HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.466 OF 2005

JUDGMENT:

The claimant, in the claim petition, filed this appeal having been aggrieved by the Order/Award of the learned Chairman of the Motor Accidents Claims Tribunal–cum-VI Additional District Judge(Fast Track Court), Rajahmundry, (*for short, 'Tribunal')* in M.V.O.P.No.672 of 2001 dated 10.11.2004, dismissing the claim application as against the claim of Rs.1,00,000/-(Rupees one lakh only), in the claim petition under Section 166 of the Motor Vehicle Act, 1988 *(for short, 'the Act')*.

2. Heard Sri N.Siva Reddy, the learned counsel for the appellant-claimant and Sri Kota Subbarao, learned standing counsel for the 2nd respondent. The 1st respondent who remained exparte before the Tribunal was sent notice by registered post however no proof received. It can be dran presumption of service for not return. Even the 1st respondent to the appeal having been remained exparte in the Tribunal, for taken even not served in the appeal, not fatal to the maintainability of the appeal, vide decision in **M.Chakradhara Rao v. Y.Baburao**[1]**.** Thus taken as heard the 1st respondent from deemed service, 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 in the grounds of appeal by the appellant-claimant in nutshell are that the Judgment and decree of the Tribunal is contrary to law, weight of evidence and probabilities of the case and grossly erred in dismissing the total claim of the appellant though there is ample evidence to prove the factum of accident and the injuries caused to the appellant and thus does exempt the insurer at least to the extent pay and recover and thereby sought for setting aside said findings of the Tribunal and allow the appeal as claimed in the claim

petition with costs. Whereas learned counsel for the 2nd respondent-insurance company contended that the Tribunal rightly dismissed the claim application as the alleged accident occurred on 11.02.2001 and the first information report lodged against the driver of the crime vehicle on 10.04.2001 and the Tribunal rightly holding that the claimant failed to give her explanation for non-filing of charge sheet against the 1st respondent-driver and the claimant is utterly failed to establish the occurrence of accident itself. Learned counsel for the 2nd respondent further contended that as on the date of accident, the driver did not possess the badge and he is not authorized to drive the auto rickshaw with passengers and prays to dismiss the appeal with costs.

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

1. *Whether the award of the Tribunal fastening joint liability on the insurer with insured to indemnify the insured for the claimant(s) and requires interference by this Court while sitting in the appeal?*

2. *Whether the quantum of compensation awarded by the Tribunal is not just and requires interference by this Court and if so with what extent and against whom with what rate of interest with what observations?*

3. *To what result?*

POINT-1:

5. The allegations that were made in the claim petition and as per Ex.A-1 F.I.R are that on 11.02.2001 evening the claimant got into the auto bearing No. AP 5X 6935, belonging to the 1st respondent-driver-cum-owner insured with the 2nd respondent (Ex.B-1 is the policy), to go to her house and when she reached near Nelaturu village, the auto turned turtle due to the rash and negligent driving of the 1st respondent and the claimant sustained injuries as mentioned under Ex.A-2 wound certificate; but the complaint made before the concerned S.H.O was only on 10.04.2001 with a delay of 2 months stating that the hospital authorities, where she was joined for treatment, did not intimate about the accident to the concerned P.S and

after came to know about non-reporting of the matter, husband of the claimant gave a complaint to police on 10.04.2001. Saying no worth evidence was placed before the Tribunal explaining under what circumstances the delay caused in giving the complaint, the Tribunal held that the delay occurred was not substantiated by any cogent evidence and rejected the allegations regarding the occurrence of the accident as explained in the claim petition. In addition to that no charge-sheet was filed by the claimant to prove the accident, but for remand report filed as Ex.A-3, which reveals that a charge-sheet was being filed before the Court concerned. Ex.A-4 is the bunch of medical bills worth Rs.16,046.95 Ps. From perusal of the material concerned, the 1st respondent-owner-cum-driver was having valid driving licence as per Ex.B-2, which shows that he is eligible and authorized to drive the auto rickshaw with passengers, but at the same time, the 1st respondent possesses a badge with effect from 20.05.2003 and valid upto 19.05.2006 whereas the date of alleged accident was 11.02.2001.

