

(2013) 09 KL CK 0068
In the High Court Of Kerala
Case No : M.A.C.A. No. 942 of 2012

C.P. Paul

APPELLANT

Vs

Chandran and Others

RESPONDENT

Date of Decision : 25-09-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 14, 149(2)(a)(ii), 9

Citation : (2013) 4 KLJ 736

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : R. Sudhir, for the Appellant; P.K. Babu, for the Respondent

Judgement

Thomas P. Joseph, J.—These appeals, though arise from separate awards passed by the different Motor Accident Claims Tribunals, the same are being disposed of by a common judgment since common questions of fact and law are involved for a decision. The question for decision is whether, if the driver of the offending vehicle was not having the authorisation/badge to drive the transport/goods vehicle involved in the accident though he was having a license to drive a vehicle of the same type, the insurer is exonerated from its statutory liability to the third parties and at any rate, is entitled to recover the amount paid to the claimants from the insured? Short facts are as under:

2. M.A.C.A. No. 103 of 2012:

This appeal arises from the award dated 26.10.2009 in O.P. (M.V.) No. 754 of 2008 of the Motor Accident Claims Tribunal, Pala. The vehicle involved is a TATA Ace vehicle. The second respondent, insurer of that vehicle contended that the appellant who is the registered owner cum driver of that vehicle had no badge/authorisation to drive the said vehicle. The Tribunal accepted that contention and while making the second respondent/insurer liable to pay compensation to the claimant, permitted it to recover the amount from the appellant/registered owner-insured. He has challenged the award to that extent.

3. M.A.C.A. No. 1471 of 2013:

This appeal is preferred by the third respondent in O.P. (M.V.) No. 514 of 2008 of the Motor Accident Claims Tribunal, Muvattupuzha from the award dated 09.05.2013. The Tribunal found that the driver of the offending vehicle though, had a license, did not have the badge/authorisation to drive a transport vehicle on the date of the accident. Ext. B2, driving license of the driver revealed that the authorisation to drive the transport vehicle was only with effect from 29.04.2008 while the accident occurred on 09.05.2007. Hence while holding that the insurer is liable to pay compensation to the claimant, it was allowed to recover the amount from the appellant/owner-insured. He is aggrieved to that extent.

4. M.A.C.A. Nos. 942 and 943 of 2012:

These appeals are preferred by the first respondent in O.P. (M.V.) Nos. 893 and 892 of 2008 respectively, of the Motor Accident Claims Tribunal, Muvattupuzha. The vehicle involved is a goods auto rickshaw. The third respondent, insurer of contended that the driver of the goods auto rickshaw was not having a valid license or badge to drive the goods auto rickshaw. The Tribunal found that the driver had a valid, license but the badge/authorisation to drive the goods vehicle was from 22.04.2005 to 21.04.2008 while the accident occurred on 03.07.2008 and its renewal was only on 17.07.2008 meaning thereby, that on the date of the accident, the driver had no badge/authorisation to drive the goods vehicle. The Tribunal exonerated the insurance company from liability to pay compensation to the claimants and made the owner/insured liable. He is aggrieved.

5. M.A.C.A. Nos. 1391 of 2011, 1534, 1536, 1541 & 1655 of 2012:

These appeals arise from the common award dated 28.01.2011 passed by the Motor Accident Claims Tribunal, Pathanamthitta. The vehicle involved is a jeep belonging to and driven by the first respondent. The appellant/insurer contended that the driver had no license or badge to drive the offending vehicle. The Tribunal found that the driver-cum-owner had no badge but, based on the decision in National Insurance Company Ltd. Vs. Annappa Irappa Nesaria and Others, the insurer was made liable. No right of recovery was given. The insurer has preferred the appeals.

6. M.A.C.A. No. 567 of 2013

This appeal is preferred by the. insurer; against the award dated 03.12.2012 in O.P. (M.V.) No. 764 of 2007 of the Motor Accident Claims Tribunal, Paravur. The offending vehicle is a goods auto rickshaw. The Tribunal found, accepting the contention of the insurer that the driver I was not having the badge/authorisation to drive a goods vehicle on the date of accident (15.09.2007). The Tribunal found that absence of badge does not amount to a fundamental breach as held in National Insurance Co. Ltd. Vs. Swaran Singh and Others, and New India Assurance Company Ltd. Vs. Balakrishnan and others, and hence the

insurer is liable. No right of recovery was given. The insurer is aggrieved and has preferred the appeal.

