REPORTED

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **MACA No. 1052/2006**

NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through: Mr. L.K. Tyagi, Advocate

versus

MANJIT SINGH & ORS. ..... Respondents
Through: Mr.B.K. Bharti, Advocate for Respondents Nos. 1 to 3.

% Date of Decision : May 18 , 2011

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

J U D G M E N T

: REVA KHETRAPAL, J.

1. The present appeal has been filed by M/s New India Assurance Company Limited against the judgment and award of the Claims Tribunal, Delhi dated 02.11.2006 whereby the learned Claims Tribunal passed an award in the

sum of Rs.10,25,000/- with interest @ 6% per annum from the date of the petition till its realization in favour of the respondents Nos. 1 to 3 with a direction to the Insurance Company to pay the same within 30 days of the passing of the award.

2. The facts leading to the filing of the claim petition as set out in the claim petition are that on 29.03.2001, the respondent No.1/claimant alongwith his wife, Smt. Jasmeet Kaur and son, Charanjit Singh on his arrival at the New Delhi Railway Station from Punjab, boarded an auto-rickshaw bearing No. DL-1RE-1603 from New Delhi Railway Station to his house at Tilak Nagar. At about 5.45 a.m. when it reached Patel Nagar, the auto-rickshaw, which was being driven rashly and negligently and at a high speed, turned turtle resulting in all the aforesaid persons sustaining grievous injuries. Smt. Jasmeet Kaur succumbed to the said injuries almost immediately thereafter.

3. Respondents Nos. 1 to 3 are the legal representatives of the deceased, Smt. Jasmeet Kaur. The respondent No.4, Sh.

Ashok Kumar is the auto-rickshaw driver, who is the principal tort feasor in the instant incident. The respondent No.5, Ashok Jain is the previous owner and the respondent No.6, Sh. Sanjay Gupta @ Sanju is the present owner of the aforesaid auto-rickshaw. The respondents No.4, 5 and 6 as well as the appellant were duly served with the notice of the filing of the claim petition and contested the case before the Claims Tribunal.

4. A joint written statement was filed by the respondents No.4 to 6 in which it was stated that the accident had taken place on account of a cow having come in front of the scooter and the sudden application of brakes by the driver to avoid a major accident. The appellant – Insurance Company filed a written statement, which it subsequently amended to take the defence that the respondent No.4 – driver was not holding a valid or effective driving licence and, as such, though the offending vehicle was insured with it vide policy No.311401/31/00/07155 valid from 27.03.2001 to 26.03.2002, it was not liable to pay any compensation to the

respondents No.1 to 3/claimants as per the terms and conditions of the policy.

5. The learned Claims Tribunal held the respondent No.4 guilty of rash and negligent driving and concluded that the respondent No.4 being the driver, the respondent No.5 being the owner and the respondent No.6 being the present owner of the offending vehicle were jointly and severally liable to make payment of compensation to the claimants. As the offending vehicle was insured with the Insurance Company, the Insurance Company was directed to make payment of compensation.

6. Aggrieved by the aforesaid direction of the Tribunal to make payment of compensation to the respondents No.1 to 3, the Insurance Company has preferred the present appeal for setting aside the award of the Claims Tribunal. Mr. L.K. Tyagi, the learned counsel for the Insurance Company has assailed the order of the Tribunal mainly on two grounds. The first ground is that the TSR in question was falsely implicated by the claimants after over four months of the

accident in collusion with the respondents No. 4 to 6 viz., the driver and owners of the TSR. It is submitted that the FIR lodged by the son of the deceased (the respondent No.2 herein) did not disclose the number of the vehicle. On the other hand, after four months were over, on 18.07.2001, the respondent No.1, Sh. Manjit Singh went to the police station alongwith the driver and owner of the TSR in question and disclosed the number of TSR. It is further submitted that the claimants have not satisfactorily explained as to how and in what circumstances they got the number of the TSR after four months, when it was not available with them at the time of the accident.