6. Now coming to decide whether the insurer can be exonerated from liability to indemnify the insured to the third party claimants concerned:

i) No doubt in ***National Insurance Company Limited Vs. Vidhyadhar Mahariwala & Others***[2], the two judge bench of the Apex Court in this decision by referring to ***National Insurance Company Limited Vs. Swaran Singh & Others***[3] apart from other expressions in ***National Insurance Company Limited Vs. Kusum Rai & Others***[4] and ***Oriental Insurance Company Limited Vs. Nanjappan & Others***[5] and ***Ishwar Chandra & Others Vs. Oriental Insurance Company Limited & Others***[6] held that the insurer is not liable to indemnify the owner, when the driver has no license to drive the crime vehicle.

ii) In **Ishwar Chandra** (supra) it was held by the two judge bench that the driver's licence when expired 30 days prior to the date of accident and no renewal application filed even by date of accident to say a renewal dates back to date of application, it is suffice to hold the driver has no valid licence as on date of accident.

iii) In **Kusumrai** (supra) it was held by the two judge bench that, the vehicle was used as taxi (commercial) and the driver is required to hold appropriate licence but not having valid commercial vehicle licence and from that breach, the insurer is held entitled to rise the defence.

iv) In **Vidhyadhar Mahariwala** (supra)—in para -8 of the judgment, it was observed that in **Swaran Singh** (supra)whereupon it was held as follows:-

> "45. Thus, a person whose license 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 license, he did not have a valid license, 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 terms states that the license remains valid for a period of thirty days from the day of its expiry.
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> 46. Section 15 of the Act does not empower the authorities to reject an application for renewal only on the ground that there is a break in validity or tenure of the driving license has lapsed, as in the meantime the provisions for disqualification of the driver contained in Sections 19,20,21,22,23 and 24 will not be attracted, would indisputably confer a right upon the person to get his driving license renewed. In that view of the matter, he cannot be said to be delicensed and the same shall remain valid for a period of thirty days after its expiry."

v) In **Ram Babu Thiwari Vs. United Insurance Company Limited**[7] by referring to **Ishwar Chandra, Kusum Rai, Swaran Singh** (supra) among other expressions, held that when a driving license of the driver of the offending vehicle was expired about three years prior to accident and it was got renewed only subsequent to the accident it was held as violation of the terms of the policy by referring to **Kusum Rai** (supra) followed in **Ishwar Chandra** (Supra) observed

that in view of the Section 15(1) of the Act even the license after period of expiry remains valid for thirty days to renew meantime any renewal subsequently would be renewed from the date of renewal only to say as on the date of accident even be subsequent renewal long after thirty days expiry of the statutory period not a valid renewal to say no valid license to exonerate the Insurer and thus exonerated the insurer.

vi) The above decisions other than **Swaran singh** (Supra) mostly speak of no valid license as on the date of accident though earlier it was from its lapse and timely non-renewal or holding one license not valid to drive other type of vehicle.

vii) On perusal of **Swaran Singh** (Supra) referring earlier expressions speaks several categories of cases as to such imperfect license or lapsed license with no license in subsistence or a fake license or even driver with no license at all. An extreme case of this type of driver having no license at all driving the vehicle knowingly without even application for lilcence and without experience to drive even admittedly and in his saying it is to the willful and conscious knowledge of the owner as a fundamental breach.

