

(2014) 07 SHI CK 0221

In the High Court Of Himachal Pradesh

Case No : FAO Nos. 139 to 142 of 2012, 4011 and 4105 of 2013, 201, 4092 of 2013 and 243 of 2014

Bimla Devi and Others

APPELLANT

Vs

Oriental Insurance Company Limited and Others

RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 10, 10(2)(d), 10(2)(e), 112, 133

Citation : (2015) 1 ACC 373

Hon'ble Judges : Mansoor Ahmad Mir, C.J

Bench : Single Bench

Advocate : Ritta Goswami, Advocates for the Appellant; G.C. Gupta, Sr. Adv. and Meera Devi, D.P. Chauhan and Ritta Goswami, Advocates for the Respondent

Judgement

Mansoor Ahmad Mir, C.J.—All these nine appeals are outcome of a motor vehicular accident, which was allegedly caused by driver, namely Shri Bhagat Ram, who also died in the same accident, while driving the offending vehicle-Trax, bearing registration No. HP-01 K-7527, belonging to Smt. Bimla Devi, rashly and negligently, on 1st November, 2008, at about 11.30 p.m. at place Balkhner. Thus, I deem it proper to dispose of all these appeals by a common judgment. In FAO Nos. 139, 140, 141, 142 of 2012, the owner insured has questioned the impugned awards passed on different dates in different claim petitions arising out of the same accident by the Motor Accident Claims Tribunal, Kinnaur Civil Division at Rampur Bushahr, H.P. (hereinafter referred to as "the Tribunal"), whereby the owner-insured has been saddled with liability; FAOs No. 201, 4092 and 4011, 4105 of 2013 are directed by the insurer-Oriental Insurance Company Limited and the owner-insured, respectively, against the impugned awards, whereby the insurer- Oriental Insurance Company Limited has been asked to satisfy the award with a right to recover the same from the owner-insured; and in FAO No. 243 of 2014, the claimant-injured has questioned the impugned award on the ground of adequacy of the compensation, on the grounds taken in the memos of respective appeals.

2. In order to determine the issues and return findings in all these appeals, viz-?-viz, the questions in dispute, it is profitable to give a brief resume of the facts of the case.

Brief/acts:

3. It is averred that on 1st November, 2008, the vehicle-Trax, bearing registration No. HP-01 K-7527, was being driven by its driver, namely, Shri Bhagat Ram, rashly and negligently, at about 11.30 p.m., while going from Village Khanog to Kot, met with accident at Balkhner, went off the road and fell down, resulting in the death of seven occupants, out of twelve, including the driver, while the others sustained injuries. Thus, the claimants have filed the claim petitions for grant of compensation, as per the break-ups given in the respective claim petitions.

4. The owner-insured and the insurer-Oriental Insurance Company Limited resisted the claim petitions on the grounds taken in the memo of objections.

5. On the pleadings of the parties, the issues were framed in the respective claim petitions. The following issues were framed in MAC Petition No. 2 of 2009 (subject matter of FAO No. 139 of 2012):

"1. Whether late Sh. Thakur Dass died on account of injuries sustained by him due to rash and negligent driving of Trax No. HP-01K-7527 being driven by Sh. Bhagat Ram (since deceased), as alleged?--OPP

2. If issue No. 1 is proved, to what amount of compensation the petitioners are entitled to and from whom?--OPP

3. Whether the driver of the offending vehicle (Bhagat Ram, since deceased) was not possessed of a valid and effective driving license at the time of accident?--OPR-2

4. Whether the offending vehicle was being plied in breach of the terms and conditions of the insurance policy?--OPR-2

5. Relief."

6. The Tribunal framed following issues MAC Petition No. 28 of 2010 (subject matter of FAO No. 140 of 2012):

"1. Whether late Sh. Neelam Geer died on account of injuries sustained by him due to rash and negligent driving of Trax No. HP-01K-7527 being driven by Sh. Bhagat Ram (since deceased), as alleged?--OPP

2. If issue No. 1 is proved, to what amount of compensation the petitioners are entitled to and from whom?--OPP

3. Whether the driver of the offending vehicle (Bhagat Ram, since deceased) was not possessed of a valid and effective driving license at the time of accident?--OPR-2

