

MUKUND DEWANGAN

A

v.

ORIENTAL INSURANCE CO. LTD. ETC.

(Civil Appeal No. 5826 of 2011)

B

FEBRUARY 11, 2016

[KURIAN JOSEPH AND ARUN MISHRA, JJ.]

Motor Vehicles Act, 1988 – ss.2(21), (41); 10(2)(d) – Driving licence – Whether for the drivers having licence to drive ‘light motor vehicles’ there is necessity of obtaining endorsement to drive the ‘transport vehicle’ when the ‘transport vehicle’ is of class of ‘light motor vehicle’ – Conflicting decision of Supreme Court on the question – Held: Matter referred to Larger Bench to decide the questions: (1) Meaning required to be given to definition ‘light motor vehicle’ as defined u/s. 2(21); (2) whether ‘transport vehicle’ excluded from the definition of ‘light motor vehicle’; (3) Whether ‘transport vehicle’ and ‘omnibus’ the “gross vehicle weight” of either of which does not exceed 7500 kgs. would be a “light motor vehicle” and also motor-car or tractor or a road roller, “unladen weight” of which does not exceed 7500 kgs. and holder of licence to drive class of “light motor vehicle” as provided in section 10(2)(d) would be competent to drive a transport vehicle or omnibus, the “gross vehicle weight” of which does not exceed 7500 kgs. or a motor-car or tractor or road roller, the “unladen weight” of which does not exceed 7500 kgs.; (4) Effect of the amendment made by virtue of Act No.54 of 1994 while substituting clauses (e) to (h) of section 10(2) which contained “medium goods vehicle”, “medium passenger motor vehicle”, “heavy goods vehicle” and “heavy passenger motor vehicle” by “transport vehicle”; (5) Whether insertion of expression ‘transport vehicle’ under section 10(2)(e) is related to said substituted classes only or it also excluded transport vehicle of light motor vehicle class from purview of Sections 10(2)(d) and 2(41) of the Act; (6) Effect of amendment of Form 4 as to operation of the provisions contained in section 10 as amended in the year 1994 and whether procedure to obtain driving licence for transport vehicle of class of “Light Motor Vehicle” has been changed.

C

D

E

F

G

H

- A *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan & Ors.* (1987) 2 SCC 654: 1987 (2) SCR 752; *Sohan Lal Passi v. P. Sesh Reddy & Ors.* (1996) 5 SCC 21 : 1996 (3) Suppl. SCR 647 ; *Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd.* (1999) 6 SCC 620: 1999 (2) Suppl. SCR 202 ;
- B *Oriental Insurance Co. Ltd. v. Zaharulnisha & Ors.* (2008) 12 SCC 385: 2008 (7) SCR 58 ; *National Insurance Co. Ltd. v. Swaran Singh* (2004) 3 SCC 297: 2004 (1) SCR 180 ; *New India Assurance Co. Ltd. v. Prabhu Lal* (2008) 1 SCC 696: 2007 (12) SCR 724;
- C *New India Assurance Co. Ltd. v. Roshanben Rahemansha Fakir & Anr.* (2008) 8 SCC 253: 2008 (8) SCR 328 ; *National Insurance Co. Ltd. v. Annappa Irappa Nesaria alias Nesaragi & Ors.* (2008) 3 SCC 464: 2008 (1) SCR 1061 ; *Oriental Insurance Co. Ltd. v. Angad Kol & Ors.* (2009) 11 SCC 356: 2009 (2) SCR 695 ; *S.Iyyapan v. United India Insurance Co.* (2013) 7 SCC 62: 2013 (7) SCR 45; *Kulwant Singh & Ors. v. Oriental Insurance Co.Ltd.*(2015) 2 SCC 186; *Nagashetty v. United India Insurance Co. Ltd. & Ors.* (2001) 8 SCC 56 : 2001 (1) Suppl. SCR 656 – referred to.
- E

Case Law Reference

	1987 (2) SCR 752	referred to	Para 22
	1996 (3) Suppl. SCR 647	referred to	Para 23
	1999 (2) Suppl. SCR 202	referred to	Para 24
F	2008 (7) SCR 58	referred to	Para 25
	2004 (1) SCR 180	referred to	Para 25
	2007 (12) SCR 724	referred to	Para 26
	2008 (8) SCR 328	referred to	Para 27
G	2008 (1) SCR 1061	referred to	Para 28
	2009 (2) SCR 695	referred to	Para 30
	2013 (7) SCR 45	referred to	Para 32
	(2015) 2 SCC 186	referred to	Para 33
	2001 (1) Suppl. SCR 656	referred to	Para 34

H

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5826 A
of 2011.

From the Judgment and Order dated 24.02.2011 of the High Court
of Chhattisgarh at Bilaspur in M. A. No. 940 of 2006

WITH

SLP(C) Nos. 32828, 32833, 32835, 32827 of 2010, C.A. Nos. 4068- B
4069, 8992 of 2012, SLP(C) No. 16082 of 2012, SLP(C) Nos. 887-890,
28455-28456 of 2013, C.A. No. 6379 of 2013, SLP(C) Nos. 8709-8710,
8712-8713, 14333-14334, 8704-8706, 13008, 15759-15760, 36364-36365
of 2014, C.A. No. 9990 of 2014, SLP(C) Nos. 20072, 3300, 3302 of C
2015, SLP(C) Nos. 6429, 15924 of 2015.

Ms. Kiran Suri, Sr. Adv., Rajeev Kumar Bansal, Raj Singh Rana,
Akshay K. Ghai, R. K. Kapoor, Ms. Rekha Giri, Ms. Sai Jyotsna, Anis
Ahmed Khan, Praveen Sehrawat, Priyadarshi Banerjee, Piyush Sharma,
Vikram Saini, A. K. Mishra, P. K. Jain, Saurabh Jain, S. P. Singh Rathore,
P. K. Goswami, Sudhakar Dwivedi, Uday Prakash Yadav, Raghavendra D
Shukla, Apoorv Kurup, Aditya Chanakya Boxipatra, Rohit Rathi,
Ardhendumauli Kumar Prasad, Ms. Kirti Mishra, S. J. Amith, Gautam
Kumar, Dr. (Mrs.) Vipin Gupta, Jay Kishore Singh, Gautam Godara,
Anand V. Selvam, Ravindra K. Adsure, H. K. Chaturvedi, Ms. Roopali
Chaturvedi, Ms. Tanuj Bagga Sharma, Dr. Praveen Hans, N. D. B. E
Raju, Rohan Ganpathy, N. Ganpathy, Sameer Shrivastava, Vijeta Ohri,
Akshat Shrivastava, Vishnu Mehra, Ms. Sakshi Mittal, Anil Kumar, Sumit
Attri, Uday B. Dube, V. N. Raghupathy, Balaji Srinivasan, Ms. Meenakshi
Chauhan, Ravi Bakshi, Sudhir Mathur, Yash Pal Dhingra, Dr. Meera
Agarwal, R. C. Mishra, Amarjeet Singh Dheman, Ankolekar Gurudatta,
Purushottam Sharma Tripathi, Mukesh Kumar Singh, R. C. Mishra, Arup F
Banerjee, Anis Ahmed Khan, V.K. Gupta, T.J. Sharma, Rajinder Mathur,
Apoorv Kurup, A.C. Boxipatra. Advs. for the Appellant.

Ms. Priyadarshi Gopal, Ms. Rameeza Hakeem. (For M/s Law
Associates), G. Balaji, Ms. Soayi B. Qureshi, Ravi Prakash, Ms. Udit
Singh, Chandra Prakash. Rahul Kumar, Ms. Meenakshi Midha, C. S. G
Ashri, Ms. Taniya Pandey, Ms. Shanta Devi Raman, Garvesh Kabra,
Arbaaz Hussain, Rohit Sinha, Sanjay Kumar Singh, Pradeep Gaur, Amit
Gaur, Ambhoj Kr. Sinha, M. K. Dua, Kishore Rawat, Anish Kumar Gupta,
Ms. Deep Shikla Bharat. Brajesh Kumar, Chandra Shekhar Suman,
Varinder Kumar Sharma, Nawal Kishore Sahu, Dr. Neera Agarwal, R. H

- A C. Mishra, Amarjeet Singh Dheman, Javed M. Rao, T. N. Saxena, H. C. Kharbanda, Shahid Ali Rao, Nand Ram, S. L. Gupta, Guru Nath R. Naik, R. K. Gupta, Ram Ashray, Vikash Chandra, Ravinder Kumar Wadhawan, Varinder Kumar Sharma, Arvind Kumar Tiwary, Jay Prakash Yadav, R. A. Gupta, C. K. Rai, Ms. Neerja Sachdeva, Ms. Meera Mathur, B Ajay Singh, Varinder Kumar, Nafis A. Siddiqui, Ms. Nidhi, B. Subrahmanya Prasad, Ms. Rameeya Hakeem, M/s. Law Associates, Gautam Narayan, Ambhoj Kumar Sinha, Advs. for the Respondents.

The following order of the Court was delivered by

- C **ARUN MISHRA, J.** 1. The question raised is whether for the drivers having licence to drive light motor vehicles there is a necessity of obtaining endorsement to drive the transport vehicle when the transport vehicle is of class of light motor vehicle.

- D 2. We have heard learned counsel for the parties at length. For consideration of aforesaid question, it is necessary to refer to various provisions and decisions.

