

(2010) 05 AHC CK 0319

Allahabad High Court (Lucknow Bench)

Case No: F.A.F.O. No. 252 of 2002

National Insurance  
Co. Ltd.

APPELLANT

Vs

Sita Singh and Others

RESPONDENT

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Date of Decision: May 18, 2010

Acts Referred:

- Central Motor Vehicles Rules, 1989 - Rule 14, 15, 16, 16(1), 6
- Constitution of India, 1950 - Article 227
- Motor Vehicles Act, 1939 - Section 96(2)
- Motor Vehicles Act, 1988 - Section 10, 10(2), 14, 141, 149

Citation: (2010) 4 AWC 3562

Hon'ble Judges: Satish Chandra, J; Devi Prasad Singh, J

Bench: Division Bench

Final Decision: Dismissed

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### Judgement

Devi Prasad Singh and Satish Chandra, JJ.

Heard Miss Pooja Arora holding brief of Sri S. C. Gulati, learned Counsel for the appellant, Sri Anurag Narain, learned Counsel for the respondents as well as Sri U. S. Sahai, learned Counsel for the appellant in Cross Appeal No. 16 of 2002.

2. The Appeal No. 252 of 2002 has been filed by the National Insurance Company against the impugned award dated 12.12.2001 passed by Motor Accident Claims Tribunal Faizabad in Claim Petition No. 84 of 1998.

The respondents-claimants had also filed Cross Appeal No. 16 of 2002 for enhancement of the compensation.

3. In brief, on 15.12.1997 at about 2.30 a.m., adjacent to City Montessori School in short "C.M.S.", Hussain Ganj, the claimants' son Krishna Pratap Singh boarded a tempo for Charbagh Railway Station. The driver of the tempo No. UP-32 Q 5071 was

driving the tempo rashly and negligently and before the C.M.S. collided with certain stones lying over the road. Sri Krishna Pratap Singh was sitting on the front seat of the tempo. He suffered grievous injuries and later on died in hospital on 15.12.1997 at about 11.15 a.m.. The deceased was book binder. F.I.R. was lodged. The claimants approached the Tribunal for payment of compensation.

4. The Tribunal framed four issues relating to accident occurred from the tempo No. UP-32 Q 5071 and consequential death of Krishna Pratap Singh in the accident in question. Issues were also framed with regard to rashness and negligence driving of the vehicle, the insurance cover, driving licence and the amount of compensation.

5. On behalf of the claimants, witnesses, namely P.W. 1 Sri Virendra Kumar Singh, P.W. 2 Sri Anand Kumar Jaiswal and P.W. 3 Smt. Seeta Singh appeared and proved the documents as well as the factum of accident. On behalf of the insurance company, only certain documentary evidence was filed and no oral evidence was led to controvert the evidence led by the claimants. The Tribunal after appreciating the evidence on record held that the accident occurred, at the place in question, on account of rashness and negligence on the part of the tempo driver and awarded compensation to the tune of Rs. 3,22,000. The Tribunal assessed the income of the deceased @ Rs. 30,000 per year and after deducting one third in view of personal expenses, awarded the compensation in terms of Schedule-II of the Motor Vehicles Act.

6. Feeling aggrieved with the impugned award dated 12.12.2001, the Insurance company has preferred the present appeal and claimants- respondents have filed cross appeal for enhancement of the compensation.

7. The argument advanced by the learned Counsel for the appellant- insurance company is that the driver was having a driving licence of light motor vehicle (in short L.M.V.) and he was not having transport licence. Submission of the appellant's counsel is that though a person having L.M.V. licence may ply the tempo but in the absence of endorsement with regard to ply transport vehicle, the driver was not competent to ply the vehicle being violation of the terms and conditions of the policy, the insurance company is not liable to pay compensation. It has further been stated that the permit to ply the vehicle was only within the 40 kms of the area. It could not have plied in the Nagar Palika to carry passengers for Charbagh Railway Station.

8. On the other hand Sri U. S. Sahai, learned Counsel for the claimants respondents submits that the income of the deceased was much higher from Rs. 30,000, as assessed by the Tribunal. He further submits that instead of multiplier of 16 being the age of 20 years, the multiplier of 30 should have been used as the deceased was of tender age.

9. So far as the multiplier is concerned, admittedly, the deceased was aged about 20 years and under Second Schedule of the Motor Vehicles Act, in case the age of the

deceased is 15 years and not exceeding 20 years, the multiplier of 16 has been provided. Accordingly, the Tribunal has rightly applied the multiplier of 16 while awarding the compensation. The objection raised by the respondents' counsel with regard to multiplier seems to be not sustainable.

