IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PAVAN KUMAR DWIVEDI

MISC. APPEAL No. 2555 of 2011

THE NEW INDIA ASSURANCE CO.LTD.

Versus

ASHISH AND ANR. AND OTHERS

Appearance:

Shri Sudhir V. Dandwate, learned counsel for the appellant.

Shri Romil Malpani, learned counsel for the respondent No.1.

Heard on : 17.11.2025

Pronounced on : 09.02.2026.

ORDER

The appellant/Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act being aggrieved by the award dated 08.08.2011 passed in Claim Case No.43/2009 challenging the liability imposed upon it for payment of compensation.

2. Short facts of the case are that on 24.06.2009 deceased Mangalabai was going on motorcycle No.MP-09-MR-1102 as a pillion rider, respondent No.2 Prakash Rao was riding the same in rash and negligent manner as per the contents of the claim petition. When they reached near Musakhedi Ring Road, Pink City, accident occurred as another motorcycle dashed into the motorcycle of Prakash Rao, respondent No.2. Deceased Mangalabai sustained grievous injuries in the accident and died because of the same.

2.1 The respondent No.1 filed claim petition under Section 166 of

Motor Vehicles Act claiming compensation for the death of Mangalabai. The claims Tribunal after recording evidence awarded total compensation of Rs.85,000/- to the respondent No.1.

3. The Insurance Company has come before this Court on two grounds; (i) there was complete absence of any material to show rash and negligent driving of the rider of motorcycle No.MP-09-MR-1102 (insured vehicle); and (ii) the rider Prakash Rao was not having valid driving license for riding the motorcycle. He, thus submits that on any count the Insurance Company could not have been saddled with the liability to pay compensation. In support of his submissions he referred to para Nos.13 and 14 and submits that the accident occurred due to rash and negligent driving of the respondent No.2. He has placed reliance on Ex.P/2 the FIR and closure report, which was registered in Police Station, Sanyogitaganj, Indore in which statement of respondent No.2 and Ashish were recorded during Marg investigation. He points out that para No.13 and 14 itself would show that it was the unknown motorcycle, which was being driven in rash and negligent manner and not the motorcycle driven by respondent No.2. In the statements recorded in Marg intimation and in criminal case there is no whisper of rash and negligent driving on the part of respondent No.2. He, thus submits that in absence of rash and negligent driving on the part of respondent No.2 Prakash Rao the Insurance Company could not have been held liable to pay compensation in the case.

3.1 He points out that in para 21 of the impugned award the claims Tribunal has considered the second plea raised by the appellant/Insurance

Company in as much as on the date of accident the respondent No.2 was not holding a valid driving license for riding the motorcycle. He submits that Insurance Company called one Bhaiyalal Dwivedi, Assistant Grade II (AW-1) from the R.T.O., Indore, who brought with himself license of Prakash Rao, according to which license No.P-32454/97 was issued to him valid from 8.1.1997 to 30.10.2005. It was issued for Light Motor Vehicle (LMV) with an endorsement of professional. The witness admitted before the Tribunal that there is no endorsement of motorcycle on the license of respondent No.2. He brought with him the original record also i.e. license card of the respondent No.2 Ex.D/1, its photocopy Ex.D/1C and original record Ex.D/2 and its photocopy Ex.D/2C. The Tribunal recorded findings in para 23 that the respondent No.2 has a valid driving license for driving the Light Motor Vehicle. After recording this finding the claims Tribunal discarded the contention of the Insurance Company that there was no endorsement of motorcycle, thus he was not eligible to drive motorcycle by placing reliance on the judgment of Karnataka High Court in the case of Srinivasagowda and another Vs. Sannamma and others, reported 1 (2011) ACC 416, wherein it was held that as the driver in that case having HMV license, it was considered that he was having valid license for riding scooter also. He submits that the claims Tribunal has completely ignored that the facts of the said case were different and in fact prior to 1988 there was a requirement that before holding the LMV driving license one should possess for a period of one year a driving license for motorcycle. He submits that in fact before grant of license of a vehicle the rider category is required to be

mentioned, but after 1988 this situation has completely changed and that is how the judgment of Srinivasagowda (supra) is not applicable in the present case. In support of his submissions he placed reliance on the judgment rendered by the Hon'ble Apex Court in the case of ***Oriental Insurance Co.Ltd. Vs. Naharulnisha and others,*** reported in ***(2008) 12 SCC 385***.

3.2 Learned counsel further points out that even the claimant respondent No.1 had earlier filed M.A.No.2793/2011 before this Court for enhancement of compensation. The said appeal was allowed vide order dated 13.12.2011, whereby the amount of compensation was enhanced from Rs.85,000/- to Rs.2,49,000/-. However, the Insurance Company subsequently filed Review Petition No.14/2012, thereby it was held that this enhancement shall be subject to the order, which would be passed in the present appeal. He, thus prays for reversal of the findings recorded by the claims Tribunal and setting aside the impugned award.

