

**HIGH COURT OF TRIPURA
AGARTALA
MAC App. No.40 of 2024**

The Branch Manager

Oriental Insurance Company Ltd.
Dharmanagar Branch,
Rajbari, Dharmanagar, Dist:- North Tripura
(Insurer of the bike vehicle bearing
Registration Number TR-05-B-7023)

---- Appellant

Versus

1. Smt. Shefali Rudra Paul,
W/O Late Umesh Rudra Paul

2. Smt. Uttama Rudra Paul
D/O Late Umesh Rudra Paul,
Both are resident of Vill- Durgapur
Hawerbazar, PO:- Birchandranagar
PS & Sub Div:- Kailashahar,
Dist:- Unakoti Tripura, Pin-799280

----Claimant-respondents

3. Sri Abdul Khalik
S/O Aftar Ali of Fulbari
PS:- Churaibari
Sub-Div:- Dharmanagar
Dist:- North Tripura, Pin-799262
(Owner of the bike vehicle bearing
Registration No. TR-05-B-7023)

----Owner respondent.

For Petitioner(s) : Mr. K. De, Adv.

For Respondent(s) : Mr. H. K. Bhowmik, Adv,
Mr. R. Datta, Adv.

Date of hearing : 29.07.2024

Date of delivery of
Judgment & Order : 31.07.2024

Whether fit for
reporting : YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal is preferred challenging the judgment
and award dated 26.09.2023 delivered by Learned MAC(1st),

Unakoti District, Kailashahar in connection with case No.T.S(MAC) No.9 of 2022. By the said judgment, the Learned Tribunal below has awarded compensation at Rs.8, 30,000/- along with interest at the rate of 6% per annum from the date of filing of the case i.e. w.e.f. 18.05.2022 within a period of 2(two) months from that day, failing which it was further ordered to pay penal interest at the rate of 9% per annum till the date of actual payment.

2. Heard Learned Counsel Mr. K. De representing the appellant-Insurance Company and also heard Learned Counsel Mr. R. Datta for the owner-respondent of the bike bearing No.TR-05-B-7023 and further heard Learned Counsel Mr. H. K. Bhowmik representing the claimant-respondents.

3. Before coming to the conclusion of the appeal let us discuss about the subject matter of the claim petition filed before the Learned Tribunal below.

4. The respondent-claimant-petitioners filed one claim petition under Section 166 of M.V. Act before the Learned Tribunal below for the death of the husband of respondent No.1 and the father of respondent No.2 respectively in a road accident occurred on 01.05.2019 at Kirtantali under Kailashahar Police Station due to rash and negligent driving of the bike bearing No.TR-05-B-7023. According to the respondent-claimant-petitioners, on 01.05.2019 Umesh Rudra Paul, husband and father of claimant-respondent Nos.1 and 2, was proceeding towards Kailashahar town by riding his bi-cycle via

Kailashahar-Dalugaon road and when he reached at Kirtantali(near Shanshanghat), that time, one motor bike bearing No.TR-05-B-7023(Pulsar 150), which was also coming from Kailashahar towards Dalugaon with high speed suddenly dashed against said Umesh Rudra Paul, as a result, he fell down on the ground and received injury on his person. Immediately on receipt of information, Fire Service personnel came to rescue the victim and shifted him to District hospital, Kailashahar from where the victim was brought to Silchar and after that, the injured was treated at Shillong and Gauhati Medical College and Hospital and in course of his treatment, said Umesh Rudra Paul succumbed to his injuries on 06.05.2019.

It was further stated that the accident took place due to rash and negligent driving of the driver of the said bike. On that issue, Kailashahar P.S case No.33/2019 under Section 279/338/304(A) IPC was registered. It was further submitted that at the time of accident the monthly income of the deceased was Rs.15,000/-. So, the respondent-claimant-petitioners filed the claim petition.

5. The OP No.1 i.e. owner-respondent No.3 herein, appeared and contested the petition by filing written statement denying the assertion of the respondent-claimant-petitioners. It was further submitted that he was the owner of the vehicle bearing No.TR-05-B-7023(pulsar 150). It was duly registered and valid up to 15.08.2023. Further stated that the vehicle was duly insured with the OP No.2-Insurance Company on the date

of the accident and on the day of alleged accident, he was also having valid driving licence upto 21.11.2037.

The OP No.2 i.e. appellant-Insurance Company herein also appeared on receipt of notice and contested the claim by filing written statement and it was further submitted that the claim petition was subjected to strict prove by the respondent-claimant-petitioners.

