

(2016) 03 GUJ CK 0138

In the Gujarat High Court

Case No : First Appeal No. 711 of 2012 With First Appeal No. 712 of 2012 With First Appeal No. 569 of 2013 to First Appeal No. 570 of 2013

Heirs And Legal Representatives of Decd. Galabhai Alias

APPELLANT

Vs

Kara Gogan Rathod

RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Citation : (2016) 4 Civil LJ 485 : (2016) 3 GLR 1967

Hon'ble Judges : Mr. S.G. Shah, J.

Bench : Single Bench

Advocate : Mr. Tushar L. Sheth, Advocate, for the Appellant; Mr. Vijay H. Nangesh, Advocate, Ms. Shrimoli Jhaveri, For Ms. Vidhi J. Bhatt, Advocates, Mr. Bhavesh D. Hajare With Mahendra Trivedi, Advocates, for the Respondent

Final Decision : Partly Allowed

Judgement

Mr. S.G. Shah, J.—All these appeals are arising out of common judgment and award dated 30/4/2011 by Motor Accident Claims Tribunal (Auxiliary), Porbandar in consolidated Motor Accident Claim Petition Nos. 98 of 2007 and 100 of 2007. Both such claim petitions are arising out of the common vehicular accident wherein one victim has died and another person has received grievous injuries. Therefore, the Tribunal has decided both the petitions by common judgment. However, now, petitioners of both the petitions have filed separate appeals for enhancement of amount of compensation. Whereas, driver and owner of one of the vehicle have preferred separate appeals against both the claimants since the Tribunal has exonerated the liability of their insurer. So also, the owner of the second vehicle is also exonerated from making any payment to any of the victim.

2. First Appeal No.711 of 2012 is preferred by the claimants of M.A.C.P. No. 100 of 2007 being legal heirs and representatives of deceased victim Galabhai @ Bhayabhai Visabhai Parmar. They have claimed Rs.5 Lacs as compensation for accidental death of the victim whereas Tribunal has awarded Rs.3,34,800/- only

against driver and owner of one of the vehicle and hence, they have preferred these appeals for enhancement of their claim so as to hold that the insurer of the vehicle in question is liable to satisfy the award.

3. First Appeal No.712 of 2012 is preferred by injured claimant of M.A.C.P. No.98 of 2007, who has also claimed Rs.5 Lacs towards compensation for his injuries; whereas Tribunal has awarded Rs.2,03,949/-, but only concerned driver and owner of another vehicle and therefore, he has also preferred an appeal for enhancement of amount of compensation so also to hold the Insurance Company of other vehicle liable to satisfy the award.

4. The First Appeal No.569 of 2013 is cross appeal of First Appeal No.711 of 2012 i.e. against the legal heirs of the deceased victim and First Appeal No.570 of 2013 is cross appeal of First Appeal No.712 of 2013 against the injured victim, but prayer in these appeals is common to the effect that Insurance Company is responsible and liable to satisfy the award and, therefore, sought direction to modify the award to that extent.

5. Perusal of impugned judgment makes it clear that all the applications are filed under section 166 of the Motor Vehicles Act for compensation because of injuries sustained in a vehicular accident. So far as factum of accident is concerned, it is recorded that on 20.5.2007, at about 6.45 p.m. on road from Ranavav to Jamnagar near Lirbai Society, Ranavav, when injured victim Mahesh Prabhatbhai Vaghela and deceased victim Galabhai Vishabhai Parmar were going towards Bileshwar from Ranavav on their Suzuki motorcycle No. GBW-7935, which was driven by the deceased Galabhai, driver of one auto-rickshaw No. GJ-10 W-4552 came with excessive speed so as to endanger the human life and dashed with the motorcycle of the victim, which resulted into unfortunate accident, wherein both the riders of motorcycle had sustained serious injuries amongst which driver of the motorcycle, namely, Galabhai @ Bhayabhai Vishabhai Parmar succumbed to the injuries during the treatment and pillion rider of the motorcycle being victim and claimant Mahesh Prabhatbhai Vaghela has received serious injuries.

6. The record shows that the rickshaw No. GJ-10W-4552, which was involved in the accident, was insured by the respondent - Insurance Company, but it seems that the motorcycle in question was probably not insured at the relevant time and therefore, claimants have filed claim petitions against driver, owner and insurer of the auto-rickshaw as well as owner of the motorcycle, since the driver of the motorcycle has died in the same accident.

