

## The New India Assurance Co. Ltd. Vs Basantha Mohanthly and 5 Others

**Court:** Andhra Pradesh High Court

**Date of Decision:** Dec. 19, 2013

**Final Decision:** Dismissed

### Judgement

Dr. B. Siva Sankara Rao, J.

The 2nd respondent-New India Assurance Company Limited filed this appeal, having been aggrieved by the

Order/Award of the learned Chairman of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Visakhapatnam, (for short,

"Tribunal") in M.V.O.P.No.758 of 2004, dated 11.03.2010, awarding compensation of Rs. 7,90,000/- (Rupees Seven lakhs Ninety thousand

only) with interest at 7.5% per annum as against the claim of the claimant of Rs. 12,50,000/-(Rupees Twelve lakhs fifty thousand only) in the claim

petition u/s 166 of the Motor Vehicle Act, 1988 (for short, "the Act").

2. Heard Sri Naresh Byrapaneni, the learned counsel for the appellant-2nd respondent, Sri G. Sai Narayana Rao, learned counsel for respondents

1 to 4 and Sri P.N.A. Christian learned counsel for the 6th respondent. Against the appeal 5th respondent notice served, but not appeared, thus

taken up the appeal to decide on merits. Perused the material on record. The parties hereinafter are referred to as arrayed before the Tribunal for

the sake of convenience in the appeal.

3. The contentions of the insurer in the grounds of appeal as well as in course of hearing in nutshell are that the quantum of compensation is

exorbitant and excessive, that the driver K. Maheswara Rao of the crime bike of claim petition 1st respondent insured with 3rd respondent under

Ex.B-1 policy was holding only a learner's licence as can be seen from Ex.B-5 extract coupled with the evidence of R.W.-2 and 3 and the charge

sheet Ex.B-4 also speaks the offence committed for not having regular licence and thereby the Tribunal erred in fixing joint liability instead of

exonerating the insurer hence to exonerate. In the course of hearing, the appellant-2nd respondent reiterated said contentions by drawing attention

of the Court to the provisions of the M.V. Act. The 6th respondent i.e., claim petition 3rd respondent insurer of the moped of the deceased stated

that there is no liability to the insurer fixed as no claim can be passed against the owner of the bike other than any claim of personal insurance

accidents claim if at all for policy claimed outside the purview of the claims tribunal, hence, there is nothing to interfere with said finding of the

Tribunal in the appeal filed by the insurer of the crime bike of the 1st respondent of the claim petition. Whereas, it is the contention of the

claimants-contesting respondents to the appeal that the Tribunal having come to a right conclusion by referring to the expressions of the Apex

Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, from particularly paras 93 to 97 that a learning licence is an effective driving

licence and thereby for this Court while sitting in the appeal, there is nothing to interfere either to exonerate the insurer on that count or to reduce

the quantum of compensation or rate of interest; hence, to dismiss the appeal.

4. Now the points that arise for consideration in the appeal are:

1. Whether the rider of the crime hero Honda motor bike of the 1st respondent, insured with 2nd respondent, admittedly covered by policy; is not

having effective driving licence from possessing only learning licence and if so, the insurer is to be exonerated from liability along with the insured

and if not or even otherwise the quantum of compensation awarded by the Tribunal is excessive and exorbitant and requires interference to reduce

in arriving a just compensation?

2. To what result?

POINT No. 1:

5. The factual matrix that were proved before the Tribunal is that on 17.10.2003 at about 9.00 A.M. the deceased Gopal Mohanthy going on his

TVS moped bearing No. AP 32 D 141, one Hero Honda motor cycle bearing No. T/R AP 31 AE 7527 driven by its driver K. Maheswara Rao

in a rash and negligent manner dashed the TVS moped, due to which he sustained injuries and died on the same day at about 11.45 A.M. in the

King George Hospital, Visakhapatnam. Then, the 1st claimant is the wife and claimant Nos.2 and 3 are the daughters and the 4th claimant is the

son of the deceased Gopal Mohanthy filed the claim petition claiming compensation of Rs. 12,50,000/- showing the income of the deceased as Rs.

11,495/-. The fact that the accident was the result of rash and negligent driving of the crime Hero Honda bike of the claim petition-1st respondent

insured with the 2nd respondent driven by one K. Maheswara Rao not in dispute but for to say the Tribunal was erred in loosely referring at para-

7 in referring to the counter of the 2nd respondent as well as para-4 last but 1st line apart from para-21, 1st line stating as if the 1st respondent

was the owner-cum-rider of the Hero Honda bike instead of saying that it is not the 1st respondent that is the rider but for said Maheswara Rao.