Coming to the cases no license is concerned:-

viii) In **Sardari vs. Sushilkumar**[8] - the facts show one Jageeru, Tonga driver on 10-2-85 met with accident when it colluded with tractor and he later was expired on 15-2-85 and the Insurance Company in the counter contended that the driver of the tractor did not hold valid and effective licence and there is no liability to indemnify. In the course of trial, the said tractor driver Sushil Kumar categorically deposed that he does not know how to drive a tractor as he never even tried to learn driving tractor, that he had not been possessing any licence to drive a tractor and he did not even apply for licence. It was therefrom, the Tribunal held that admittedly when the driver of crime

tractor was not knowing to drive tractor and not even having any licence at all to drive, the Insurance Company is not liable to indemnify owner of the tractor. The appeal was also dismissed confirming the said finding of the tribunal when preferred by driver and owner of the tractor for no appeal by claimants. In that factual context it was observed in para 6 of the judgment by the Supreme Court that, time and again made distinction between cases where III party is involved Vis-à-vis owner of the vehicle was involved. The object of Sections 147 & 149 of the MV Act enacted was social justice doctrine envisaged in the preamble of the constitution, however, the Act itself provides where the insurance company can avoid its liability. The avoidance of such liability by insurer largely depends upon violation of conditions of the Insurance Contract. Where the breach is ex-facie apparent from the record, court need not fasten liability on the insurer. In certain situations, however, the court while fastening liability on insured, may direct the insurer to pay to the claimants and recover the same from the insured.

ix) In **UIIC Vs. Gianchand**[9], it was observed that when the insured handed over the vehicle to an un-licenced driver, insurer would be exonerated from liability to meet III party claims.

x) In **Swaran Singh** (three judges bench-supra) it was laid down that the owner of the vehicle has a responsibility to see that no vehicle is driven except by a person who doesn't satisfy Sections 3 & 4 of the MVAct. In a case where the driver admittedly did not hold licence and the same was allowed consciously to be driven by the owner of the vehicle by such person insurer in its defence succeed to avoid liability. The matter, however, may be different where a disputed question of fact arises as to driver had a licence or owner committed a breach of the policy terms by consciously allowing a person to drive without having a valid driving licence.

xi) In **NIAC Vs. Prabhulal**[10] it was a claim arisen out of Consumer District Forum holding no liability of the insurer against the National Consumer Commission's verdict fixing responsibility.

xii) In **Prem Kumari Vs. Prahlad Dev**[11] it was also observed that owner of the vehicle cannot contend no liability to verify the fact as to whether the driver possessed a valid licence or not.

xiii) By referring all these expressions at Para 9 of the Judgment of the Apex Court in **Saradari** (supra), the Apex Court did not choose to interfere with the finding of the tribunal confirmed by the High Court, in not chosen to make liable the insurer.

xiv) In **Surina Durvasulu Vs. Bhavanarayana Murthy**[12] Para 14 it was held that when the driver had no valid driving licence to drive tractor and the charge sheet also mentions a penal provision for violation of the same in driving with no licence and nothing deposed by owner despite contention of Insurance Company, that he has taken all necessary precautions to entrust the vehicle to a person who had valid driving licence, insurance company not made liable holds good.

7. The other type of cases are driver possessing a fake license and not any real license to drive and driving the vehicle entrusted by owner it all depends upon the facts as to the owner consciously by knowing it is a fake license allowed or believing as genuine allowed and what extent the liability to enquire lies on the owner concerned, the cases on that principle are as follows: -

i) In **National Insurance Company Limited Vs. Laxmi Narain Dhut**[13]**,** it was held by the Apex Court referring to **Swaran Singh** (supra) and **New India Insurance Company Limited Vs. Kamala**[14] at page 41 that the defense available to the Insurer to indemnify the insured or **not** (any) of a third party claim under Section 149 of the Act includes the license claim as genuine is fake. In that case on facts

found the license possessed was fake and it was even renewed by the Regional Transport Officer concerned ignorant if the fact or otherwise held that mere renewal of a fake license cannot cure the inherent defect as renewal cannot transform a fake license as genuine as held in **Kamala**(supra) was the conclusion arrived.

ii) The other decision on that is **Oriental Insurance Company Limited Vs. Prithvi Raj**[15] which is also a fake license and proved so and held that a renewal cannot take away the effect of fake license to make the Insurer liable and the Insurer cannot thereby be liable to that conclusion, they followed **Kamala** (Supra) besides **United India Insurance Co. Ltd. V. Lehru**[16] (supra).