10. Now coming to the argument advanced by the appellant's counsel with regard to driving licence, it shall be appropriate to look into the statutory provision.

11. Section 10 of the Motor Vehicles Act provides that the driving licence shall be in such form and shall contain such information as may be prescribed by the Central Government. Rule-14 of the Central Motor Vehicles Rules, 1989 which provides that the application for a driving licence shall be made in Form-4 and shall be accompanied by certain documents. After receipt of the application form, driving test is held by the competent authority and thereafter licence is granted.

12. Rule 16 provides that every driving licence shall be issued or renewed by a licensing authority in Form-6. Form-4 has been prescribed in pursuance to Rule 14 of the Central Motor Vehicles Rules, 1989. in short "Rule". For convenience, Form-4 is reproduced as under:

FORM 4

(See Rule 14)

Form of Application for licence to Drive a Motor Vehicle

To

The Licensing Authority

Space of  
photograph

1 Apply for a Licence to enable me to drive vehicle of the following description

- (a) Motor cycle without gear
- (b) Motor cycle with gear
- (c) Invalid carriage
- (d) Light Motor vehicle
- (e) Transport vehicle
- (f) Medium passengers motor vehicle

(g) Heavy goods vehicle

(h) Heavy passenger motor vehicle

(i) Road roller

(j) Motor vehicle of the following description.

Particulars to be furnished by applicant

1. Full Name \_\_\_\_\_

2. Son/Wife/Daughter of \_\_\_\_\_

3. Permanent address \_\_\_\_\_

(Proof to be enclosed) \_\_\_\_\_

4. Temporary address \_\_\_\_\_

Official address (if any) \_\_\_\_\_

5. Date of birth (proof to be enclosed) \_\_\_\_\_

6. Educational qualification \_\_\_\_\_

7. Identification mark(s) (1) \_\_\_\_\_

(2) \_\_\_\_\_

8. Optional-Blood Group RH FACTOR \_\_\_\_\_

9. Have you previously held driving \_\_\_\_\_

Licence if so give details

10. Particulars and date of every conviction  
which has been ordered to be endorsed  
on any Licence held by applicant \_\_\_\_\_

11. Have you been disqualified for  
obtaining a Licence to drive? if so, for  
what reason \_\_\_\_\_

12. Have you been subjected to a driving test as to your fitness or ability to drive a vehicle in respect of which a Licence to drive is applied for ? If so give the following details. \_\_\_\_\_

| Date of test | Testing Authority | Result of test |
|--------------|-------------------|----------------|
|--------------|-------------------|----------------|

1.

2.

3.

4.

13. I enclose 3 copies of my recent( passport size photograph) (Where laminated card is used on) photograph are required.

14. I enclose the learner's Licence No. ... dated ... issued by Licensing Authority.

15. I enclose the Driving Certificate No. ... dated ... issued by ...

16. I have submitted along with application for Learners Licence the written consent of parents/guardian.

17. I have submitted along with application for Learner's Licence/I enclose the medical fitness certificate.

18. I am exempted from the Medical test under Rule 6 of Central Motor Vehicle Rules, 1989.

19. I am exempted from the preliminary test under Rule (2) of Central Motor Vehicle Rules, 1989.

20. I have paid the fee of rupees ...

I hereby declare that to the best of my knowledge and belief the particulars above are true.

Note-Strike out whichever inapplicable.

Date ...

Signature or thumb impression  
of applicant

Certificate of test of competence to drive

The applicant has passed the test prescribed under Rule 15 of the Central Rules, 1989. The test was conducted on (here enter the registration mark and the vehicle) on (date)

The applicant has failed in the test

(The details of deficiency to be listed out)

Date ...

Signature of testing Authority

Full name & designation

Two specimen signature of applicant

Strike out whichever is inapplicable.

13. After receipt of the application under Form-4, the driving licence is granted in Form-6. A plain reading of Form-4 and Form-6 shows that it possessed column with regard to light motor vehicle as well as transport vehicle. The Form-6 also contains such indication. For convenience, Form-6 is reproduced as under:

FORM 6

(See Rule 16 (1))

(To be printed in Book Form of the size six centimetres into eight centimetres)

Form of Driving Licence

Name of the Licence Holder \_\_\_\_\_

Son/Wife/Daughter of \_\_\_\_\_

passport

Name to be written

across the photograph \_\_\_\_\_

(Part of the seal and signature of the Licensing Authority to be on Photograph)

Specimen signature/Thumbprint

Impression of the Holder

of

Signature and designation of

Licensing Authority.