4. Whether the offending vehicle was being plied in breach of the terms and conditions of the insurance policy?--OPR-2

5. Relief."

7. The following issues came to be framed by the Tribunal in MAC Petition No. 100 of 2008, which is subject matter of.

FAO No. 141 of 2012:

"1. Whether late Sh. Rakesh Kumar died on account of injuries sustained by him due to rash and negligent driving of Trax No. HP-01K-7527 being driven by Sh. Bhagat Ram (since deceased), as alleged?--OPP

2. If issue No. 1 is proved, to what amount of compensation the petitioners are entitled to and from whom?--OPP

3. Whether the driver of the offending vehicle (Bhagat Ram, since deceased) was not possessed of a valid and effective driving license at the time of accident?--OPR-2

4. Whether the offending vehicle was being plied in breach of the terms and conditions of the insurance policy?--OPR-2

5. Relief."

8. The following issues were framed in MAC Petition No. 1 of 2009 (subject matter of FAO No. 142 of 2012):

"1. Whether late Sh. Dila Ram died on account of injuries sustained by him due to rash and negligent driving of Trax No. HP-01K-7527 being driven by Sh. Bhagat Ram (since deceased), as alleged?--OPP

2. If issue No. 1 is proved, to what amount of compensation the petitioners are entitled to and from whom?--OPP

3. Whether the driver of the offending vehicle (Bhagat Ram, since deceased) was not possessed of a valid and effective driving license at the time of accident?--OPR-2

4. Whether the offending vehicle was being plied in breach of the terms and conditions of the insurance policy?--OPR-2

5. Relief."

9. The Tribunal framed following issues in MAC Petition No. 21 of 2009, which is subject matter of FAO Nos. 201 and 4011 of 2013:

"1. Whether late Sh. Nihal Chand died on account of injuries sustained by him due to rash and negligent driving of Trax No. HP-01K-7527 being driven by Sh. Bhagat Ram (since deceased), as alleged?--OPP

2. If issue No. 1 is proved, to what amount of compensation the petitioners are

entitled to and from whom?--OPP

3. Whether the driver of the offending vehicle (Bhagat Ram, since deceased) was not possessed of a valid and effective driving license at the time of accident?--OPR-2

4. Whether the offending vehicle was being plied in breach of the terms and conditions of the insurance policy?--OPR-2

5. Relief."

10. The following issues were framed in MAC Petition No. 45 of 2009, which is subject matter of FAO Nos. 4092,4105 of 2013 and 243 of 2014:

"1. Whether the petitioner had sustained injuries which resulted in disability to the extent of 75% due to the rash and negligent driving of trax No. HP-01K-7527 being driven by its driver (since deceased) as alleged?--OPP

2. If issue No. 1 is proved, to what amount of compensation the petitioners are entitled to and from whom?--OPP

3. Whether the driver of the offending vehicle (Bhagat Ram since deceased) was not possessed of a valid and effective driving licence at the time of accident?--OPR-2

4. Whether the offending vehicle was being plied in breach of the terms and conditions of the insurance policy?--OPR-2

5. Relief."

11. The parties have led the evidence in support of their cases. The Tribunal, after scanning the evidence, oral as well as documentary, held the claimants entitled to compensation and saddled the owner-insured with liability, however, in some cases, the insurer-Oriental Insurance Company Limited was asked to satisfy the award at the first instance.

12. The owner-insured has questioned the impugned awards only to the extent whereby findings have been returned by the Tribunal saddling her with liability and exonerating the insurer- Oriental Insurance Company Limited.

13. The insurer-Oriental Insurance Company Limited has called in question the impugned awards whereby it has been asked, at the first instance, to satisfy the award with a right to recover the same from the owner-insured.

14. The claimants have not questioned the impugned awards on any count, thus have attained finality so far it relates to them, except Shri Chaman Lal, the claimant in M.A.C. Petition No. 45 of 2009, titled as Shri Chaman Lal v. Smt. Bimla Devi & Another, appellant in FAO No. 243 of 2014, who has questioned the adequacy of compensation and has prayed for enhancement of compensation.

15. In the given circumstances, I deem it proper not to discuss the findings

returned by the Tribunal on issue No. 1. However, there is ample evidence on the file led by the claimants to the effect that the driver of the offending vehicle, namely Shri Bhagat Ram, had driven the offending vehicle rashly and negligently and had caused the accident.