6. Upon the pleadings of the parties, the Learned Tribunal below framed the following issues:

- i) **Whether on 01.05.2019 at about 08:00 to 08:30 hours the vehicle bearing No.TR-02-B-7023 driven by Abdul Khalik in rash & negligent manner dashed the husband of the claimant No.1 namely Umesh Rudra paul, at Kirtantali on KLS-Dalugaon road under Kailashahar PS, who received head injuries and 06-05-2019 he succumbed to his injuries in Guwahati Medical College & Hospital?**
- ii) **Whether the claimant-petitioners are entitled to get any compensation, if so, to what extent?**
- iii) **Who is liable to pay the compensation?**
- iv) **To any other relief/reliefs to which the parties are entitled to, if any?**

7. Before the Tribunal, the respondent-claimant-petitioner No.2 Smt. Uttama Rudra Paul was examined as PW-1 and she relied upon some documents which were marked as Exbt.-P1 to Exbt.-P8.

From the side of the OP No.1 i.e. owner-respondent No.3 herein, Md. Abdul Khalik was examined as DW-1 and he relied upon certain documents which were marked as Exbt.-A to Exbt.-D.

8. Finally on conclusion of proceeding, Learned Tribunal below by the judgment and award allowed the claim

petition. The operative portion of the judgment and award dated 26.09.2023 of the Learned Tribunal below runs as follows:

A W A R D

"11. In the result, it is ordered that O.P. No.2, the Branch Manager, the Oriental Insurance Company Limited, Dharmanagar Branch, Rajbari, Dharmanagar, North Tripura, the Insurer of the offending bike vehicle bearing No.TR-05-B-7023 shall pay the awarded amount of compensation of Rs.8,30,000/- (rupees eight lacs and thirty thousand) with interest @ 6% per annum from the date of filing of the case, i.e., on 18-05-2022 to the claimant-petitioners within 02(two) months from today, failing which the OP No.2 shall have to pay penal interest of 9% p.a. till the date of actual payment.

12. Order regarding manner of disbursement of the compensation amount shall be passed as per the guidelines of the Hon'ble High Court of Tripura after payment of the awarded amount.

13. Supply copy of this award free of cost to the claimant-petitioner and OP No.3 through their engaged learned counsels.

14. The case stands disposed of."

Challenging that award, the present appellant has preferred this appeal.

9. In course of hearing of argument, Learned Counsel for the Insurance-Company, Mr. K. De drawn the attention of the Court that on the alleged date of accident, the rider-cum-owner of the bike did not have any valid driving licence but the Learned Tribunal below did not consider the same and fastened the liability upon the Insurance Company in place of fastening the liability upon the owner-respondent. Learned Counsel in course of hearing also drawn the attention of the Court referring para No.6 of the judgment/award and submitted that in the said judgment, it was referred in para

No.6 that during cross-examination by OP No.2-Insurance Company, DW-1 stated that the driving licence was issued on 04.07.2019 and that was valid up to 21.11.2037 from which it appears that on the alleged date of accident, he had no valid driving licence. So, in view of the principle laid down by Hon'ble the Apex Court, according to Learned Counsel for the appellant, there was no scope on the part of Learned Tribunal below to fasten the liability the amount of compensation upon the appellant-Insurance Company.

10. Learned Counsel for the appellant further drawn the attention of this Court referring para No.10 of the said judgment and award and submitted that the Learned Tribunal below at the time of delivery of judgment relied upon the citation of Hon'ble Apex Court reported in **AIR 2011 SC 1234 (Kusum Lata & Ors. vs. Satbir and Ors.)**, but the Hon'ble Apex Court also in another judgment of 3 judges Bench reported in **(2004) 3 SCC 297 of National Insurance Co. Ltd. v. Swaran Singh & Ors.** dated 05.01.2004 wherein in para Nos.84, 85, 86, 87, 92 and 93, Hon'ble the Apex Court observed as under:

"When, admittedly, no licence was obtained by a driver

84. We have analysed the relevant provisions of the said Act in terms whereof a motor vehicle must be driven by a person having a driving licence. The owner of a motor vehicle in terms of Section 5 of the Act has a responsibility to see that no vehicle is driven except by a person who does not satisfy the provisions of Section 3 of 4 of the Act. In a case, therefore, where the driver of the vehicle, admittedly, did not hold any licence and the same was allowed consciously to be driven by the owner of the vehicle by such

person, the insurer is entitled to succeed in its defence and avoid liability. The matter, however, may be different where a disputed question of fact arises as to whether the driver had a valid licence or where the owner of the vehicle committed a breach of the terms of the contract of insurance as also the provisions of the Act by consciously allowing any person to drive a vehicle who did not have a valid driving licence. In a given case, the driver of the vehicle may not have any hand in it at all e.g. a case where an accident takes place owing to a mechanical fault or vis major.(See Jitendra Kumar:(2003) 5 SC 538.)