3. Driving licence has been defined in section 2(10) of the Act of 1988. The provision is extracted hereinbelow :

- E **“2(10) “driving licence” means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description.”**

Gross vehicle weight has been defined in section 2(15) thus :

- F **“2(15) “gross vehicle weight” means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle;”**

Heavy goods vehicle has been defined in section 2(16) to mean:

- G **“2(16) “heavy goods vehicle” means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms;”**

- H thus :
Heavy passenger motor vehicle has been defined in section 2(17)

“2(17) “heavy passenger motor vehicle” means any public service vehicle or private service vehicle or educational institution bus or omnibus the gross vehicle weight of any of which; or a motor-car the unladen weight of which, exceeds 12,000 kilograms;”

A

Light motor vehicle has been defined in section 2(21) of the Act thus :

B

“2(21) “light motor vehicle” means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor-car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms;”

C

Medium goods vehicle has been defined in section 2(23) to mean:

“2(23) “medium goods vehicle” means any goods carriage other than a light motor vehicle or a heavy goods vehicle;”

D

Medium passenger motor vehicle is defined under section 2(24) thus :

“2(24) “medium passenger motor vehicle” means any public service vehicle or private service vehicle, or educational institution bus other than a motor-cycle, invalid carriage, light motor vehicle or heavy passenger motor vehicle;”

E

Motor car has been defined in section 2(26) of the Act of 1988 thus :

“2(26) “motor-car” means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor-cycle or invalid carriage;”

F

“Omnibus” has been defined in section 2(29) thus :

“2(29) “omnibus” means any motor vehicle constructed or adapted to carry more than six persons excluding the driver;”

G

“Tractor” has been defined in section 2(44) of the Act thus :

“2(44) “tractor” means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller;”

H

- A “Transport vehicle has been defined in section 2(47) thus :
- “2(47) “transport vehicle” means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;”**
- B “Unladen weight” has been defined in section 2(48) thus :
- “2(48) “unladen weight” means the weight of a vehicle or trailer including all equipments ordinarily used with the vehicle or trailer when working, but excluding the weight of a driver or attendant; and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the vehicle with the heaviest such alternative part or body;”**
- C
4. The provisions under section 2 define heavy goods vehicles, heavy passenger motor vehicle, medium goods vehicle, medium passenger motor vehicle and light motor vehicle separately. Section 2(21) deals with class of Light Motor Vehicle which includes a transport vehicle or omnibus, the gross vehicle weight of either of which does not exceed 7500 kgs. or a motor car or tractor or road roller, the unladen weight of any of which does not exceed 7500 kgs. The transport vehicle has been defined in section 2(47), omnibus has been defined in section 2(29).
- D However, the transport vehicle or omnibus the gross vehicle weight of which does not exceed 7500 kgs., has been included in section 2(21) of the Act of 1988. The gross vehicle weight has been defined in section 2(15). In the case of Light Motor Vehicle, the total weight of the transport vehicle or omnibus, the load certified by the Registering Authority should not exceed 7500 kgs. and in case of motor car, tractor or road roller, it is necessary that unladen weight as defined in section 2(48) of the Act of
- E 1988 should not exceed 7500 kgs.
- F
5. To dilate further upon the issue, it is necessary to take note of other provisions of the Act. Public service vehicle, goods carriage, an educational institution bus and private service vehicle are included in transport vehicles. They are defined in Sections 2(35), 2(14), 2(11) and 2(33) respectively. The provisions are extracted hereunder:-
- G
- “2(35) “public service vehicle” means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxi-cab, a motor-cab, contract carriage, and stage carriage;”**
- H

“2(14) “goods carriage” means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods;” A

“2(11) “educational institution bus” means an omnibus, which is owned by a college, school or other educational institution and used solely for the purpose of transporting students or staff of the educational institution in connection with any of its activities;” B

“2(33) “private service vehicle” means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes;” C

6. Section 3 of the Act of 1988 deals with the necessity for driving licence. Same is extracted below : D

“3. Necessity for driving licence.— (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than a motor cab or motor cycle hired for his own use or rented under any scheme made under sub-section (2) of section 75] unless his driving licence specifically entitles him so to do. E

(2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.” F

7. Section 9 deals with grant of driving licence which reads as under : G

“9. Grant of driving licence.— (1) Any person who is not for the time being disqualified for holding or obtaining a driving licence may apply to the licensing authority having jurisdiction in the area— H

A (i) in which he ordinarily resides or carries on business, or
 (ii) in which the school or establishment referred to in section 12 from where he is receiving or has received instruction in driving a motor vehicle is situated,

B for the issue to him of a driving licence.

(2) Every application under sub-section (1) shall be in such form and shall be accompanied by such fee and such documents as may be prescribed by the Central Government.

C (3) If the applicant passes such test as may be prescribed by the Central Government, he shall be issued the driving licence:

Provided that no such test shall be necessary where the applicant produces proof to show that –

D (a) (i) the applicant has previously held a driving licence and that the period between the date of expiry of that licence and the date of such application does not exceed five years; or

E (ii) the applicant holds or has previously held a driving licence to drive such class of vehicle issued under section 18; or

F (iii) the applicant holds a driving licence to drive such class of vehicle issued by a competent authority of any country outside India, subject to the condition that the applicant complies with the provisions of sub-section (3) of section 8,

G (b) the applicant is not suffering from any disease or disability which is likely to cause the driving by him to be a source of danger to the public; and the licensing authority may, for that purpose, require the applicant to produce a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8.

H Provided further that where the application is for a driving licence to drive a motor vehicle (not being a transport vehicle), the licensing authority may exempt the applicant from the test of competence to drive prescribed

under this sub-section, if the applicant possesses a driving certificate issued by an automobile association recognised in this behalf by the State Government. A

(4) Where the application is for a licence to drive a transport vehicle, no such authorisation shall be granted to any applicant unless he possesses such minimum educational qualification as may be prescribed by the Central Government and a driving certificate issued by a school or establishment referred to in section 12. B

(5) Where the applicant does not pass the test, he may be permitted to reappear for the test after a period of seven days: C

Provided that where the applicant does not pass the test even after three appearances, he shall not be qualified to reappear for such test before the expiry of a period of sixty days from the date of last such test. D

(6) The test of competence to drive shall be carried out in a vehicle of the type to which the application refers:

Provided that a person who passed a test in driving a motor cycle with gear shall be deemed also to have passed a test in driving a motor cycle without gear. E

(7) When any application has been duly made to the appropriate licensing authority and the applicant has satisfied such authority of his competence to drive, the licensing authority shall issue the applicant a driving licence unless the applicant is for the time being disqualified for holding or obtaining a driving licence: F

Provided that a licensing authority may issue a driving licence to drive a motor cycle or a light motor vehicle notwithstanding that it is not the appropriate licensing authority, if the licensing authority is satisfied that there is good and sufficient reason for the applicant's inability to apply to the appropriate licensing authority: G

Provided further that the licensing authority shall not issue a new driving licence to the applicant, if he had previously held a driving licence, unless it is satisfied that there H

A is good and sufficient reason for his inability to obtain a duplicate copy of his former licence.

(8) If the licensing authority is satisfied, after giving the applicant an opportunity of being heard, that he—

B (a) is a habitual criminal or a habitual drunkard; or

(b) is a habitual addict to any narcotic drug or psychotropic substance within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985; (61 of 1985); or

C (c) is a person whose licence to drive any motor vehicle has, at any time earlier, been revoked,

it may, for reasons to be recorded in writing, make an order refusing to issue a driving licence to such person and any person aggrieved by an order made by a licensing authority under this sub-section may, within thirty days of the receipt of the order, appeal to the prescribed authority.

D (9) Any driving licence for driving a motor cycle in force immediately before the commencement of this Act shall, after such commencement, be deemed to be effective for driving a motor cycle with or without gear.”

E 8. The application has to be made in such form as may be prescribed. Section 10 deals with the form and contents of the licence to drive. Section 10 before its amendment made in 1994 by Act 54 of 1994 provided as under :

F “10. Form and contents of licences to driver.— (1) Every learner’s licence and driving licence, except a driving licence issued under section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

G (2) A learner’s licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:—

(a) motor cycle without gear;

(b) motor cycle with gear;

H (c) invalid carriage;

- (d) light motor vehicle;
- (e) medium goods vehicle;
- (f) medium passenger motor vehicle;
- (g) heavy goods vehicle;
- (h) heavy passenger motor vehicle;”
- (i) road-roller;
- (j) motor vehicle of a specified description. “

A

B

C

D

E

F

G

H

9. It is clear from the provisions of section 10(2) that the classes of vehicles have been separately provided. Light motor vehicle has been provided in section 10(2)(d). Transport vehicle had been inserted in 1994 in place of sections 10(2)(e) to 10(2)(h), in place of medium goods vehicle as provided in section 10(2)(e), medium passenger motor vehicle provided in section 10(2)(f), heavy goods vehicle in section 10(2)(g) and heavy passenger motor vehicle in section 10(2)(h). Thus it is apparent that transport vehicles were included under the Act of 1988 under the category of “light motor vehicle”, “heavy motor vehicle” etc. as per gross vehicle weight or unladen weight, as the case may be, is apparent from a bare reading of the aforesaid classification given in section 10(2) of the Act read with definition of light motor vehicle as defined in section 2(21) of the Act.

The provisions contained in section 10 of the Act had been amended vide Amendment Act 54 of 1994. The Statement of Objects and Reasons of the Amendment Act 54 of 1994 reads :

“Amendment Act 54 of 1994 - Statement of Objects and Reasons. – The Motor Vehicles Act, 1988 (59 of 1988) consolidated and rationalised various laws regulating road transport. The Act came into force with effect from 1st July, 1989 replacing the Motor Vehicles Act, 1939.

2. After the coming into force of the Motor Vehicles Act, 1988, Government received a number of representations and suggestions from the state govt. transport operators and members of public regarding the inconvenience faced by them because of the operation of some of the provisions of the 1988 Act. A Review Committee was, therefore, constituted by the Government in March, 1990 to examine and review the 1988 Act.

3. The recommendations of the Review Committee were

A forwarded to the State Governments for comments and they generally agree with these recommendations. The Government also considered a large number of representations received, after finalisation of the Report of the Review Committee, from the transport operators and public for making amendments in the Act. The draft of the proposals based on the recommendation of the Review Committee and representations from the public were placed before the Transport Development Council for seeking their views in the matter. The important suggestions made by the Transport Development Council relate to, or are on account of, -

C (a) The introduction of newer type of vehicles and fast increasing number of both commercial and personal vehicles in the country.

D (b) Providing adequate compensation to victims of road accidents without going into longdrawn procedure;

(c) Protecting consumers' interest in Transport Sector;

E (d) Concern for road safety standards, transport of hazardous chemicals and pollution control;

(e) Delegation of greater powers to State Transport Authorities and rationalising the role of public authorities in certain matters;

F (f) The simplification of procedures and policy liberalisation in the field of Road Transport;

(g) Enhancing penalties for traffic offenders.