16. Before I deal with issue No. 2, I deem it proper to return findings on issues No. 3 and 4.

17. The insurer in order to discharge the onus has led evidence to the effect that the driver was not competent to drive the offending vehicle, though he had the licence to drive a light motor vehicle (LMV), but was not containing endorsement of Public Service Vehicle (PSV). The insurer has also placed on record of the learned Tribunal in MAC No. 100 of 2008 the affidavit of Shri Mohinder Lal, Assistant Administrative Officer, The Oriental Insurance Company Limited, Divisional Office Shimla, as Ext. RW- 5/A. The Tribunal held that the driver was not having effective and valid driving licence; accordingly, the owner-insured has committed breach of the terms and conditions of the insurance policy and decided issues No. 3 and 4 in favour of the insurer and against the owner-insured.

18. Ms. Ritta Goswami, learned Counsel appearing on behalf of the owner-insured argued that the findings returned by the Tribunal are not correct as the vehicle in question was a Light Motor Vehicle (LMV) and there was no requirement of "PSV endorsement. She has placed reliance on the judgments rendered by this High Court in Oriental Insurance Company v. Sudesh Kumari and Others, reported in 2014 (1) Him L.R. 628, and Oriental Insurance Company Vs. Gulam Mohammad (since deceased) and Others, , in support of her case.

19. Mr. G.C. Gupta, learned Senior Counsel representing the insurer-Oriental Insurance Company Limited, argued that even though the offending vehicle was a Light Motor Vehicle (LMV), but endorsement was required in terms of Section 3 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the MV Act"). He has relied on the judgments rendered by the Apex Court in Oriental Insurance Company Vs. Gulam Mohammad (since deceased) and Others, , and by this Court in Oriental Insurance Company v. Lekh Ram and Others, reported in I (2012) ACC 205 : 2011 (2) Him L.R. 674; National Insurance Company Vs. Sunita Devi and Others, , and Parkash Chand v. New India Insurance Company Ltd. & Ors., reported in Latest HLJ 2011 (HP) 551, in support of his case.

20. The argument advanced by Mr. Gupta, though attractive, is not tenable and the findings returned by the Tribunal are not legally correct for the following reasons:

21. I deem it proper to reproduce the definitions of "driving licence", "light motor vehicle", "private service vehicle" and "transport vehicle" as contained in Sections 2(10), 2(21), 2(35) and 2(47), respectively, of the MV Act herein:

"2.....

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

xxx xxx xxx

(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.

xxx xxx xxx

(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 maxicab, a motorcab, contract carriage, and stage carriage.

xxx xxx xxx

(47) "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle."

22. Section 2(21) of the MV Act provides that a "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. Section 2(35) of the MV Act gives the definition of a "public service vehicle", which means any vehicle, which is used or allowed to be used for the carriage of passengers for hire or reward and includes a maxicab, a motorcab, contract carriage and stage carriage. It does not include light motor vehicle (LMV). Section 2(47) of the MV Act defines a "transport vehicle". It means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.

23. At the cost of repetition, definition of "light motor vehicle" includes the words "transport vehicle" also. Thus, the definition, as given, mandates the "light motor vehicle" is itself a "transport vehicle", whereas the definitions of other vehicles are contained in Sections 2(14), 2(16), 2(17), 2(18), 2(22), 2(23) 2(24), 2(25), 2(26), 2(27), 2(28) and 2(29) of the MV Act. In these definitions, the words "transport vehicle" are neither used nor included and that is the reason, the definition of "transport vehicle" is given in Section 2(47) of the MV Act.

24. In this backdrop, we have to go through Section 3 and Section 10 of the MV Act. It is apt to reproduce Section 3 of the Act herein:

"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.

(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."

25. It mandates that the driver should have the licence to drive a particular kind of vehicle and it must contain endorsement for driving a transport vehicle. In this section, the words "light motor vehicle" are not recorded. Meaning thereby, this section is to be read with the definition of other vehicles including the definition given in Section 2(47) of the MV Act except the definition given in Section 2(21) of the MV Act for the reason that Section 2(21) of the MV Act provides, as discussed hereinabove, that it includes transport vehicle also.

