

A NATIONAL INSURANCE CO. LTD.

v.

KAUSHALYA DEVI AND ORS.  
(Civil Appeal No. 3542 of 2008)

MAY 13, 2008

B [S.B. SINHA AND V.S. SIRPURKAR, JJ.]

C *Motor Vehicles Act, 1988 – ss. 3, 4, 10 and 149 – Motor  
accident – By goods vehicle – Causing death of passenger  
travelling therein – Claim for compensation – Granted by Tri-  
bunal holding the Insurance company liable to pay – High  
Court holding Insurance Company not liable – However, since  
awarded amount already deposited, directed the release  
thereof in favour of claimant with liberty to Insurance Com-  
pany to recover it from the owner of offending vehicle – On  
D appeal, held: The owner alone was liable to pay the compen-  
sation as driver of the offending vehicle was not holding valid  
licence and the deceased was unauthorized passenger – If  
deposited amount withdrawn by the claimant, the Insurance  
Company to recover it from the owner, and if not withdrawn, to  
E refund the amount.*

A petition was filed seeking compensation u/s 166 of  
Motor Vehicles Act, 1988. The offending vehicle which  
caused death of the son of the claimant was insured. In-  
F surance Company took the objections on the ground that  
the driver of the offending vehicle did not possess effec-  
tive or valid driving licence and the deceased was travel-  
ing as an unauthorized passenger on the truck which was  
a goods carriage. Tribunal awarded the compensation. In  
G appeal High Court held that the Insurance Company was  
not liable to pay the compensation. However, in view of  
the fact that the amount awarded had already been de-  
posited, it was directed to be released in favour of the  
claimant with liberty to the Insurance Company to recover

that amount from the owner of the offending vehicle. Hence the present appeals by the Insurance Company as also owner of the offending vehicle. A

Allowing the appeals filed by the Insurance Company and dismissing that filed by the owner of the offending vehicle, the Court B

HELD: 1. The owner alone was liable to pay compensation to the first respondent for causing death of son of the claimant by rash and negligent driving on the part of the driver of the truck. High Court was of the opinion that the endorsement permitting the driver to drive heavy goods vehicle was ante dated and was not existing on the date of accident. On the relevant date, the driver only held a licence to drive a light transport vehicle. The provisions relating to the necessity of having a licence to drive a vehicle is contained in Sections 3, 4 and 10 of Motor Vehicles Act, 1988.[Paras 9, 10 and 12] [504-H, 505-A-D, 507-D] C D

*National Insurance Co. Ltd. v. Swaran Singh and Ors. 2004 (3) SCC 297; National Insurance Co. Ltd. v. Laxmi Narain Dhut 2007 (4) SCALE 36 – relied on.* E

*Oriental Insurance Company Ltd. v. Meena Variyal and Ors. 2007 (5) SCALE 269; Oriental Insurance Company Ltd. v. Brij Mohan and Ors. 2007 (7) SCALE 753; Oriental Insurance Co. Ltd. v. Prithvi Raj 2008 (1) SCALE 727 – referred to.* F

2. The deceased was not the owner of any goods which were being carried in the truck. Admitted position is that he had been traveling in the truck for the purpose of collecting the empty boxes. He was a vegetable dealer. He was not traveling in the truck as owner of the goods viz. the vegetables. He was traveling in the truck for a purpose other than the one for which he was entitled to travel in a public carriage goods vehicle. [Para 13] [507-E,F] G

*New India Assurance Co. Ltd. v. Asha Rani and Ors. 2003 H*

A (2) SCC 223 – relied on.

*Prem Kumar and Ors. v. Prahlad Dev and Ors.* 2008 (1) SCALE 531; *Oriental Insurance Co. Ltd. v. Prithvi Raj* 2008 (1) SCALE 727 – referred to.

B 3. If the amount deposited by the insurance company has since been withdrawn by the claimant, it would be open to the insurance company to recover the same in the manner specified by the High Court. But if the same has not been withdrawn, the deposited amount may be refunded to the insurance company and the proceedings for realization of the amount may be initiated against the owner of the vehicle. [Para 14] [508-C,D]

Civil APPELLATE JURISDICTION : Civil Appeal No. 3542 of 2008

D From the final Judgment and Order dated 5.12.2005 of the High Court of Himachal Pradesh at Shimla in FAO No. 223 of 2002

WITH

E C.A. No. 3552 of 2008

S.L. Gupta, S.S. Yadav, Goodwill Indeevar and Dinesh Kumar Garg for the Appearing Parties.