4. *Per contra*, learned counsel for the claimant-respondent No.2 refers to para 9 and 10 of the impugned award and submits that he admitted in para 3 of his cross-examination that he was riding the motor cycle in high speed, which caused the accident. He places reliance on the judgment of this Court rendered in the case of ***Smt. Sushila Bhadoriya and others Vs. M.P.State Road Transport Corpn.and another***, reported in ***2005 (1) MPLJ 372*** and submits that compensation can be claimed from the owner of the vehicle on which the deceased was sitting.

4.1 As regards question of license he places reliance on two orders of the Karnataka High Court rendered in the cases of ***United India Insurance***

Co.Ltd. Vs. Bharamappa Doddabirappa Pujari and another, reported in *1 (2004) ACC 568* and *Srinivasagowda and another Vs. Sannamma and others*, reported *1 (2011) ACC 416*. He further places reliance on the insurance policy Ex.D/3 and submits that no such condition was there.

5. In rejoinder submissions learned counsel for the appellant/Insurance Company submits that criminal case would show that Prakash Rao was not negligent.

6. Heard learned counsel for the parties; perused the record.

7. Learned counsel for the appellant has mainly stressed upon two facts; (i) there is complete absence of any material to show rash and negligent driving of the rider of motorcycle No.MP-09-MR-1102 i.e. the insured vehicle and (ii) rider Vikas Rao was not having valid driving license for riding the motorcycle. With respect to first contention that there was complete absence of material to show that ash and negligent driving of the driver reference to para 3 of the cross-examination of Prakash Rao himself would show that he explicitly admitted that he was riding his motorcycle in high speed and that accident occurred due to his fault. This statement of the owner of the vehicle has been referred to by the Tribunal in para 9 and 10 of the impugned award. In view of the same, the first contention regarding absence of any material to show rash and negligent driving of the insured vehicle is discarded. As regards contention of learned counsel regarding absence of a valid driving license it is seen from the record that AW-1 Bhaiyalal Dwivedi, Assistant Grade II came from RTO, Indore, who brought with himself license of Prakash Rao according to which license No.P-32454/97 was issued to him valid from 08.01.1997 to 20.10.2005 for operating Light Motor Vehicle. However, significantly there is no endorsement of motorcycle on the said license of respondent No.2. It is, thus clear that rider was having a driving license for operating Light Motor Vehicle, which is a totally different class from the vehicle, which was being ridden by Prakash Rao at the time of accident. However, the claims Tribunal by placing reliance on a judgment of the Division Bench of Karnataka High Court discarded this defence of the Insurance Company and held it liable to pay compensation. The Division Bench of Karnataka High Court in the case of Srinivasagowda (supra) considered this aspect in para 16 in following words:-

> *"16. A question that occurs to our mind is that a person, who is licensed to drive motor cycle with gear, can he not drive motor cycle without gear? Prudent answer would be in the affirmative. If that is the case, our answer and finding is that the driver of the scooter who was authorized to drive HMV is deemed to had valid driving licence to drive scooter. Merely because an*

endorsement has not been made in the driving licence as per Section 11 of the Act, it cannot be said that the driver has violated Section 3 of the Act. Section 3 of the Act says that no person shall drive motor vehicle in any public place unless he holds an effective driving licence to drive the vehicle. In the decision reported in 2008 ACJ 1928 (Oriental Insurance Company Ltd. V/S. Jaharulnisha And Others) supra, the driver, who had licence to drive heavy motor vehicle, was driving two wheeler-scooter held violated Section 10(2) of M V Act. But no reference was made as to whether a person authorized to drive higher capacity vehicle (HMV) was deemed to possess valid licence to drive lower capacity vehicle namely motor cycle or not. But we are of the view that the driver, who has valid licence to driver heavy motor vehicle is deemed to possess valid licence to drive scooter. In our view, none of the decisions cited by the learned Counsel for the insurer can be applied to the case on hand and they are of no avail. Accordingly, we answer Point No.3 in the affirmative."