7. After trial, the Tribunal has awarded the amount of compensation as aforesaid in favour of the claimants, but only against the driver and owner of the rickshaw though it was held that drivers of both the vehicles are held liable for the accident and their negligence is fixed as 90% of the rickshaw driver and 10% of the driver of the motorcycle, but considering the vicarious and thereby, joint and several liability of both the tort-feasors, directed to recover the amount of compensation from the driver and owner of the rickshaw. However, considering

that at the time of accident, opponent No.1 before the Tribunal being driver of the auto-rickshaw, he was not holding valid driving license to drive transport vehicle, Insurance Company of the auto-rickshaw is exonerated from its liability to pay compensation, since it was considered as a breach of condition of the insurance policy by the owner of the vehicle to allow to ply a public transport vehicle by a person, who is not holding a valid driving license to drive such public transport vehicle even if he is holding a license to drive the non-transport vehicle.

8. Therefore, in these appeals, the claimants have claimed additional compensation with a prayer to impose the liability upon the Insurance Company to satisfy the award so also the driver and owner of the rickshaw has also challenged the award, which exonerates the Insurance Company from satisfying the award. Therefore, all the appeals are heard together and decided by this common judgment.

9. Before we proceed further to decide the appeals on its own merits, it is necessary to recollect here that initially while admitting the First Appeal Nos. 711 and 712 of 2012, by common oral order dated 27/3/2012, the Co-ordinate Bench of this High Court has after recording the submissions of both the sides in brief, endorsed the admission of appeals in following words:-

"Appeals are admitted only for the purpose of multiplier".

However, the claimants/appellants have challenged such initial order of admitting the appeals for limited purpose only, by filing Civil Appeal No. 8478 of 2015 before the Hon'ble Supreme Court of India, which has by its order dated 8/10/2015 clarified that when High Court has admitted the appeals, it should have gone into all the issues involved in the appeals before it and decided the same on merits instead of restricting the appeals for the purpose of multiplier and thereby, while setting-aside the order passed by the High Court dated 27/3/2012, requested the High Court to consider all the issues and decide the same on merits with further request to dispose of the appeals as early as possible, considering that appeals are pending for last three years.

10. Therefore, now practically all these appeals are to be decided on their own merits considering the rival submissions and evidence available on record, so also applicable law.

11. As aforesaid, First Appeal Nos. 711 and 712 of 2012 are for enhancement of compensation and also for fixing liability of the insurance company, since the insurance company has been exonerated from making payment to the claimants by satisfying the award; whereas First Appeal Nos. 569 and 570 of 2013 are filed by the owners of the vehicles for such second relief regarding fixing liability of the insurance company. Therefore, practically discussion and determination of First Appeal Nos. 711 and 712 of 2012 will take care of First Appeal Nos. 569 and 570 of 2013 without any further discussion as well as determination.

12. Now if we take the First Appeal No. 711/2012 to scrutinise the quantum of

compensation awarded to the claimants in M.A.C. Petition No. 100/2007, relevant information can be summarised as under :

- (i) Victim Galabhai @ Bhayabhai Vishabhai Parmar, died in the accident.
- (ii) Age of the victim - 30 years
- (iii) Occupation of the victim - repairing and maintenance of telephone instruments and working as a Telephone Operator, though there is no proper evidence, he is not in Government job.
- (iv) Income of the victim - Rs.5,000/- pm, as claimed by the claimants.
- (v) Claimants - widow and parents.

Based upon above basic information and more particularly in absence of evidence regarding actual income, the Tribunal has considered Rs.3,000/- pm as income of the deceased - victim and after deducting 3rd amount towards personal expenses and thereby taking Rs.2,000/- as loss of earning by the claimants and applying 15 as a suitable multiplier, the Tribunal has considered Rs.3,60,000/- as compensation under the head of loss of earning and then added Rs.10,000/- under the head of loss of consortium and Rs.2,000/- under the head of expenses for funeral ceremony. Thereby, Tribunal has arrived at total amount of Rs.3,72,000/- and deducting 10% amount towards negligence of the victim deceased, the Tribunal awarded Rs.3,34,800/- as total compensation.

13. Therefore, prima-facie it becomes clear that the Tribunal has not considered the prospective income and awarded very meagre amount under the head of loss of consortium, so also for funeral expenses and nothing has been awarded for loss of estate. Therefore, if we consider the latest decisions of the Hon'ble Supreme Court on the issue, there is a need to increase the amount of compensation.