F The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

G 2. Kishan Lal (deceased) was traveling in a truck bearing registration No.HP-11-1448 on 16.3.2000. He was aged about 27 years. He was unmarried. The said truck met with an accident.

H First respondent being the mother of the deceased filed an application for payment of compensation under Section 166 of the Motor Vehicles Act, 1988 (The Act). Appellant was served with a notice. One of the objections taken by it was that the

driver of the truck did not possess any valid or effective driving licence and that the deceased was travelling as an unauthorized passenger on the truck which was a goods carriage. A

3. The Tribunal awarded a sum of Rs. 1,18,000/- by way of compensation. An appeal was preferred thereagainst before the High Court. B

By reason of the impugned judgment, whereas the contention of the appellant-insurance company was upheld, having regard to the fact that the amount awarded in favour of the first respondent had already been deposited, it was directed to be released in favour of the claimant with liberty to the insurance company to recover the said amount along with interest from the owner by filing an appropriate application for execution before the Tribunal without being required to file a separate suit. C

4. Both the insurance company as also the owner of the truck are, thus, before us. D

5. Shri S.L. Gupta, learned counsel appearing on behalf of the insurance company, would submit that as the deceased was travelling as a gratuitous passenger and as the driver of the vehicle was not possessing an effective driving licence, the High Court should not have passed the impugned order. E

6. Mr. Garg, learned counsel appearing on behalf of the owner of the vehicle, on the other hand, would contend that the deceased was a vegetable vendor and he had been travelling in the truck for collecting the empty boxes and, thus, he was not a gratuitous passenger. In any event, it was urged, as the insurance company has already deposited the amount of compensation, the right to recover the amount from the owner of the vehicle need not have been granted. F

7. The Tribunal, having regard to the rival contentions of the parties, framed the following issues : G

"1. Whether deceased Shri Krishan Lal had died due to the rash and negligent driving of Shri H

A Shyam Lal, driver of truck No.HP-11-1448, as alleged? ...OPP.

2. If issue No.1 supra is proved, to what amount of compensation the petitioner is entitled to and from which of the respondents? ..OPP

B 3. Whether the truck driver did not have valid driving licence on the date of accident, as alleged, if so, its effect? OPR.3.

C 4. Whether the documents i.e. route permit, R.C. and fitness certificate of the truck, in question, were not valid on the date of accident as alleged? ...OPR.3

5. Relief.”

D 8. It was opined by the Tribunal that the driver of the truck was driving the vehicle rashly and negligently. It was furthermore held that the truck in question was insured with the appellant insurance company, but it had not been proved that the driver was not having any valid driving licence.

E With regard to the contention that the deceased was a gratuitous passenger in a goods vehicle, it was held :

F “The evidence, on record, which has been led by the petitioner would go to show that the deceased was traveling in the truck, in question, for bringing empty vegetable boxes. Further, even if it is taken that the deceased was traveling in the truck as unauthorized person, even then, under the existing law, the insurance company cannot avoid the liability in question. Therefore, the plea raised by the learned Advocate for the insurance company does not have any force.”

G 9. The High Court, however, held that the driving licence of the Driver Shyam Lal was not valid, stating :

H “Since I am of the opinion that the endorsement permitting

Shyam Lal to drive heavy goods vehicle was ante dated and was not existing on the date of accident it is clear that the owner could not have handed over the vehicle to a person who held a valid driving licence. On 16.3.2000 Shyam Lal only held a licence to drive a light transport vehicle and the owner could not have checked or verified the licence for driving a heavy goods vehicle. In fact in this case the owner has not even stepped into the witness box to say anything in this regard. Therefore, I hold that the insurance company was wrongly held liable to pay compensation.”

As regards to the question as to whether the deceased was an unauthorized passenger, it accepted the plea of the insurance company.

10. The provisions relating to the necessity of having a licence to drive a vehicle is contained in Sections 3, 4 and 10 of the Act. As various aspects of the said provisions, vis-à-vis, the liability of the insurance company to reimburse the owner in respect of a claim of a third party as provided in Section 149 thereof have been dealt with in several decisions, it is not necessary for us to reiterate the same once over again. Suffice it to notice some of the precedents operating in the field..