7. In order to substantiate his aforesaid plea that the respondents /driver and owner had colluded with the claimants and that the alleged vehicle was not involved in the accident, reference was made by Mr. Tyagi to the evidence of R3W2, Sub-Inspector Ashok Kumar, the Investigating Officer of case FIR No.187/2001, registered at Police Station Patel Nagar in respect of the accident which

resulted in the death of the deceased. R3W2, SI Ashok Kumar testified that on 18.07.2001, Sh. Manjit Singh had come alongwith Sh.Ashok Kumar and stated that Sh. Ashok Kumar was the person who had caused the accident on 29.03.2001. The vehicle bearing registration No. DL-1RE-1603 was also brought by them to the police station. Thereafter a notice u/s 133 of the Motor Vehicles Act was given to the owner of the vehicle to appear before him. He further stated that he had not carried out any other independent investigation in respect of the vehicle involved in the accident.

8. Mr. B.K. Bharti, the learned counsel for the respondents Nos. 1 to 3/claimants sought to rebut the aforesaid allegation of collusion by contending that PW1 Manjit Singh in the course of his cross-examination stated that the police had first recorded his statement and thereafter statement of his son, Charanjeet Singh, on the basis of which case FIR No.187/2001 was registered by the police. He further stated that he had noted down the number of the offending TSR,

which he had seen at the spot, but the initial number which was given to the police at the time of making his statement was not complete as one digit was missing therefrom. The police had given him time to trace out the number of the vehicle and finally he verified the same from the record of the Transport Authority and, thereafter he identified the TSR driver and, thus, there was a delay of three or four months in giving the correct number of the vehicle to the police. He further stated that the respondent No.4, Sh. Ashok Kumar had admitted before police that he was the driver of TSR involved in the accident.

9. Apart from the aforesaid, Mr. B.K. Bharti contended, on behalf of the respondents No. 1 to 3, that the very fact that the driver of the offending TSR viz., the respondent No.4, Sh. Ashok Kumar was convicted for the offences punishable under Sections 279/337/338/304A IPC is sufficient to bear out his contention that there was no collusion between the claimants on the one hand and the driver and owner of the TSR on the other. I am inclined to agree with the aforesaid

submission of Mr. Bharti for the reason that the record shows that the respondent No.4 was not only convicted for offences punishable under Sections 279/337/338/304A IPC but also sentenced to undergo rigorous imprisonment for one year as well as to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for one month for the offence punishable under Section 304-A IPC. Had there been any collusion between the aforesaid Ashok Kumar and the claimants, the case would not have resulted in the conviction of Sh. Ashok Kumar and that too on the basis of the testimonies of PW-1, Charanjeet Singh, the son of the deceased and PW-2, Manjeet Singh, the husband of the deceased as is evident from a bare glance at the order of conviction dated 9th February, 2010. I, therefore, find no merit in the submission of the learned counsel for the Insurance Company that the TSR in question had been falsely implicated by the claimants after over 4 months of the accident in collusion with the driver and owner of the said offending vehicle.

10. Adverting to the second ground urged on behalf of the appellant/Insurance Company, Mr. L.K. Tyagi submitted that the Claims Tribunal had grossly erred in fastening the liability on the Insurance Company in view of the fact that the Investigating Officer in his deposition had stated that the driver Ashok Kumar was not holding any driving licence on the date of the accident and was challaned under Section 3/181 of the Motor Vehicles Act, 1988, besides other Sections of the Indian Penal Code. Mr. Tyagi also referred to the testimonies of R4W3, Sh. Sanjay Gupta and R3W1, Sh. Lalit Kumar to buttress his contention that the driver did not possess any driving licence on the date of the accident, i.e., on 29.03.2001, and this by itself was sufficient to exonerate the appellant/Insurance Company. Reliance was placed by Mr. Tyagi in this context upon the judgment of the Supreme Court in the case of ***United India Insurance Co. Ltd. Vs. Gian Chand and Others II (1997) ACC 437 (SC)***. In the said case, the Supreme Court while dealing with the issue of liability of Insurance Company held that where the

driver of the vehicle had no licence and the owner of the vehicle was aware of the fact that his vehicle was being driven by an unlicenced driver, the Insurance Company would not be liable to pay the award amount. It was observed:-

> *"10. Under the circumstances, when the insured had handed over the vehicle for being driven by an unlicenced driver, the Insurance Company would get exonerated from its liability to meet the claims of third party who might have suffered on account of vehicular accident caused by such unlicenced driver."*