4. Therefore, the proposed legislation has been prepared in the light of the above background. The Bill inter alia provides for -

G (a) modification and amplification of certain definitions of new type of vehicles ;

(b) simplification of procedure for grant of driving licences;

H (c) putting restrictions on the alteration of vehicles;

(d) certain exemptions for vehicles running on non-polluting fuels; A

(e) ceilings on individuals or company holdings removed to curb "benami" holdings;

(f) states authorised to appoint one or more State Transport Appellate Tribunals; B

(g) punitive checks on the use of such components that do not conform to the prescribed standards by manufactures, and also stocking / sale by the traders;

(h) increase in the amount of compensation of the victims of hit and run cases; C

(i) removal of time limit for filling of application by road accident victims for compensation;

(j) punishment in case of certain offences is made stringent; D

(k) a new pre-determined formula for payment of compensation to road accident victims on the basis of age/income, which is more liberal and rational.

5. The Law Commission in its 119th Report had recommended that every application for a claim be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, at the option of the claimant. The bill also makes necessary provision to give effect to the said recommendation." E F

Section 10 has been amended vide Act 54/1994 to the following effect :

"10. Form and contents of licences to drive.—(1) Every learner's licence and driving licence, except a driving licence issued under section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government. G

(2) A learner's licence or, as the case may be, driving H

A licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:—

- (a) motor cycle without gear;
- (b) motor cycle with gear;
- B (c) invalid carriage;
- (d) light motor vehicle;
- (e) transport vehicle;
- (i) road-roller;
- (j) motor vehicle of a specified description.”

C 10. Form 4 which was in vogue till 28.3.2001 as prescribed under Rule 14 of the Central Motor Vehicles Rules, 1989 (hereinafter referred to as ‘the Rules of 1989’), is extracted hereunder :

“FORM 4

[See Rule 14]

Form of Application for Licence to drive a Motor Vehicle

D To, [passport size
Photograph]

THE LICENSING AUTHORITY,
.....

E I apply for a licence to enable me to drive vehicles of the following description:-

- (a) Motor cycle without gear
- (b) Motor cycle with gear
- (c) Invalid Carriage
- (d) Light Motor Vehicle
- F (e) Medium Goods Vehicle
- (f) Medium Passenger Motor Vehicle
- (g) Heavy Goods Vehicle
- (h) Heavy Passenger Motor Vehicle
- (i) Road roller
- G (j) Motor Vehicle of the following description.

Particulars to be furnished by the Applicant

- 1. Name
- 2. Son/wife/daughter of
- 3. Permanent address

(Proof to be enclosed)

H

4. Temporary address/ Official address (if any) A
5. Date of birth
 (Proof to be enclosed)
6. Educational qualification
7. Identification mark (1).....
 (2)..... B
8. Optional/Blood Group — RH factor..... B
9. Have you previously held driving licence?.....
 If so, give details.
10. Particulars and date of every conviction
 which has been ordered to be endorsed
 on any licence held by the applicant..... C
11. Have you been disqualified for obtaining
 a licence to drive? If so, for what reason?.....
12. Have you been subjected to a driving test as to your
 fitness or ability to drive a vehicle in respect of which a
 licence to drive is applied for? If so, give the following
 details :- D
- | Date of test | Testing Authority | Result of test |
|--------------|-------------------|----------------|
| (1) | | |
| (2) | | |
| (3) | | |
13. I enclose three copies of my recent [passport size
 photographs](where laminated card is used, no photo-
 graphs are required) E
14. I enclose Learner's licence No. dated
 issued by Licensing Authority.
15. I enclose the Driving Certificate No.
datedissued by..... F
16. I have submitted along with my application for learner's
 licence the written consent of parent / guardian.
17. I have submitted along with the application for learner's
 licence./I enclose the medical fitness certificate.
18. I am exempted from the medical test under rule 6 of
 the Central Motor Vehicles Rules , 1989. G
19. I am exempted from preliminary test under rule 11 (2)
 of the Central Motor Vehicles Rules 1989.
20. I have paid the fee of Rs.
- I hereby declare that to the best of my knowledge and H

A **belief the particulars given above are true.**

Note : Strike out whichever is inapplicable.

Date :

**Signature/Thumb impression
of applicant.**

B **Certificate of test of competence to drive**

The applicant has passed the test prescribed under rule 15 of the Central Motor Vehicles Rules, 1989. The test was conducted on (here enter the registration mark and description of the vehicle)..... on (date).

C **The applicant has failed in the test.**

(The details of deficiency to be listed out.)

Date _____

**Signature of Testing Authority
Full name and designation**

D **Two specimen signatures of applicant:**

Strike out whichever is inapplicable.”

E 11. It is apparent from the Form prescribed under Rule 14 till 28.3.2001, the aforesaid classification of vehicles remained the same As provided in Section 10(2) of the Act of 1988 for the first time transport vehicle was inserted w.e.f. 28.3.2001 by deleting the existing classes, medium passenger and goods vehicle, heavy goods vehicle and heavy passenger motor vehicles to bring in tune with Section 10(2)(e) to (h). Form 4 has undergone other changes with respect to item ‘a’ motorcycle without gear which was substituted vide GSR 684(E) on 5.10.1999 w.e.f. 22.10.1999 and again substituted by GSR 76(E) dated 31.1.2000 w.e.f. 31.1.2000. With aforesaid changes brought about by notifications in 1989 and 2000 in Section 10(2)(a) we are not concerned here. Amended Form ‘4’ is extracted hereunder:

“FORM 4

[See Rule 14(1)]

G **Form of Application for Licence to Drive a Motor Vehicle**

To

The Licensing Authority

.....

.....

**Space for
Passport size
photograph**

H

I apply for a licence to enable me to drive vehicles of the following description:- A

- (a) Motor cycle without gear
- (b) Motor cycle with gear
- (c) Invalid carriage
- (d) Light Motor vehicle
- (e) Transport vehicle B
- (f) Medium passenger motor vehicle
- [*****]
- (i) Road roller
- (j) Motor vehicles of the following description: C

Particulars to be furnished by Applicant

- 1. Full Name.....
- 2. Son/Wife/Daughter of ;.....
- 3. Permanent address
(Proof to be enclosed) D
- 4. Temporary address/ Official address (if any).....
- 5. Date of birth.....
(proof to be enclosed)
- 6. Educational qualification
- 7. Identification mark(s) 1..... E
2.....
- 8. Optional
Blood Group
RH FACTOR
- 9. Have you previously held driving
Licence? If so, give details. F
- 10. Particulars and date of every.....
conviction which has been ordered to be
endorsed on any licence held by applicant
- 11. Have you been disqualified for.....
obtaining a Licence to drive? If so,
for what reason? G
- 12. Have you been subjected to a driving
test as to your fitness or ability
to drive a vehicle in respect of which
a licence to drive is applied for ?
If so, give the following details. H

12. Thus, as per Amendment of Section 10 vide Act 54 of 1994, there is deletion of categories of medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle and heavy passenger motor vehicle and these have been substituted by the classification “transport vehicle”. It is pertinent to note here that the definition and classification of light motor vehicle in the Act remains intact as it existed. It is also apparent from the Statement of Objects and Reasons of the Amendment Act No.54 of 1994 that the transport operators and members of public faced inconvenience because of operation of some of the provisions of the Act of 1988. It was intended for simplification of procedures and policy liberalization and it became necessary due to introduction of newer type of vehicles and faced increasing numbers of both personal and commercial vehicles in the country. Hence, it was intended to modify and amplify certain definitions of new types of vehicles for simplification of procedure for grant of driving licences as provided in para 4(a) and (b) of the Statement of Objects and Reasons. The question is whether intendment appears not to touch the classification of light motor vehicle which has to be understood in the light of the definition in section 2(21) of the Act of 1988 and it was never intended that the transport vehicles of light motor vehicle category should be taken out of the purview of the existing classification of light motor vehicles and the transport vehicles as inserted in section 10 has to be understood in the light of the amendment brought about vide deletion of the provisions of medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle and heavy passenger motor vehicle. Thus, no change had been brought about with respect to the transport vehicles of class of light motor vehicle as defined in section 2(21) of the Act of 1988.

13. To consider further on the issue, certain rules and forms are also required to be referred to. Rule 8 provides for minimum educational qualification for driving transport vehicles which is 8th standard. However proviso makes it clear that the qualification of 8th standard shall not apply in the case of renewal of driving licence to drive a transport vehicle and/or addition of another class of transport vehicle to the driving licence already held before the commencement of the Motor Vehicles Act, 2007. Rule 8 of the Rules of 1989 inserted on 10.4.2007 is quoted below :

“8. Minimum educational qualification for driving transport vehicles.— The minimum educational qualification in respect of an applicant for obtaining a licence to drive a transport vehicle shall be a pass in the eighth standard:

- A **Provided that the minimum educational qualification specified in this rule shall not apply in the case of –**
- (i) **renewal of a driving licence to drive a transport vehicle : or**
- B (ii) **addition of another class of transport vehicle to the driving licence, already held before the commencement of the Motor Vehicles (Amendment) Rules, 2007.”**

C 14. Earlier Rule 8 was omitted by GSR No.933(E) dated 28.10.1989 w.e.f. 28.10.1989. The Rule has been inserted in the year 2007 and it is provided that Eighth standard qualification will not apply in the case of addition of another class of transport vehicle to the driving licence. Thus, it is clear that Rule 8 contemplates addition of transport vehicle of other category than the existing one in the licence. Question arises whether that refers to the addition to light motor vehicle’s category, and gross vehicle weight or the unladen weight of vehicle in section 2(21) does not exceed 7500 kgs. would remain a light motor vehicle.

D Section 10 of the Act contains the provisions as to class of vehicles of the transport vehicle and light motor vehicle separately. The question arises whether the transport vehicle insertion in Section 10(2)(e) is confined to the category of substitution made by deleting existing sections 10(2)(e), (f), (g) and (h) which were for medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle and heavy passenger motor vehicle, and in case “transport vehicle” even of the weight of light motor vehicle is treated in one category under section 10(2)(e) in that case whether any purpose would be left behind insertion of Rule 8 again in the year 2007.

