

(2019) 05 GAU CK 0095

In the Gauhati High Court

Case No : Motor Accident Appeal No. 321 Of 2013

National Insurance Co Ltd

APPELLANT

Vs

Santana Goswami And Ors

RESPONDENT

Date of Decision : 24-05-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 10, 15, 149, 149(2), 149(2)(7), 149(2)(a)(ii), 163A, 165, 166, 168, 173, 174
Indian Penal Code, 1860 — Section 279, 304A, 427
Motor Vehicles Act, 1939 — Section 96(1), 96(2)(b), 96(2)(b)(ii)
Evidence Act, 1872 — Section 114(g)
Central Motor Vehicles Rules, 1989 — Rule 18
Assam Motor Vehicles Rules, 2003 — Rule 8

Citation : (2019) 05 GAU CK 0095

Hon'ble Judges : Manish Choudhury, J

Bench : Single Bench

Advocate : P Hujuri, Mijanur Rahman

Final Decision : Allowed

Judgement

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 (as amended) (hereinafter referred to as the Act, in short) is directed against the judgment and award dated 15.06.2012 passed by the Member, Motor Accident Claims Tribunal, Kamrup, Guwahati (hereinafter referred to as the Claims Tribunal, in short) in MAC Case No. 520/2007. By the judgment and award dated 15.06.2012, the Claims Tribunal had directed the appellant-insurer of the vehicle bearing registration No. AS-01/Z-7871 to pay an amount of Rs. 15,52,000/- along with interest @ 6 % per annum from the date of filing of the claim application i.e. 09.03.2007 till payment to the respondents-claimants.

2. In order to appreciate the issues involved in this appeal, it is necessary to state the relevant facts. On 05.12.2006, one Dwijen Chandra Goswami (the deceased) was proceeding in a scooter from Baligaon ASEB Divisional Office to Jorhat. As he reached J.B. Chariali on National Highway 37, all of a sudden, a

Tata Indica car bearing registration No. AS-01/Z-7871 (hereinafter is also referred to as the Indica, for convenience), coming from Guwahati side and driven in a rash and negligent manner, hit the scooter of the deceased. As a result of the impact, the deceased sustained grievous injuries and died on the same day in the JDS Civil Hospital, Jorhat where he was taken immediately after the accident. Contending that the Indica was the offending vehicle, a claim application under Section 166 of the Act was filed by the legal representatives of the deceased before the Claims Tribunal on 09.03.2007 seeking compensation for the death of the deceased in an accident arising out of use of motor vehicle. Out of the three claimants, the claimant No. 1 is the wife of the deceased while the claimant No. 2 and the claimant No. 3 are the minor daughter and the minor son respectively of the deceased. The insurer, the owner and the driver of the Indica vehicle were impleaded as opposite party No. 1, opposite party No. 2 and opposite party No. 3 respectively in the claim application. The said claim application was registered and numbered as MAC Case No. 520/2007.

3. On receipt of notices from the Claims Tribunal, all the opposite parties appeared and filed their written statements separately. The owner-insured in his written statement while denying the averments made in the claim application, had contended that on the day of the accident on 05.12.2006, the Indica was duly insured under a valid and effective policy of insurance and as such, the owner was not liable to pay any compensation to the claimants as he was entitled to be indemnified by the insurer of the vehicle. The driver had also denied the contentions made in the claim application through the written statement filed by him and had specifically averred that the accident did not take place due to rash and negligent driving on his part. It was contended that it was the deceased who entered the main road from the by-lane in his scooter suddenly and having seen the scooter, he pressed the brake of the Indica but the brake did not work at that time and as a result, the accident took place. The insurer of the vehicle (hereinafter also referred to as the appellant-insurer and/or the appellant), in its written statement, had admitted that the Indica bearing registration No. AS-01/Z-7971, at the relevant time, was covered by a policy of insurance issued by it. It was further contended that the insurer was not liable to pay any compensation until and unless it was proved that the driver had a valid driving licence and the terms and conditions of the insurance policy were duly followed by the owner-insured.