Driving Licence number \_\_\_\_\_

Date of issue \_\_\_\_\_

Name \_\_\_\_\_

Son/wife/daughter of \_\_\_\_\_

Temporary address/Official address (if any) \_\_\_\_\_

Permanent Address \_\_\_\_\_

Date of Birth \_\_\_\_\_

Educational qualifications \_\_\_\_\_

(Optional/Blood group with RH factor)

The holder of this licence is licensed to drive throughout India vehicles of the following description

Motorcycle without gear

Motorcycle with gear

Invalid carriage

Light motor vehicle.

Transport vehicle

Medium passenger motor vehicle

Heavy goods vehicle

Heavy passenger motor vehicle

A motor vehicle of the following description.

The Licence to drive a motor The licence to drive transport vehicle  
vehicle other than transport in valid from .... to \_\_\_\_\_  
vehicle is valid from \_\_\_\_\_ to  
\_\_\_\_\_

Name and designation of the Authority who conducted the driving test.

Signature and designation of the

Licensing Authority.

Authorisation to drive transport vehicle

Number \_\_\_\_\_ Date \_\_\_\_\_

Authorised to drive transport vehicle with effect from \_\_\_\_\_ Badge  
Number \_\_\_\_\_

Signature

Designation of the Licensing Authority

Name & designation of the authority who conducted the driving test.

Space for addition of other classes of vehicles

Number \_\_\_\_\_ Date \_\_\_\_\_

Also authorised to drive the following class of or description of motor vehicle  
Name & designation of the \_\_\_\_\_ Signature & designation of Licensing Authority



Authority who conducted the driving test

Authority,

Date:

Space for renewal of driving licence.

The licence to drive motor vehicles other than transport vehicles is hereby renewed.

The licences to drive transport vehicles is hereby renewed,

From\_\_\_\_\_ to \_\_\_\_\_

From\_\_\_\_\_to\_\_\_\_\_

Signature of Licensing Authority

Signature of Licensing Authority

From\_\_\_\_\_ to \_\_\_\_\_

From\_\_\_\_\_ to\_\_\_\_\_

Signature of Licensing Authority

Signature of Licensing Authority

From \_\_\_\_\_ to\_\_\_\_\_

From \_\_\_\_\_ to\_\_\_\_\_

Signature of Licensing Authority

Signature of Licensing Authority

Space for endorsement by Court

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Date

Section and Rule

fine or other punishment

Signature of the  
Endorsing Authority  
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Space for endorsement by Licensing Authority

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Date

Proceedings  
number and  
date

Disqualification period  
From to

Signature of Licensing  
Authority  
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14. From the perusal of Form-4 and Form-6, it is obvious that the item with regard to transport vehicle was introduced by G.S.R. 221 (E) dated 28.3.2001 with effect from same date. Thus, the item with regard to transport vehicle was introduced with effect from 28.3.2001. In the present case, the accident occurred earlier to it, i.e., on

15.11.1997.

15. It has been stated by the appellant's counsel that in the absence of entry enabling the driver to ply transport vehicle shall amount to violation of the terms and conditions, seems to be misconceived.

16. Statutory provision unless expressly or impliedly make retrospective shall always be prospective in nature. Therefore, the submission of the appellant's counsel that in the absence of inability provided by the Transport Department to ply transport vehicle, the driver shall not be competent to drive the tempo, seems to be misconceived.

17. Attention has been invited by the appellant's counsel to a case in [New Indian Assurance Co. Ltd. Vs. Roshanben Rahemansha Fakir and Another](#), . In this case, their Lordships of Hon"ble Supreme Court held that in case a person is plying transport vehicle and without having licence to ply under the said category, it shall amount of a violation of the terms and conditions of the policy. However, the case of Roshanben Rahemansha Fakir (supra) does not seem to cover the present controversy where accident occurred prior to introduction of said condition in Form-4 and Form-6 of the Form. Similar is the position with regard to another case referred by the appellant's counsel in [National Insurance Co. Ltd. Vs. Challa Bharathamma and Others](#),

18. Attention has been invited to a case in [National Insurance Company Ltd. Vs. Annappa Irappa Nesaria and Others](#), where the Hon"ble Supreme Court held that when the matter cropped up, whether the person having the driving licence under the category of light carriage passenger vehicle and light goods carriage vehicle, their Lordships held that it cannot be said that the driver was not possessing effective licence to drive the motor van having goods carriage permit.

19. Apart from the above, their Lordships of Hon"ble Supreme Court in a case in [National Insurance Co. Ltd. Vs. Swaran Singh and Others](#), held as under:

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 Central Government to prescribe the 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", "semitrailer",

"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. 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 accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with 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.