7. M.A.C.A. No. 1722 of 2012:

This appeal arises from the award dated 13.03.2012 of the Motor Accident Claims Tribunal, Pala in O.P. (M.V.) No. 459 of 2009. The accident occurred on 19.02.2009. The offending vehicle is a jeep. The appellant/insurer contended that the driver had no license and that the vehicle had no fitness certificate. The owner and driver of the vehicle remained ex parte in the Tribunal. The appellant/insurer filed application to direct the owner and driver to produce the fitness certificate and driving license but there was no response though notice was served on them. The Tribunal found that though such an application was preferred and there was no response for that, Ext. A4, final report does not show that the driver was charge sheeted for driving the vehicle without license or fitness certificate and hence the contention of the insurer cannot be accepted. The appellant/insurer was made liable to pay compensation to the claimant without any right of recovery of the amount from the insured. Hence the appeal.

8. M.A.C.A. No. 1797 of 2012:

This appeal arises from the award dated 03.04.2012 in O.P. (M.V.) No. 1422 of 2002 of the Motor Accident Claims Tribunal, Muvattupuzha. The accident occurred on 23.07.2002. The offending vehicle is a goods auto rickshaw. A The third respondent/in surer contended that the driver had no authorisation/badge at the relevant time. The Tribunal found that the driver of the vehicle had no authorisation/badge at the relevant time. The insurer was made liable but a right of recovery was given. The owner of the vehicle is aggrieved and has preferred the appeal.

9. M.A.C.A. No. 1041 of 2012

This appeal arises from the award dated 18.06.2010 in O.P. (M.V.) No. 304 of 2007 of the Motor Accident Claims Tribunal, Waynad, at Kalpetta. The accident occurred on 09.04.2007. The vehicle involved is an auto rickshaw. The 6th respondent/insurer contended that the driver had, no license or authorisation/badge to drive that auto rickshaw. The Tribunal found that the driver had a license but, had no authorisation/badge at the time of the accident since validity of the badge expired on 15.01.2004 and a fresh badge was issued only on 20.04.2010. While directing the insurer to pay the amount to the claimant, it was given a right of recovery. The owner of the offending vehicle has preferred the appeal.

10. I have heard the learned counsel on both sides as to the consequence of the driver not having authorisation/badge at the relevant time. I also heard the learned Senior Advocate, Sri. Mathews Jacob, on the question in view of the various, decisions rendered by the Supreme Court and this Court.

11. It is appropriate that I refer to the relevant provisions of the Motor Vehicles

Act, 1989 (for short, "the Act") and the relevant Rules.

12. Secs. 3(1) of the Act deals with the necessity for driving license and states that no person shall drive a motor vehicle in public place unless he holds "an effective driving license" issued to him authorising him to drive the vehicle. Sec. 9 deals with the issue of new license, Sec. 14 deals with currency of the license while Sec. 15 deals with renewal of the license. As per the provisions of Sec. 15, except in cases where the request for renewal is made beyond a period of five years, it is not necessary for the authority concerned to conduct a fresh test for renewal of license. Instead, on payment of the required fee and on compliance of the other requirements as mentioned in Sec. 15, the authority concerned is bound to renew the license.

13. Sec. 149(2)(a) of the Act deals with avoidance of liability to the third parties, by the insurer. The circumstances in which the insurer could avoid its statutory liability to the third parties is stated. Sub clause (ii) refers to a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving license during the period of disqualification. Referring to the above said provision, a Full Bench of this Court in *Oriental Insurance Co. Ltd. Vs. Paulose*, held that the expression "is not duly licensed" is used in the past tense (the decision in *Oriental Insurance Company Ltd. v. Paulose* (supra) was doubted and referred to the Full Bench which, by order dated 09.07.2009 in M.A.C.A. No. 585 of 2003 has referred the matter to a larger Bench. But, it is relevant to note that in *National Insurance Company Ltd. v. Swaran Singh* (supra) (SC) in paragraph 39, the Supreme Court also has taken the View that the expression "is not duly licensed" occurring in Sec. 149(2)(a)(ii) of the Act is used in the past tense. Since the above cited decisions stand, I must proceed on the basis that the expression "is duly licensed" is used in the past tense).