11. Reliance was also placed by Mr. Tyagi, the learned counsel for the Insurance Company, upon the decision of the Supreme Court rendered in ***United India Insurance Co. Ltd. Vs. Rakesh Kumar Arora and Others 2008 (13) SCALE 35***. In the said case, the driver was a minor and did not hold any valid and effective driving licence as on the date of the accident. The High Court, reversing the order of the Claims Tribunal, fastened the liability on the Insurance Company to pay compensation to the claimants, by holding as under:-

"After considering the rival contentions of the parties, I am of the opinion that the material point for determination is whether there was any breach of contract between the owner of the vehicle and the insurance company. If the breach is committed on behalf of the vehicle, certainly the Insurance Company has a case. In order to bring the case within the mischief of "breach" it has to be proved that there was a willful default on the part of the insured. I have already stated above that no sane father would like to give the custody or keys of the vehicle to his minor son aged 14years much less to the friend of the minor. Had Rakesh Kumar Arora parted the possession of the vehicle to his son he would have contemplated very easily that by doing so he would have incited the trouble. The Hon'ble Supreme Court 1987 while interpreting the expression "breach" came to the conclusion that if it is proved on the record that the owner of the vehicle had done everything in his power to keep, honour, and fulfil the promise, in such a situation he cannot be held guilty of a deliberate breach. There is no evidence on the record to indicate that the owner of the vehicle parted the keys of the vehicle to his son deliberately or knowingly. If in the absence of the father son take the keys of the vehicle and drives the vehicle for a fun and caused accident, it cannot be said that there was an express or

implied consent on the part of the owner. The judgments which have been relied upon by the learned counsel for the Insurance Company may not be any assistance to him for the simple reason that in the said judgments it has proved prima facie that there was a breach of contract on the part of the insured".

A Letters Patent Appeal was preferred by the insurance company but the same was dismissed. However, in the SLP filed by the insurance company, the Supreme Court accepted the contention of the insurance company and held as under:

"15. Section 4 of the Motor Vehicles Act prohibits driving of a vehicle by any person under the age of eighteen years in any public place. Section 5 of the Act imposes a statutory responsibility upon the owners of the motor vehicles not to cause or permit any person who does not satisfy the provisions of Sec. 3 or 4 to drive the vehicle.

16. The vehicle in question admittedly was being driven by Karan Arora who was aged about fifteen years. The Tribunal, as noticed hereinbefore, in our opinion, rightly held that Karan Arora did not hold any valid licence on the date of accident, namely 5.2.1997.

17. The learned single Judge as also the Division Bench of the High Court did not put unto themselves a correct question of

law. They proceeded on a wrong premise that it was for the Insurance Company to prove breach of conditions of the contract of insurance.

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

12. On the basis of the above, Mr.Tyagi submitted that where the driver does not possess valid and effective driving licence on the date of the accident, the Insurance Company cannot be held liable to satisfy the award. Reliance was placed by him on the following judgments:-

(i) ***National Insurance Company Ltd. Vs. Kusum Rai and Others II (2006) ACC 19.***

(ii) ***Ishwar Chandra Vs. Oriental Insurance Company Ltd. and Others II (2007) ACC 63***.

(iii) ***National Insurance Company Ltd. Vs. Kaushalaya Devi and Others IV (2008) ACC 796***.

13. To counter the aforesaid contentions of the learned counsel for the Insurance Company, Mr. B.K. Bharti, on behalf of the respondents Nos. 1 to 3/ claimants, submitted that the Insurance Company cannot shake off its liability only by

saying that at the relevant point of time, the vehicle was driven by a person having no licence, the liability of the insurer to satisfy the decree passed in favour of third party being statutory.

14. Reference in particular was made by him to paragraph 96 of the judgment of the Supreme Court in ***National Insurance Company Ltd. Vs. Swaran Singh and Others 2004(1) T.A.C. 321 (SC)***, which contains the summary of findings rendered in the said decision and runs as follows:-

> *"96. 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 of 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 under Section 163-A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149 (2) (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 a 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 wherefor 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 circumstances 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 for his disqualification 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 under Section 119 (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."