20. A plain reading of Judgment of Hon'ble Supreme Court in the Swaran Singh's case (supra) shows that in case it is found that accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with 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. It shall be appropriate to reproduce the relevant portion of the Judgment of Swaran Singh's case (supra):

Section 20 empowers the Court to disqualify a person in the event a person is convicted of an offence under the Motor Vehicles Act or of an offence in the commission of which a motor vehicle was used.

The learned Counsel appearing on behalf of the respondents, who are third party claimants on the other hand, submitted:

(i) that the Parliament deliberately used two different expressions "effective licence" in Section 3 and "duly licensed" in Sub-section (2) of Section 149 of the Act which are suggestive of the fact that a driver once licensed, unless he is disqualified, would continue to be a duly licensed person for the purpose of Chapter XI of the Act.

(ii) Thus, once a person has been duly licensed but has not renewed his licence, the same would not come within the purview of Section 149 and thus would not constitute a statutory defence available to the insurer in terms thereof. Only in the event of lapse of five years from the date of expiry of the licence, may such statutory defence be raised.

(iii) Once a certificate of insurance is issued in terms of the provisions of the Act, the insurer has a liability to satisfy an award. It has been pointed that a major departure has been made in the 1988 Act insofar as in terms of Section 96(2)(b) of the 1939 Act all the statutory defences were available in terms of Sub-section (3) thereof provided that the policy conditions other than those prescribed therein had no effect;

whereas in the new Act, Section 149(2)(a) prescribes that the policy is void if it is obtained by non-disclosure of material fact. Section 149(4) confines to only Clause (b) and states that the conditions of policy except as mentioned in Clause (b) of Sub-section (2) are of no effect and, thus, after the amendment except in cases which are covered under Clause (b) of Section 149, the insurance companies are liable to pay to the third parties. In other words, the right of insurer to avoid the claim of the third party would " arise only when the policy is obtained by misrepresentation of material fact and fraud and in no other case.

(iv) Sub-section (1) of Section 149 makes it clear that the insurer should pay first to the third parties and recover the same if they are absolved on any of the grounds specified in Sub-section (2) thereof. Reliance, in this connection, has been placed on [British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others](#), and *New India Assurance Company v. Kamla and Ors.*,

(v) The burden to prove the defence raised by the insurers as regard the question as to whether there has been any breach of violation of policy conditions of the insurance policy has been issued or not, would be upon the insurer.

(vi) The breach on the part of the insured must be a wilful one being of fundamental condition by the insured himself and the burden of proof therefore, would be on the insurer.

(vii) With a view to avoid its liabilities it is not sufficient for the insurer to show that the person driving at the time of accident was not duly licensed but it must further be established that there was a breach on the part of the insured. Reliance, in this connection, has been placed on [Narcinva V. Kamat and Another Vs. Alfredo Antonio Doe Martins and Others](#), [Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others](#), [Sohan Lal Passi Vs. P. Sesh Reddy and others](#), and *United India Insurance Company Ltd. v. Lehu and Ors.*,

The intention of the Parliament became further evident when in the Motor Vehicles Act, 1939, a new chapter being Chapter VIIA dealing with insurance of motor vehicles against third party risks was introduced and the beneficent provisions contained in the Motor Vehicles Act, 1939 were further made liberal by reason of the Motor Vehicles Act, 1988 and the amendments carried out therein from time to time in aid of the third party claims by way of grant of additional or new rights conferred on the road accident victims.

Under the common law a person injured by reason of another person's wrong doing had no right of action against insurers who undertook to indemnify the wrongdoer. The first invasion of this principle took place by reason of the Third Parties (Rights against Insurers) Act, 1930. The British Parliament in the light of the aforementioned Act enacted the Road Traffic Act, 1930 which has since been replaced by Road Traffic Act, 1988.

The Third Parties (Rights against Insurers) Act, 1930 was enacted with a view to correct injustice effecting a "statutory assignment of the rights of the assured to the injured person as prior thereto the right of a person to be indemnified under a contract of insurance against claims made against him by persons whom he might have injured was one personal to himself, and there was no privity of any sort between the injured person and the insurers. The injured person had no interest either at law or in equity in the insurance money, either before or after it was paid by the insurers to the assured. In a case where the assured became bankrupt and if the injured person had not already obtained Judgment and levied execution of his claim for damages his only right was to move in the bankruptcy or the winding-up of proceedings. The beneficial provisions of the aforementioned English Statutes were incorporated by the Parliament of India while enacting the Motor Vehicles Act, 1939 which has also since been repealed and replaced by the Motor Vehicles Act, 1988.