14. In *National insurance Company Ltd. v. Swaran Singh* (supra) the Supreme Court referred to Secs. 3 and 149(2)(a)(ii) of the Act and highlighted the difference in the phraseology used - in Sec. 3, the expression used is "effective driving license", while in Sec. 149(2)(a)(ii), the expression used "is not duly licensed". The Supreme Court held that if there is no effective license as stated in Sec. 3, the driver is liable for prosecution under Sec. 181 of the Act but, Sec. 149(2) pertains to insurance as regards third parties (See paragraph 36 of *National Insurance Company Ltd. v. Swaran Singh* (supra)). In paragraph 37, the supreme Court observed that a provision of a statute which is penal in nature vis-?-vis a provision which is beneficent to a third party must be interpreted differently and that it is well-known that the provisions contained in different expressions are ordinarily construed differently. In paragraph 38, it is observed that the words "effective driving license" used in Sec. 3 of the Act cannot be imported to sub Sec. 2(a)(ii) of Sec. 149 where the expression used is "is not duly licensed". In paragraph 39, it is stated that if the license has expired, the driver could apply for renewal and obtain the same automatically without

undergoing a further test or without having been declared unqualified therefore (in cases where the request for renewal is made within five years from the date of expiry). In paragraph 68, it is held that the insurer cannot shake off its liability to pay the compensation only by saying that at the relevant point of time the vehicle was driven by a person having no license (again drawing the distinction between the expressions in Secs. 3 and 149(2)(a)(ii) of the Act). However, in paragraph 77, the Supreme Court has struck a different note in a case where the driver was not having a license "at all" which means that he was not duly licensed as stated in Sec. 149(2)(a)(ii) of the Act and held that in such cases, the insurer can avoid liability. In paragraph 81, the Supreme Court referred to a license issued for one type of vehicle and the driver driving another type of vehicle. In paragraph 84, it is held that when the pleas of licensing conditions are taken by the insurer, it would be open to the Tribunal to adjudicate the claim and decide the inter-se liability of the insurer and the insured; although where such adjudication is likely to entail undue delay in decision of the claim of the victim, the Tribunal in its discretion may relegate the insurer to seek its remedy of reimbursement from the insured in the civil court.

15. The gist of the decision in *National Insurance Company Ltd. v. Swaran Singh* (supra) is summarised in paragraph 102. There, it is held in clause (iii) as under:

The breach of policy conditions, e.g., disqualification of driver or invalid driving license of the driver, as contained in sub-sec. (2)(a)(ii) of Sec. 149, have to be proved to have been committed by the insured for avoiding liability by the insurer, mere absence, fake or invalid driving license 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.

Clause (vi) states as under:

Even when the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid license 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 of the condition of driving license 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 insurer under Sec. 149(2) of the Act.

16. In *National Insurance Co. Ltd. Vs. Kusum Rai and Others*, the offending vehicle was a commercial vehicle. The driver had only a license to drive a light motor vehicle. There was no authorisation to drive a commercial vehicle. The

Supreme Court held that the condition in the policy of insurance was violated. The Supreme Court referred to Sec. 3 of the Act and held that if on facts it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failure and similar other causes having no nexus with the driver not possessing the requisite type of license, the insurer will not be allowed to avoid its liability merely for the technical breach of conditions concerning driving the vehicle.

17. P.T. Moidu Vs. The Oriental Insurance Co. Ltd. and Others, is a decision rendered by a Division Bench of this Court. There, reference was made to National Insurance Company Ltd. v. Siwaran Singh (supra) and National Insurance Company Ltd. v. Kusmm Rai and Ors. (supra). In that case, the driver of the vehicle had no badge to drive the type of the vehicle involved in the accident. It was held that there was no evidence that absence of badge caused the accident (referring to paragraph 102 (clause (vi)) of National Insurance Company Ltd. v. Swaran Singh (supra)). It was held that though absence of badge in driving a commercial vehicle will attract penal consequence, that is no ground to deny statutory liability of the insurer to the third party. Right of recovery given to the insurer by the Tribunal was set aside by the Division Bench.