14. Even if we do not consider the earning capacity of the victim as claimed by the claimants, there is a need to consider the prospective income and, therefore, monthly dependency needs to be taken as Rs.3,000/- instead of Rs.2,000/-. Thereby, even if we do not change any other calculation, so also the negligence of the victim, then loss of earning capacity would be Rs.3,000/- pm and applying 15 multiplier [Rs.3,000/- x 12 x 15], the amount would come to Rs.5,40,000/- and if we deduct 10% of such amount, then total amount would be Rs.4,86,000/-. Whereas the following decisions, as discussed hereinafter, confirm that the amount of compensation under the head of loss of consortium, loss of love and care, loss of estate and funeral expenses i.e. the conventional amount on all such count would be Rs.3,25,000/-. As against that, the Tribunal awarded only Rs.12,000/-. Therefore, even on a conservative side, if we do not consider the loss of care and guidance to minors, since there are no children though similar amount is awarded for parents also, the minimum amount on all such count would be Rs.2,25,000/-. Out of that, if we deduct 10% amount because of negligence of the victim, then also the claimants are entitled to receive

Rs.2,02,500/.

15. List of judgments in support of the conventional amount, as considered above are as under :

- (1) Rajesh v. Rajbir Singh reported in [2013] 9 SCC 54
- (2) Vimal Kanwar v. Kishore Dan reported in [2013] 7 SCC 476
- (3) Jiju Kurivila v. Kunjujamma Mohan reported in [2013] 9 SCC 166
- (4) Sanobanu Nazirbhai Mirza v. Ahmedabad Muni. Transport Service reported in 2013 AIR SCW 5800
- (5) Kalpanaraj v. Tamil Nadu S.T. Corpn. Reported in [2015] 2 SCC 764
- (6) Anjani Singh v. Salauddin reported in 2014 [6] SCALE 55
- (7) Kala Devi v. Bhagwan Das Chauhan reported in [2015] 2 SCC 771
- (8) Jitendra Khimshankar Trivedi v. Kasam Daud Kumbhar reported in [2015] 4 SCC 237
- (9) Asha Verman v. Maharaj Singh reported in (2015) IX [SC] 227
- (10) Chanderi Devi v. Jaspal Singh reported in 2015 [4] SCALE 390.

16. Therefore, total compensation would be Rs.6,88,500/-. Thereby, the amount of compensation awarded by the Tribunal needs to be enhanced from Rs.3,34,800/- to Rs.6,88,500/- and to that extent the award needs to be modified. Thereby the claimants are entitled to Rs.3,53,700/- as additional amount of compensation with 9% interest from the date of petition till realization.

17. So far as liability of insurance company is concerned, since it is common issue in all four appeals, it would be taken care of hereinafter.

18. So far as First Appeal No. 712/2012 is concerned, the basic information can be summarised as under :

- (i) Victim - Mahesh Parbat Vaghela
- (ii) Age of the victim - 28 years
- (iii) Occupation of the victim - serving as a Helper in K.M. Agatha
- (iv) Income of the victim - Rs.5,000/- pm.
- (v) Injuries - Fracture of right femur tibia and cavical which resulted into amputation of right leg below knee.
- (vi) Disability - 60% of lower extremity, which is reduced by the Tribunal on its own as 30% for body as a whole.

19. The perusal of determination for compensation to this claimant in para 9 of the impugned judgment transpires that though the claimant has produced on

record certificate issued by his employer regarding his salary, the Tribunal has considered that it is not a reliable evidence to prove the income and, therefore, considered Rs.3,000/- pm as earning capacity of the victim and thereby considering 30% disability, amount of Rs.1,62,000/- is awarded towards loss of earning, Rs.7,500/- is awarded towards pain, shock and suffering, Rs.3,000/- for attendant, diets and transportation and Rs.9,000/- for actual loss of income during treatment; thereby total Rs.2,03,949/- is awarded to the claimant.