Concededly, different types of insurance covers are issued containing different nature of contract of insurance. We are, however, in this batch of cases mainly concerned with third party right under the policy. Any condition in the insurance policy, whereby the right of the third party is taken away, would be void.

Indisputably such a benefit to a third party was provided under the Statute keeping in view the fact that the conditions in the assured's policy may be of little or no effect in relation to a claim by a person to whom an assured was under a compulsorily insurable liability.

The right of the victim of a road accident to claim compensation is a statutory one. He is a victim of an unforeseen situation. He would not ordinarily have a hand in it. The negligence on the part of the victim may, however, be contributory. He has suffered owing to wrongdoing of others. An accident may ruin an entire family. It may take away the only earning member. An accident may result in the loss of her only son to a mother. An accident may take place for variety of reasons. The driver of a vehicle may not have a hand in it. He may not be found to be negligent in a given case. Other factors such as unforeseen situation, negligence of the victim, bad road or the action or inaction of any other person may lead to an accident.

A person suffering grievous bodily injury may require money for his survival/medical treatment. Statutory compensation paid to the next of kin of the victim of an accident may, thus, bring to a large number of families the only ray of light at the end of the tunnel.

We may also take note of the fact that whereas in Section 3 the words used are "effective licence", it has been differently worded in Section 149(2), i.e., "duly licensed". If a person does not hold an effective licence as on the date of the accident, he may be liable for prosecution in terms of Section 141 of the Act but Section 149 pertains to insurance as regard third party risks.

A provision of a statute which is penal in nature vis-a-vis a provision which is beneficent to a third party must be interpreted differently. It is also well known that the provisions contained in different expressions are ordinarily construed differently.

The words "effective licence" used in Section 3, therefore, in our opinion cannot be imported for Sub-section (2) of Section 149 of the Motor Vehicles Act. We must also notice that the words "duly licensed" used in Sub-section (2) of Section 149 are used in past tense.

Thus, a person whose licence is ordinarily renewed in terms of the Motor Vehicles Act and the rules framed thereunder, despite the fact that during the interregnum period, namely, when the accident took place and the date of expiry of the licence, he did not have a valid licence, he could during the prescribed period apply for renewal thereof and could obtain the same automatically without undergoing any further test or without having been declared unqualified therefore, Proviso appended to Section 14 in unequivocal term states that the licence remains valid for a period of thirty-days from the day of its expiry.

The summary of our findings to the various issues as raised in these petitions is as follows:

(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.

(ii) An insurer is entitled to raise a defence in a claim petition filed u/s 163A 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 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 circumstance 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 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 u/s 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 u/s 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 claimant or claimants on one side and 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 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 u/s 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 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 claims and defences of insurer against 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 present case, the accident occurred because of collision with certain stones lying on the road. It is also held that because of rashness and negligent driving of the tempo driver accident occurred but we cannot close our eyes to the fact that the accident occurred on account of certain stones lying over the road.

22. Thus, keeping in view the Judgment of Hon"ble Supreme Court (supra), the driver who was possessing light motor vehicle licence was competent to drive the vehicle in question. So far as the date of occurrence is concerned, any change made in the Act. Rules or Form in the year 2001, shall not invalidate the driver's right to ply the vehicle. The argument advanced by the appellant's counsel on the basis of the driving licence assailing the award is not sustainable.

23. Apart from the above, no permission u/s 170 of the Motor Vehicles Act was granted by the Tribunal. It has been stated by the appellant's counsel that the application was moved and the same was kept pending by the Tribunal to pass appropriate order. Since no decision was taken by the Tribunal on the application moved by the appellant, as alleged by the appellant's counsel, the present appeal seems to be not maintainable. It may be appropriate to observe that in case the application u/s 170 of the Act is rejected then for any grievance, if any, it shall be incumbent upon the insurance company to approach higher forum to challenge the order passed by the Tribunal. This Court has got ample power under Article 227 of the Constitution of India to interfere at the trial stage in case some irregularity or impropriety is committed by the trial court and a mandamus be issued to take decision on pending application. However, it appears that the appellant has failed in his duty to pursue the application and kept the application pending before the Tribunal. Accordingly, in view of the law settled by the Hon"ble Supreme Court in the case of National Insurance Co. Ltd. v. Nicolletta Rohtagi and Ors. 2003 (3) TAC 293 : 2003 (1) AWC 33 (SC), the appeal seems to be not maintainable.



24. In view of the above, on merit, as well as on maintainability, the appeal is dismissed.

25. So far as the cross appeal filed by the claimants-respondents is concerned, it has already been decided by order dated 22.11.2004 hence call for no adjudication.

Appeal dismissed accordingly.