E 15. Rule 16 provides for the Form of driving licence. Same shall be issued or renewed by licensing authority in Form 6. Rule 16 and Form 6 are quoted below :

- F **“16. Form of driving licence.—(1) Every driving licence issued or renewed by a licensing authority shall be in Form 6.**
- G **(2) Where the licensing authority has the necessary apparatus, [for the issue of a laminated card type or Smart Card type driving licence, such card type or Smart Card type driving licence, as may be specified in the Notification issued by the concerned State Government or Union Territory Administration] shall be in Form 7.**
- H

(3) On and from the date of commencement of this sub-rule, every driving licence issued or renewed by the licensing authority shall be in Form 7. A

(4) Every International Driving Permit issued by a licensing authority shall be in Form 6-A and shall be valid for a period of not more than one year from the date of issue, as the case may be, or till the validity of the driving licence, whichever is earlier. B

(5) The automobile associations authorised by the State Government/ Union Territory Administration shall be allowed to issue International Driving Permit to their own members as also others subject to counter-signature by competent authority.” C

“FORM 6

[See Rule 16(1)]

(To be printed in book form of the size six centimeters by eight centimeters) D

FORM OF DRIVING LICENCE

Name of the Licence holder.....

Son/wife/daughter of

[Passport size
 photograph] E

Name to be written across the photograph.....

(Part of the seal and signature
 of the Licencing Authority
 to be on the photograph
 and part on the driving licence)

Specimen signature/
 Thumb impression of
 the holder of the
 licence F

Signature and designation
 of the Licencing Authority

- 1. Driving Licence Number G
- 2. Date of issue
- 3. Name
- 4. Son /Wife/ Daughter of
- 5. Temporary address/ official
 address (if any) H

- A 6. Permanent address
- 7. Date of Birth
- 8. Educational Qualifications
- 9. Optional
- Blood Group
- RH Factor

B 10. The holder of this licence is licenced to drive throughout India vehicles of the following description:-

- C Motor Cycle without gear
- Motor Cycle with gear
- Invalid Carriage
- Light Motor Vehicle
- [Transport vehicle]
- Medium passenger motor vehicle

D 11. A Motor vehicle of the following description :
 The licence to drive a motor vehicle other than transport vehicle is valid from to.....
 The licence to drive transport vehicle is valid from to.....

E Name and designation of the Authority who conducted the driving test. Signature and designation of the Licencing Authority

Authorisation to drive transport vehicle
 Number..... Date.....

F Authorised to drive transport vehicle with effect from

Badge Number.....
 Signature

Designation of the licensing Authority

G Name and designation of the authority who conducted the driving test.

Space for addition of other classes of vehicles
 Number..... Date.....

Also authorized to drive the following class or description of motor vehicles:-

H

Name and designation of the Authority who conducted the driving test.
Dated:.....

Signature and designation of Licencing Authority A

Signature and designation of the Licencing Authority B

Space for renewal of driving licence

The licence to drive motor vehicles other than transport vehicles is hereby renewed.

The licence to drive transport vehicles is hereby renewed C

From..... to

Signature of Licencing Authority

Signature of Licencing Authority D

From.....to.....

Signature of Licencing Authority

Signature of Licencing Authority E

From.....to.....
Signature of Licencing Authority

Space for endorsement by Court

Date	Section and Rule	Fine or other punishment	Signature of the endorsing authority
1	2	3	4

Space for endorsement by licensingh authority

Date	Proceedings number and date	Disqualification period From to	Signature of the licensing authority
1	2	3	4"

A It is pertinent to mention that in the Form light motor vehicle and transport vehicle are separately given.

16. Rule 17 of the Rules deals with the additional driving licence. Same has to be applied for in Form 8. Rule 17 and Form 8 read thus :

B **“17. Addition to driving licence.— (1) An application for addition of another class of description of motor vehicle to the driving licence shall be made in Form 8 to the licensing authority and shall be accompanied by—**

(a) **an effective learner’s licence and driving licence held by the applicant;**

C (b) **in the case of an application for addition of a transport vehicle, the driving certificate in Form 5;**

(c) **[* * *]**

(d) **appropriate fee as specified in Rule 32.**

D (2) **The provisions of sub-section (1), sub-section (3) and sub-section (4) of Section 9 shall, insofar as may be, apply in relation to an application under sub-section (1) as they apply in relation to an application for the grant of a driving licence.”**

E Form 8 as provided in Rule 17(1) of the Rules reads as under :

“FORM 8
[See Rule 17(1)]

F **APPLICATION FOR THE ADDITION OF A NEW CLASS OF VEHICLE TO A DRIVING LICENCE**

To
The Licensing Authority,

.....

G I, **Shri/Smt./ Kumari..... hereby apply for the addition of the following class/classes of motor vehicles to the attached licence:-**

(a) **Motor cycle without gear**

(b) **Motor cycle with gear**

(c) **Invalid carriages,**

(d) **Light motor vehicles,**

H

- (e) Transport vehicle A
- (f) Medium passenger motor vehicles
- (g) x x x
- (h) x x x
- (i) Road rollers,
- (j) Motor vehicle of the following description : B
I enclose,
(a) a Medical Certificate in Form 1-A
(b) Learner's licence in Form 3,
(c) Driving licence in Form 6/7,
I hereby apply for the addition of the following :
(d) Driving Certificate in Form 5 if the application is to drive C
a transport vehicle,
(e) I have paid the fee of Rs.
Dated: Signature or thumb-impression
of the Applicant

CERTIFICATE OF TEST OF COMPETENCE TO DRIVE D

The applicant has passed/failed in the test specified in Rule 15 of the Central Motor Vehicles Rules, 1989. The test was conducted on a(here enter description of vehicles) on date.... E

Signature of Testing Authority
Name & Designation"

17. Form 8 also separately provide the light motor vehicle and transport vehicle. Question arises whether in Forms 4, 5 and 8, transport vehicle has to be understood for the categories of vehicles for which substitution has been made in section 10(2) by deleting the existing provisions of section 10(2)(e), (f), (g) and (h). However the form still contains the provision with respect to "medium passenger motor vehicles", notwithstanding the insertion of the changed classification of the vehicles in section 10(2) of the Act or it may be printer's omission to delete ? F
G

18. Rule 34 has also been referred to which deals with the trade certificate. Rule 34(2) provides that separate application shall be made for the classes of vehicles prescribed therein. Rule 34 is quoted below:

"34. Trade certificate.— (1) An application for the grant or H

A **renewal of a trade certificate shall be made in Form 16 and shall be accompanied by the appropriate fee as specified in Rule 81.**

(2) Separate applications shall be made for each of the following classes of vehicles, namely:—

- B (a) motorcycle;
 (b) invalid carriage;
 (c) light motor vehicle;
 (d) medium passenger motor vehicle;
 (e) medium goods vehicle;
 C (f) heavy passenger motor vehicle;
 (g) heavy goods vehicle;
 (h) any other motor vehicle of a specified description.”

D Rule 34 also makes a distinction between light motor vehicle, medium passenger motor vehicle, medium goods vehicle, heavy passenger motor vehicle and heavy goods vehicle. As per Rule 126 of the Rules, proto-type of every motor vehicle is subject to test by the Vehicle Research & Development Establishment of the Ministry of Defence of the Government of India or Automotive Research Association of India. Testing Agency has to conduct test as provided in Rule 126A to verify whether these vehicles conform to the provisions of the Rules made under section 110 of the Act. All the relevant information has to be inserted as per section 41 of the Act in the registration particulars as may be prescribed by the Central Government. Application for registration of motor vehicle has to be made in Form 20. Class of vehicle, gross vehicle weight as well as unladen weight are to be mentioned.

F 19. Rule 31 of the Rules contains a syllabus for imparting instructions in driving of motor vehicles in schools or establishments. That syllabus is divided in parts A to K. Part A deals with driving theory- I. B- Traffic education-I. C-light vehicles driving practice. D- Vehicle mechanism and repairs. E-Medium and heavy vehicle driving. F- Traffic education-II. G- Public relations for drivers. H-Heavy vehicle driving practice. I-Fire hazards. J- Vehicle maintenance. K- First-aid.

H 20. It is apparent from the syllabus that there is a separate syllabus for light motor vehicle and for medium and heavy vehicle driving practice. No separate syllabus has been provided for transport vehicles. They are included in the aforesaid categories. Thus, it appears that as per the weight of the vehicles, the syllabus has been provided and different

teaching is prescribed as per different weights of the vehicles. A driving licence has to be issued as per Rule 16 in Form 6. Form 6 also separately provides for light motor vehicle, transport vehicle. A

21. The Central Government, inter alia, has the power to frame the rules provided under section 27 of the Act, regarding minimum qualification, regarding forms and contents of the licences referred to in sub-section (1) of section 10 and providing for authority to grant licences and other matters as provided in section 27. State Government is enjoined to maintain a register of motor vehicles under Rule 75 as provided in Form 41 which includes gross vehicle weight, unladen weight etc. Thus it is clear that the scheme of the Act, Rules and the Forms emphasise the gross vehicle weight and unladen weight which is required to be mentioned specifically in the State registration particulars etc. so as to ascertain the class of vehicle whether it is light, medium or heavy etc. B C

22. In *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan & Ors.* (1987) 2 SCC 654, it was held that in order to consider the intention of the Legislature in the course of interpretation, motive and philosophy of the relevant provisions keeping in mind the goals to be achieved by enacting the same, has to be taken into consideration. It was observed thus : D

“12. The defence built on the exclusion clause cannot succeed for three reasons, viz.: E

(1) On a true interpretation of the relevant clause which interpretation is at peace with the conscience of Section 96, the condition excluding driving by a person not duly licensed is not absolute and the promisor is absolved once it is shown that he has done everything in his power to keep, honour and fulfil the promise and he himself is not guilty of a deliberate breach. F

(2) Even if it is treated as an absolute promise, there is substantial compliance therewith upon an express or implied mandate being given to the licensed driver not to allow the vehicle to be left unattended so that it happens to be driven by an unlicensed driver. G

(3) The exclusion clause has to be “read down” in order that it is not at war with the “main purpose” of the provisions enacted for the protection of victims of H

A accidents so that the promisor is exculpated when he does everything in his power to keep the promise.