26. My this view is supported by Section 10 of the MV Act, which reads as under:

"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.

(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 cases, namely:

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

27. Section 10(2)(d) of the MV Act contains "light motor vehicle" and Section 10(2)(e) of the MV Act, which was substituted in terms of amendment of 1994, class of the vehicles specified in Clauses (e) to (h) before amendment stand deleted and the definition of the "transport vehicle" stands inserted. So, the words "transport vehicle" used in Section 3 of the MV Act are to be read viz-?-viz other vehicles, definitions of which are given and discussed hereinabove.

28. A Division Bench of the High Court of Jammu and Kashmir at Srinagar, of which I (Justice Mansoor Ahmad Mir, Chief Justice) was a member, in a case titled as National Insurance Co. Ltd. v. Muhammad Sidiq Kuchey & Ors., being LPA No. 180 of 2002, decided on 27th September, 2007, has discussed this issue and held that a driver having licence to drive "LMV" requires no "PSV" endorsement. It is apt to reproduce the relevant portion of the judgment herein:

"The question now arises as to whether the driver who possessed driving licence for driving above mentioned vehicles, could he drive a passenger vehicle? The answer, I find, in the judgment passed by this Court in case titled National Insurance Co. Ltd. Vs. Irfan Sidiq Bhat and Mohd Aslam Khan, , wherein it is held that Light Motor Vehicle includes transport vehicle and transport vehicle includes public service vehicle and public service vehicle includes any motor vehicle used or deemed to be used for carriage of passengers. Further held, that the authorization of having PSV endorsement in terms of Rule 41(a) of the Rules is not required in the given circumstances. It is profitable to reproduce paras 13 and 17 of the judgment hereunder:

"13. A combined reading of the above provisions leaves no room for doubt that by virtue of licence, about which there is no dispute, both Showkat Ahamd and Zahoor Ahmad were competent in terms of Section 3 of the Motor Vehicles Act to drive a public service vehicle without any PSV endorsement and express authorization in terms of Rule 4(1)(a) of the State Rules. In other words, the requirement of the State Rules stood satisfied.

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17. In the case of Mohammad Aslam Khan (CIMA No. 87 of 2002) Peerzada Noor-ud-Din appearing as witness on behalf of Regional Transport Officer did say on recall for further examination that PSV endorsement on the licence of Zahoor Ahmad was fake. In our opinion, the fact that the PSV endorsement on the licence was fake is not at all material, for, even if the claim is considered on the premise that there was no PSV endorsement on the licence, for the reasons stated above, it would not materially affect the claim. By virtue of "C to E" licence Showkat Ahmad was competent to drive a passenger vehicle. In fact, there is no separate definition of passenger vehicle or passenger service vehicle in the Motor Vehicles Act. They come within the ambit of public service vehicle under Section 2(35). A holder of driving licence with respect to "light Motor Vehicle" is thus competent to drive any motor vehicle used or adapted to be used for carriage of passengers i.e. a public service vehicle."

In the given circumstances of the case PSV endorsement was not required at all."

29. The purpose of mandate of Sections 2 and 3 of the MV Act came up for consideration before the Apex Court in a case titled as Chairman, Rajasthan State Road Transport Corporation & Ors. v. Smt. Santosh & Ors., reported in VII (2013) SLT 425 : 2013 AIR SCW 2791, and after examining the various provisions of the MV Act held that Section 3 of the Act casts an obligation on the driver to hold an effective driving licence for the type of vehicle, which he intends to drive. It is apt to reproduce paras 19 and 23 of the judgment herein:

"19. Section 2(2) of the Act defines articulated vehicle which means a motor vehicle to which a semi-trailer is attached; Section 2(34) defines public place; Section 2(44) defines "tractor" as a motor vehicle which is not itself constructed to carry any load; Section 2(46) defines "trailer" which means any vehicle, other

than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle. Section 3 of the Act provides for necessity for driving licence; Section 5 provides for responsibility of owners of the vehicle for contravention of Sections 3 and 4; Section 6 provides for restrictions on the holding of driving licence; Section 56 provides for compulsion for having certificate of fitness for transport vehicles; Section 59 empowers the State to fix the age limit of the vehicles; Section 66 provides for necessity for permits to ply any vehicle for any commercial purpose; Section 67 empowers the State to control road transport; Section 112 provides for limits of speed; Sections 133 and 134 imposes a duty on the owners and the drivers of the vehicles in case of accident and injury to a person; Section 146 provides that no person shall use any vehicle at a public place unless the vehicle is insured. In addition thereto, the Motor Vehicle Taxation Act provides for imposition of passenger tax and road tax, etc.