4. On the basis of the pleadings made by the parties, the Claims Tribunal framed the following issues for adjudication :-

(1) Whether the victim, Dwijen Ch. Goswami, died as a result of the injuries sustained in the alleged road accident dated 05.12.2006 involving vehicle No. AS-01/Z-7871 and whether the said accident took place due to rash and negligent driving of the driver of the offending vehicle?

(2) Whether the claimant is entitled to receive any compensation and if yes, to what extent and by whom amongst the opposite parties, the said compensation

amount will be payable?"

5. In support of the claim application, the claimants' side examined 3 (three) witnesses viz. P.W.1 - Smti. Santana Goswami, the claimant No. 1 and the wife of the deceased; P.W.2 - Sri Deba Kumar Saikia, Deputy Manager, ASEB, Jorhat Electrical Division No. 1, Jorhat and P.W.3 - Sri Dambaru Saikia, an eye-witness to the accident. The appellant-insurer had also examined 2 (two) witnesses. In so far as the matter of just compensation embodied in Issue No. 2 is concerned, it was established from the evidence on record that the deceased was working as a Junior Engineer in ASEB Sub-Divisional Office and was getting a gross salary of Rs. 18,125/- per month and as per his service book, the date of birth of the deceased was 01.01.1960. Accepting the same, the Claims Tribunal had adopted a multiplier of '13' placing the deceased in the age group of 45-50 years for computing the loss of dependency. The salary certificate of the deceased for the month of November, 2006 was exhibited as Ext.-8, wherein, a deduction of Rs. 208/- per month was shown under the head of professional tax. Considering the fact that to arrive at the actual income for the purpose of assessing the loss of dependency, statutory deduction like income tax or professional tax, etc. were to be deducted from the gross income, the Claims Tribunal, upon consideration of the pay drawn by the deceased, was of the view that his income tax would not be more than Rs. 20,000/- per annum. The Claims Tribunal after deduction of taxes - professional tax and the income tax - from his gross salary, had decided that the actual annual income of the deceased would be Rs. 1,95,004/- (Rs. 18,125/- X 12 - Rs. 22,496/-). In view of the principle as regards future prospects laid down in the decision of Smt. Sarla Verma and others vs. Delhi Transport Corporation, reported in (2009) 6 SCC 171, addition of 30% of the actual salary was made by the Claims Tribunal in view of the fact that the deceased was below 50 years of age and was in a permanent job. With the addition of future prospects to the extent of 30%, the Claims Tribunal assessed the annual income of the deceased at Rs. 2,53,505/- [Rs. 1,95,004/- + Rs. 58,501/- (30% of Rs. 1,95,004/-)]. By making deduction of 1/3rd on account of personal and living expenses of the deceased in view of the number of dependents, the Claims Tribunal had assessed the annual loss of dependency to the dependents at Rs. 1,69,003/- (say, Rs. 1,69,000/-). On the basis of the above, the Claims Tribunal had arrived at the total loss of dependency at Rs. 21,97,000/- (= Rs 1,69,000/- X 13). By making additions of Rs. 5,000/-, Rs. 5,000/- and Rs.10,000/- for the conventional heads of funeral expenses, loss of estate and loss of consortium respectively, the Claims Tribunal had arrived at the total compensation amount of Rs. 22,17,000/-.