20. Looking to the facts and circumstances available on record, when claimant has proved several medical bills, so also amputation and produced certificate of his employer to show that he was paid Rs.5,000/- pm, it is quite clear and obvious that the Tribunal has awarded compensation only on the basis of guess work in absence of any evidence in rebuttal by the opponents. Even if we consider the presumption of the Tribunal as it is, then also it is clear and certain that the Tribunal has not considered prospective income of the claimant when he was only 28 years of age at the time of the accident and hence when monthly income of the victim can be certainly taken as average Rs.4,500/- pm for his lifetime considering the fact that by passage of time because of experience, he would certainly earn more than Rs.3,000/- as taken by the Tribunal. Whereas so far as disability is concerned, it is surprising to note that though the disability of 30% for body as a whole is scheduled under The Employees' Compensation Act [for short "EC Act"] only for loss of three fingers of one hand in part II of Schedule 1, so also for loss of all toes of both feet proximal to the proximal inter-phalangeal joint, whereas 50% disability is for loss of earning capacity for amputation below knee and also for amputation for one foot proximal to the meta-tar so-phalangeal joint, the Tribunal has considered 30% disability for amputation of leg below knee. Therefore, when EC Act has prescribed the particular injury with particular percentage of disability, considering the nature of activities of the employees, in such cases of claimants who are doing labour work, percentage of loss of earning capacity prescribed in the EC Act cannot be ignored, rather it can be certainly followed for such scheduled injuries, more particularly when claimants are labour class people. It is clear and certain that loss of earning capacity does not depend solely on physical disability, but in case of a dancer, the amputation of leg would result into 100% or maximum disablement. Whereas in the case of singer, throat injury may be considered as 100% loss to earning capacity, but so far as labour class is concerned, it would be safe to rely upon the scheduled injuries and percentage prescribed in the EC Act. Therefore, the Tribunal has committed an error by mechanically or arithmetically reducing the disability by 50% and taking only 30% as loss of earning capacity for the victim, who is doing semi-skilled labour work in a construction company. Therefore, the disability is to be taken as 50% and earning capacity as Rs.4,500/- pm. Relying upon such modified earning capacity and loss of earning, the claimant is entitled to compensation of Rs.4,32,000/- (Rs.2250 x 12 x 15). Deducting the amount awarded by the Tribunal being Rs.1,62,000/- from Rs.4,32,000/-, the claimant is entitled to additional amount

of compensation of Rs.2,70,000/- on this head.

21. Similarly the quantum of award of compensation on other heads is also very much meagre and conservative and, therefore, it also requires to be modified relying upon the different decisions of the Hon'ble Supreme Court on such issue. Therefore, the claimant is entitled to additional amount of compensation as under :

Rs.1,00,000/-

towards pain, shock & suffering

Rs. 12,000/-

towards loss of actual earning @ Rs.3,000/- for 4 months

Rs.1,00,000/-

for medical and other expenses including expenditure for artificial limb.

Thus, the claimant is entitled to additional amount of compensation of Rs.2,12,000/- on different heads. But the Tribunal has already awarded Rs.38,949/- and, therefore, the claimant is entitled to difference amount of Rs.1,73,051/- i.e. Rs.1,73,100/-. Thereby now the claimant is entitled to Rs.4,43,100/- as additional amount of compensation with 9% interest from the date of petition till realization.

22. For above determination, I am relying upon the following judgments :

(1) Jakir Hussein v. Sabir reported in [2015] 7 SCC 252

(2) Sanjay Kumar v. Ashok Kumar reported in [2014] 5 SCC 330

(3) Govind Yadav v. New India Insurance Co. Ltd., reported in [2011] 10 SCC 683

(4) Ibrahim v. Raju reported in [2011] 10 SCC 634

23. Now coming to the main issue regarding liability of the insurance company, the respondent insurance company is relying upon the following decisions :

(1) New India Assurance Co. Ltd. v. Roshanben Rahemansha Fakir reported in [2008] 8 SCC 253

(2) Oriental Insurance Co. Ltd. v. Angad Kol reported in AIR 2009 SC 2151

(3) Order dated 8/5/2014 passed in First Appeal No. 3289/2013 in the case of United India Insurance Co. Ltd., v. Bhikhubhai Amarsinhbhai Parmar

(4) National Insurance Co. Ltd., v. Nagamma reported in 2015 ACJ 2423.

24. As against that, the appellants being original claimants are relying upon the following judgments and submitted that when the deceased and the injured were third party with respect to offending vehicle being Rickshaw, the insurance company cannot be exonerated from its liability:

(1) National Insurance Co. Ltd. v. Swaran Singh reported in 2004 (3) SCC 297 [Larger Bench]

" wherein the Hon"ble Supreme Court held that unless the breach[es] regarding the condition of driving licence is/ are not so fundamental and found to have contributed to the cause of the accident, the insurance company is liable; and the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party.