15. Mr. Bharti contended that an affidavit had been placed on the record of this court by the respondent No.1 dated 17.01.2011, wherein it was stated that he had obtained and filed on the record of this case a photocopy of the Information Report which he had obtained under the RTI Act, 2005 pertaining to learner's licence No.184 of the driver, Sh. Ashok Kumar. A bare glance at the said licence, which was filed alongwith the affidavit, Mr. Bharti contended, would show that the date of expiry of the learner's licence was 12.06.2001, meaning thereby that the

date of issue of the said learner's licence was six months prior thereto. The accident occurred on 29.03.2001 and, thus, the accident occurred while Sh. Ashok Kumar was holding a learner's licence. Relying upon the judgment of the Supreme Court in the case of ***Swaran Singh (supra)***, Mr. Bharti contended that a person holding a learner's licence must be held to be a duly licenced person and, therefore, there was no merit in the submission of the Insurance Company that the licence for LTV (Taxi) and TSR having been issued to the driver Ashok Kumar on 24.07.2001, he had no licence to drive the TSR on the date of the accident.

16. At this juncture, it deserves to be mentioned that on the respondent No.1 filing the aforesaid affidavit, an opportunity was afforded by this court to the Insurance Company to verify the RTI Information Report and the licence placed on record by the respondent No.4/driver. A verification report dated 02.08.2010 was placed on record by the Insurance Company given by its Investigators, M/s. Mack Insurance Auxiliary Services Pvt. Ltd. wherein it is stated as under:-

> "As per your instruction our investigator visited the Licensing Authority, Janakpuri, New Delhi for the purpose of status of Learning Licence. The Official of RTO has informed that they did not keep the record of the Learning Licence for more than six months. However, he has refused to give the same in writing."

17. Let us have a look, now, at the evidence on record on the aforesaid aspect of the matter. R3W1 Lalit Kumar, Record Keeper, RTO Office, West Zone, Jankapuri, Delhi, in the context of the licence issued to Ashok Kumar, testified that as per the record brought by him, the said Ashok Kumar was issued licence by their office for the first time on 24.07.2001 for the category of LMV (Taxi) and LTV (TSR). The said licence was renewed on 24.07.2004. He categorically stated that before 24.07.2001, Sh. Ashok Kumar was not holding any licence as per their record. The report Exhibit R3W1/1 in this regard was signed by the Motor Vehicle Inspector, Sh. Raj Kumar, whose signatures he identified. In the course of his cross-examination, the witness conceded that Ashok Kumar might have held a learner's licence issued from their

department valid for six months but stated that the records of the learner's licence were not available. He, however, denied the suggestion that Ashok Kumar was holding a learner's licence since January, 2001 and stated that a learner's licence may have been issued in May or June, 2001.

18. R3W2, SI Ashok Kumar, the Investigating Officer of FIR No.187/2001 Police Station Patel Nagar, in the context of the driving licence of the respondent No.4, testified that the driver Ashok Kumar was not holding any driving licence on the date of the accident and challan under Section 3/181 Motor Vehicles Act had been filed against him.

19. R4W3, Sh. Sanjay Gupta, the present owner of the offending vehicle in the course of his testimony admitted that he had not obtained any copy of the driving licence of Sh. Ashok Kumar, who was employed by him as a driver in January, 2001. He stated that Ashok Kumar was holding a licence but he had not seen the licence before employing him. In the course of his cross-examination, he admitted that the notice

under Section 133 of the Motor Vehicles Act Exhibit R3W2/P1 was given to him by the Investigating Officer.

20. R4W4, Sh. Madan Lal Nagar, Administrative Officer, New India Assurance Company, testified that a notice under Order XII Rule 8 CPC to produce the original policy and driving licence was given to the respondent Nos. 4, 5 and 6, copy whereof was Exhibit R4W4/2 and postal receipts were Exhibits R4W4/3 to R4W3/5 and UPC was Exhibit R4W4/6. He further testified that as per the terms of the policy, vehicle must be driven by a person holding valid driving licence. He stated that the driver was challaned by the police under Sections 3/181 Motor Vehicles Act for not possessing valid driving licence and placed on record the certified copy of the charge-sheet, Exhibit R4W4/7.