6. The manner, mentioned above, in which the Claims Tribunal had arrived at the total amount of compensation is not assailed by any of the parties including the appellant-insurer. The Claims Tribunal had held that the deceased also contributed to the accident and his extent of contributory negligence had been decided at 30%. By making deduction of 30% from the afore-mentioned total amount of compensation of Rs. 22,17,000/-, the Claims Tribunal had held that

the balance amount of 70% (= Rs. 22,17,000/- X 70%) i.e. Rs. 15,51,900/, say, Rs. 15,52,000/- was liable to be paid jointly and severally by the insurer, the owner and the driver of the Indica. As the Indica was covered by a policy of insurance, the said amount has been directed to be paid by the appellant-insurer within a period of one month from the date of the award and it is this direction which is assailed in the instant appeal by the appellant-insurer contending that there was wilful violation on the part of the owner of the vehicle and there was breach of the terms and conditions of the policy of insurance by him as the vehicle at the relevant point of time was driven by a driver holding a fake licence.

7. I have heard Mr. R.K. Bhatra, learned counsel for the appellant-insurer and also Mr. M. Dutta, learned counsel for the respondent Nos. 1, 2 and 3-claimants. Notices on the respondent No. 4 and the respondent No. 5 who are the owner and the driver respectively of the Indica involved in the accident, had been found to be duly served. But no appearance has been made on their behalf in the instant appeal.

8. Mr. Bhatra, learned counsel for the appellant-insurer has submitted that the driver of the offending Indica was not duly licensed at the time of the accident and the owner-insured of the Indica despite knowing fully well about the fake nature of the driving licence, had engaged him to drive the vehicle. As such, there was breach and wilful violation of the terms and conditions of the policy of insurance on the part of the owner-insured of the Indica and for that reason, the appellant-insurer cannot be held liable to indemnify the said owner-insured. It is further submitted that collusion between the owner and the driver could be easily inferred from the subsequent acts they had adopted during the course of the proceeding before the Claims Tribunal. Referring to the written statements filed separately on their behalf, the learned counsel has submitted that none of them had specifically addressed the issue of driving licence. In his written statement, the driver did not mention anything about his driving licence, not to speak of its validity or otherwise. It is further submitted that the insurer had, by leading evidence, established the fact of breach of the terms and conditions of the policy of insurance on the part of the owner-insured of the Indica. The learned counsel for the appellant-insurer has also assailed the finding of the Claims Tribunal as regards the extent of contributory negligence attributed to the Indica.

9. Per contra, Mr. Dutta, learned counsel for the respondents-claimants has submitted that from the evidence on record, it is not possible to reach a conclusion that there was breach of the terms and conditions of the policy of insurance on the part of the owner-insured of the Indica. While admitting that renewal could not make a fake driving licence valid, he has submitted that it cannot be said, in the instant case, that there was lack of due diligence on the part of the owner-insured of the Indica and, as such, the direction made by the Claims Tribunal requiring the insurer of the Indica to pay the compensation to the claimants, thereby, rejecting the contention of the insurer to recover from the same from the owner, is not unjustified. He has submitted that the finding on

the aspect of contributory negligence is also not to be interfered with.

10. I have duly considered the submissions made by the learned counsels for the parties. The learned counsels for the parties have referred to the evidence on record to substantiate their respective contentions and have also relied on a number of decisions of the Supreme Court, which will be referred to in the later part of this judgment. I have perused the materials available on records including the oral and documentary evidence led by the parties before the Claims Tribunal.

11. Two issues that have arisen for adjudication in the instant appeal are, firstly, whether the finding of the Claims Tribunal as regards inter-se extent of contributory negligence between the scooter and the Indica, requires any interference; and secondly, whether there was breach and wilful violation of the terms and conditions of the insurance policy on the part of the owner-insured of the Indica which would exonerate the appellant-insurer from the liability to indemnify the owner-insured in respect of the compensation directed to be paid by the Claims Tribunal and there should be a direction to the insurer satisfy the award first with the liberty to recover the same from the owner-insured.

12. Having considered the above submissions made on behalf of the parties on the aspects of contributory negligence and the breach of the policy condition, it appears necessary to examine the evidence led on those aspects by the parties to find out as to whether the insurer was successful or unsuccessful in discharging the burden to establish the fact of breach on the part of the owner-insurer of the Indica.