18. New Indian Assurance Co. Ltd. Vs. Roshanben Rahemansha Fakir and Another, referred to the decisions in National Insurance Company Ltd. v. Swaran Singh (supra) and National Insurance Company Ltd. Vs. Annappa Irappa Nesaria and Others, In New India Assurance Co. Ltd. v. Roshanben Rahemansha Fakir & Anr. (supra) the Supreme Court held that a light motor vehicle would not include a transport vehicle. There, the driver had no authority to drive the goods vehicle. It was held that there is no effective license for the driver as required by Sec. 10 of the Act and hence the insurer was not liable (notwithstanding the decision in National Insurance Company Ltd. v. Swaran Singh (supra) by a larger Bench where a distinction between "effective license" and "is not duly licensed" was drawn).

19. Oriental Insurance Co. Ltd. v. Angad Kol & Ors. 2008 KHC 4858 is a decision rendered by the Supreme Court. There, a distinction was drawn between a light motor vehicle and a transport vehicle. It was held that a transport vehicle may be a light vehicle but for driving that, a distinct license is required, In that case there was no valid or effective license to drive a goods Vehicle (in the sense that there was no authorisation to drive a transport vehicle). It was held that it amounted to breach of the condition which made the insurer not liable.

20. New India Assurance Co. Ltd. Vs. Suresh Chandra Aggarwal, is a case where the license had expired four months before the accident. The insurer was held not liable (but, this decision has no application to the facts of the present case since that was a claim for own damage by the owner/insured and hence Sec. 149(2)(a)(ii) of the Act had no application.

21. Jawahar Singh Vs. Bala Jain and Others, is a decision rendered by the

Supreme Court. There, the driver had no license "at all" (meaning thereby that he was not "duly licensed" as stated in Sec. 149(2)(a)(ii) of the Act) and hence right of recovery was given to the insurer. The said decision also has no application to the facts of the present case since in these cases, the driver of the offending vehicle had a license but, there was no authorisation to drive the transport/goods vehicles involved.

22. National Insurance Co. Ltd. Vs. Geeta Bhat and Others, was a case of the driver holding a fake license. Reference was made to the decision in Smt. Yallwwa and Others Vs. National Insurance Co. Ltd. and Another, where it was held,

the recent decisions of this Court are authorities for the proposition that the insurance company would not be liable in cases where passengers of a vehicle are not third parties.

23. Referring to the said observation, the Supreme Court held in National Insurance Ltd. v. Geetha Bhat & Ors. (Supra) in paragraph 13,

thus, whereas in a case where a third party has raised a claim, Swaram Singh would apply, in a claim made by the owner of the vehicle or other passengers of a vehicle, it would not.

24. New India Assurance Company Ltd. Vs. K. Venu and Others, is a decision rendered by the Division Bench of this Court. There again, reference was made to the decision in National Insurance Company Ltd. v. Swaran Singh (supra) and in particular, paragraph 82 of the said decision. That was a case arising from the order of the Workmen Compensation Commissioner. The Division Bench observed that the Commissioner has to take a decision whether the fact of the driver possessing license for one type of vehicle but was found driving another type of vehicle was the main or contributory cause of the accident.

25. Manager, Iffco Tokio General Insurance Co. Ltd. Vs. Selvam and Others, is a decision rendered by a learned Judge of the Madurai Bench of the Madras High Court. Referring to National Insurance Company Ltd. v. Swaran Singh (supra), learned judge held that absence of a badge to drive a transport vehicle enabled the insurer to recover the amount from the insured (after payment to the claimant). Right of recovery was given to the insured.

