



1

MA-376-2007

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE HIMANSHU JOSHI

ON THE 10th OF NOVEMBER, 2025MISC. APPEAL No. 376 of 2007*BRANCH MANAGER UNITED INDIA INSU.COMP.**Versus**MANEESH KUMAR SINGRORE AND OTHERS*

.....
Appearance:

*Shri D.N. Shukla - Advocate for the appellant.**None for the respondents though served.*
.....

ORDER

The insurance company has preferred this appeal challenging the award dated 19.09.2006 in M.V.C No. 42/2005 passed by learned Additional Motor Accident Claims Tribunal, Jabalpur whereby the Tribunal has awarded compensation to the tune of Rs. 76,000/- to the claimant/respondent No. 1 on account of road accident. The appellant/insurance company was directed to indemnify the claimant being insurer of the offending vehicle.

2. The concise account of the case are that on 07.10.2004, the claimant/respondent No.1 met with an accident due to rash and negligent driving of respondent No.2 while driving motor cycle bearing registration number M.P.-51-B-7262 which resulted into serious injuries to the claimant on his right leg and hand. The claimant suffered with the fractured on the tibia fibula bone of his right leg. He remained hospitalized for the period from 07.10.2004 to 15.10.2004 at Medial College, Jabalpur.

3. The claimant filed a claim petition wherein the respondent No. 2



and 3 remained ex-parte. The insurance company contested the case on the ground that on the date of accident the driver of offending vehicle being minor did not have valid driving license to drive the vehicle and thus, the insurance company is liable to pay compensation to the claimant. After going through the evidence, the learned Tribunal discarded the plea raised by appellant/insurance company holding them liable to pay the compensation.

4. Learned counsel for the appellant/insurance company argued that the respondent No. 2 and 3 both are brothers. The respondent No. 2 was the driver of offending vehicle which was registered in the name of respondent No. 3. The insurance company does not deny the fact of vehicle being insured but the learned Tribunal failed to consider that the vehicle was plying in violation of condition of insurance policy as the driver of vehicle did not have valid driving license on the date of accident. The respondent No. 3/owner of offending cannot escape from his liability to pay the compensation merely on saying that he did not give consent to drive the vehicle to his brother. With the aforesaid, he prays to allow the appeal and appellant/insurance company may be exonerated from its liability to pay the compensation.

5. Heard.

6. On perusal of record, it is clearly established that the accident occurred due to the rash and negligent driving of respondent No. 2 while driving the offending vehicle registered in the name of respondent No.3. It is also undisputed that respondent No. 2 was a minor and had no driving licence. Under Section 3 read with Section 4 and 5 of the Motor Vehicles



Act, 1988, no person below the prescribed age can drive a motor vehicle, and the owner of such vehicle is under a statutory duty to ensure that the vehicle is not driven by a person who does not hold a valid licence.

7. The contention of the owner that the vehicle was driven by his minor brother without his consent or knowledge cannot be accepted as the owner of a vehicle must take adequate care to ensure that only a duly licensed and competent person drives the vehicle.

8. It is often said that responsibility is the silent shadow that follows every act of freedom. In the case of the young, whose impulses race faster than their understanding, that shadow must be guided by the hands of their elders. Thus, upon the elder rests the solemn duty to restrain the minor from venturing into paths not yet meant for their age particularly, the act of driving a vehicle, which demands both maturity and lawful permission. The elder must serve as both guardian and guide, ensuring that the thrill of youth does not overrun the boundaries of safety and law. The minor's safety, and the safety of others, depends upon the vigilance of the elder who understands that care is the truest expression of responsibility.

9. In the present case, both the owner and the driver are real brother . It is inconceivable that the owner was unaware of his brother's use of the vehicle. Even assuming otherwise, the duty to keep the vehicle safe and not accessible to an unlicensed person lies squarely on the owner. Hence, the owner cannot escape liability by merely stating lack of consent.

10. Therefore, it is held that there was a fundamental breach of the policy condition by the owner in permitting or negligently allowing a minor



to drive the vehicle.