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23. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in Sub-section (2) of the said section. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in Sub-section (2) of Section 10. They are "goods carriage", "heavy goods vehicle", "heavy passenger motor vehicle", "invalid carriage", "light motor vehicle", "maxi-cab", "medium goods vehicle", "medium passenger motor vehicle", "motor-cab", "motorcycle", "omnibus", "private service vehicle", "semi-trailer", "tourist vehicle", "tractor", "trailer" and "transport vehicle".

30. The Apex Court in another case titled as National Insurance Company Ltd. Vs. Annappa Irappa Nesaria and Others, , has also discussed the purpose of amendments, which were made in the year 1994 and the definitions of "light motor vehicle", "medium goods vehicle" and the necessity of having a driving licence. It is apt to reproduce paras 8, 14 and 16 of the judgment herein:

"8. Mr. S.N. Bhat, learned Counsel appearing on behalf of the respondents, on the other hand, submitted that the contention raised herein by the appellant has neither been raised before the Tribunal nor before the High Court. In any event, it was urged, that keeping in view the definition of the Tight motor vehicle" as contained in Section 2(21) of the Motor vehicles Act, 1988 ("Act" for short), a light goods carriage would come within the purview thereof.

A "light goods carriage" having not been defined in the Act, the definition of the "light motor vehicle" clearly indicates that it takes within its umbrage, both a transport vehicle and a non-transport vehicle.

Strong reliance has been placed in this behalf by the learned Counsel in Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd., .

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14. Rule 14 prescribes for filing of an application in Form 4, for a licence to drive a motor vehicle, categorizing the same in nine types of vehicles.

Clause (e) provides for "Transport vehicle" which has been substituted by G.S.R. 221(E) with effect from 28.3.2001. Before the amendment in 2001, the entries medium goods vehicle and heavy goods vehicle existed which have been substituted by transport vehicle. As noticed hereinbefore, Light Motor Vehicles also found place therein.

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16. 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."

31. The insurer has filed an affidavit in evidence (Ext. RW- 5/A) and has stated that the driver was competent to drive light transport vehicle, but was not competent to drive public service vehicle, which is not correct in view of the decisions, discussed hereinabove.

32. Having glance of the above discussions, I hold that the endorsement of PSV was not required.

33. It is not a case of the insurer that the accident was due to the reason that the driver of the offending vehicle was competent to drive one kind of the vehicle and was found driving different kind of vehicle, which was the cause of the accident.

34. The Apex Court in a case titled as National Insurance Co. Ltd. Vs. Swaran Singh and Others, , held that it has to be pleaded and proved that the driver was having licence to drive one kind of vehicle, was found driving another kind of vehicle and that was the cause of accident. If no such plea is taken, that cannot be ground for discharging the insurer. It is apt to reproduce para 84 of the judgment herein:

"84. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in Sub-section (2) of said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are, (a) motorcycles without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in Sub-section (2) of Section 10. They are "goods carriage", "heavy-goods vehicle", heavy passenger motor-vehicle", "invalid carriage", "light motor-vehicle", "maxi-cab", "motorcycle", "omnibus", "private service vehicle". In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal. A person possessing a driving licence for "motorcycle without gear", for which he has no licence. Cases may also arise where a holder of driving licence for "light motor vehicle" is found to be driving a "maxicab", "motor-cab" or "omnibus" for which he has no licence. In each case on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence."

(Emphasis added)

35. In the said judgment, the Apex Court has also laid down principles, how can insurer avoid its liability. It is apt to reproduce relevant portion of para 105 of the judgment in Swaran Singh's case (supra):

"105.....

(i).....

(ii).....

(iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability, must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefore would be on them.

(v).....

(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 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."

36. Applying the test, it was for the insurer to prove that the owner-insured has committed wilful breach, which it has failed to do so, but on the contrary the owner-insured has filed affidavit (Ext. RW-2/A in MAC Petition No. 2 of 2009). It is apt to reproduce relevant portion of the said affidavit herein:

".....