26. S. Iyyapan Vs. United India Insurance Company Ltd. and Another, was a case where the High Court, relying on Sardari and Others Vs. Sushil Kumar and Others, held the insurer to be not liable. The insured challenged that judgment in the Supreme Court. The Supreme Court, referring to National Insurance Company Ltd. v. Swaran Singh (supra) and in particular, paragraph 102 (clause (vi)) held that the insurer cannot be absolved of liability on the ground that although the driver had a license to drive a light motor vehicle, he had no authorisation to drive it when used as a commercial vehicle. In any case, third parties have a right to recover the amount from the insured. It was also held

that it is for the insurer to proceed against the insured for recovery in the event that there has been a violation of any condition of insurance policy (in that case, no right of recovery was given by the Supreme Court).

27. *New India Assurance Co. Ltd. v. Balakrishnan* (supra) is a decision rendered by a Division Bench of this Court relying on *National Insurance Company Ltd. v. Swaran Singh* (supra) and in particular, paragraph 102 of clause (vi) and *P.T. Moidu v. The Oriental Insurance Company Ltd. & Ors.* (supra). There, the driver was not having the authorisation to drive the type of vehicle he was driving though, he had a license to drive that type of vehicles. The Tribunal had made the insurer liable to pay the amount and no right of recovery was given to it. The Division Bench held that person driving a passenger auto rickshaw without the requisite authorization (badge) may amount to an infraction of Sec. 3(1) of the Act (there being "no effective license") but, that is not sufficient for the insurer to avoid its liability to the insured. Instead, the insurer has to prove that the breach was so fundamental and has contributed to the cause of the accident. The decision of the Tribunal was confirmed. The Division Bench distinguished the decision in *Oriental Insurance Co. Ltd. v. Angad Kol & Ors.* (supra), in paragraph 21. It was held that in deciding *Angad Kol's* case, learned judges were satisfied that the accident was attributable to absence in that case and that is why the learned Judges had not adverted in detail to the proposition in paragraph 102 (vi) of *Swaram Singh's* case.

28. Learned counsel for the insured have brought to my notice the unreported judgment (dated 20.08.2013) of the Division Bench of this Court, in *M.A.C.A. No. 105 of 2012*. That was an appeal preferred by the insured against the decision of the Tribunal. In that case, the offending vehicle was a transport vehicle. The driver had no badge to drive a transport vehicle but, had a license. The Tribunal allowed the insurance company to recover the amount from the insured on payment of the same to the claimant. The Division Bench referred to paragraph 102 (clause vi) of *National Insurance Company Ltd. v. Swaran Singh* (supra), *P.T. Moidu v. The Oriental Insurance Company Ltd. & Ors.* (supra), *New India Assurance Co. Ltd. v. Balakrishnan* (supra) and Rule 6 of the Kerala Motor Vehicles Rules, 1989 as also Sec. 9(4) of the Act. In paragraph 16, the Division Bench held that the Kerala Rules do not prescribe the conduct of another driving test before the issue of authorisation to drive the transport vehicle. In paragraph 17, the Division Bench referred to and distinguished the decisions in *New India Assurance Co. Ltd. v. Roshanben Rahemansha Fakir and Anr.* (supra), *National Insurance Company Ltd. v. Kusum Rai and Ors.* (supra) and *New India Assurance Co. Ltd. Vs. Prabhu Lal*, as those cases were not dealing with Rule 6 of the Kerala Motor Vehicles Rules. The Division Bench held that those decisions do not overrule the decision of the Division Bench *P. T. Moidu v. The Oriental Insurance Company Ltd. & Ors.* (supra). In paragraph 18, it was held that the driver in that case had a license to drive a light motor vehicle (the class to which the offending vehicle belonged) but, there was no badge authorising him to drive a transport vehicle (the driver in that case had obtained the badge after the accident). The

Division Bench took the view that there was no case for the insurer that the driver was not qualified to apply for a badge to drive transport vehicle and hence the omission to apply for and obtain a badge was purely technical and cannot be said to be a fundamental breach offending the main purpose rules as insisted in paragraph 102 (clause vi) of National Insurance Company Ltd. v. Swaran Singh (supra). The accident could not also be attributed to want of badge to drive a transport vehicle. The appeal was allowed and the right of recovery given to the insurer was set aside.