In *National Insurance Co. Ltd. v. Swaran Singh & Ors.* [(2004) 3 SCC 297], this Court held:

“88. Section 10 of the Act provides for forms and contents of licences to drive. The licence has to be granted in the prescribed form. Thus, a licence to drive a light motor vehicle would entitle the holder there to drive the vehicle falling within that class or description.

89. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in

A sub-section (2) of the said section.”

It was furthermore, observed :

B “90. We have construed and determined the scope of sub-clause ( ii ) of sub-section (2) of Section 149 of the Act. Minor breaches of licence conditions, such as want of medical fitness certificate, requirement about age of the driver and the like not found to have been the direct cause of the accident, would be treated as minor breaches of inconsequential deviation in the matter of use of vehicles. C Such minor and inconsequential deviations with regard to licensing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance to the third parties.

D 91. On all pleas of breach of licensing conditions taken by the insurer, it would be open to the Tribunal to adjudicate the claim and decide inter se liability of insurer and insured; although where such adjudication is likely to entail undue delay in decision of the claim of the victim, the Tribunal in its discretion may relegate the insurer to seek its remedy of reimbursement from the insured in the civil court.” E

The decision in *Swaran Singh*, however, was held to be not applicable in relation to the owner or a passenger of a vehicle which is insured.

F 11. In *National Insurance Co. Ltd. v. Laxmi Narain Dhut* [2007 (4) SCALE 36], this Court referring to *Swaran Singh* (supra) and discussing the law on the subject, held :

“In view of the above analysis the following situations emerge:

G 1. The decision in *Swaran Singh*’s case (supra) has no application to cases other than third party risks.

2. Where originally the licence was a fake one, renewal cannot cure the inherent fatality.

H

3. In case of third party risks the insurer has to indemnify the amount and if so advised, to recover the same from the insured.

A

4. The concept of purposive interpretation has no application to cases relatable to Section 149 of the Act.

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The High Courts/Commissions shall now consider the matter afresh in the light of the position in law as delineated above.

{See also *Oriental Insurance Company Ltd. v. Meena Variyal & Ors.* [2007 (5) SCALE 269]; *Oriental Insurance Company Ltd. v. Brij Mohan & Ors.* [2007 (7) SCALE 753]; and *Oriental Insurance Co. Ltd. v. Prithvi Raj* [2008 (1) SCALE 727]}.

C

12. In view of the findings arrived at by the High Court, it must be held that the owner alone was liable to pay compensation to the first respondent herein for causing death of her son by rash and negligent driving on the part of the driver of the truck. The High Court's judgment must be sustained on this ground.

D

13. The deceased was not the owner of any goods which were being carried in the truck. Admitted position is that he had been traveling in the truck for the purpose of collecting the empty boxes. He was a vegetable dealer. He was not traveling in the truck as owner of the goods viz. the vegetables. He was traveling in the truck for a purpose other than the one for which he was entitled to travel in a public carriage goods vehicle.

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This aspect of the matter is squarely covered by the decision of this Court in *Brij Mohan* (supra) wherein the Bench cited with approval the decision in *New India Assurance Co. Ltd. v. Asha Rani & Ors.* [(2003) 2 SCC 223] wherein it was stated :

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"26. In view of the changes in the relevant provisions in the 1988 Act vis-a-vis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be

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A attributed having regard to the context in which they have  
been used i.e. "a third party". Keeping in view the  
provisions of the 1988 Act, we are of the opinion that as  
the provisions thereof do not enjoin any statutory liability  
on the owner of a vehicle to get his vehicle insured for any  
passenger travelling in a goods vehicle, the insurers would  
not be liable therefor."

{See also *Prem Kumar & Ors. v. Prahlad Dev & Ors.*  
[2008 (1) SCALE 531] and *Oriental Insurance Co. Ltd. v. Prithvi  
Raj* [2008 (1) SCALE 727]}.

C 14. For the reasons aforementioned, Civil Appeal arising  
out of SLP (C) No. 10694 is allowed and Civil Appeal arising  
out of SLP (C) No. 9910 of 2006 is dismissed. If the amount  
deposited by the insurance company has since been withdrawn  
by the first respondent, it would be open to the insurance com-  
pany to recover the same in the manner specified by the High  
Court. But if the same has not been withdrawn the deposited  
amount may be refunded to the insurance company and the pro-  
ceedings for realization of the amount may be initiated against  
the owner of the vehicle. In the facts and circumstances of the  
case, however, there shall be no order as to costs.

K.K.T.

Civil Appeal No. 3542/08 allowed

Civil Appeal No. 3552/08 dismissed.