iii) The other decisions regarding fake license is **National Insurance Company Limited Vs. Dupati Singaiah**[17] referring to **Lehru, Swaran Singh, Gain chand, Prithvi Raj, Prahlad dev**(supra), not to mention **Oriental Insurance Company Limited Vs. Meena Variyar**[18] earlier expression in **Scandia Insurance Company Limited Vs. Kokila Ben Chandravadan**[19] and **United India Insurance Company Limited V**s.**Rakesh Kumar Arora**[20] held that i n **Swaran Singh** (surpa) at para-102 it was held that an insurer is entitled to raise a defense in a claim filed under Section 163-A and 166 of the Act, in terms of Section 149 (2)(a)(ii) of the Act, as to breach of the policy conditions including disqualification of the driver or invalid license of the driver etc., and to avoid such a liability the defense has to be proved by the insurer with a plea raised to establish such breach. However, it was not laid down in **Swaran Singh** (supra) any criteria as to how said burden would be discharged. Thus same would depend upon facts and circumstances of each case. The question as to whether owner has taken a reasonable care to find out as to whether driving license produced by driver is fake or otherwise does not fulfill the requirements of law or not will have to be determined in each

case. If available at the time of the accident was driven by a person having learner's license, Insurance Company would be liable to satisfy the claim. Thus, unless the Insurer proves willful breach of specific conditions of policy they cannot escape from liability. In **Swaran Singh** (supra), at para-85 and 94 as well as 102(3) observed that it may be true that a fake or forged license is as good as no license, however, the question is whether Insurer must prove that owner was guilty of willful breach of the conditions of the policy in the contract of Insurance as considered with some details in **Lehru** (Supra). To agree said conclusion of **Swaran singh and Lehru** (supra), it was observed in **Dhupati Singaiah** (supra) at para-820 that in most of cases drivers and owners remaining *ex-parte* by taking it for granting that in the event of negligence being proved, the Insurance Company would discharge its statutory liability. It is the only Insurer that has to lead evidence both on the question of negligence and on the question of liability, therefore, main defense available to the Insurer is under Section 149(2) of the Act when if Insurer leads evidence to show license found in the vehicle involved in the accident is fake or the driver had no license or valid license, it can be taken sufficient proof of breach of conditions as per Section 149 (2)(a) of Act therefrom Section 149(2)(a)(ii) of the Act enables the Insurer to escape from liability if shown that there has been a breach of specified condition of policy and on facts therefrom held Insurer to be exonerated from liability.

iv) In ***Ashok Gangadhar Maratha V. Oriental Insurance Co. Ltd***[21] and ***Roshanben*** (supra) also the above principles of law are reiterated in exonerating the insurer.

v) In fact, the three judges bench judgment of the Apex Court in **Swaran Singh** (supra) well laid down the law in this regard referring to **Lehru** (supra) and **Kamala** (supra) that followed the earlier three-Judges bench decision **Sohan Lal Passi V. P.Sesha Reddy**[22] wherein the reference was answered upholding the view taken

Skandia Insurance Co. Ltd. V. Kokila Ben Chandravadan[23] and the principle laid down therefrom in **Swaran Singh** (supra) was approved and reiterated even in the subsequent decisions including the above but for distinguishing for the facts on hand in each of the cases as held by the Apex Court in

NIC Vs. Geetabhat[24] that the principle is the same but for any deviation from factual matrix of each case if at all to say non-liability.

vi) The Apex court in **Lehru** (supra), **Swaran Singh** (supra), **Nanjappan** (supra), **Geetabhat** (supra) and several other expressions in the cases relating to no license at all or imperfect and no valid license held that even it is one of breach of terms of policy and violation of rules, since the policy otherwise covers risk, though denied liability from no valid license, the insurer is to pay and recover. The insurance company cannot escape liability unless the violation proved willful with conscious knowledge and fundamental, every violation of policy conditions cannot be considered to escape the insurer from liability to indemnify the owner (insured) to the 3rd party claimants.