29. Learned counsel for the insurer have brought to my notice another decision of the Division Bench of this Court (dated 02.09.2013) in National Insurance Co. Ltd. Vs. Ammini Amma and Others, In that case the insurer challenged the award which directed it to indemnify the insured. The insurer contended that the driver had no "valid license". Relying on the charge sheet, the Division Bench held that the driver had no "valid license" and gave the insurer a right of recovery of the amount from the insured.

30. Now I am to decide these appeals in the light of the aforesaid decisions.

31. Though learned counsel for the insurers in these appeals have taken my attention to National Insurance Company Ltd. v. Kusum Rai and Ors. (supra) and New India Assurance Co. Ltd. v. Prabku Lal (supra), those decisions cannot be relied on for the purpose of either exonerating the insurer or giving the insurer a right of recovery for the reasons that the Division Bench of this Court in the judgment dated 20.08.2013 in M.A.C.A. No. 105 of 2012 has distinguished those decisions and held that those decisions do not apply to the situation in this state where rule 6 of the Kerala Motor Vehicles Rules applies. I cannot also follow the decision in M.A.C.A. No. 2366 of 2010 (supra) since it is not clear how the driving license (in that case) was not valid, the decision in P.T. Moidu v. The Oriental Insurance Co. Ltd. & Ors. (supra) was not considered, the consequence of absence of a badge in the light of the decision in National Insurance Company Ltd. v. Swaran Singh (supra) was not considered, the Division Bench did not doubt the Bench decisions in P.T. Moidu v. The Oriental Insurance Co. Ltd. & Ors. (Supra) and New India Assurance Co. Ltd. v. Balakrishnan (Supra) and as the decision in M.A.C.A. No. 2366 of 2010 does not lay down any law. The decision in M.A.C.A. No. 2366 of 2010 has to be confined to the facts of that case.

32. Reading Secs. 3, 9, 14 and 149(2)(a)(ii) of the Act in the light of the decision in National Insurance Co. Ltd. v. Swaran Singh (supra), it is clear that a distinction has been drawn for the purpose of avoidance of liability to the third parties and indemnification of the insured between "effective license" occurring in Sec. 3 and "is not duly licensed" occurring in Sec. 149(2)(a)(ii) and it was held that it is not sufficient that the insurer proves that the driver of the offending vehicle had no "effective license" on the date of the accident but it has to be proved that he was either not duly licensed or was disqualified from holding a license or, other circumstances stated in Sec. 149(2)(a)(ii) of the Act existed and further, that the mere fact of there being no effective license, in the sense that

the driver was not authorised to drive a transport/goods vehicle on the date of the accident by itself, is not sufficient unless the insurer is also able to prove that the breach of the condition of driving license is/are so fundamental as is/are found to have contributed to the cause of the accident. That is what the Division Benches of this Court have pointed out in *P.T. Moidu v. The Oriental Insurance Co. Ltd. & Ors.*, *New India Assurance Co. Ltd. v. Balakrishnan* and in *M.A.C.A. No. 105 of 2012*. In other words, that there was no authorisation/badge to drive a transport/goods vehicle on the date of the accident may amounts to an infraction of Sec. 3 of the Act opening the person concerned to prosecution under the relevant provisions of the Act but, in the absence of proof that absence of authorisation/badge has contributed to the cause of accident, the insurer is not absolved of its liability to the third parties or, its duty to indemnify the insured. The decisions of the Supreme Court referred above and which held that in the absence of "effective license" (as against the phraseology used in Sec. 149(2)(a) (ii) of the Act) the insurer could avoid its liability are rendered by Benches of two judges while *National Insurance Co. Ltd. v. Swaram Singh* (supra) is rendered by a Bench of three Judges and hence the latter decision has to be followed.

33. Learned counsel for the insurance company have contended, referring to the decision in *National Insurance Co. Ltd. v. Geetha Bhat & Ors.* (supra) that in cases involving passengers of the offending vehicle, the decision in *National Insurance Company Ltd. v. Swaran Singh* (supra) would not apply. My attention is drawn to the observations in paragraph 13 of the said decision (which I have extracted in paragraph 24 above) that the decision in *National Insurance Company Ltd. v. Swaran Singh* (supra) cannot apply to "other passengers of a vehicle" (the claimants in *M.A.C.A. No. 1471 of 2013* and *M.A.C.A. Nos. 1391 of 2011, 1534 of 2012, 1536 of 2012, 1541 of 2012 and 1655 of 2012* are passengers in the offending vehicles).