85. In *V. Meperson v. Shiv Charan Singh*:(1998 ACJ 601(Del), the owner of the vehicle was held not to be guilty of violating the condition of policy by willfully permitting his son to drive the car who had no driving licence at the time of accident. In that case, it was held that the owner and insurer both were jointly and severally liable.

86. In *New India Assurance Co. Ltd. v. Jagtar Singh*:(1998 ACJ 1074(HP)) Hon'ble M. Srinivasan, C.J., as His Lordship then was, was dealing with the case where a duly licensed driver was driving a vehicle but there was a dispute as to who was driving the vehicle. In that case the Court referred to the judgment in *Kashiram Yadav v. Oriental Fire & General Insurance Co.*:(1989) 4 SCC 128 and expressed its agreement with the views taken therein.

87. In *National Insurance Co. Ltd. v. Ishroo Devi*:(1999 ACJ 615(HP) where there was no evidence that the society which employed the driver was having knowledge that the driver was not holding a valid licence, it was held that the insurance company is liable. The Court relied upon the decisions of this Court in *Kashiram Yadav case*:(1989) 4 SCC 128, *Skandia case*:(1987) 2 SCC 654 and *Sohan Lal Passi case*:(1996) 5 SCC 21.

Where the driver's licence is found to be fake
92. It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of the wilful breach of the conditions of the insurance policy or the contract of insurance. In *Lehru case*:(2003) 3 SCC 338 the matter has been considered in some detail. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of the law in terms whereof the insurer is to establish wilful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or for the owners to be absolved from any liability whatsoever. We would be dealing in some

detail with this aspect of the matter a little later.

Learner's licence

93. The 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 when a vehicle is 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.

Referring the same, learned Counsel for the appellant-Insurance Company submitted that in view of the principle of law laid down by Hon'ble Apex Court in the aforesaid 3 Judges bench in absence of valid driving licence, the observation of the Learned Tribunal below cannot be sustained in the eye of law.

11. Learned Counsel further referred another citation of Hon'ble Apex Court reported in **AIR 1996 SC 1150** in **New India Assurance Co. Ltd. v. Mandar Madhav Tambe & Ors.** dated 14.12.1995 wherein in para No.15, Hon'ble the Apex Court further observed as under:

"15. Apart from the fact that a learner having such a licence would not be regarded as duly licenced, the aforesaid clause in the insurance policy makes it abundantly 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". This clause specifically provides that even if respondent No.3 had held a current learners licence at the time of the accident, the appellant would not be liable. In the present case it is clear that the respondent No.3 did not have a permanent learner's licence before the date

of the accident and he had held only a learner's licence and it lapsed nearly two years before the accident. The High Court observed that the Act did not contemplate a "permanent driving licence" because a driving licence is valid only for a certain period after which it has to be renewed. This may be so, but the use of the words "permanent driving licence" in the insurance policy was to emphasise that a temporary or a learner's licence holder would not be covered by the insurance policy. The intention and meaning of the policy clearly is that the person driving the vehicles at the time of the accident must be one who holds a 'driving licence' within the meaning of Section 2(5A) of the Act. This being so, we are unable to agree with the conclusions of the High Court that the appellant was liable to pay the amount which had been awarded in favour of respondent No.1."

Referring the same, Learned Counsel further submitted that even it was found that on the day of alleged accident, if the owner-cum-rider had learner's licence, in that case also, there was no scope on the part of the Tribunal to impose any liability of payment of compensation upon the Insurance Company but the Learned Tribunal below did not consider the same and fastened the liability upon the Insurance Company for which according to Learned Counsel, the interference of the Court is required and Learned Counsel urged for allowing this appeal by setting aside the judgment of the Learned Tribunal below and to fasten the liability upon the owner-cum-rider of the offending motor bike.

12. On the other hand, Learned Counsel for the owner-cum-rider or the motor bike, Mr. R. Datta submitted that from the record, it appears that the driving licence was issued by the Authority on 04.07.2019 and the same is valid upto 21.11.2037 but the alleged accident took place on 01.05.2019.