There is also no dispute on the factum of the accident was the result of rash and negligent driving of said rider of the crime bike to interfere so also

on the factum of the vehicle is insured with the 2nd respondent, but for on the contention that there is any violation of policy by the insured in

entrusting the crime vehicle to a person who is not having any valid and effective licence. Before coming to discuss the facts, it is relevant to

mention that Section 2(10) of the Motor Vehicles Act (Act 59 of 1998) (hereinafter referred to as "the Act) defines "driving licence"

driving licence means the licence issued by a competent authority under Chapter II authorizing the person specified therein to drive, otherwise than

as a learner, a motor vehicle or a motor vehicle of any specified class or description.

5(a) Section 2(19) defines ""learner"s licence

learner"s licence means the licence issued by a competent authority under Chapter II authorizing the person specified therein to drive as a learner, a

motor vehicle or a motor vehicle of any specified class or description

5(b) Section 3 speaks on necessity for driving licence and sub-section (1) speaks that:

No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorizing him to drive the

vehicle; ---

5(c) There is no need to go through Sections 6 and 7 muchless Section 4 as it is not the case that the said Maheswara Rao was below 18 years

and not otherwise eligibility even in mistaken issuance of licence to drive the vehicle in public place. Now coming to Section 8 speaks of grant of

learner"s licence. Sub-sections 1, 5 and 6 with proviso are relevant for the case purpose which speak:

(1)-----

provided that a learner"s licence limited to driving an invalid carriage may be issued to the applicant, if the licensing authority is satisfied that he is fit

to drive such a carriage

(5) No learner"s licence shall be issued to any applicant unless he passes to the satisfaction of the licensing authority such test as may be prescribed

by the Central Government"".

(6)-----

Provided that a licensing authority may issue a learner"s licence to drive a motor cycle or a light motor vehicle notwithstanding that it is not the

appropriate licensing authority, if such authority is satisfied that there is good reason for the applicant"s inability to apply to the appropriate licensing

authority.

5(d) Further, Section 10 Form and contents of licence to drive therein among the two sub-sections, sub-section (1) speaks

every learner's licence and driving licence, except a driving licence issued u/s 18, shall be in such form and shall contain such information as may be

prescribed by the Central Government

5(e) Sub-section (2) speaks

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)-----

(b) motor cycle with gear;

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6. A combined reading of these provisions clearly envisages that a learner's licence is also a licence issued by competent authority as an effective

driving licence which the rider of the crime bike to 1st respondent, insured with 3rd respondent, of the claim petition admittedly possessed, since

before the date of accident including on the date of accident and it is also proved from the evidence of R.Ws. 2 and 3 that said rider of the bike K.

Maheswara Rao pursuant to the learning licence dated 12.09.2003 after the accident dated 17.10.2003 within six months, minimum required

period of learning licence to grant regular licence, obtained the regular licence on 20.10.2004. When such is the case, the police officer, without

properly going even, under the mistaken impression, filed the charge sheet as if he was not possessed the driving licence. Even as per R.Ws. 2 and

3 in their evidence stated as if he is not having effective driving licence and that does not change the law atleast to appreciate in favour of the

insurer. It is also in this context necessary to mention that the law is well settled in interpreting a learner's licence is an effective and valid licence

under the Act and that is not a defence u/s 149 of the Act to the insurer to avoid liability particularly from United India Insurance Company Ltd.

Vs. Lehu and Others, case and that was also briefly further discussed in Three Judge Bench expressed in Apex Court in Swaran Singh (supra)

that:

Learner's licence

Motor Vehicles Act, 1988 provides for grant of learner's licence. [See Section 4(3), Section 7(2), Section 10(3) and Section 14]. A learner's

licence is, thus, also a licence within the meaning of the provisions of the said Act. It cannot, therefore, be said that a vehicle when being driven by

a learner subject to the conditions mentioned in the licence, he would not be a person who is not duly licensed resulting in conferring a right on the

insurer to avoid the claim of the third party. It cannot be said that a person holding a learner's licence is not entitled to drive the vehicle. Even if

there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run

counter to the provisions of Section 149(2) of the said Act.

The provisions contained in the said Act provide also for grant of driving licence which is otherwise a learner's licence. Section 3(2) and 6 of the

Act provides for the restriction in the matter of grant of driving licence, Section 7 deals with such restrictions on granting of learner's licence.

Section 8 and 9 provide for the manner and conditions for grant of driving licence. Section 15 provides for renewal of driving licence. Learner's

licences are granted under the rules framed by the Central Government or the State Governments in exercise of their rule making power.

Conditions are attached to the learner's licences granted in terms of the statute. A person holding learner's licence would, thus, also come within

the purview of "duly licensed" as such a licence is also granted in terms of the provisions of the Act and the rules framed thereunder. It is now a

well-settled principle of law that rules validly framed become part of the statute. Such rules are, therefore, required to be read as a part of main

enactment. It is also well-settled principle of law that for the interpretation of statute an attempt must be made to give effect to all provisions under

the rule. No provision should be considered as surplusage.