13. In order to divine the intention of the legislature in the course of interpretation of the relevant provisions there can scarcely be a better test than that of probing into the motive and philosophy of the relevant provisions keeping in mind the goals to be achieved by enacting the same. Ordinarily it is not the concern of the legislature whether the owner of the vehicle insures his vehicle or not. If the vehicle is not insured any legal liability arising on account of third party risk will have to be borne by the owner of the vehicle. Why then has the legislature insisted on a person using a motor vehicle in a public place to insure against third party risk by enacting Section 94? Surely the obligation has not been imposed in order to promote the business of the insurers engaged in the business of automobile insurance. The provision has been inserted in order to protect the members of the community travelling in vehicles or using the roads from the risk attendant upon the user of motor vehicles on the roads. The law may provide for compensation to victims of the accidents who sustain injuries in the course of an automobile accident or compensation to the dependants of the victims in the case of a fatal accident. However, such protection would remain a protection on paper unless there is a guarantee that the compensation awarded by the courts would be recoverable from the persons held liable for the consequences of the accident. A court can only pass an award or a decree. It cannot ensure that such an award or decree results in the amount awarded being actually recovered, from the person held liable who may not have the resources. The exercise undertaken by the law courts would then be an exercise in futility. And the outcome of the legal proceedings which by the very nature of things involve the time cost and money cost invested from the scarce resources of the community would make a mockery of the injured victims, or the dependants of the deceased victim of the accident, who themselves are obliged to incur not inconsiderable expenditure of time, money and energy in litigation. To

B

C

D

E

F

G

H

overcome this ugly situation the legislature has made it **A**
obligatory that no motor vehicle shall be used unless a third
party insurance is in force. To use the vehicle without the
requisite third party insurance being in force is a penal
offence (Section 94 of the Motor Vehicles Act). The
legislature was also faced with another problem. The **B**
insurance policy might provide for liability walled in by
conditions which may be specified in the contract of policy.
In order to make the protection real, the legislature has
also provided that the judgment obtained shall not be
defeated by the incorporation of exclusion clauses other **C**
than those authorised by Section 96 and by providing that
except and save to the extent permitted by Section 96 it
will be the obligation of the insurance company to satisfy
the judgment obtained against the persons insured against
third party risk (vide Section 96). In other words, the
legislature has insisted and made it incumbent on the user **D**
of a motor vehicle to be armed with an insurance policy
covering third party risks which is in conformity with the
provisions enacted by the legislature. It is so provided in
order to ensure that the injured victims of automobile
accidents or the dependants of the victims of fatal accidents
are really compensated in terms of money and not in terms **E**
of promise. Such a benign provision enacted by the
legislature having regard to the fact that in the modern age
the use of motor vehicles notwithstanding the attendant
hazards, has become an inescapable fact of life, has to be
interpreted in a meaningful manner which serves rather **F**
than defeats the purpose of the legislation. The provision
has therefore to be interpreted in the twilight of the aforesaid
perspective.”

14. Section 96(2)(b)(ii) extends immunity to the insurance
company if a breach is committed of the condition excluding **G**
driving by a named person *or persons or by any person who*
is not fully licensed, or by any person who has been
disqualified for holding or obtaining a driving licence during
the period of disqualification. The expression “breach” is
of great significance. The dictionary meaning of “breach”
is “infringement or violation of a promise or obligation” **H**

A (See *Collins English Dictionary*). It is therefore abundantly
clear that the insurer will have to establish that the insured
is guilty of an infringement or violation of a promise that a
person who is duly licensed will have to be in charge of the
vehicle. The very concept of infringement or violation of
B the promise that the expression “breach” carries within
itself induces an inference that the violation or infringement
on the part of the promisor must be a wilful infringement or
violation. If the insured is not at all at fault and has not
done anything he should not have done or is not amiss in
any respect how can it be conscientiously posited that he
C has committed a breach? It is only when the insured himself
places the vehicle in charge of a person who does not hold
a driving licence, that it can be said that he is “guilty” of
the breach of the promise that the vehicle will be driven by
a licensed driver. It must be established by the insurance
company that the breach was on the part of the insured and
D that it was the insured who was guilty of violating the
promise or infringement of the contract. Unless the insured
is at fault and is guilty of a breach the insurer cannot escape
from the obligation to indemnify the insured and successfully
contend that he is exonerated having regard to the fact that
E the promisor (the insured) committed a breach of his
promise. Not when some mishap occurs by some
mischance. When the insured has done everything within
his power inasmuch as he has engaged a licensed driver
and has placed the vehicle in charge of a licensed driver,
with the express or implied mandate to drive himself it
F cannot be said that the insured is guilty of any breach. And
it is only in case of a breach or a violation of the promise on
the part of the insured that the insurer can hide under the
umbrella of the exclusion clause. In a way the question is
as to whether the promise made by the insured is an
G absolute promise or whether he is exculpated on the basis
of some legal doctrine. The discussion made in para 239 of
Breach of Contract by Carter (1984 Edn.) under the head
Proof of Breach, gives an inkling of this dimension of the
matter. In the present case even if the promise were to be
treated as an absolute promise the grounds for exculpation
H can be found from Section 84 of the Act which reads thus:

“84. *Stationary vehicles*—No person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place, unless there is in the driver’s seat a person duly licensed to drive the vehicle or unless the mechanism has been stopped and a brake or brakes applied or such other measure taken as to ensure that the vehicle cannot accidentally be put in motion in the absence of the driver.”

In view of this provision apart from the implied mandate to the licensed driver not to place an unlicensed person in charge of the vehicle, there is also a statutory obligation on the said person not to leave the vehicle unattended and not to place it in charge of an unlicensed driver. What is prohibited by law must be treated as a mandate to the employee and should be considered sufficient in the eye of law for excusing non-compliance with the conditions. It cannot therefore in any case be considered as a breach on the part of the insured. To construe the provision differently would be to rewrite the provision by engrafting a rider to the effect that in the event of the motor vehicle happening to be driven by an unlicensed person, regardless of the circumstances in which such a contingency occurs, the insured will not be liable under the contract of insurance. It needs to be emphasised that it is not the contract of insurance which is being interpreted. It is the statutory provision defining the conditions of exemption which is being interpreted. These must therefore be interpreted in the spirit in which the same have been enacted accompanied by an anxiety to ensure that the protection is not nullified by the backward looking interpretation which serves to defeat the provision rather than to fulfil its life-aim. To do otherwise would amount to nullifying the benevolent provision by reading it with a non-benevolent eye and with a mind not tuned to the purpose and philosophy of the legislation without being informed of the true goals sought to be achieved. What the legislature has given, the Court cannot deprive of by way of an exercise in interpretation when the view which renders the provision potent is equally plausible as the one which renders the provision impotent.

A In fact it appears that the former view is more plausible
B apart from the fact that it is more desirable. When the option
C is between opting for a view which will relieve the distress
D and misery of the victims of accidents or their dependants
on the one hand and the equally plausible view which will
reduce the profitability of the insurer in regard to the
occupational hazard undertaken by him by way of business
activity, there is hardly any choice. The Court cannot but
opt for the former view. Even if one were to make a strictly
doctrinaire approach, the very same conclusion would
emerge in obedience to the doctrine of “reading down” the
exclusion clause in the light of the “main purpose” of the
provision so that the “exclusion clause” does not cross
swords with the “*main purpose*” highlighted earlier. The
effort must be to harmonize the two instead of allowing the
exclusion clause to snipe successfully at the main purpose.
This theory which needs no support is supported by
Carter’s “*Breach of Contract*” vide paragraph 251. To quote:

E “Notwithstanding the general ability of contracting
parties to agree to exclusion clauses which operate to
define obligations there exists a rule, usually referred
to as the “main purpose rule”, which may limit the
application of wide exclusion clauses defining a
promisor’s contractual obligations. For example, in *Glynn
v. Margetson & Co (1893 AC 351, 357, Lord Halsbury,
L.C. stated:*

F It seems to me that in construing this document, which
is a contract of carriage between the parties, one must
in the first instance look at the whole instrument and
not at one part of it only. Looking at the whole
instrument, and seeing what one must regard ... as
its main purpose, one must reject words, indeed whole
provisions, if they are inconsistent with what one
assumes to be the main purpose of the contract.’

G Although this rule played a role in the development of the
doctrine of fundamental breach, the continued validity of
the rule was acknowledged when the doctrine was rejected
by the House of Lords in *Suisse Atlantique Societe d’*

H

Armement Maritime S.A. v. N.V. Rotterdamsche Kolen Centrale (1967) 1 AC 361, 393, 412-413, 427-428, 430. Accordingly, wide exclusion clauses will be read down to the extent to which they are inconsistent with the main purpose, or object of the contract.

(emphasis supplied)"

23. A 3-Judge Bench of this Court in *Sohan Lal Passi v. P. Sesh Reddy & Ors.* (1996) 5 SCC 21 examined the correctness of the aforesaid view in *Skandia's* case (supra) and has laid down thus :

"12. ... According to us, Section 96(2)(b)(ii) should not be interpreted in a technical manner. Sub-section (2) of Section 96 only enables the insurance company to defend itself in respect of the liability to pay compensation on any of the grounds mentioned in sub-section (2) including that there has been a contravention of the condition excluding the vehicle being driven by any person who is not duly licensed. This bar on the face of it operates on the person insured. If the person who has got the vehicle insured has allowed the vehicle to be driven by a person who is not duly licensed then only that clause shall be attracted. In a case where the person who has got insured the vehicle with the insurance company, has appointed a duly licensed driver and if the accident takes place when the vehicle is being driven by a person not duly licensed on the basis of the authority of the driver duly authorised to drive the vehicle whether the insurance company in that event shall be absolved from its liability? The expression 'breach' occurring in Section 96(2)(b) means infringement or violation of a promise or obligation. As such the insurance company will have to establish that the insured was guilty of an infringement or violation of a promise. The insurer has also to satisfy the Tribunal or the Court that such violation or infringement on the part of the insured was wilful. If the insured has taken all precautions by appointing a duly licensed driver to drive the vehicle in question and it has not been established that it was the insured who allowed the vehicle to be driven by a person not duly licensed, then the insurance company cannot repudiate its statutory liability under sub-section (1) of Section 96....."