13. The claimant No. 1 as P.W.1, in her evidence, had reiterated the facts mentioned in the claim application, indicated above. In support of her oral evidence, the claimant No. 1, inter-alia, exhibited a number of documents including Ext.-1 - Accident Information Report in Form 54; Ext.-2 - Post-Mortem Examination Report; Ext.-5 - Driving Licence of the deceased; Ext.-6 - First Information Report dated 05.12.2006 of Jorhat Police Station Case No. 651/2006 and Charge-sheet dated 31.01.2007 submitted in Jorhat Police Station Case No. 651/2006. Admittedly, the claimant No.1 was not an eye-witness to the accident and it was P.W.3 who was an eye-witness to the accident. From the evidence of P.W.3, it is found that the deceased i.e. the scooterist was coming from the side of Baligaon and when he arrived on the National Highway, Jorhat by-pass, he was hit by the Indica which was coming from the side of Pulibar and was proceeding towards Sibasagar side on the National Highway. The Claims Tribunal on appreciation of his evidence along with other evidence had found that the scooter was not hit from the rear or front but it was hit from the side. P.W.3, in cross-examination, stated that the by-pass road was a big one and the vehicles ply at high speeds. The Claims Tribunal on appreciation of the evidence, observed that from the evidence of P.W.3, it could be inferred that the deceased also partly contributed to the accident and he suddenly arrived on the by-pass road without caring to ascertain whether there was any movement of vehicles plying on the main road. It appears that the deceased did not act in a prudent and reasonable

manner and had he done so, he could have avoided the accident. As P.W.3 testified that the Indica was driven at a high speed for which its driver lost control and hit the scooter, it was in these facts and circumstances, the Claims Tribunal attributed the inter-se extent of contributory negligence to the accident at 30% and 70% on the part of the deceased and on the part of the driver of the Indica respectively.

14. I have also perused the contents of the charge sheet dated 31.01.2007 (Ext.-6) filed in connection with Jorhat Police Station Case No. 651/2006 against the driver of the Indica finding a prima facie case against him under Section 279/304A/427, Indian Penal Code. On a careful perusal of the evidence on record and the findings arrived at by the Claims Tribunal, I find no good reason to make any interference as regards the finding of the Claims Tribunal on the aspect of inter-se extent of contributory negligence on the part of the two vehicles. The Claims Tribunal appeared to have proceeded on the premise that the bigger the vehicle, the greater the extent of liability. In my considered opinion, the said finding of the Claims Tribunal is not to be interfered with.

15. D.W. 1, Sri Santanu Kumar Baruah was a Senior Assistant in National Insurance Company Limited i.e. the appellant-insurer who filed his evidence on affidavit. He deposed that the Indica was insured with the appellant-insurer at the time of the accident. He further deposed that at the time of the accident, the Indica was driven by one Md. Abdur Rahman having driving licence No. F-1856/98/EZKV/87 valid up to 23.12.2007. He also deposed that to verify the genuineness of the said driving licence, the insurer engaged an independent investigator, Sri Bankim Das (D.W.2), who enquired into the matter in the office of the District Transport Officer (D.T.O.), Kamrup by making an application. He deposed that the D.T.O., Kamrup after checking the driving licence details, gave a written report under his seal and signature on the body of the said application itself stating that the original driving licence No. 11212/TNS/95 was issued on 26.09.1995 and from the report, it was revealed that the said driving licence was originally issued from the office of the District Transport Officer (D.T.O.), Nagaland. On getting the said report from the D.T.O., Kamrup, the investigator visited the office of the D.T.O., Tuensang, Nagaland and filed an application dated 30.04.2007 before the D.T.O., Tuensang requesting him to give a report as regards the driving licence No. 11212/TNS/95 issued on 26.09.1995 from the said office. The D.T.O., Tuensang gave his report on the body of the said application itself under his seal and signature and from the said report, it was revealed that no such driving licence was issued in the name of Md. Abdur Rahman. D.W.1 exhibited a copy of the insurance policy bearing No. 200600/31/06/6100000560 valid from 09.06.2006 to 08.06.2007 as Ext.-A. In his cross examination, D.W.1 stated that as per the terms of the insurance policy, any person holding a valid driving licence was entitled to drive the vehicle and the holder of the driving licence No. F-1856/98/EZ/KV/87 valid up to 23.12.2007 was endorsed to drive Motorcycle/LMV/MMV/HMV/PSV. The said licence was renewed by the D.T.O., Kamrup and he admitted that the D.T.O., Kamrup had not