vii) Even in **Geetabhat** (supra) it was held reiterating the principle laid down in the above decisions after referring the above among other several decisions that when insurer seeks to avoid liability on ground of fake or no licence of driver of the vehicle of the insurer, but for saying no licence issued by RTO in name of the driver, even taken alleged licence as fake, insurer has to pay to the third party claimants and recover from insured.

viii) In fact, in **Swaran Singh's** case (supra), the Apex Court observed that it is the obligation on the part of owner to take equitable care to see that the driver had an appropriate license to drive the vehicle. The question as regards the liability of owner vis-à-vis the driver being not possessed of a valid license concerned, at para-89, it was observed that Section 3 of the Act casts an obligation on a driver

to hold an effective driving license for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licenses for various categories of vehicles mentioned in sub-section (2) of this Section. The various types of vehicles described for which a driver may obtain a license 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.

ix) Furthermore, in **Oriental Insurance Company Limited Vs. Brij Mohan & Others**[25] while holding that insurance company has no liability, however, invoked Article 142 and 136 of the Constitution in directing the insurer to pay first and recover from the vehicle owner, like in several other cases within the power of the Apex Court.

x) The other decision of Apex Court in ***Roshanben*** *(*supra) did not lay any different proposition, it was in fact held that in the absolute proof of the defect of licence contributed to the cause of accident, for the defect alone the insurer cannot be absolved from liability. It was a case of driving licence was meant for driving non-transport auto and held not meant to drive the transport auto.

xi) In ***National Insurance Company Limited VS. Baljit Kaur***[26] it was held (even the case of unauthorized passenger of goods vehicle) as a general observation that interest of justice would be sub-served in giving such a direction to pay and recover having regard to the scope and purport of Sections 149 read with 168 of the MV Act,1988.

xii) In another judgment of two judges bench in **National Insurance Company Limited Vs. Parvathneni & Another**[27], the Apex Court doubted the correctness of the directions issued in various judgments to the insurer to pay even though not liable and therefrom formulated issues for consideration by a larger bench

xiii) In fact, by referring to the above expression in **Swaran Singh's** case (supra), this Court (High Court of Andhra Pradesh) in an appeal by insurance company, observed in **New India Assurance Company Limited, Tirupati, Vs. G.Sampoorna & Others**[28] from paras-6 onwards that insurer raised the contention of driver was not having valid license at the time of accident and examined employee of Regional Transport Office, besides employee of the insurance company and the owner of the vehicle did not speak anything. No evidence produced by claimants to show that there was a license or it was even if lapsed renewed later. However, the Tribunal held that even in the absence of driving license, insurance company has to pay and recover rather than escaping from liability for the claimants are not parties to the contract of insurance of the vehicle between insurer and insured.

xiv) Therefrom further held that the conclusion is not acceptable from reading of Section 149(2)(a) r/w Section 3 of the Act and by referring to **Vidhyadhar Mahariwala** case (supra) in saying the statute itself excludes insurer's liability in such a case, thereby the fact whether the claimant being a third party is not a privy to the policy between insurer and insured has no relevance. It is however, by referring to the **Swaran Singh** (supra) apart from the earlier expressions referred therein, observed that the proposition laid down in **Swaran Singh** (supra) is referred to a larger bench and it is still pending.

xv) In **Swaran Singh** (supra) it was held that the Tribunals and Courts in exercise of their jurisdiction to issue any direction for pay and recovery considering, depending upon facts and circumstances of each case. In the event of 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 under Section 149(2)(a)(ii) of the Act, the insurance

company shall be entitled to realise the award amount from owner or driver, as the case may be, in execution of the same award in view of Sections 165 and 168 of the Act.