11. The Insurance Company has raised a valid defence that the vehicle was being driven by a person who was not duly licensed. The breach being fundamental and directly contributing to the cause of the accident, the insurer is entitled to be exonerated from liability to indemnify the claimants.

13. The Apex Court in the case of *United Insurance Company Ltd. vs. Rakesh Kumar Arora and Ors.* [(2008) 13 SCC 298] has held as under.

10. The vehicle in question admittedly was being driven by Karan Arora who was aged about fifteen years. The Tribunal, as noticed hereinbefore, in our opinion, rightly held that Karan Arora did not hold any valid licence on the date of accident, namely, 5-2-1997.

11. The learned Single Judge as also the Division Bench of the High Court did not put unto themselves a correct question of law. They proceeded on a wrong premise that it was for the Insurance Company to prove breach of conditions of the contract of insurance.

12. The High Court did not advert to itself the provisions of Sections 4 and 5 of the Motor Vehicles Act and thus misdirected itself in law.

13. This aspect of the matter has been considered by this Court in Oriental Insurance Co. Ltd. v. Prithvi Raj [(2008) 2 SCC 338 : (2008) 2 SCC (Cri) 701 : (2008) 1 Scale 727] wherein upon taking into consideration a large number of decisions, it was held that the Insurance Company was not liable, stating: (SCC p. 349, para 9)

“9. In the instant case, the State Commission has categorically found that the evidence on record clearly established that the licensing authority had not issued any licence, as was claimed by the driver and the respondent. The evidence of Shri A.V.V. Rajan, Junior Assistant of the Office of the Jt. Commissioner and Secretary, RTA, Hyderabad who produced the official records clearly established that no driving licence was issued to Shri Ravinder Kumar or Ravinder Singh in order to enable and legally permit him to drive a motor vehicle. There was no cross-examination of the said witness. The National Commission also found that there was no defect in the finding recorded by the State Commission in this regard.”

14. Yet again, this Court in National Insurance Co. Ltd. v. Kaushalaya Devi [(2008) 8 SCC 246 : (2008) 8 Scale 500] took the same view stating: (SCC pp. 248-49, paras 10-11)



“10. The provisions relating to the necessity of having a licence to drive a vehicle are 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.

11. In National Insurance Co. Ltd. v. Swaran Singh [(2004) 3 SCC 297 : 2004 SCC (Cri) 733] this Court held: (SCC p. 336, paras 88-89)

‘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 thereof 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: (SCC p. 337, paras 90-91)

‘90. We have construed and determined the scope of sub-clause (ii) of sub-section (2)(a) 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 [(2004) 3 SCC 297 : 2004 SCC (Cri) 733] , however, was held to be not applicable in relation to the owner or a passenger of a vehicle which is insured.”

15. In view of the authoritative pronouncement of this Court as noticed hereinbefore, the impugned judgment cannot be sustained. It is set aside accordingly and that of the learned Tribunal is restored. However, keeping in view the admitted fact that as no



stay had been granted by the High Court the appellant has deposited the entire amount which has since been withdrawn by the respondent claimant, we direct that the appellant shall be entitled to recover the amount in question from the owner of the vehicle, namely, Respondent 1.

14. Accordingly, the liability to pay compensation shall rest jointly and severally upon the respondent No. 2 and 3. However, in the interest of justice, and following the principle laid down in *National Insurance Co. Ltd. Vs Swarn Singh*, reported in (2004) 3 SCC 297, the Insurance Company is directed to pay the compensation to the claimants in the first instance and recover the same from the owner and driver thereafter.

15. Therefore, the appeal is **allowed**. The findings recorded by the Tribunal so far it relates to indemnifying the claimants by the insurance company is hereby set aside. The Insurance Company/appellant is not liable to indemnify the claimant due to breach of policy conditions. The liability to pay compensation shall rest jointly and severally on respondents No. 2 and 3. However, The Insurance Company shall, in the first instance, deposit the awarded amount with liberty to recover the same from respondent Nos. 2 and 3 (owner and driver) as per law.

(HIMANSHU JOSHI)
JUDGE