adduced any evidence to prove his report.

16. D.W.2, Sri Bankim Das was the independent investigator who was engaged by the insurer to investigate, inter-alia, about the driving licence No. F-1856/98/EZ/KV/87 issued to Md Abdur Rahman. This witness reiterated the same facts like D.W.1. D.W.2 along with his engagement letter dated 09.04.2007 exhibited the copy of his application dated 30.04.2007 made to the D.T.O., Tuensang, whereon, the D.T.O., Tuensang also made his written report, as Ext.-B. D.W.2 further stated that from the report of the D.T.O., Tuensang, it was revealed that no driving licence No. 11212/TNS/95 was issued from the office of the D.T.O., Tuensang on 26.09.1995. In his cross examination, D.W.2 had admitted that he did not submit the report given by the D.T.O., Kamrup.

17. In the above conspectus of facts, it is to be considered as to whether in the instant case, the appellant-insurer is entitled to recover the compensation from the owner-insured having successfully discharged the burden of proving breach of the terms and conditions of the policy of insurance on the part of the owner-insured of the Indica or there was failure on the part of the appellant-insurer to discharge the said burden.

18. The primary responsibility of the owner of a motor vehicle, as per the provisions of the Act, is to ensure that his motor vehicle is driven by a person duly licensed under the Act. No motor vehicle shall be driven in any public place by a person unless he holds a valid and effective driving licence issued to him by the concerned Licensing Authority to drive such vehicle. The Act provides for compulsory insurance of motor vehicle against third party risks to extend relief by way of just compensation to victims of accident caused by the use of motor vehicle. Section 149 of the Act pertains to the duty of an insurer to satisfy judgments and awards passed against persons insured in respect of third party risks. An insurer is entitled to raise a defense in a claim application filed under Section 163A/166 of the Act, as available under the provision of Section 149 of the Act. One of the available defenses that an insurer is permitted to take is that the offending vehicle was driven by a person who did not hold a valid driving licence. The breach of terms and conditions of the insurance policy in the context of Section 149 (2)(a)(ii) of the Act has to be proved to have been committed by the insured by cogent evidence.

19. The word "breach" appearing in Section 96(2)(b)(ii), Motor Vehicles Act, 1939 came to be considered in the *Skandia Insurance Co. Ltd. vs. Kokilaben Chandravadan and others*, reported in (1987) 2 SCC 654. It may be noted that Section 96(2)(b)(ii), Motor Vehicles Act, 1939 is identical to Section 149(2)(a)(ii), Motor Vehicles Act, 1988. The relevant parts of Section 96(2)(b)(ii), Motor Vehicles Act, 1939 and Section 149(2)(a)(ii), Motor Vehicles Act, 1988 read as under :-

The Motor Vehicles Act, 1939 :-

"96. Duty of insurers to satisfy. -

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice through the Court of the bringing of the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely :-

(a) -----

(b) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i) -----

(ii) 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 licence during the period of disqualification; or

(iii) -----
-----"

The Motor Vehicles Act, 1988 :-

"149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. -

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely -

(i) -----

(ii) 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 licence during the period of disqualification; or

(iii) -----
-----";