A 24. It is relevant to note the various decisions rendered by this Court. In *Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd.* (1999) 6 SCC 620, this Court considered the definition of light motor vehicle and held thus :

B **“10. The definition of “light motor vehicle” as given in clause (21) of Section 2 of the Act can apply only to a “light goods vehicle” or a “light transport vehicle”. A “light motor vehicle” otherwise has to be covered by the definition of “motor vehicle” or “vehicle” as given in clause (28) of Section 2 of the Act. A light motor vehicle cannot always mean a light goods carriage. Light motor vehicle can be a non-transport vehicle as well.”**

C 25. In *Oriental Insurance Co. Ltd. v. Zaharulnisha & Ors.* (2008) 12 SCC 385 this Court has referred to the decision in *National Insurance Co. Ltd. v. Swaran Singh* (2004) 3 SCC 297 to the effect that if a person has been given a licence for a particular type of vehicle
D he cannot be said to have no licence for driving another type of vehicle which is of the same category but of a different type. As for example when a person is granted a licence for driving a light motor vehicle he can drive either a car or a jeep and it is not necessary that he must have driving licence both for car and jeep separately. This Court has laid
E down that since the driver was having licence to drive heavy motor vehicle but at the time of accident was driving a scooter which is a totally different class of vehicle, the act was held to be in violation of Section 10(2) of the MV Act. The relevant provisions read thus :

F **“18. A three-Judge Bench of this Court in *National Insurance Co. Ltd. v. Swaran Singh* (2004) 3 SCC 297 has extensively dealt with the meaning, application and interpretation of various provisions, including Sections 3(2), 4(3), 10(2) and 149 of the MV Act. In para 47 of the judgment, the learned Judges have held that if a person has been given a licence for a particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle which is of the same category but of different type. As for example, when a person is granted a licence for driving a light motor vehicle he can drive either a car or a jeep and it is not necessary that he must have driving licence both for car and jeep separately.**
G
H **In para 48, it is held as under: (SCC pp. 324-25)**

“48. Furthermore, the insurance company with a view to avoid its liabilities is not only required to show that the conditions laid down under Section 149(2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. By reason of the provisions contained in the 1988 Act, a more extensive remedy has been conferred upon those who have obtained judgment against the user of a vehicle and after a certificate of insurance is delivered in terms of Section 147(3). After a third party has obtained a judgment against any person insured by the policy in respect of a liability required to be covered by Section 145, the same must be satisfied by the insurer, notwithstanding that the insurer may be entitled to avoid or to cancel the policy or may in fact have done so. The same obligation applies in respect of a judgment against a person not insured by the policy in respect of such a liability, but who would have been covered if the policy had covered the liability of all persons, except that in respect of liability for death or bodily injury.”

19. The judgment (in *Swaran Singh case*) proceeds to hold that under the MV Act, holding of a valid driving licence is one of the conditions of the contract of insurance. Driving of a vehicle without a valid licence is an offence. However, the question herein is whether a third party involved in an accident is entitled to the amount of compensation granted by the Motor Accidents Claims Tribunal although the driver of the vehicle at the relevant time might not have had a valid driving licence but would be entitled to recover the same from the owner or driver thereof. It is trite that where the insurers, relying upon the provisions of violation of law by the assured, take an exception to pay the assured or a third party, they must prove a wilful violation of the law by the assured. In some cases, violation of criminal law, particularly violation of the provisions of the MV Act, may result in absolving the insurers but, the same may not necessarily hold good in the case of a third party. In any event, the exception applies only to acts done intentionally or “so recklessly as to denote that the assured did not care

A what the consequences of his act might be". The provisions
of sub-sections (4) and (5) of Section 149 of the MV Act
may be considered as to the liability of the insurer to satisfy
the decree at the first instance. The liability of the insurer
is a statutory one. The liability of the insurer to satisfy the
B decree passed in favour of a third party is also statutory.

20. The learned Judges having considered the entire
material and relevant provisions of the MV Act and conflict
of decisions of various High Courts and this Court on the
question of defences available to the insurance companies
in defending the claims of the victims of the accident arising
C due to the harsh and negligent driving of the vehicle which
is insured with the insurance companies, proceeded to
record the following summary of findings: (*Swaran Singh*
case, SCC pp. 341-42, para 110)

D "110. (i) Chapter XI of the Motor Vehicles Act, 1988
providing compulsory insurance of vehicles against third-
party risks is a social welfare legislation to extend relief
by compensation to victims of accidents caused by use
of motor vehicles. The provisions of compulsory
insurance coverage of all vehicles are with this paramount
E object and the provisions of the Act have to be so
interpreted as to effectuate the said object.

(ii) An 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
F 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g. disqualifica-
tion of the driver or invalid driving licence of the driver,
as contained in sub-section (2)(a)(ii) of Section 149, has
to be proved to have been committed by the insured for
avoiding liability by the insurer. Mere absence, fake or
G 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 in-
sured or the third parties. To avoid its liability towards
the insured, the insurer has to prove that the insured
H was guilty of negligence and failed to exercise reason-

able 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. A

(iv) Insurance companies, 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. B

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case. C

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the 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 149(2) of the Act. D E

(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. F

(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. G

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising H

A in use of motor vehicle. The said power of the Tribunal
is not restricted to decide the claims inter se between
the claimant or claimants on one side and the insured,
insurer and driver on the other. In the course of
B adjudicating the claim for compensation and to decide
the availability of defence or defences to the insurer, the
Tribunal has necessarily the power and jurisdiction to
decide disputes inter se between the insurer and the
insured. The decision rendered on the claims and
disputes inter se between the insurer and insured in the
C course of adjudication of claim for compensation by the
claimants and the award made thereon is enforceable
and executable in the same manner as provided in Section
174 of the Act for enforcement and execution of the award
in favour of the claimants.

D (x) Where on adjudication of the claim under the Act the
Tribunal arrives at a conclusion that the insurer has
satisfactorily proved its defence in accordance with the
provisions of Section 149(2) read with sub-section (7),
as interpreted by this Court above, the Tribunal can
direct that the insurer is liable to be reimbursed by the
insured for the compensation and other amounts which
E it has been compelled to pay to the third party under the
award of the Tribunal. Such determination of claim by
the Tribunal will be enforceable and the money found
due to the insurer from the insured will be recoverable
on a certificate issued by the Tribunal to the Collector
F in the same manner under Section 174 of the Act as
arrears of land revenue. The certificate will be issued
for the recovery as arrears of land revenue only if, as
required by sub-section (3) of Section 168 of the Act the
insured fails to deposit the amount awarded in favour of
the insurer within thirty days from the date of
G announcement of the award by the Tribunal.

(xi) The provisions contained in sub-section (4) with the
proviso thereunder and sub-section (5) which are
intended to cover specified contingencies mentioned
therein to enable the insurer to recover the amount paid
H under the contract of insurance on behalf of the insured

can be taken recourse to by the Tribunal and be extended to the claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.”

A

B

21. In the light of the above settled proposition of law, the appellant Insurance Company cannot be held liable to pay the amount of compensation to the claimants for the cause of death of Shukurullah in road accident which had occurred due to rash and negligent driving of scooter by Ram Surat who admittedly had no valid and effective licence to drive the vehicle on the day of accident. The scooterist was possessing a driving licence of driving HMV and he was driving a totally different class of vehicle, which act of his is in violation of Section 10(2) of the MV Act.”

C

D

26. In *New India Assurance Co. Ltd. v. Prabhu Lal* (2008) 1 SCC 696 this Court considered the question of driving a transport vehicle by a driver having valid licence to ply only light motor vehicle, no endorsement was made on the licence enabling the driver to drive transport vehicle. A two Judge Bench of this Court has laid down that the owner of the said vehicle cannot claim indemnification in such circumstances from the insurer. It has been held that goods carrier will be a transport vehicle. The accident took place on 17.4.1998. The vehicle involved was Tata 709. The District Forum held it to be a goods carrier and covered by transport vehicle whereas the State Commission held that it was a light motor vehicle relying on the gross weight of the vehicle. This Court laid down that the said Commission was wrong in reversing the finding of the District Forum. This Court has considered the question

E

F

38. We find considerable force in the submission of the learned counsel for the Insurance Company. We also find that the District Forum considered the question in its proper perspective and held that the vehicle driven by Ram Narain was covered by the category of transport vehicle under Clause (47) of Section 2 of the Act. Section 3, therefore, required the driver to have an endorsement which would entitle him to ply such vehicle. It is not even the case of

G

H

A the complainant that there was such endorsement and Ram Narain was allowed to ply transport vehicle. On the contrary, the case of the complainant was that it was Mohd. Julfikar who was driving the vehicle. To us, therefore, the District Forum was right in holding that Ram Narain could not have driven the vehicle in question.

B 39. The learned counsel for the complainant, however, heavily relied upon *Ashok Gangadhar* (1999) 6 SCC 620. In that case, the appellant was the owner of a truck, light motor vehicle, which was insured with the respondent Insurance Company. The vehicle met with an accident and a claim was lodged by the complainant before the Consumer Commission. It was contended by the Insurance Company that the truck was a goods carriage or a transport vehicle and since the driver of the truck was holding a driving licence issued in Form 6 to drive light motor vehicle only, he was not authorised to drive transport vehicle as there was no endorsement on his driving licence authorising him to drive such transport vehicle. The aggrieved complainant approached this Court. Allowing the appeal and setting aside the order passed by the Commission, this Court held that the driver of the vehicle was holding a valid driving licence for driving a light motor vehicle and there was no material on record to show that he was disqualified from holding an effective valid licence at the time of accident. In view of those facts, the Court held that the policy did not insist on the driver to have a licence to drive a transport vehicle by obtaining a specific endorsement. Considering the definition of "light motor vehicle" as given in Clause (21) of Section 2 of the Act, this Court held that such light motor vehicle (LMV) cannot always mean a light goods carriage. A light motor vehicle (LMV) can be a non-transport vehicle as well. The Court proceeded to observe that since there was neither a pleading nor a permit produced on record, the vehicle remained as a light motor vehicle. And though it can be said to have been designed to be used as a transport vehicle or a goods carriage, it could not be so held on account of statutory prohibition contained in Section 66 of the Act to be a transport vehicle.