21. From the aforesaid evidence, it stands conclusively proved that at the time of the accident, the respondent No.4, Ashok Kumar was not in possession of a driving licence and was accordingly challaned by the police of Police Station Patel Nagar under Section 3/181 Motor Vehicles Act. There is

also on record a certified copy of the order passed by the Metropolitan Magistrate, Delhi in the case of State Vs. Ashok Kumar, FIR No.187/2001, Police Station Patel Nagar dated 09.02.2010, whereunder the accused was held to have violated Section 3 of the Motor Vehicles Act and thus, to have committed the offence punishable u/s 181 of the said Act, apart from the offences under Section 279/337/338/304A IPC. The relevant portions of the said judgment, which are apposite for the purpose of deciding the present appeal are reproduced as under:-

> "37. At this stage, the most important point to be noted is that the accused was not having the licence to drive the vehicle. He was not able to produce his licence in compliance of the provisions of Motor Vehicle Act. The accused was thus driving the vehicle in contravention of section 3 of the said Act, for which he has been separately charged. The accused has nowhere disputed the fact that he was not authorised to drive a commercial vehicle on the date of incident. He has not been able to prove that he was having a licence to drive the vehicle. No record has been summoned from the transport authority to establish any

fact that licence was granted or even that he had applied for the same."

38. In such a situation, the factum of driving a commercial vehicle at a high speed at a spot which requires extra caution, coupled with the fact that the accused was having no licence to drive any vehicle, clearly establishes rashness and negligence on his part.

42. In these facts and circumstances, this court is of the view that the prosecution has been able to establish its case beyond reasonable doubt against the accused. No contradiction or irregularity can be seen in the proceedings which would go to the root of the matter to create doubt in the prosecution case. It has been established beyond reasonable doubt that the accused was not having the licence to drive the vehicle on the date of incident and he thus violated section 3 of the Motor Vehicles Act. He has thus committed the offence punishable under section 181 of the said Act. Further, he drove the vehicle in a rash and negligent manner so as to endanger human life or personal safety of others and likely to cause hurt or injury to any person, and thereby committed the offence punishable under section 279 IPC. While driving the said vehicle in the aforesaid manner, he had caused

> simple injuries to Sh. Charanjeet Singh and committed the offence punishable under section 337 IPC, he caused grievous injuries to Sh. Manjeet Singh and committed the offence punishable under section 338 IPC and further caused death of Smt. Jasmeet Kaur and committed the offence punishable under section 304-A IPC."

22. From the aforesaid, it stands conclusively proved that the respondent No.4 was driving a transport vehicle without a licence and that too rashly and negligently and at a high speed. Assuming, however, from the information derived by the learned counsel for the respondents No.1 to 3 through the RTI that the respondent No.4 was possessed of a learner's licence which was valid on the date of the accident, the same in my view is of no avail. There is no manner of doubt that the respondent No.4 was transporting three passengers, who had arrived at the New Delhi Railway Station from Bhatinda (Punjab) on his TSR, and in all probability alongwith all their belongings. This, I find the respondent No.4 was doing in clear violation of the Insurance Policy issued by the

appellant. The relevant column of the said Insurance Policy, Exhibit R4W4/1 reads as follows:-

> **"PERSONS OR CLASSES OF PERSONS ENTITLED TO DRIVE:**
>
> *Drivers Clause: Persons or classes of persons entitled to drive:- Any person including the insured provided that the person driving holds an effective and valid driving license to drive the category of vehicle insured hereunder, at the time of accident and is not disqualified from holding or obtaining such a license. Provided also that a person holding an effective and valid Learner's License to drive the category of vehicle insured hereunder may also drive the vehicle* ***when not used for transport of passengers*** *at the time of accident and that the person satisfies the requirements of Rule 3 of Motor Vehicle Rule, 1989".*