3. That the driving licence of late Sh. Bhagat Ram was also legal and valid one which I had checked before keeping him as my employee. He was possessing driving licence to drive light transport vehicle.

4. That my above said vehicle was attached with Tax Union, Anni and the President of the said Union had also checked the licence and had found it valid and legal for driving the light transport vehicles."

37. It is averred that she had examined the driving licence of the driver of the offending vehicle at the time of his employment with her and had also shown it to the President of the Taxi Union, who also had stated that the driver was having the valid driving licence.

38. The insurer has not led any evidence in order to rebut this statement and the same has remained unshattered. Applying the tests laid down in Swaran Singh's case (supra) to the instant case, the insurer is liable.

39. In a case titled as Lal Chand Vs. Oriental Insurance Co. Ltd., , the owner had performed his job whatever he was required to do and satisfied himself that the driver was having valid driving licence. The Apex Court held the insurer liable. It is apt to reproduce paras 8, 9 and 11 of the judgment herein:

"8. We have perused the pleadings and the orders passed by the Tribunal and also of the High Court and the annexures filed along with the appeal. This Court in the case of United India Insurance Company Ltd. Vs. Lehu and Others, , in paragraph 20 has observed that where the owner has satisfied himself that the

driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). He will, therefore, have to check whether the driver has a driving licence and if the driver produces a driving licence, which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take test of the driver, and if he finds that the driver is competent to drive the vehicle, he will hire the driver.

9. In the instant case, the owner has not only seen and examined the driving licence produced by the driver but also took the test of the driving of the driver and found that the driver was competent to drive the vehicle and thereafter appointed him as driver of the vehicle in question. Thus, the owner has satisfied himself that the driver has a licence and is driving competently, there would be no breach of Section 149(2)(a)(ii) and the Insurance Company would not then be absolved of its liability.

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11. As observed in the above paragraph, the insurer, namely the Insurance Company, has to prove that the insured, namely the owner of the vehicle, was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant point of time."

40. It would also be profitable to reproduce para 10 of the judgment rendered by the Apex Court in Pepsu Road Transport Corporation Vs. National Insurance Company, , hereinbelow:

"10. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the Insurance Company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh case. If despite

such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the Insurance Company is not liable for the compensation."

41. In the given circumstances, the Tribunal has fallen in error in saddling the owner-insured with liability.

42. The claimant-injured, appellant in FAO No. 243 of 2014, has sought enhancement of compensation. The Tribunal has awarded compensation to the tune of Rs. 5,18,700 to the claimant-injured. I have gone through the award made in MAC Petition No. 45 of 2009 and am of the considered view that in view of the injuries/disability suffered by the claimant-injured-appellant in FAO No. 243 of 2014, the Tribunal has awarded adequate compensation, cannot be said to be inadequate. Viewed thus, the appeal, being FAO No. 243 of 2014 merits to be dismissed and is dismissed accordingly.

43. Having up-shoot of the above discussions, the appeals filed by the owner-insured are allowed, the appeals filed by the insurer-Oriental Insurance Company Limited are dismissed and the insurer-Oriental Insurance Company Limited is saddled with liability.

44. The insurer-Oriental Insurance Company Limited is directed to deposit the amount within three months and on deposition, the same be released in favour of the claimants strictly as per the terms and conditions contained in the impugned awards.

45. If the owner-insured has deposited the amount, that be released to the owner-insured after the amount is deposited by the insurer-Oriental Insurance Company Limited and disbursed to the claimants.

46. While parting, Mr. K.R. Thakur, learned Counsel appearing on behalf of respondent Nos. 3 to 6 in FAO No. 141 of 2012, stated that a mistake has crept in the impugned award passed in MAC Petition No. 100 of 2008, while making apportionment with regard to the share of Petitioner No. 1. I have gone through the same. No such mistake has been crept-in, but only comma has been inserted at wrong place (i.e. Rs. 23,6500), in-stead, it be read as inserted after "2" and "6", i.e. Rs. 2,36,500.

47. The appeals are disposed of and the impugned awards are modified, as indicated hereinabove, along with all pending applications. Send down the records after placing copy of the judgment on each of the files.