, who has a licence for medium passenger motor vehicle. But the converse cannot be true, that is to say, a person having a licence to drive a medium passenger motor vehicle can very well drive a medium goods vehicle. Similarly, a person holding a licence to drive a heavy goods vehicle cannot be permitted to drive a heavy passenger vehicle without a specific endorsement. However, a person having a licence to drive a heavy passenger motor vehicle Page 1725 can drive a heavy goods vehicle without a specific endorsement to that effect. That is my reading of the provisions of Section 10(2) of the Act. That appears to be logical too. At least with regard to items (g) and (h) which are respectively for heavy goods vehicle and heavy passenger motor vehicle.

36. Considering the similarity in the operation mechanism of both the vehicles, viz., heavy goods vehicle and heavy passenger motor vehicle this Court has rendered above ruling and the same is not applicable to the facts of the case, as the mechanism to drive a light motor vehicle, the operation of clutch, process of acceleration, etc., are entirely different with one provided in the Autorickshaw. A person who knows to drive a Light Motor Vehicle, a car, a four wheeler cannot be presumed to know to drive an Autorickshaw, which is a "Public Service Vehicle".

37. In National Insurance Co. Ltd. v. Anbalagan and Anr. reported in 2004 (2) TNMAC 539, the claimant, employed as an auto driver sustained grievous injuries while driving the autorickshaw which was used as a goods vehicle. The observation of this Court at paragraph 7 of the judgment is extracted hreunder:

Of the various case laws relied on by the learned Judge in the above said case, the following are particularly relevant. In 1981 TLNJ 117, the question arose as to whether a mere licence to drive a light motor vehicle which includes autorickshaw would authorize the driver to drive the autorickshaw as a public carrier and in that case the Insurance Company was exempted from liability. In Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd. , the Supreme Court had an occasion to interpret the words effective driving licence under Section 3 of the Motor Vehicles Act, 1988 and it was held that it means a valid licence both as regards the period and the type of vehicle and in that case, the light motor vehicle though designed to be used as a goods carrier neither had a permit as goods vehicle carriage nor was it carrying any goods on the date of the accident.

38. On careful analysis of the judgments cited by the learned Counsel appearing for the parties and the materials on record, I am of the considered opinion that if a person is already in possession of a driving licence authorising him to drive a vehicle other than a transport vehicle, he cannot be permitted to drive a transport vehicle, unless as per Form 6 and in terms of Rule 16 of 1989 Rules, the driving licence additionally authorises and entitles him to drive a transport vehicle, in addition to any other type of vehicle for which the driver might have already been licenced/authorised to drive. A person having Light Motor Vehicle is not authorised to drive a commercial vehicle without due endorsement made by the competent authorities. The driving licence to drive light motor vehicle is not appropriate Page 1726 to drive an autorickshaw which is a transport vehicle. Following the decision of the Apex Court in National Insurance Co. Ltd. v. Kusum Rai and Ors. , the insurer can also take a defence that the driver did not have the requisite driving licence to drive a particular type of vehicle and it will be for the insurer to prove that the insured did not take adequate care and caution to verify genuineness or otherwise of the licence held by the driver. The effect of the evidence in this regard has to be considered by the concerned Tribunal. The owner of the motor vehicle in terms of Section 5 of the Act has a responsibility to see that no vehicle is driven by a person who does not satisfy the provisions of Section 3 and 4 of the Act. It is the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle and he cannot contend that he has no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or not. The Tribunal should evaluate the evidence on record and 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 allowed to avoid its liability merely for technical breach of conditions concerning driving licence.

39. The decision rendered by this Court in (cited supra), squarely apply to the facts of this case, as in both cases, the driver of the offending vehicle had only licence to drive the light motor vehicle at the time of accident. The case of the claimants that the autorickshaw was used for carrying passengers

i.e., for commerical purpose, has not been refuted by the owner, as he had remained exparte. Even before this forum, the owner has not submitted that he verified the genuineness of the licence and satisfied as to its suitability. By placing Ex.B1- Driving licence and adducing oral evidence through the Regional Transport Officer, the appellant-Insurance Company has proved that the driver did not have requisite licence to drive the particular type of vehicle, viz., Autorickshaw. Therefore, on assessment of evidence, I am of the view that the owner of the vehicle has not taken adequate care and caution and let his vehicle in control of a person who does not possess the requisite type of licence. In such circumstances, on evidence, the breach of conditions of the policy could be attributed to the insured.

40. In Kusum Rai's case, the owner of the vehicle did not contest the claim, but considering the poor background of the claimants, although the Court held that the Insurance Company was not liable to pay compensation, in Page 1727 exercise of powers under Article 136 of the Constitution of India, directed the Insurance Company to pay amount and recover from the owner of the vehicle. In the case on hand, the owner of the vehicle, respondent No. 3, has appeared and contested the appeals and denied his liability.

41. In the light of the discussion, the finding of the Tribunal fastening liability on the Insurance Company is liable to be set aside and the Company is hereby exonerated to pay compensation. The quantum of compensation is not challenged in the appeals and hence remain unaltered. The owner of the vehicle is liable to pay compensation to the claimants in all appeals, with accrued interest. Though the Insurance Company has raised a substantial ground that there has been violation of permit condition by allowing more number of passengers, no argument was advanced in that behalf and therefore, the said aspect is not dealt with.

42. In the result, the Civil Miscellaneous Appeals are allowed as indicated above. No order as to costs. Consequently, connected Miscellaneous Petitions are closed.