C

D

E

F

G

H

It was, therefore, held that the Commission was not right in rejecting the claim of the claimant. Accordingly this Court set aside the order passed by the Commission and directed the Insurance Company to pay compensation to the complainant. A

40. It is no doubt true that in Ashok Gangadhar (supra) in spite of the fact that the driver was holding valid driving licence to ply light motor vehicle (LMV), this Court upheld the claim and ordered the Insurance Company to pay compensation. But, in our considered opinion, the learned counsel for the Insurance Company is right in submitting that it was because of the fact that there was neither pleading nor proof as regards the permit issued by the Transport Authority. In absence of pleading and proof, this Court held that, it could not be said that the driver had no valid licence to ply the vehicle which met with an accident and he could not be deprived of the compensation. This is clear if one reads para 11 of the judgment, which reads thus: (SCC p. 626) B
C
D

“11. To reiterate, since a vehicle cannot be used as a transport vehicle on a public road unless there is a permit issued by the Regional Transport Authority for that purpose and since in the instant case there is neither a pleading to that effect by any party nor is there any permit on record, the vehicle in question would remain a light motor vehicle. The respondent also does not say that any permit was granted to the appellant for plying the vehicle as a transport vehicle under Section 66 of the Act. Moreover, on the date of the accident, the vehicle was not carrying any goods and though it could be said to have been designed to be used as a transport vehicle or a goods carrier, it cannot be so held on account of the statutory prohibition contained in Section 66 of the Act.” E
F
G

(emphasis supplied)

41. In our judgment, Ashok Gangadhar (supra) did not lay down that the driver holding licence to drive a light motor vehicle need not have an endorsement to drive transport vehicle and yet he can drive such vehicle. It was on the H

A peculiar facts of the case, as the Insurance Company neither pleaded nor proved that the vehicle was transport vehicle by placing on record the permit issued by the Transport Authority that the Insurance Company was held liable.

B 42. In the present case, all the facts were before the District Forum. It considered the assertion of the complainant and defence of the Insurance Company in the light of the relevant documentary evidence and held that it was established that the vehicle which met with an accident was a “transport vehicle”. Ram Narain was having a licence to drive light motor vehicle only and there was no endorsement as required by Section 3 of the Act read with Rule 16 of the Rules and Form 6. In view of necessary documents on record, the Insurance Company was right in submitting that Ashok Gangadhar (*supra*) does not apply to the case on hand and the Insurance Company was not liable.”

C 27. In *New India Assurance Co. Ltd. v. Roshanben Rahemansha Fakir & Anr.* (2008) 8 SCC 253 the driver was holder of a licence to drive a three-wheeler. This Court noted that the licence was not meant to be used to drive a transport vehicle. The vehicle involved was an autorickshaw delivery van and was a goods carrier. Contention was raised that the driver of the vehicle was not holder of a legal and valid licence. Question arose whether driver was holding a licence to drive a transport vehicle. This Court held thus :

D “10. Section 10 of the Act provides for classes of the driving licence. Different classes of vehicle have been defined in different provisions of the Motor Vehicles Act. The “transport vehicle” is defined in Section 2(47) of the Act to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. We have noticed hereinbefore the provisions of sub-section (4) of Section 41. We have also noticed the notification issued by the Central Government in this behalf. The said notification clearly postulates that a three-wheeled vehicle for transport of passengers or goods comes within the purview of Class 5 of the Table appended thereto. The licence granted in favour of the said Salim Amadbhai goes

to show that the same was granted for a vehicle other than the transport vehicle. It was valid from 13.5.2004 to 12.5.2024. Section 14(2)(a) provides that a driving licence issued or renewed under the Act shall, in case of a licence to drive a transport vehicle will be effective for a period of three years whereas in the case of any other vehicle it can be issued or renewed for a period of 20 years from the date of issuance or renewal. The fact that the licence was granted for a period of 20 years, thus, clearly shows that Salim Amadbhai, driver of the vehicle, was not granted a valid driving licence for driving a transport vehicle.

X X X X X

13. From the discussions made hereinbefore, it is evident that the driver of the vehicle was not holding an effective licence. Possession of an effective licence is necessary in terms of Section 10 of the Motor Vehicles Act.”

28. In *National Insurance Co. Ltd. v. Annappa Irappa Nesaria alias Nesaragi & Ors.* (2008) 3 SCC 464, a Division Bench of this Court has considered the question with respect to an accident which took place on 9.12.1999 involving a Matador van, a “goods carriage” vehicle. The driver was holding a licence to drive light motor vehicle. Submission was raised before this Court that “light motor vehicle” cannot be a transport vehicle. Forms 4 and 6 were also referred along with Rules 14 and 16 of the 1989 Rules. After referring to Form 4 as it has been amended w.e.f. 28.3.2001, this Court has held that transport vehicle has been substituted for “medium goods vehicle” and “heavy goods vehicle”, and continued at the relevant time, to cover both “light passenger carriage vehicle” and “light goods carriage vehicle”. The driver who had a valid licence to drive a light motor vehicle, therefore, was authorized to drive a light goods vehicle as well. This Court has laid down thus :

“20. From what has been noticed hereinbefore, it is evident that “transport vehicle” has now been substituted for “medium goods vehicle” and “heavy goods vehicle”. The light motor vehicle continued, at the relevant point of time to cover both “light passenger carriage vehicle” and “light goods carriage vehicle”. A driver who had a valid licence to drive a light motor vehicle, therefore, was authorized to drive a light goods vehicle as well.

A **21. The amendments carried out in the Rules having a prospective operation, the licence held by the driver of the vehicle in question cannot be said to be invalid in law.”**

B 29. Thus, this Court has opined that prior to the amendment made in the form in 2001 a person holding a licence to drive “light motor vehicle” could have driven “light passenger carriage vehicle” and “light goods carriage vehicle” also.

C 30. In *Oriental Insurance Co. Ltd. v. Angad Kol & Ors.* (2009) 11 SCC 356, this Court has considered the decision in *National Insurance Co. Ltd. v. Annappa Irappa Nesaria* (supra) and *Prabhu Lal* (supra). The accident in the said case took place on 31.10.2004. A mini door auto dashed against the insured. Question arose whether the driver was not having an effective driving licence to drive “goods carriage vehicle”. Driver was holding a licence to drive motor-cycle and light motor vehicle. Licence was granted for a period of 20 years. Therefore, this Court presumed that it was meant for the purpose of a vehicle other than a transport vehicle. This Court observed thus :

D **“21. Licence having been granted for a period of 20 years, a presumption, therefore, arises that it was meant for the purpose of a vehicle other than a transport vehicle. Had the driving licence been granted for transport vehicle, the tenure thereof could not have exceeded to three years.”**

E 31. This Court observed that the grant of licence to drive transport vehicle became effective from 28.3.2001 i.e. date on which the form was amended and held that the vehicle was a “goods vehicle” as such the driver did not hold a valid driving licence for driving a “goods vehicle”.

F 32. - In *S.Iyyapan v. United India Insurance Co.* (2013) 7 SCC 62, this Court has considered the decisions in *Ashok Gangadhar* (supra), *Annappa Irappa Nesaria* (supra), *Prabhu Lal* (supra) and other decisions and laid down thus :

G **“18. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error**

H

of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside.” A

33. This Court in *Kulwant Singh & Ors. v. Oriental Insurance Co. Ltd.* (2015) 2 SCC 186, referring to the decisions of this Court in *S. Iyyapan* (supra) and *Annappa Irappa Nesaria* (supra) has laid down that when one driver is holding a licence to drive light motor vehicle, he can drive commercial vehicle of that category. This Court has considered the question thus : B

“8. We find that the judgments relied upon cover the issue in favour of the appellants. In *Annappa Irappa Nesaria* (2008) 3 SCC 464, this Court referred to the provisions of Sections 2(21) and (23) of the Motor Vehicles Act, 1988, which are definitions of “light motor vehicle” and “medium goods vehicle” respectively and the rules prescribing the forms for the licence i.e. Rule 14 and Form 4. It was concluded: (SCC p. 468, para 20) C D

“20. From what has been noticed hereinbefore, it is evident that ‘transport vehicle’ has now been substituted for ‘medium goods vehicle’ and ‘heavy goods vehicle’. The light motor vehicle continued, at the relevant point of time to cover both ‘light passenger carriage vehicle’ and ‘light goods carriage vehicle’. A driver who had a valid licence to drive a light motor vehicle, therefore, was authorised to drive a light goods vehicle as well.” E

9. In *S. Iyyapan* (2013) 7 SCC 62, the question was whether the driver who had a licence to drive “light motor vehicle” could drive “light motor vehicle” used as a commercial vehicle, without obtaining endorsement to drive a commercial vehicle. It was held that in such a case, the insurance company could not disown its liability. It was observed: (SCC p. 77, para 18) F G

“18. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely H

A because the driver did not get any endorsement in the
driving licence to drive Mahindra Maxi Cab, which is a
light motor vehicle, the High Court has committed grave
error of law in holding that the insurer is not liable to
pay compensation because the driver was not holding
B the licence to drive the commercial vehicle. The
impugned judgment [Civil Misc. Appeal No. 1016 of
2002, order dated 31-10-2008 (Mad)] is, therefore, liable
to be set aside.”

10. No contrary view has been brought to our notice.

C 11. Accordingly, we are of the view that there was no breach
of any condition of insurance policy, in the present case,
entitling the Insurance Company to recovery rights.”