xvi) It is from this, the Court in **Sampoorna** (supra) from para-13 onwards observed that "In my opinion from the afore-extracted passage of the judgment, it is evident that direction to the insurance company to pay the compensation does not automatically follow in every case where the insurance company is found not liable. The same depends upon the fats and circumstances of each case. In all the aforementioned cases, which were referred to by the Supreme Court, directions were given on the facts of each case and considered the fact that the provisions of the Act dealing with insurance and payment of compensation are beneficial in nature".

xvii) In paragraph 81 of Swaran Singh (supra), it was observed that right to avoid liability in terms of Section 149(2) is restricted as has been discussed herein before. It is one thing to say that the insurance companies are entitled to raise a defence; but it is another thing to say that despite the fact that its defence has been accepted, having regard to facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner. These two matters stand apart and require contextual reading.

xviii) The Supreme Court in subsequent judgments have not treated the previous judgments including **Swaran Singh** (supra) as laying down unexceptionable principle that in every claim brought before the Tribunal, the insurance company should be directed to pay compensation amount first even though its defence was found accepted, as evident from some of the later expressions like in **National Insurance Company Limited Vs. Bommithi Subbhayamma & Others**[29], (a case of passenger in a goods vehicle).

xix) By referring to the above, from paragraph 20, the High Court in **Sampoorna** (supra) observed that on the strength of the discussion undertaken above, it is not possible for this Court to treat the judgment in **Swaran Singh** (supra) as containing mandatory directions to Tribunals and Courts to invariably direct the insurer to pay at first instance and recover from owner of the vehicle even though they are held not liable. Pending resolution of the issues by the larger bench of the Supreme Court, it would be reasonable to understand the judgment in **Swaran Singh** (supra) as leaving discretion to the Tribunals and the Courts to give appropriate directions depending upon facts and circumstances of each case.

xx) By applying the ratio in **Swaran Singh** (supra) at para-21 of the judgment, the High Court held that some amount that was already deposited by the insurance company, which holds good to withdraw, and for the rest, insurance company is not liable.

8. In fact besides **Lehru** (supra), **Swaran Singh**'s (supra) and Nanjappan (supra) in holding that from lack of license or fake license or imperfect or defective license, the insurer can be ordered firstly to satisfy the claimants by indemnifying the owner and then recover from owner and driver;

i) Even in the subsequent expressions of the Apex Court in **Kusumlatha and others V. Satbir and Others**[30] it was held that the Tribunal has got inherent power to issue such directions to insurer to pay and recover.

ii) Even in the recent expression of the High Court in **Jaya Prakash Agarwal V. Mohd. Kalimulla**[31] having considered the law at length taken similar view, while saying at para-39 that each case has to be decided on its own facts and circumstances.

iii) Even in the latest expression of the Apex Court in **S.Iyyappan Vs. United India Insurance Company**[32] a two judge

bench of the Apex Court held that even though the insurer has taken the defence that there is a breach of conditions of the policy excluding from liability, from the driver is not duly licenced in driving the crime vehicle when met with accident, third party has a statutory right under Section 149 read with 168 of the Act to recover compensation from insurer and it was for the insurer to proceed against the insured for recovery of amount paid to third party in case there was any fundamental breach of condition of Insurance policy.

9. From the above legal position and coming to the factual matrix, the claimant suffered with fracture on the right clavicle which was shown picturesque in Ex.A-6 X-ray M.L.C.No.887/8670, dated 10.04.2001 with reference to Ex.A-2=A-5 wound certificate dated 30.04.2001 with radiology report enclosed to it. The wound certificate was issued by Deputy Civil Surgeon of Government Hospital when taken the injured by police after registration of Ex.A-1 F.I.R dated 10.04.2001 in Cr.No.21/2001 on the report of the husband of the injured dated 10.04.2001, Ex.A-1 F.I.R and Ex.A-2 wound certificate read that the injured immediately after the accident on 11.02.2001 was admitted in the private hospital of Mandapeta viz., Srinivasa Nursing home and she was fond sustained fracture of right clavicle besides another simple injury and was treated as inpatient till 10.04.2001, when on knowing about the hospital doctor did not report the accident to police, her husband reported to police. In Ex.A-2 also it discloses the fracture sustained in the auto accident dated 11.02.2001 of the crime auto No.AP 5 X 6935 of 1st respondent. Further Ex.A-3 remand report shows the accident was the result of rash and negligent driving of crime auto of 1st respondent owner-cum-driver. This is when sufficient to prove the accident and in support of it, P.W-1 and P.W-3 the doctor issued Ex.A-2 and P.W-2 eye witness deposed and proved, the delay in reporting the accident to police by injured is not fatal. In fact it is the duty of the auto driver as well as the private doctor who admitted the medico legal case instead referring to Government