34. I must understand the said observation in *National Insurance Co. Ltd. v. Geetha Bhat & Ors.* (supra) in the light of the observation in *Yallawwa v. National Insurance Co. Ltd.* (extracted in paragraph 232, above) that,

the trend of recent decisions is that the insurance companies would not be liable in cases where passengers of vehicle are not third parties.

35. It is useful to refer to paragraphs 19 and 38 of *National Insurance Co. Ltd. Vs. Laxmi Narain Dhut*, In paragraph 19, the different situations arising from *National Insurance Company Ltd. v. Swaran Singh* (supra) is referred to, as a driver having a license but, a fake one (where the insured is expected to conduct only a verification of the license and is not required to search through various offices of the transport authorities in the country), where the driver has no license at all (not duly licensed), where the driver had an original license but which expired as on the date of the accident and it has not been renewed (i.e. not having an effective license) and, a license for a class of vehicle other than which was as the insured vehicle and the license being a learners license. In paragraph 38, it is observed that in the case of third party risk, the insurer has to

indemnify the amount and if so I advised, recover the same from the insured (again in accordance with paragraph 102 (clause vi) of National Insurance Company Ltd. v. Swaran Singh (supra)).

36. In the light of the above observations in National Insurance Company v. Lakshmi Narayan Dutt (supra) and Yallawwa v. National Insurance Co. Ltd. (supra) the observation in paragraph 13 of National Insurance Co. Ltd. v. Geetha Bhat & Ors. (supra) that the decision in National Insurance Company Ltd. v. Swaran Singh (supra) does not apply to "other passengers of a vehicle" can only be understood as meaning, passengers of a vehicle who are not third parties", i.e. passengers who are not covered by the policy of insurance. There is no reason to think that the above said observation distinguishes a person who is outside the vehicle sustaining the injury and inside the (vehicle sustaining injury, both entitled to the coverage of insurance but with respect to the person inside the vehicle, the decision in National Insurance Company Ltd. v. Swaran Singh (supra) does not apply. Hence the contention of the learned counsel for the insurance companies based on the observation in paragraph 13 of National Insurance Co. Ltd. v. Geetha Bhat & Ors. (supra) cannot be accepted.

37. Now I shall revert to the facts of the cases involved in these appeals. Except in M.A.C.A. No. 1722 of 2012, the finding entered by the Tribunals concerned is only regarding want of badge/authorisation for the driver to drive the transport/goods vehicle involved. There is also no finding that the absence of such badge/authorisation in any way contributed to the cause of the accident. Hence the breach cannot be said to be fundamental as well. Hence in the tight of what i have stated above, that by itself cannot exonerate the insurance company from its liability to the third parties (claimants) or, give it a right of recovery of the amount from the insured. The insurers are bound to indemnify the insured. Hence in all the appeals other than in M.A.C.A. No. 1722 of 2012, contention of the insurance companies either that it is not liable, or that it is entitled to recover the amount of compensation from the insured on payment of the same to the claimants cannot be accepted.

38. But, M.A.C.A. No. 1722 of 2012 stands on a different footing. There, the contention raised by the appellant/insurer is that the offending vehicle was not having a fitness certificate and that the driver had no license. The registered owner and driver of the offending vehicle remained absent in the Tribunal. The appellant/insurer filed an application to direct the owner and driver to produce the fitness certificate and the driving license. In spite of notice to them, they did not respond. The Tribunal, referring to Ext. A4, final report alone observed that since there is no charge for driving the vehicle without a fitness certificate or driving license, the mere fact that the appellant had called for the fitness certificate or license from the owner/driver is not sufficient. The appellant/insurer was held liable.