20. The word "breach" has been interpreted to be "infringement or violation of a promise or obligation". In order to avoid the liability under Section 96(2)(b)(ii), Motor Vehicles Act, 1939 / Section 149(2)(a)(ii), Motor Vehicles Act, 1988, the insurer must be able to show that there was "breach" of terms and conditions of the policy on the part of the owner-insured of the motor vehicle. Imparting prime significance to the expression "breach" the Supreme Court in the case of Skandia Insurance (supra), has explained the same in the following words :-

"14. Section 96(2)(b)(ii) extends immunity to the insurance company if a breach is committed of the 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 from holding or obtaining a driving licence during the period of disqualification. The expression "breach" is of great significance. The dictionary meaning of "breach" is "infringement or violation of a promise or obligation" (see Collins English Dictionary). It is therefore abundantly clear that the insurer will have to establish that the insured is guilty of an infringement or violation of a promise that a person who is duly licensed will have to be in charge of the vehicle. The very concept of infringement or violation of the promise that the expression "breach" carries within itself induces an inference that the violation or infringement on the part of the promisor must be a wilful infringement or violation. If the insured is not at all at fault and has not done anything he should not have done or is not amiss in any respect how can it be conscientiously posited that he has committed a breach? It is only when the insured himself places the vehicle in charge of a person who does not hold a driving licence, that it can be said that he is "guilty" of the breach of the promise that the vehicle will be driven by a licensed driver. It must be established by the insurance company that the breach was on the part of the insured and that it was the insured who was guilty of violating the promise or infringement of the contract. Unless the insured is at fault and is guilty of a breach the insurer cannot escape from the obligation to indemnify the insured and successfully contend that he is exonerated having regard to the fact that the promisor (the insured) committed a breach of his promise....."

21. In Sohan Lal Passi vs. P. Sesh Reddy, reported in (1996) 5 SCC 21, the issue involving driving licence in the context of Section 96(2)(b)(ii), Motor Vehicles Act, 1939 was again considered by a three-Judge Bench when the insurer doubted the correctness of the interpretation given in Skandia Insurance (supra). In Sohan Lal Passi (supra), the three-Judge Bench had, inter-alia, observed as under :-

"12.The expression "breach" occurring in Section 96(2)(b) means infringement or violation of a promise or obligation. As such the insurance company will have to establish that the insured was guilty of an infringement or violation of a promise. The insurer has also to satisfy the Tribunal or the Court that such violation or infringement on the part of the insured was wilful. If the insured has taken all precautions by appointing a duly licensed driver to drive the

vehicle in question and it has not been established that it was the insured who allowed the vehicle to be driven by a person not duly licensed, then the insurance company cannot repudiate its statutory liability under sub-section (1) of Section 96. Unless it is established on the materials on record that it was the insured who had wilfully violated the condition of the policy by allowing a person not duly licensed to drive the vehicle when the accident took place, the insurer shall be deemed to be a judgment-debtor in respect of the liability in view of sub-section (1) of Section 96 of the Act....."

22. The principle laid down in *Skandia Insurance (supra)* and *Sohan Lal Passi (supra)*, that in order to avoid liability, it must be shown by the insurer that there was "breach" on the part of the insured, was agreed to also in the case of *United India Insurance Co. Ltd. vs. Lehu and others*, reported in (2003) 3 SCC 338, which was a case involving allegedly a fake driving licence and Section 149(2)(a)(ii), Motor Vehicles Act, 1988. In *Lehu (supra)*, it has been held that in order to avoid liability, it is not sufficient to show that the person driving at the time of accident was not duly licensed but it is also to be established by the insurer that the breach was on the part of the insured, in that the insured was aware or had noticed that the licence was fake and he thereafter also, allowed that person to drive.