34. The decision in *Nagashetty v. United India Insurance Co.
Ltd. & Ors.* (2001) 8 SCC 56 has also been referred in which it has
D been laid down that the tractor will be used for carrying goods. The
goods will be carried in a trailer attached to it. Thus it was held that the
holder having an effective driving licence can drive a tractor, if used for
carrying goods. He would not become disqualified to drive a tractor if a
trailer is attached to it. The contention that it was a transport vehicle, as
trailer was attached to it, consequently, driver was not holding a valid
E licence, was rejected. This Court considered the submission and held as
under :

“9. Relying on these definitions, Mr S.C. Sharda submitted
that admittedly the trailer was filled with stones. He
submitted that once a trailer was attached to the tractor
the tractor became a transport vehicle as it was used for
carriage of goods. He submitted that Section 10(2) of the
Motor Vehicles Act provides for grant of licences to drive
specific types of vehicles. He submitted that the driver only
had a licence to drive a tractor. He submitted that the driver
did not have a licence to drive a transport vehicle. He
submitted that therefore it could not be said that the driver
had an effective and valid driving licence to drive a goods
carriage or a transport vehicle. He submitted that thus the
driver did not have a valid driving licence to drive the type
of vehicle he was driving. He submitted that as the driver
did not have a valid driving licence to drive a transport
H

vehicle, the Insurance Company could not be made liable. He submitted that the High Court was right in so holding. A

10. We are unable to accept the submissions of Mr S.C. Sharda. It is an admitted fact that the driver had a valid and effective licence to drive a tractor. Undoubtedly under Section 10, a licence is granted to drive specific categories of motor vehicles. The question is whether merely because a trailer was attached to the tractor and the tractor was used for carrying goods, the licence to drive a tractor becomes ineffective. If the argument of Mr S.C. Sharda is to be accepted, then every time an owner of a private car, who has a licence to drive a light motor vehicle, attaches a roof carrier to his car or a trailer to his car and carries goods thereon, the light motor vehicle would become a transport vehicle and the owner would be deemed to have no licence to drive that vehicle. It would lead to absurd results. Merely because a trailer is added either to a tractor or to a motor vehicle by itself does not make that tractor or motor vehicle a transport vehicle. The tractor or motor vehicle remains a tractor or motor vehicle. If a person has a valid driving licence to drive a tractor or a motor vehicle, he continues to have a valid licence to drive that tractor or motor vehicle even if a trailer is attached to it and some goods are carried in it. In other words, a person having a valid driving licence to drive a particular category of vehicle does not become disabled to drive that vehicle merely because a trailer is added to that vehicle. B
C
D
E

11. In this case we find that the Insurance Company, when issuing the insurance policy, had also so understood. The insurance policy has been issued for a tractor. In this insurance policy, an additional premium of Rs.12 has been taken for a trailer. Therefore the insurance policy covers not just the tractor but also a trailer attached to the tractor. The insurance policy provides as follows for the "persons or classes of persons entitled to drive": F
G

"Persons or classes of persons entitled to drive.—Any person including insured provided that the person driving holds an effective driving licence at the time of the accident and H

A is not disqualified from holding or obtaining such a licence:
B Provided also that the person holding an effective learner's
C licence may also drive the vehicle when not used for the
D transport of goods at the time of the accident and that such
E a person satisfies the requirements of Rule 3 of the Central
F Motor Vehicles Rules, 1989, limitations as to use."

12. The policy is for a tractor. The "effective driving
licence" is thus for a tractor. The restriction on a learner
driving the tractor when used for transporting goods shows
that the policy itself contemplates that the tractor could be
used for carriage of goods. The tractor by itself could not
carry goods. The goods would be carried in a trailer
attached to it. That is why the extra premium for a trailer.
The restriction placed on a person holding a learner's
licence i.e. not to drive when goods are being carried is
not there for a permanent licence-holder. Thus a permanent
licence-holder having an effective/valid licence to drive a
tractor can drive even when the tractor is used for carrying
goods. When the policy itself so permits, the High Court
was wrong in coming to the conclusion that a person having
a valid driving licence to drive a tractor would become
disqualified to drive the tractor if a trailer was attached to
it."

35. "Transport vehicle" as defined in section 2(47) means a public
service vehicle, a goods carriage, an educational institution bus or a private
service vehicle. Public service vehicle has been defined in section 2(35)
to mean any motor vehicle used or adapted to be used for the carriage
of passengers for hire or reward, and includes a maxicab, a motorcab,
contract carriage, and stage carriage. "Goods carriage" which is also a
transport vehicle, is defined in section 2(14) to mean any motor vehicle
constructed or adapted for use solely for the carriage of goods, or any
motor vehicle not so constructed or adapted when used for the carriage
of goods. It was submitted that a person holding licence to drive Light
Motor Vehicle who is driving a vehicle registered for private use, is
driving a similar vehicle, which is registered or insured, for the purpose
of carrying passengers for hire or reward, would require endorsement
as to drive a "transport vehicle" is not contemplated by the provisions of
the Act. There are several vehicles which can be used for private use as

well as for carrying passengers for hire or reward. It was also submitted that a driver who is competent to drive a vehicle for private use, would be entitled to drive the same vehicle if it is used for hire or reward or for even carrying the goods in the said vehicle. It was also submitted that it was intended by the Amendment Act 54/1994 to simplify the procedure not to make it complicated and invalidate the licence of light motor vehicle and its holder could drive transport vehicle of the weight specified in section 2(21) of the Act. A
B

36. It was further submitted that there is difference in 'class of vehicles' and 'type of vehicles' and it is not necessary to obtain endorsement to drive transport vehicle of Light Motor Vehicle category when a person is competent to drive the same class of vehicle i.e. a light motor vehicle, as per the Amendment Act 54 of 1994 and Forms 4 and 6 as amended in 2001. C

37. It was also submitted that when this Court has held in *Annappa Irappa Nesaria* (supra) that prior to insertion of the Forms in 2001 the holder of licence of "light motor vehicle" was competent to drive a transport vehicle also. It was further submitted that no change has been brought by insertion of the Forms in the provisions contained in section 10(2)(d). D

38. It was also submitted that Section 3 of the MV Act, 1988 from the very beginning provided about the transport vehicle. However, classes of vehicle classified in section 10(2) were light motor vehicle, medium goods and passenger motor vehicle, and heavy goods and passenger vehicle. The change brought about in 1994 was substitution of transport vehicle in place of medium and heavy goods and passenger vehicles and in view of the decisions of this Court in *Ashok Gangadhar* (supra), *Annappa Irappa Nesaria* (supra) and *Kulwant Singh* (supra), a person holding LMV licence was competent to drive a transport vehicle. The provisions of "light motor vehicle" in section 10(2)(d) remains intact. It has not been amended. It was also submitted that the Forms which have been amended would not govern the interpretation of the provisions of Act; whereas the intendment of the Rule 8 inserted in 2007 was that type of vehicle could be added. What is the effect and purpose of insertion of Rule 8 in 2007, has not been taken into consideration. The Form has to be interpreted in tune with provisions of the Act and Rules. The object of the Act and Amendment Act 54/1994 has also not been taken into consideration in any of the decisions, and the effect of different syllabus E
F
G
H

A having been prescribed for “light motor vehicle”, heavy and medium vehicles was also not placed for consideration.

39. In *Ashok Gangadhar Maratha* in para 10 (supra), *S.Iyyapan v. United India Insurance Co.* (supra), *Kulwant Singh & Ors. v. Oriental Insurance Co. Ltd.* (supra), and *Nagashetty v. United India Insurance Co. Ltd. & Ors.* (supra), the view taken is that when driver is holding licence to drive light motor vehicle, he is competent to drive transport vehicle of that category; whereas in *New India Assurance Co. Ltd. v. Prabhu Lal* (supra) the view taken is that before 2001 also it was necessary for a driver possessing licence to drive Light Motor Vehicle to obtain endorsement to drive transport vehicle of that category; whereas in *National Insurance Co. Ltd. v. Annappa Irappa Nesaria* (supra), this Court laid down that before 28.3.2001 there was no necessity for holder of licence to drive light motor vehicle to have endorsement to drive transport vehicle; whereas in *New India Assurance Co. Ltd. v. Roshanben Rahemansha Fakir & Anr.* (supra) and *Oriental Insurance Co. Ltd. v. Angad Kol & Ors.* (supra), the view taken is that it is necessary for holder of light motor vehicle licence to obtain specific endorsement on licence, to drive transport vehicle of the light motor vehicle weight as provided in section 2(41).

E Thus, there appears to be a conflict in the decisions of this Court with respect to the pre-amended position and also after amendment has been effected in the Forms in 2001. In view of aforesaid discussion, following questions are required to be referred to larger Bench :

1. What is the meaning to be given to the definition of “light motor vehicle” as defined in section 2(21) of the MV Act?
- F Whether transport vehicles are excluded from it ?
2. Whether ‘transport vehicle’ and ‘omnibus’ the “gross vehicle weight” of either of which does not exceed 7500 kgs. would be a “light motor vehicle” and also motor-car or tractor or a road roller, “unladen weight” of which does not exceed 7500 kgs. and holder of licence to drive class of “light motor vehicle” as provided in section 10(2)(d) would be competent to drive a transport vehicle or omnibus, the “gross vehicle weight” of which does not exceed 7500 kgs. or a motor-car or tractor or road roller, the “unladen weight” of which does not exceed 7500 kgs. ?

H

3. What is the effect of the amendment made by virtue of Act No.54 of 1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10(2) which contained “medium goods vehicle”, “medium passenger motor vehicle”, “heavy goods vehicle” and “heavy passenger motor vehicle” by “transport vehicle”? Whether insertion of expression ‘transport vehicle’ under section 10(2)(e) is related to said substituted classes only or it also excluded transport vehicle of light motor vehicle class from purview of Sections 10(2)(d) and 2(41) of the Act? A B

4. What is the effect of amendment of the Form 4 as to operation of the provisions contained in section 10 as amended in the year 1994 and whether procedure to obtain driving licence for transport vehicle of class of “Light Motor Vehicle” has been changed? C

40. Let the matters be placed before Hon’ble the Chief Justice of India to constitute a larger Bench in order to resolve conflict in the views expressed by different Benches of this Court. D

Kalpana K. Tripathy

Matter referred to larger bench.