39. I must notice that the appellant/insurer had not produced the report of the AMVI in the said case to show whether the accident was due to any mechanical

defect. I am not very much impressed by the View taken by the Tribunal that in spite of the appellant filing application to direct the owner/driver to produce the fitness certificate/license and that was not responded, no finding against driver/owner is possible. But the appellant/insurer has not taken steps to examine the investigating Officer who submitted Ext. A4, final report. It is not clear whether that officer had verified the fitness certificates or driving license. Having regard to the facts of the case, I am inclined to think that further enquiry is required so far as the case involved in M.A.C.A. No. 1722 of 2012 is concerned. The appellant/insurer has to show that the Vehicle had no fitness certificate, that has contributed to the cause of the accident and/or that the driver was not duly licensed. I am inclined to set aside the award in O.P. (M.V.) No. 459 of 2009 of the Motor Accident Claims Tribunal, Pala and remand that case to the Tribunal for fresh decision after further enquiry.

40. In the light of the above decisions, the appeals preferred by the insurance companies (except in M.A.C.A. No. 1722 of 2012) are liable to be dismissed and the appeals preferred by the insured are liable to be allowed. M.A.C.A. No. 1722 of 2012 is liable to be allowed by way of remand. I place on record my appreciation for the assistance given to me by learned counsel on both sides and particularly learned Senior Advocate, Sri. Mathews Jacob who addressed arguments on my request.

Resultantly,

I. M.A.C.A. No. 103 of 2012 is allowed as under:

The award dated 26.10.2009 in O.P. (M.V.) No. 754 of 2008 of the Motor Accident Claims Tribunal, Pala to the extent it gave right of recovery to the second respondent/insurer from the insured is set aside.

II. M.A.C.A. No. 1471 of 2012 is allowed as under:

The award dated 09.05.2013 in O.P. (M.V.) No. 514 of 2008 of the Motor Accident Claims Tribunal, Muvattupuzha to the extent it gave a right of recovery to the 5th respondent/insurer from the appellant/insured is set aside.

III. M.A.C.A. Nos. 942 and 943 of 2012 are allowed as under:

(i) The common award dated 20.08.2011 of the Motor Accident Claims Tribunal, Muvattupuzha in O.P. (M.V.) Nos. 893 and 892 of 2008, respectively to the extent it exonerated the third respondent/insurer is set aside.

(ii) The third respondent/insurer is found liable to pay compensation awarded by the Tribunal to the respective claimants.

(iii) The third respondent/insurer is directed to deposit the award in the Tribunal within three months.

IV. M.A.C.A. Nos. 1391 of 2011, 1534, 1536, 1541 and 1655 of 2012

(i) The common award dated 28.01.2011 of the Motor Accident Claims Tribunal,

Pathanamthitta in O.P. (M.V.) Nos. 1291, 1293, 1294, 1295 and 1292 of 2003 are confirmed.

(ii) The above appeals will stand dismissed.

V. M.A.C.A. No. 567 of 2013

(i) The award dated 03.12.2012 in O.P. (M.V.) No. 764 of 2007 of the Motor Accident Claims Tribunal, Paravur is confirmed.

(ii) The above appeal will stand dismissed.

VI. M.A.C.A. No. 1797 of 2012 is allowed as under:

(I) The award dated 03.04.2012 in O.P. (M.V.) No. 1422 of 2002 of the Motor Accident Claims Tribunal, Muvattupuzha to the extent it gave the third respondent/insurer a right of recovery from the appellant/insured is set aside.

VII. M.A.C.A. No. 1041 of 2012 is allowed as under:

Award dated 18.06.2010 in O.P. (M.V.) No. 304 of 2007 of the Motor Accident Claims Tribunal, Waynad at Kalpetta to the extent it gave right of recovery of the amount to the 6th respondent/insurer from the appellant/insured is set aside.

VIII. M.A.C.A. No. 1722 of 2012 is allowed by way of remand as under:

(a) Award dated 13.03.2012 in O.P. (M.V.) No. 459 of 2009 of the Motor Accident Claims Tribunal, Pala is set aside to the extent it related to the liability of the parties.

(b) O.P. (M.V.) No. 459 of 2009 is remitted to the tribunal for fresh decision on the question of liability after giving the opportunity to adduce further evidence.

(c) The Parties shall appear in the Motor Accident Claims Tribunal, Pala on 30.10.2013

(d) If found necessary, the Tribunal may issue notice to such of the parties not represented before it on 30.10.2013

(ix) The Parties shall suffer their costs in all the appeals.