**(1998) 03 MP CK 0050**

**In the Madhya Pradesh High Court**

**Case No :** M.A. No. 226 of 1996

Kewal Ram Basena and Others — APPELLANT

Vs

Mohammed Shakil and Another — RESPONDENT

**Date of Decision :** 26-03-1998

**Acts Referred:**
Motor Vehicles Act, 1988 — Section 140, 149

**Citation :** (2000) ACJ 324

**Hon'ble Judges :** S.C. Pandey, J

**Bench :** Single Bench

**Advocate :** Wazid Hyder, for the Appellant; Amrit Ruprah, for the Respondent

**Final Decision :** Dismissed

## Judgement

S.C. Pandey, J.—This appeal, filed by the claimants, is directed against the interim award dated 20.4.1995, passed by the Motor Accidents Claims Tribunal, Balaghat in Motor Accident Claim Case No. 44 of 1994.

2. The facts of this case are that one Ramcharan, who was driving a vehicle, met with an accident on 5.6.1994. He died as a result of injuries suffered in that accident. Thereupon, the appellant Nos. 1 and 2, who are the parents of the deceased Ramcharan and appellant No. 3, who is sister of Ramcharan, filed a claim, before the Claims Tribunal, claiming that they are entitled to Rs. 65,000 (Rupees sixty-five thousand) together with the interest on account of the accident, which happened during the course of employment of the deceased Ramcharan. It is not in dispute that Ramcharan was an employee of Mohd. Shakil, the respondent No. 1 and the vehicle involved in the accident bearing registration No. CIR 37 was owned by him. This vehicle was insured with Oriental Insurance Co. Ltd., the respondent No. 2.

3. During the pendency of this claim, an application u/s 140 of the Motor Vehicles Act, 1988 was made by the appellants, claiming that they are entitled to Rs. 25,000 (Rupees twenty-five thousand) by way of no fault liability. This

application was resisted by the respondents.

4. The Claims Tribunal has given an interim award of Rs. 25,000 on 20.4.1995. By this interim award, it was directed that the owner shall pay Rs. 25,000 to the appellants within one month from the date of interim award. In case the amount is not paid within that period, an interest at the rate of 12 per cent per annum has been imposed upon the owner/respondent No. 1.

5. The appellants are aggrieved by the interim award against the respondent No. 1 alone. They claimed that the respondent No. 2, the Oriental Insurance Co. Ltd., should have also been made liable for payment of award as it was the insurer of the vehicle.

6. Having heard the counsel for the parties, this court is of the view that there is no merit in this appeal. The appellants themselves have pleaded in para 7 of their application, before the Claims Tribunal, that Ramcharan, the deceased was a licence holder which was numbered as 411 of 1994. Subsequently, the appellants themselves filed an application for amendment of the original application, admitting the fact that the deceased Ramcharan was not duly licensed driver. He was holding only a learner''s licence. Although, this amendment has been rejected by the Claims Tribunal and the revision filed by the appellants has also been dismissed by this court, the fact nevertheless remains that there is admission on the part of the appellants that the deceased Ramcharan was directed to drive the vehicle by respondent No. 1 without having a regular licence. The admission of the appellants clearly shows that the deceased Ramcharan did not have a regular licence.

7. Under such circumstances, learned Claims Tribunal was of the view that the respondent No. 2, the Oriental Insurance Co. Ltd., is not liable to pay any amount. This decision of the Claims Tribunal appears to be correct and according to the judgment delivered by the Supreme Court in the case of New Indian Assurance Co. Ltd. Vs. Mandar Madhav Tambe and others, . The learned counsel for the appellants has not been able to point out to me that the conditions of insurance did permit the respondent No. 1, the owner to hand over'' the vehicle to a person having a learner''s licence. The definition of learner''s licence under the Motor Vehicles Act, 1988 would not include a person driving a vehicle on - learner''s licence. Under such circumstances, it cannot be said that the respondent No. 1, the owner had handed over the vehicle to a person who was authorised to drive a vehicle.

8. Learned counsel for the appellants, however, tried to argue on the basis of a decision in the case of Sohan Lal Passi Vs. P. Sesh Reddy and others, , that the insurance company shall still be liable to pay the compensation in the case of no fault liability. The purport meaning of the aforesaid decision is very clear. Their Lordships pointed out that the owner is entitled to show that he has handed over a vehicle to a duly licensed driver or there was substantial compliance with the condition of the insurance by handing over the vehicle to a licensed driver. No

 

further relaxation is given to the condition and by making it almost negative. The learned counsel for the appellants has also drawn attention of this court to a decision in the case of National Insurance Company, Jabalpur Vs. Thaglu Singh and Others, . In this case, the Division Bench of this court has rendered a decision regarding the no fault liability. It has been held by the Division Bench that the object of Section 140 of the Motor Vehicles Act, 1988 is to pay the minimum compensation to the victim or to the legal representatives of the deceased. The defence which a company can take u/s 149 of the Motor Vehicles Act, 1988 cannot be looked into for the purpose of defeating the claim on account of no fault liability. Obviously, this decision was rendered by the Division Bench for the purpose of ensuring immediate payment to the claimants. However, it is not necessary to examine the case in detail or where the alleged defences of the insurance company were in dispute as it is not so in this case. The Claims Tribunal is entitled to pass an interim award in accordance with admitted facts of the case. This case is, therefore, distinguishable. In the case before me, it is not a defence of company that the deceased Ramcharan was driving the vehicle while having a learner''s licence. If the admitted facts were true, the respondent No. 2, the Oriental Insurance Co. Ltd., should not have been made a party to the application for claim. However, merely because the respondent No. 2, the Oriental Insurance Co. Ltd. has been made a party to the claim, it does not follow that it is bound to pay the amount by way of no fault liability.

9. Consequently, there is no merit in this appeal. The appeal fails and is accordingly dismissed.

 