23. In a three-Judge Bench decision in *National Insurance Co. Ltd. vs. Swaran Singh and others*, reported in (2004) 3 SCC 297, the Supreme Court after considering many earlier decisions on a number of issues including on validity of driving licence qua liability of the insurer under Section 149(2)(a)(ii), Motor Vehicles Act, 1988, summarized its findings in para 110 of the judgment as under :-

"110. 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) An insurer is entitled to raise a defence in a claim petition 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 the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has 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 the 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) Insurance companies, 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 wherefor would be on them.

(v) The Court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances 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 the 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 fulfil 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 sub-section (4) with the proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the 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 the 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.

24. It is, thus, laid down in Swaran Singh (supra) that the insurance company with a view to avoid its liabilities is not only required to show that the conditions laid down under Section 149(2) (a)(ii) are satisfied but is further required to establish that there has been a breach on the part of the insured. Such a breach on the part of the insured must be established by the insurer to show that the insured used or caused or permitted to be used the vehicle in breach of the Act. Under the Act, holding of a valid driving licence by the driver is one of the conditions of contract of insurance. The said proposition has also been explained in Swaran Singh (supra) as under :-

"69. The proposition of law is no longer *res integra* that the person who alleges breach must prove the same. The insurance company is, thus, required to establish the said breach by cogent evidence. In the event, the insurance company fails to prove that there has been breach of conditions of policy on the part of the insured, the insurance company cannot be absolved of its liability (See. *Sohan Lal Passi vs. P. Sesh Reddy*, (1996) 5 SCC 21)).

70. Apart from the above, we do not intend to lay down anything further i.e. degree of proof which would satisfy the aforementioned requirement inasmuch as the same would indisputably depend upon the facts and circumstances of each case. It will also depend upon the terms of contract of insurance. Each case may pose a different problem which must be resolved having regard to a large number of factors governing the case including conduct of parties as regards duty to inform, correct disclosure, suppression, fraud on the insurer etc. It will also depend upon the fact as to who is the owner of the vehicle and the

circumstances in which the vehicle was being driven by a person having no valid and effective licence. No hard-and-fast rule can, therefore, be laid down. If in a given case there exists sufficient material to draw an adverse inference against either the insurer or the insured, the Tribunal may do so. The parties alleging breach must be held to have succeeded in establishing the breach of conditions of the contract of insurance, on the part of the insurer by discharging its burden of proof. The Tribunal, there cannot be any doubt, must arrive at a finding on the basis of the materials available on records."

25. Upon consideration of the decision in *Swaran Singh* (supra), the Supreme Court in the case of *National Insurance Co. Ltd. vs. Laxmi Narain Dhut*, reported in (2007) 3 SCC 700, had noted down the situations in which the driver of a motor vehicle cannot be said to be duly licensed -

- (a) the driver had a driving licence but it was fake;
- (b) the driver had a driving licence which originally was fake but the same was renewed subsequently by a proper licensing authority;
- (c) the driver had no licence at all;
- (d) the driver originally had a valid licence but it had expired as on the date of the accident and had not been renewed;
- (e) the licence was for a class of vehicles other than that which was the insured vehicle;
- (f) the licence was a learner's licence.

26. As could be seen from the aforementioned situations, certain types of breaches are fundamental in character and are ex-facie apparent. If the driver had no licence at all, it is not open for the insured to say that he had engaged a duly licensed driver to drive his vehicle when the said vehicle got involved in an accident. In *Swaran Singh* (supra), it is observed that the Court cannot lay down any criteria as to how the said burden would be discharged inasmuch as the same would depend upon the facts and circumstances of each case.