Hospital if not chosen to report to police. Thus, it is proved that the claimant sustained injuries due to rash and negligent driving of the 1st respondent driver of crime auto insured with the 2nd respondent under Ex.B-1 policy. Thus, the Tribunal was erred in dismissing the claim against both insured as well as insurer merely on the ground of delay in giving F.I.R to set aside said finding. Now, coming to liability of 2nd respondent to indemnify the 1st respondent, from contention of the 1st respondent was not having badge at the relevant period, the insurer will not be liable thereby. R.W-1-employee of R.T.O office deposed that as per Ex.B-1- D.L. extract of 1st respondent driver-cum-owner, he is authorized to drive transport and non-transport light motor vehicles like passenger auto riksha (crime vehicle). However, he was not having badge as on date of accident dated 11.02.2011, but for from 20.05.2003 to drive transport light motor vehicle auto. Even he got the eligibility otherwise a breach is a breach so far as not possessing the badge concerned, that is not so fundamental to exonerate the insurer totally but for to indemnify the 3rd party claimant on behalf of the insured under Section 149 r/w 168 of the Act as the policy in force and cover the risk for nothing contributed to the accident from not having a badge.

10. Having regard to the above, it is the insurer also along with the insured owner of the crime vehicle jointly and severally liable to pay compensation to the claimant and then it is for the insurer to recover from the owner of the vehicle by filing execution petition in the same award without need of any separate proceedings. Accordingly Point No.1 is answered.

POINT No.2:

11. Coming to decide the dispute on quantum as to what is just compensation in the factual matrix of the case, it is apt to state that perfect compensation is hardly possible and money cannot renew a

physique or frame that has been battered and shattered, nor relieve from a pain suffered as stated by Lord Morris. In **Ward v. James**[33], it was observed by Lord Denning that award of damages in personal injury cases is basically a conventional figure derived from experience and from awards in comparable cases. Thus, in a case involving loss of limb or its permanent inability or impairment, it is difficult to say with precise certainty as to what compensation would be adequate to sufferer. The reason is that the loss of a human limb or its permanent impairment cannot be measured or converted in terms of money. The object is to mitigate hardship that has been caused to the victim or his or her legal representatives due to sudden demise. **Compensation awarded should not be inadequate and should neither be unreasonable, excessive nor deficient.** There can be no exact uniform rule in measuring the value of human life or limb or sufferance and the measure of damage cannot be arrived at, by precise mathematical calculation, but amount recoverable depends on facts and circumstances of each case. Upjohn LJ in **Charle red House Credit v. Tolly**[34] remarked that the assessment of damages has never been an exact science and it is essentially practical. Lord Morris in **Parry v. Cleaver**[35] observed that to compensate in money for pain and for physical consequences is invariably difficult without some guess work but no other process can be devised than that of making a monitory assessment though it is impossible to equate the money with the human sufferings or personal deprivations. The Apex Court in **R.D. Hattangadi v. Pest Control (India) Private Limited**[36] at paragraph No.12 held that in its very nature whatever a Tribunal or a Court is to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standard. Thus, in most of the cases involving Motor Accidents, by looking at the

totality of circumstances, an inference may have to be drawn and a guess work has to be made even regarding compensation in case of death, for loss of dependent and estate to all claimants; care, guidance, love and affection especially of the minor children, consortium to the spouse, expenditure incurred in transport and funerals etc., and in case of injured from the nature of injuries, pain and sufferance, loss of earnings particularly for any disability and also probable expenditure that has to be incurred from nature of injuries sustained and nature of treatment required.