8. Apart from this, learned counsel for the respondent has also referred to a Single Bench order of Karnataka High Court in the case of Bharamappa (supra). However, a close scrutiny of the Division Bench judgment of the Karnataka High Court would show that though it referred to Zaharulnisha (supra), however, the reasoning appears to be faulty. This issue in fact was considered by the Hon'ble Apex Court in the case of Zaharulnisha (supra) in explicit words. The Hon'ble Apex Court in para 5 recorded the contention of the Insurance Company in following words:-

5. The appellant Insurance Company filed an appeal before the High Court. Before the High Court it was contended that as the driver Ram Surat was holding licence for driving heavy motor vehicle (HMV) only, therefore, he had no valid licence to drive a two-

> ***wheeler scooter which is totally a different class of vehicle in terms of Section 10 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the MV Act"). It was contended that in view of the breach of the provisions of the MV Act, the appellant Insurance Company cannot be held liable to satisfy the award in terms of Section 149(2) of the MV Act.***

and after referring provisions of Section 2, 3, 5, 10 and 149 of the Motor Vehicles Act and after referring to case of Swarn Singh concluded in para 20, 21 and 22 as under :-

> ***20. The learned Judges having considered the entire material and relevant provisions of the MV Act and conflict of decisions of various High Courts and this Court on the question of defences available to the insurance companies in defending the claims of the victims of the accident arising due to the harsh and negligent driving of the vehicle which is insured with the insurance companies, proceeded to record the following summary of findings: (Swaran Singh case [(2004) 3 SCC 297 : 2004 SCC (Cri) 733] , SCC pp. 341-42, para 110)***
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> > *"110. (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.*
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> > *(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 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 insured 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 the claimant or claimants on one side and the 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 the 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."

21. In the light of the above settled proposition of law, the appellant Insurance Company cannot be held liable to pay the amount of compensation to the claimants for the cause of death of Shukurullah in road accident which had occurred due to rash and negligent driving of scooter by Ram Surat who admittedly had no valid and effective licence to drive the vehicle on the day of accident. The scooterist was possessing a driving licence of driving HMV and he was driving a totally different class of vehicle, which act of his is in violation of Section 10(2) of the MV Act.

22. In the result, the appeal is allowed to the limited extent and it is directed that the appellant Insurance Company though not liable to pay the amount of compensation, but in the nature of this case it shall satisfy the award and shall have the right to recover the amount deposited by it along with interest from the owner of the vehicle viz. Respondent 8, particularly in view of the fact that no appeal was preferred by him nor has he chosen to appear before this Court to contest this appeal. This direction is given in the light of the judgments of this Court in National Insurance Co. Ltd. v. Baljit Kaur [(2004) 2 SCC 1 : 2004 SCC (Cri) 370] and Deddappa v. National Insurance Co. Ltd. [(2008) 2 SCC 595 : (2008) 1 SCC (Cri) 517]

9. The Division Bench of Karnataka High Court while distinguishing the judgment in the case of ***Zaharulnisha*** (supra) in para 16 observed that there was no reference as to whether a person authorized to drive higher

capacity vehicle was deemed to possess valid license to drive lower capacity vehicle namely; motorcycle or not and thus it concluded that the driver, who has valid license to drive heavy motor vehicle is deemed to possess valid license to drive motorcycle. This observation of the Division Bench in most respectful opinion of this Court is in contrast to what was held by the Hon'ble Apex Court in the case of ***Zaharulnisha*** (supra). The clear context comes to fore from perusal of above para 5 and 21 that if a person holds license for a higher vehicle in a class of vehicles, then he can operate the lighter vehicles in that class, but same is not true for a completely different class of vehicles. In the present case the driver of the insured vehicle was holding LMV license, which is a license for four wheeler, but at the time of accident he was riding a two wheeler. Thus, the insured vehicle was a completely different class of vehicle (class of two wheeler) than the class of vehicle for which the rider held driving license (LMV, in the class of four wheeler). As such, the dispute in the present case is squarely covered by the judgment of Hon'ble Apex Court in the case of ***Zaharulnisha*** (supra). In view of the same the appeal of the Insurance Company on this point stands allowed.

10. This Court is mindful of the fact that the claimants have also filed M.A.No.2793/2011, which was allowed by coordinate Bench of this Court vide order dated 13.12.2011. However, on a review by the present appellant/Insurance Company this court vide order dated 19.4.2012 made the order dated 13.12.2011 subject to order of this appeal. This Court has already held that appellant/Insurance Company is not liable to pay

compensation in view of the breach of insurance policy in as much as the driver of the insured vehicle was not having valid driving license for riding a two wheeler at the time of accident. However, in para 22 of ***Zaharulnisha*** (supra) in similar circumstances the Hon'ble Apex Court directed the Insurance Company to first pay the amount to the claimants and then it can recover the same from owner of the vehicle.

11. Accordingly, this Court directs the appellant/Insurance company to first pay the amount of compensation to the claimants and then it can recover the same from the owner of the vehicle.

12. With the aforesaid, the present appeal stands **allowed in part**.

(PAVAN KUMAR DWIVEDI)
JUDGE

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