Mandar Madhav Tambe's case, whereupon the learned counsel placed reliance, has no application to the fact of the matter. There existed an

exclusion clause in the insurance policy wherein it was made clear that the Insurance Company, in the event of an accident, would be liable only if

the vehicle was being driven by a person holding a valid driving licence or a permanent driving licence "other than a learner's licence". The question

as to whether such a clause would be valid or not did not arise for consideration before the Bench in the said case. The said decision was rendered

in the peculiar fact situation obtaining therein. Therein it was stated that "a driving licence" as defined in the Act is different from a learner's licence

issued under Rule 16 of the Motor Vehicles Rules, 1939 having regard to the factual matrix involved therein.

The question which arises for consideration in these petitions did not arise there. Neither the same were argued at the Bar nor the binding

precedents were considered. Mandar Madhav Tambe's case (supra), therefore, has no application to the facts of these cases nor create any

binding precedent. The view we have taken is in tune with the judgments rendered by different High Courts consistently. [See for example New

India Assurance Co. Ltd. Vs. Latha Jayaraj and Others, .

Conflict of Decisions :

Contention of Mr. Salve that there exists a conflict in the decisions of this Court in Nicolletta Rohtagi (supra) on the one hand and Kamla (supra)

and Lehu (supra) on the other cannot be accepted. We do not find in the said decisions any such conflict.

Nicolletta Rohtagi (supra) was a case where a question arose as to whether an appeal by the insurer on the ground de hors those contained in

Section 149(2) would be maintainable. It was held not to be. There cannot be any doubt or dispute that defences enumerated in Section 149(2)

would be available to the insurance companies, but that does not and cannot mean that despite such defences having not been established, they

would not be liable to fulfil their statutory obligation under sub-section (1) of Section 149 of the Act.

So far as the purported conflict in the judgments of Kamla (supra) and Lehu (supra) is concerned, we may wish to point out that the defence to

the effect that the licence held by the person driving the vehicle was a fake one, would be available to the insurance companies, but whether

despite the same, the plea of default on the part of the owner has been established or not would be a question which will have to be determined in

each case.

The court, however, in Lehu (supra) must not read that an owner of a vehicle can under no circumstances has any duty to make any enquiry in this

respect. The same, however, would again be a question which would arise for consideration in each individual case.

The submission of Mr. Salve that in Lehu's case (supra), this Court has, for all intent and purport, taken away the right of insurer to raise a

defence that the licence is fake does not appear to be correct. Such defence can certainly be raised but it will be for the insurer 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.

Our attention has also been drawn on an unreported order of this Court in Malla Prakasarao vs. Malla Janaki & Ors. (Civil Appeal No. 163 of

1996 disposed of on 6th August, 2002) which reads as under : "It is not disputed that the driving licence of the driver of the vehicle had expired on

20th November, 1982 and the driver did not apply for renewal within 30 days of the expiry of the said licence, as required u/s 11 of the Motor

Vehicles Act, 1939. It is also not disputed that the driver of the vehicle did not have driving licence when the accident took place. According to the

terms of contract, the Insurance Company has no liability to pay any compensation where an accident takes place by a vehicle driven by a driver

without driving licence. In that view of the matter, we do not find any merit in the appeal.

The appeal fails and is, accordingly dismissed. There shall be no order as to costs.

In that case, the Court presumably as in the case of Mandar Madhav Tambe's case (supra), was concerned with the terms and conditions of the

contract of insurance. Before the Court, no occasion arose to consider the general terms and condition of the contract of insurance vis-à-vis

liability of insurance under the Motor Vehicles Act.

Conclusion:

It is, therefore, evident from the discussions made hereinbefore that the liability of the insurance company to satisfy the decree at the first instance

and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time.

Apart from the reasons stated hereinbefore the doctrine of stare decisis persuades us not to deviate from the said principle.

It is well-settled rule of law and should not ordinarily be deviated from. (See The Bengal Immunity Company Limited Vs. The State of Bihar and

Others, , The Keshav Mills Co. Ltd. Vs. Commissioner of Income Tax, Bombay North, , Union of India (UOI) and Another Vs. Raghubir Singh

(Dead) by Lrs. Etc., , Gannon Dunkerley and Co. and Others Vs. State of Rajasthan and Others, , Belgaum Gardeners Cooperative Production

Supply and Sale Society Ltd. Vs. State of Karnataka, , Hanumantappa Krishnappa Mantur and others Vs. State of Karnataka, ].

We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon

consideration of the facts and circumstances of each case and in the event such a direction has been issued despite arriving at a finding of fact to

the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause

(ii) of clause (a) of sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the

owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the

Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the

insurance company may initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those

exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason

or the other, the insurer was not given opportunity to defend at all. Such a course of action may also be resorted when a fraud or collusion

between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage.