In the present case, the claimants are third party, the driver of Rickshaw was having licence of Motor Cycle and Tractor since 21/12/1996 and from 16/7/1997 further endorsement of Auto Rickshaw; the accident took place on 20/5/2007, the RTO officer has deposed that having licence of this type can drive transport vehicle. In this case, the driver was having licence of Auto Rickshaw and was driving Rickshaw (delivery van) having same mechanism. It is not the case that Rickshaw being delivery van is having different mechanism than the Auto Rickshaw. In the present case, the insurance company has failed to prove that the breach was so fundamental. Therefore the insurance company is liable.

The findings of the Hon"ble Supreme Court are as under :

Summary of Findings :

108. The summary of our findings to the various issues as raised in these petitions are as follows:

(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 object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petitions filed under Section 163 A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.

(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 whereof would be on them.

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

(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.

(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) ful-fill the requirements of law or not, will have to be determined in each case.

(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.

(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 in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of 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 insurer and the insured. The decision rendered on the claims and disputes inter-se between the insurer and insured in the 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.

(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 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 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 announcement of the award by the Tribunal.

(xi) The provisions contained in subsection (4) with proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against 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.

(2) *S. Iyyapan v. United India Ins. Co. Ltd.* 2013 (7) SCC 62 (Supreme Court), wherein also insurer was held liable. Relevant Para 17 and 18 read as under:

"17 The heading "Insurance of Motor Vehicles against Third Party Risks" given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of 1939 Act) itself shows the intention of the legislature to make third party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons traveling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force.

18. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy

(3) First Appeal No. 2584 of 2013 decided on 8/10/2013 by Division Bench of this Court, wherein the accident took place on 9/2/2012 (after 2001) and the Division Bench, relying upon the decision of S. Iyyapan v. United reported in 2013 (7) SCC 62 has held that the question of liability for breach of condition of licence is already concluded by the judgment of the Apex Court and no different view can be taken. Ultimately held the Insurance Company liable.

(4) First Appeal No. 1657 of 2013 decided on 5/2/2014 by Division Bench of this High Court, wherein the accident took place on 23/9/2007 (after 2001). Similar contention of amendment after 2001 was negated and relying upon the decision of S. Iyyapan, ultimately the insurance company was held liable.

(5) Kulwant Singh v. Oriental Ins. Co. reported in 2015 (2) SCC 186 wherein the accident took place on 8/10/2005 (after 2001). Similar issue had come up and the order of tribunal was restored holding insurance company liable.

(6) National Ins. Co. Ltd. v. Jisha K.P. and Ors. (Full Bench Kerala HC) reported in 2015 STPL (web) 2046 KER decided on 16.12.14 :

"The accident took place on 3/12/2005 (after 2001). Considering all the judgments including the judgments relied by the other side, the Full Bench of Hon"ble Kerala High Court has held that Badge is a minor technical breach and not sufficient to exonerate insurance company from liability. It is further held that in absence of any evidence to show that the breach was so fundamental in causing accident, there can't be any automatic direction in allowing insurance company to recover the amount from owner also."

(7) Bhailalbai Garbabbhai Vasava v. Munikhan Ismailkhan Sayed reported in 2003 (1) GLR 605 (Guj. HC)-

"This Court held that if it is found that the driver is holding a valid licence to drive a particular category of vehicle, namely, light motor vehicle or heavy motor vehicle, then, the insurance company can't be exonerated of its liability to reimburse the damage".

(8) Jawahar Singh v. Bala Jain & Ors. reported in 2011 6 SCC 425 [para 14],

wherein the injured and the deceased were third parties, the Insurance Company has to pay and recover the amount. The Tribunal has power to pass an order to insurance company to pay to the claimant/s and to recover it from the owner.

(9) Kimatmal Jamandas Makhija v. Baloch Ismail Husein reported in 2012 [3] GCD 1857.

25. In view of the above discussion, it becomes clear that in the present case also there is sufficient evidence to prove beyond reasonable doubt that driver does not have valid driving licence to drive the non-transport vehicle and that settled legal position is such that in all such cases now when the statute is confirming that initially insurance company has to pay the amount and then it can recover from its owner, then I do not hesitate to modify the award by

confirming that initially the insurance company shall pay the amount of compensation as awarded to the claimants and then they may recover it from the owner only if it is proved that there is any breach of any statutory provision or condition of policy. For the purpose, insurance company may initiate appropriate proceedings in accordance with law.

26. In view of the above, appeals are partly allowed and the appellants are entitled to the additional compensation as stated above with further direction that the award is modified to the aforesaid extent with further direction that the insurance company has to satisfy the award and may recover the amount from the owner if at all they can prove breach of any statutory provision or condition of policy.