12. From the above, since the insurer is liable to indemnify the insured to satisfy the claim by payment to the claimant and then to recover from the insured (owner) in same proceedings; it is now to decide what is the just compensation the claimant is entitled. As per Ex.A-2=A-5 read with Ex.A-6 and evidence of P.Ws-1 and 3-Government hospital doctor, the claimant sustained fracture of right clavicle (shoulder region) besides another simple injury and was treated as inpatient in a private hospital from 11.02.2001 to 10.04.2001 for two months and later in the Government Hospital, an amount of Rs.20,000/- for the fracture including pain and sufferance, Rs.2,000/- for the simple injury, Rs.5,000/- for transport and attendant charges, extra nourishment, Rs.6,000/- for loss of earnings and Rs.5,000/- for medical expenses and treatment, in all Rs.38,000/- with interest at 7.5% from date of claim petition till date of realization. Accordingly, Point-2 for consideration is answered.

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POINT -3:

13. Accordingly and in the result, while allowing the appeal in part granting compensation of Rs.38,000/- with interest at 7.5% p.a. from the date of claim petition till the date of realization with joint and several liability of the insurer and insured (respondents 1 and 2) to pay

by the insurer and then to recover. The respondents shall deposit said amount within one month, failing which the claimant can execute and recover. It is made clear from the settled expressions of the Apex Court in **Lehru** (supra) & **Nanjappan** (supra) that the insurer is entitled, while depositing the amount payable, if not deposited or paid any amount so far to deposit in bank to approach the Tribunal to direct the RTA concerned not to register any transfer of the crime vehicle and to seek for attachment of the crime vehicle or other property of the insured as an assurance for execution and recovery in the same proceedings or under revenue recovery as per the MV Act, 1988 and also ask the Tribunal not to disburse the deposited amount to claimant (but for to invest in a bank) till such attachment order is made. However, after the same, the Tribunal shall not withhold the amount of the claimant, if there is any necessity to permit for any withdrawal but for to invest the balance in fixed deposit in a nationalized bank. There is no order as to costs.

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

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Dr. B. SIVA SANKARA RAO, J

Date: -01-2014
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[1] **2001(1)ALT 495 DB**
[2] AIR 2009 SC 208
[3] (2004) 3 SCC 297=2004-ACJ-1
[4] (2006) 4 SCC 250
[5] (2004) 13 SCC 224=2004-SAR(civil)-290
[6] (2007) 10 SCC 650=2007(4) Scale 292
[7] 2008 ACJ 2654
[8] 2008(1)LS-SC-177
[9] (1997)7 SCC-558
[10] (2007) 13 SCC 246
[11] 2008(1) Scale 531

[12] 2008 ACJ 654
[13] 2007 ACJ 721
[14] 2001 ACJ 843
[15] 2008(1) Scale 727
[16] JT-2003(2) SC 595 = 2003 ACJ 611
[17] 2010 ACJ 165
[18] 2012 ACJ 1284
[19] 1987 ACJ 411 (SC)
[20] 2008 ACJ 2885
[21] 2000 ACJ 319
[22] 1996 ACJ 1046 (SC)
[23] 1987 ACJ 411 (SC)
[24] 2008-ACJ-1498
[25] AIR 2007 SC 1971
[26] (2004)2 SCC-1
[27] Appeal (Civil) C.C.No. 10993 of 2009
[28] 2010 (5) ALT 105
[29] 2005 (4) ACJ 721
[30] AIR 2011 SC 1234 = 2011 (2) SCJ 639
[31] (2013)11 SCC-35
[32] (2013) 7 SCC 62
[33] 1965(1) All. E.R-563
[34] 1963(2) All.E.R-432
[35] 1969(1)All.E.R –555
[36] 1995 ACJ 366(SC)