So, on the day of alleged accident, although the OP-cum-rider of the bike could not produce any driving licence in his favour but definitely he had valid learner's licence and the said owner-respondent might have applied for the licence prior to the accident although the same was issued later on and furthermore, there was no evidence on record that the said respondent was not capable to ride/drive any vehicle on the alleged day. So, according to Learned Counsel, the observation of the Learned Tribunal below in para No.10 of the judgment was rational and justified. According to Learned Counsel, Mr. R. Datta, Learned Tribunal below rightly fastened the liability of payment of compensation upon the Insurance Company with direction to recover the same from the owner of the vehicle. It was further submitted that there is no other contrary evidence on record that on the alleged day, the vehicle had no insurance coverage. So, according to Learned Counsel, there is no scope to interfere with the judgment of the Learned Tribunal below and the Learned Tribunal below, after considering all the aspects with justification, has awarded compensation upon the respondent-claimant-petitioners. So, Learned Counsel at the end urged for dismissal of the appeal.

13. Learned Counsel for the respondent-claimant-petitioners, Mr. H. K. Bhowmik submitted that although it was the liability upon the owner-cum-rider of the bike to pay the compensation but since the bike was duly insured with the appellant-Insurance Company on that relevant day, so, the

Learned Tribunal below as per law has rightly fastened the liability of payment of compensation upon the Insurance Company. So, there was no perversity in the judgment of the Learned Tribunal below and urged for dismissal of this appeal upholding the judgment and award of the Learned Tribunal below.

14. I have heard arguments of the contesting parties. There is no dispute on record regarding the fact of accident on the alleged day i.e. 01.05.2019 and there is also no dispute on record that after the accident on 01.05.2019, the deceased victim succumbed to his injuries on 06.05.2019. From the relevant documents submitted by the respondent-claimant-petitioners, it appears that respondent-claimant-petitioner could prove that on the alleged day, an accident took place and due to accident, the injured sustained grievous injuries and ultimately he was succumbed to his injuries and on the alleged day, the vehicle of the respondent OP No.1 of the claim petition i.e. owner-respondent No.3 herein, had valid insurance coverage. From the record of the Learned Tribunal, further it appears that on the alleged day of accident, the respondent No.3 herein could not adduce any valid driving licence in his favour although he produced valid driving licence from which it appears that his driving licence was valid w.e.f. 04.07.2019 upto 21.11.2037.

The said respondent OP No.3 also could not produce any learner's licence in support of his contention before

the Learned Tribunal below but the vehicle of the respondent OP No.3 has valid insurance coverage on the day of accident vide policy No.32790/31/2019/948 covering the period w.e.f. 08.08.2018 to midnight of 07.08.2019. But prior to that, whether the said respondent No.3 had any learner's licence or not? In this regard, no documentary evidence could produce by the said respondent before the Learned Tribunal below and finally, on conclusion of proceeding, Learned Tribunal below in para No.10 of the judgment fastened the liability of payment of compensation upon the Insurance Company with a direction that the Insurance Company shall pay the amount of compensation upon the respondent-claimant-petitioners and thereafter shall recover the same from the owner-cum-rider of the vehicle i.e. offending bike. There is no contrary evidence on record that on the alleged day he was unable to ride/drive any vehicle.

15. More so, from the policy document, it appears that the alleged offending vehicle was nothing but a motor bike, so, Learned Tribunal below rightly and reasonably in para 10 of the judgment and award relied upon the judgment of Hon'ble Supreme Court reported in **AIR 2011 SC 1234 (Kusum Lata & Ors vs. Satbir and Ors.)** and fastened the liability upon the Insurance Company with direction to recover the amount from the owner-cum-driver. In this regard, Hon'ble Supreme Court of India in another case reported in **AIR 2011 SC 1234 in Pappu and Ors. v. Vinod Kumar Lamba and anr.** dated 19.01.2018

reported in **(2018) 3 SCC 208**, wherein in para Nos.13, 16, 17 and 19, Hon'ble the Apex Court observed as under:

"13. In the present case, Respondent 1 owner of the offending vehicle merely raised a vague plea in the written statement that the offending vehicle No. DIL 5955 was being driven by a person having valid driving licence. He did not disclose the name of the driver and his other details. Besides, Respondent 1 did not enter the witness box or examine any witness in support of this plea. Respondent 2 insurance company in the written statement has plainly refuted that plea and also asserted that the offending vehicle was not driven by an authorised person and having valid driving licence. Respondent 1 owner of the offending vehicle did not produce any evidence except a driving licence of one Joginder Singh, without any specific stand taken in the pleadings or in the evidence that the same Joginder Singh was, in fact, authorised to drive the vehicle in question at the relevant time. Only then would onus shift, requiring Respondent 2 insurance company to rebut such evidence and to produce other evidence to substantiate its defence. Merely producing a valid insurance certificate in respect of the offending truck was not enough for Respondent 1 to make the insurance company liable to discharge his liability arising from rash and negligent driving by the driver of his vehicle. The insurance company can be fastened with the liability on the basis of a valid insurance policy only after the basic facts are pleaded and established by the owner of the offending vehicle that the vehicle was not only duly insured but also that it was driven by an authorised person having a valid driving licence. Without disclosing the name of the driver in the written statement or producing any evidence to substantiate the fact that the copy of the driving licence produced in support was of a person who, in fact, was authorised to drive the offending vehicle at the relevant time, the owner of the vehicle cannot be said to have extricated himself from his liability. The insurance company would become liable only after such foundational facts are pleaded and proved by the owner of the offending vehicle.

16. The next question is: whether in the fact situation of this case the insurance company can be and ought to be directed to pay the claim amount, with liberty to recover the same from the owner of the vehicle (Respondent 1)?

17. This issue has been answered in National Insurance Co. Ltd.: (2004) 3 SCC 297. In that case, it was contended by the insurance company that once the defence taken by the insurer is accepted by the Tribunal, it is

bound to discharge the insurer and fix the liability only on the owner and/or the driver of the vehicle. However, this Court held that even if the insurer succeeds in establishing its defence, the Tribunal or the court can direct the insurance company to pay the award amount to the claimant(s) and, in turn, recover the same from the owner of the vehicle. The three-Judge Bench, after analysing the earlier decisions on the point, held that there was no reason to deviate from the said well-settled principle. In para 107, the Court then observed thus: (SCC p. 340)

"107. 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 an opportunity to defend at all. Such a course of action may also be resorted to 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."

19. In the present case, the owner of the vehicle (Respondent 1) had produced the insurance certificate indicating that Vehicle No. DIL 5955 was comprehensively insured by Respondent 2 (insurance company) for unlimited liability. Applying the dictum in National Insurance Co. Ltd.: (2004) 3 SCC 297, to subserve the ends of justice, the insurer (Respondent 2) shall pay the claim amount awarded by the Tribunal to the appellants in the first instance, with liberty to recover the same from the owner of the vehicle (Respondent 1) in accordance with law."

From the aforesaid principle of law laid down by the Hon'ble Apex Court, it also appears that Hon'ble the Apex Court in the aforesaid judgment also observed that the Insurance Company shall pay the claim amount as awarded by the Tribunal to the respondent-claimant-petitioner in the first instance with liberty to recover the same in accordance with law from the owner/rider of the bike. The said principle of law is also affirmed by the judgment referred by Learned Counsel for the appellant at the time of hearing.

16. Here, in the case at hand as it is already discussed that on the alleged day, the offending bike had valid insurance coverage although the respondent No.3 could not adduce any valid driving licence on the date of alleged accident in support of his defence before the Learned Tribunal below. So, in my considered view, Learned Tribunal below rightly decided the matter on merit and fastened the liability of payment of compensation upon the appellant-Insurance Company with further direction to recover the same from the owner after applying the principle of pay and recover policy. Situated thus, it appears that there is no infirmity and perversity in the judgment of the Learned Tribunal below.

17. In the result, the appeal filed by the appellant stands dismissed being devoid of merit. The judgment and award dated 26.09.2023 delivered by Learned MAC(1st), Unakoti District, Kailashahar in connection with case

No.T.S(MAC) No.9 of 2022 is hereby upheld and accordingly it is affirmed. The appellant-Insurance Company shall pay the aforesaid amount within a period of 8(eight) weeks from the date of receipt of copy of the judgment and to deposit the amount to the Learned Tribunal below for disbursal in accordance with the judgment of the Learned Tribunal below.

With this observation, the appeal stands disposed of on contest.

Send down the LCR along with a copy of judgment.

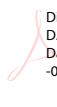
Pending application(s), if any, also stands disposed of.

JUDGE



सत्यमेव जयते

MOUMITA
DATTA
Deepshikha

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