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**(2002) 01 GAU CK 0056**  
**In the Gauhati High Court**  
**Case No : M.A. (F) No. 39 of 1995**

Dipak Bhowmik

APPELLANT

Vs

Takhelmayum Kr. Singh and Others

RESPONDENT

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**Date of Decision :** 29-01-2002

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 140, 149(2)

**Citation :** (2002) 1 GLT 352

**Hon'ble Judges :** A.K. Patnaik, J

**Bench :** Single Bench

**Advocate :** G.P. Bhowmik, for the Appellant; None, for the Respondent

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## Judgement

A.K. Patnaik, J.—This is an appeal against the judgment and Award dated 6.12.94 of the learned Member, Motor Accident Claims Tribunal, Kamrup, in MAC Case No. 58(K)/90.

2. The Appellant filed MAC Case No. 58(K)/90 before the aforesaid Tribunal. His case before the Tribunal was that on 6.9.89 at about 6.15 A.M. while he was proceeding from Guwahati towards Jagiroad on his newly purchased Bajaj Scooter No. MLA 222 A, he stopped on the left side to offer Pranam and the TATA Truck No. MNA 2556 came in a very high speed and dashed the scooter. In the aforesaid accident, he and the pillion rider were thrown away and he sustained grievous head injuries and fracture on his right hand and his scooter was also damaged. The Appellant accordingly claimed a compensation of Rs. 3.60 lakhs for loss of earning capacity for 30 years, Rs. 50,000/- as medical expenses, Rs. 30,000/- for future medical expenses, Rs. 10,000/- for damage to his scooter and Rs. 12,000/- u/s 140 of the Motor Vehicle Act. The owner of the truck, the Respondent No. 1 in this appeal, filed written statement/objection stating, inter alia, that his truck bearing registration No. MNA 2556 which was involved in the accident on 6.9.89 was insured with the New India Assurance Company Ltd. under its Policy No. 3151010053119 and the effective period of the said policy was 21.12.88 to 20.12.89. The New India Assurance Company Ltd., Respondent

No. 2 in this appeal, also filed written statement before the Tribunal and in paragraph 9 of the said written statement, the Respondent No. 2, has stated that the registration certificate, road permit, driving licence of the driver, etc. may be directed to be produced and proved in this case failing which it shall be presumed that there is statutory violation of the conditions of the Insurance Policy, if any, as contemplated under the Motor Vehicles Act, and the Insurance Company was not as such bound in law to indemnify the awarded amount of compensation, if at all, in future. The Tribunal awarded an amount of compensation of Rs. 1.43 lakhs with 10% interest from the date of filing the claim petition till payment is made to the Appellant but directed the owner of the truck to deposit awarded amount within a period of one month failing which 15% interest would accrue from the date till realization of the awarded amount. This direction was given by the Tribunal while holding in answer to the issue No. 7 that a presumption has to be drawn that the driver who drove the truck at the time of the accident had no valid licence. The relevant findings of the Tribunal in the impugned judgment and Award in this regard are as follows:

When the claimant has not named the OP No. 3 and no disclosure was made by the owner of the truck and police also failed to arrest driver, the only presumption that can be made OP No. 1, the owner is that the driver who drove the truck had no valid D/L.

3. Mr. Bhowmik, learned Counsel for the Appellant, submitted that onus lies on the Insurance Company to prove that the driver of the offending truck, which was insured, did not have any valid driving licence and the Insurance Company, Respondent No. 2, did not discharge its onus by adducing evidence before the Tribunal to prove that the driver who drove the truck on the date of accident did not have any valid licence. He stated that after filing the written statement, the Insurance Company in fact did not lead any evidence before the Tribunal. It appears from the order sheet that the Insurance Company, Respondent No. 2, was served with notice as per the report of the Process Server and yet the Respondent No. 2 has not appeared before this Court. The Court, therefore, has to proceed to dispose of the appeal in the absence of the Respondent No. 2.

4. u/s 149(2) of the Motor Vehicles Act, 1988, an insurer has been given the right to defend an action on, inter alia, the ground that there has been breach of conditions of the policy specified therein and one of the conditions specified is the condition of excluding driving by named persons or by any person who is not duly licensed or by any person who has been disqualified for holding or obtaining driving licence during the period of disqualification. In *Narcinva V. Kamat and Another Vs. Alfredo Antonio Doe Martins and Others*, , the Insurance Company contended that the driver did not have a valid driving licence at the time of accident as the driver failed to produce the licence when asked to do so in cross-examination and the Court held that onus was on the Insurance Company to prove that the driver had no driving licence to escape liability and mere non-production of the licence by the driver does not exonerate the Insurance

Company from its liability to indemnify the award. In paragraph 15 of the said judgment, the Supreme Court summed up the law as under:

To sum up the Insurance Company failed to prove that there was a breach of the term of the contract of insurance as evidenced by the policy of insurance on the ground that the driver who was driving the vehicle at the relevant time did not have a valid driving licence. Once the Insurance Company failed to prove that aspect, its liability under the contract of insurance remains intact and unhampered and it was bound to satisfy the award under the comprehensive policy of insurance.

5. In the present case, in the absence of any evidence either way, the Tribunal had presumed that the driver of the truck No. MNA 2556 did not have any valid driving licence. This approach of the Tribunal was totally contrary to the law laid down by the Apex Court in the said judgment. In paragraph 14 of the said judgment in *Narcinva V. Kamat and Anr. v. Alfredo Antonio Doe Martins and Ors.* (supra), the Supreme Court held:

The burden to prove that there was breach of the contract of insurance was squarely placed on the shoulders of the Insurance Company. It could not be said to have been discharged by it by a mere question in cross-examination. The second Appellant was under no obligation to furnish evidence so as to enable the Insurance Company to riggie out of its liability under the contract of insurance. Further the RTA which issues the driving licence keeps a record of the licences issued and renewed by it. The Insurance Company could have got the evidence produced to substantiate his allegation. Applying the test who would fail if no evidence is led, the obvious answer is the insurance company.

6. For the aforesaid reasons, the impugned judgment and Award dated 6.12.94 passed by the learned Member, Motor Accident Claims Tribunal, Kamrup in MAC Case No. 58(K)/90 in so far as it records a finding on the basis of presumption that the driver who drove the offending truck No. MNA 2556 at the time of accident had no valid licence and in so far it directs the owner of the said truck to pay compensation are set aside and instead, it is directed that the Respondent No. 2, the New India Assurance Company Ltd., shall pay the compensation of Rs. 1.43 lakhs minus interim relief of Rs. 12,000/- with 10% interest from the date of filing of the claim petition till payment is made to the claimant. In case, the Insurance Company does not make the payment of the aforesaid compensation with interest within a period of one month from the date of receipt of a certified copy of this judgment from the Appellant, the Insurance Company will be liable to pay interest at the rate of 15% per annum on the aforesaid compensation with effect from the date of delivery of this judgment till realization of the compensation.