Although, as noticed hereinbefore, there are certain special leave petitions wherein the persons having the vehicles at the time when the accidents

took place did not hold any licence at all, in the facts and circumstances of the case, we do not intend to set aside the said awards. Such awards

may also be satisfied by the petitioners herein subject to their right to recover the same from the owners of the vehicles in the manner laid down

therein. But this order may not be considered as a precedent.

Although in most of the case, we have not issued notices in view of the fact that the question of law has to be determined; we have heard counsel

for the parties at length at this stage.

Summary of Findings :

The summary of our findings to the various issues as raised in these petitions are 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) 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 driver or invalid driving licence of the driver, as

contained in sub-section (2)(a)(ii) of section 149, have 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) The insurance companies are, 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 wherefore would be on them.

(v) The court cannot lay down any criteria as to how 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 amount paid under the contract of insurance on behalf of the insured can be taken recourse of 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.

For the reasons aforementioned, these petitions are dismissed but without any order as to costs.

7. Having regard to the above, the said K. Maheswara Rao, rider of the Hero Honda bike of the 1st respondent of the claim petition insured with

the 3rd respondent was having an effective and valid driving licence which is the learner's licence to ride the gear bike and once the policy issued

covers the risk and the licence is also there and there is no other ground of any violation of policy conditions, the insurer cannot escape the liability.

Therefore, the findings arrived by the Tribunal though not in above details require no interference for this Court while sitting in the appeal so far as

that finding of fastening liability on the insurer to indemnify the insured to the claim of the claimants of the case concerned. Coming to whether the

quantum of compensation awarded by the Tribunal is excessive and exorbitant concerned, the amount awarded by the Tribunal in all Rs.

7,90,000/- out of the claim made by the claimants at Rs. 12,50,000/-. The age of the deceased as per Ex.A-2 post mortem report was about 37

years. As per Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, for a person aged between 36 to 40, the multiplier

applicable is 15. The multiplier applied by the tribunal, no doubt 16, which requires interference by reducing to 15. The deceased was doing cloth

business, according to the claim, and earning about Rs.11,495/- as per P.W.-1's evidence. No doubt, Ex.A-5 is the commercial tax department

returns, regarding the profit and loss submitted, for the cloth business for the years 2002-03 and 2003-04. It is the contention of the insurer that

these are submitted subsequent to the date of accident and the probative value to be attached is less, that was not properly taken consideration.

Undoubtedly that document cannot be given 100% probative value for above reason, but for the fact that it was also deposited by P.W.-1 in

support of the same and the document only corroborates her version and substantiating from the registration certificate possessed and returns

submitted what cloth business he was doing and the profits he was getting, the Tribunal there from at paras 13 to 15 in its discussion arrived the net

income of the deceased at Rs. 8,193/-. However, at para-16 even reduced the same and taken as Rs.6,000/- per month. The Apex Court in

Rajesh and Others Vs. Rajbir Singh and Others, held that not only for salaried employees, but also fixed wage earners, skilled workers and

artisans, even the prospective earning capacity to be increased. No doubt in that case it was increased by stating between persons aged 30 to 40

years at 50%. So far as this businessman is concerned, even 30% increase taken out of it. It comes to Rs. 10,660/- and the claimants are 4 in

number and the deduction for personal expenses as per Sarla Varma (supra) 1/3rd has to be deducted out of it, which comes to Rs. 7,107/- per

month and Rs. 85,284/- per annum. After applying multiplier (15) to it, it comes to Rs. 12,79,260/-. In addition to that, the 1st claimant is entitled

Rs. 25,000/- towards loss of consortium and funereal expenses, three minor claimants are entitled to Rs. 10,000/- each towards love, care and

guidance i.e., Rs. 30,000/- taken, though in Rajesh (supra) an amount of Rs. 1,00,000/- was awarded, and it comes to Rs. 13,34,260/- apart

from loss of estate at Rs. 5,000/-. However, the compensation awarded by the Tribunal is Rs.7,90,000/- with interest at 7.5% p.a. and thereby

while sitting in the appeal, for this Court there is nothing to interfere as laid down by the Apex Court in Ranjana Prakash and Others Vs. Divisional

Manager and Another, in the appeal filed by the insurer, in the absence of cross objections or independent appeal by the claimants even under

Order XLI Rule 33 the appellate Court has no power to enhance the claim but for to the claimants to substantiate the claim at one ground or the

other. Hence, practically there is nothing to interfere with the award of the Tribunal. Accordingly, point No. 1 is answered.

Point No. 2:

8. In the result, the appeal is dismissed, however, with no costs.

9. Miscellaneous petitions, if any, in this appeal shall stand closed.