23. Thus, clearly there was a breach of the conditions of the Insurance Policy. On a learner's licence, assuming there was one, the respondent No.4 was not entitled to transport passengers and that too without adhering to Rule 3 of the Motor Vehicles Rules, 1989, which, *inter alia*, required him to be accompanied by an instructor holding a valid driving

licence to drive the vehicle. This being so, it must be held that the Insurance Company is entitled to succeed in its defence. Though, this court is cognizant of the fact that the Hon'ble Supreme Court in ***Swaran Singh's*** case ***(supra)*** has held that a person holding a learner's licence would also come within the purview of "duly licenced" as "such a licence is also granted in terms of the provisions of the Act and the Rules framed thereunder", but in this case, as noted above, there is an exclusion clause which specifically excludes the use of the insured vehicle for the purpose of transporting passengers on a learner's licence. The exclusion clause, in my view, is of some importance for the reason that it has reference to a transport vehicle. Even otherwise, the reason for incorporating such an exclusion clause is not far to seek, viz., that a person on a learner's licence ought not to be transporting passengers, for, he as a learner may not be in full control of his vehicle. In the present case, for instance, the vehicle turned turtle as it was being driven at a high speed though it was fully loaded with passengers and the

driver was unable to maintain the balance of the vehicle. The learner's licence could, at the most, have been utilized by the driver for the purpose of learning to drive and that too in compliance with the requirements of Rule 3 of the Motor Vehicle Rules, 1989.

24. In ***National Insurance Co. Ltd. Vs. Kusum Rai and Others (2006) 4 SCC 250***, the Supreme Court after noting that the offending vehicle was being used as a taxi, i.e., as a commercial vehicle, held that the driver of the said vehicle was required to hold an appropriate licence therefor. The driver, who was driving the vehicle at the relevant time was the holder of a licence to drive a light motor vehicle only. He did not possess any licence to drive the commercial vehicle which he was driving. Evidently, therefore, there was a breach of condition of the contract of insurance and the Insurance Company was not liable to pay the claimed amount.

25. In the case of ***New India Assurance Co. Ltd. Vs. Mandar Madhav Tambe and others, 1996 ACJ 253***, the aspect of

exclusion clause in an insurance policy was dwelt upon and it was held that in view of the provisions of the exclusion clause in the insurance policy in the said case, the Insurance Company was not liable to pay the compensation. The exclusion clause in the policy in the said case, which the appellant Company relied upon was as follows:-

> "Provided that the person driving holds a valid driving licence at the time of the accident or had held a permanent driving licence (other than a learner's licence) and is not disqualified from holding such a licence."

26. In paragraphs 14 and 15 of the aforesaid decision, the Supreme Court observed as follows:-

> "14. From the aforesaid it is clear that what was obtained by respondent No.3 from the authorities under the Act was not a licence within the meaning of Section 2(5A) of the said Act. He had obtained a learner's licence which allowed him to be on the road subject to his fulfilling the conditions contained therein. One of the important conditions was that if he was driving a motor vehicle then there must be besides him in the vehicle and sitting in such a position as to be able readily to stop the vehicle." It is

clear from this that two learners by themselves cannot be in one car which is being driven by one of them. If the learner having a learner's licence under the rules is to drive a car then he must have sitting besides him a person who is duly licenced. This clearly shows that a "driving licence" as defined in the Act is different from a learner's licence issued under Rule 96. In other words, a person would be regarded as being duly licenced only if he has obtained a licence under Chaper II of the Motor Vehicles Act and a person who has obtained a temporary licence which enables him to learn driving cannot be regarded as having been duly licenced. The decision of the single judge of the Himachal Pradesh high Court in United India Insurance Company's case (supra) to the extent to which he has taken a contrary view must be held to have been incorrectly decided.

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 learner's 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 emphasis 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 vehicle 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."

27. The present case, even assuming that respondent No.4 had a learner's licence on the date of the accident, is squarely

covered by the aforesaid decision of the Supreme Court on account of the exclusion clause contained in the Insurance Policy, Exhibit R4W4/1.

28. In view of the aforesaid, in accordance with the law holding the field as on date, it is held that the Insurance Company is liable to satisfy the decree in the first instance and to recover the awarded amount from the owner(s) and driver of the offending vehicle after making payment of the award amount to the respondents No.1 to 3.

29. The appeal is allowed in the above terms.

30. Records of the Claims Tribunal which were requisitioned for the purpose of deciding the appeal be sent back.

REVA KHETRAPAL
(JUDGE)

May 18, 2011
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