27. In order to appreciate the burden to be discharged by the insurer in case it raises the breach of condition as regards absence of driving licence, the factual matrix involved in the case of *Sohan Lal Passi* (supra) may be noticed. Initially, the Claims Tribunal discharged the insurance company from the liability and directed the owner and the driver to pay the compensation amount awarded. The insured-owner of the bus authorised his driver who had the licence to drive a bus, to drive the bus to carry passengers but the said driver allowed the cleaner/conductor of the bus, also an employee of the owner, to drive the bus without any authority from the owner. The cleaner/conductor driving the bus caused the accident by hitting a scooter which resulted in death of the scooterist. It was observed therein that the accident took place when the act authorised was being performed in a mode which might not be proper but nonetheless it was directly

connected within the course of employment as the cleaner/conductor was driving the bus with a consent or knowledge of the driver for the business of the owner i.e. to carry the passengers and not for his personal benefit. A defence was raised on behalf of the insurer under Section 96(2)(b)(ii) of the Motor Vehicles Act, 1939, which is *pari-materia* to Section 149(2)(a)(ii) of the Motor Vehicles Act, 1998, to the effect that there was breach of condition of the insurance policy by the insured-owner which excluded driving by any person who was not duly licensed. It was therein held that the insurer was required to establish wilful violation of the condition of insurance policy by the insured-owner. The insured-owner had authorised his duly licensed driver to drive the bus but the driver allowed the cleaner/conductor of the bus to drive and the accident took place when the cleaner/conductor was driving the bus. It was observed that the insured-owner had taken all precautions by appointing a duly licensed driver to drive the bus and it was not established that it was the insured-owner who allowed the bus to be driven by person not duly licensed. As it was not established from the materials on records that it was the insured-owner who had wilfully violated the condition of the insurance policy by allowing a person not duly licensed to drive the bus when the accident took place, it was held that the Insurance Company could not avail the defence available under Section 96(2)(b)(ii) of the Motor Vehicles Act, 1939 as the insured-owner was not found guilty of breach of condition of the insurance policy for the reason that he had employed a driver who was duly licensed. The Supreme Court allowing the appeal by the owner-insured, held that the insurance company shall be deemed to the judgment-debtor.

28. In *New India Assurance Company Limited vs. Kamla and others*, reported in 2001 ACJ 843, the matter in issue was a driving licence which was renewed on the basis of a licence which originally was fake. Death of three passengers in a truck occurred when it capsized and the insurance company disputed its liability on the plea when the driver of the offending vehicle had a fake driving licence which was renewed after accident. The owner deposed that he engaged the driver after satisfying himself that he had a valid licence. The insurance company sought to raise the defence available to it under Section 149 (2)(a)(ii) of the Act by seeking permission from the Claims Tribunal to lead evidence for prove that the licence was a fake one after examining three witnesses on its behalf. But the said application was rejected by the Claims Tribunal and in appeal, the High Court found that the insurance company had not adduced sufficient evidence to discharge the burden which was imposed on it. The matter before the Supreme Court was as to whether the insurance company should have been given opportunity to substantiate its contention that licence was forged. It was in such situation, the Supreme Court has held as under : -

"25. The position can be summed up thus :

The insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy

condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence. Learned counsel for the insured contended that it is enough if he establishes that he made all due enquiries and believed bona fide that the driver employed by him had a valid driving licence, in which case there was no breach of the policy condition. As we have not decided on that contention it is open to the insured to raise before the Claims Tribunal. In the present case, if the insurance company succeeds in establishing that there was breach of the policy condition, the Claims Tribunal shall direct the insured to pay that amount to the insurer. In default the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimant-third parties) from the insured person."

By observing so, the matter was remitted to the Claims Tribunal granting opportunity to the parties concerned for adducing evidence in that regard.

29. In the matter of a driving licence which originally was fake but the same was renewed subsequently by a proper licensing authority, the following observations made in *Kamla* (supra) may profitably be referred :-

"12. As a point of law we have no manner of doubt that a fake licence cannot get its forgery outfit stripped off merely on account of some officer renewing the same with or without knowing it to be forged. Section 15 of the Act only empowers any licensing authority to "renew a driving licence issued under the provisions of this Act with effect from the date of its expiry." No licensing authority has the power to renew a fake licence and, therefore, a renewal if at all made cannot transform a fake licence as genuine. Any counterfeit document showing that it contains a purported order of a statutory authority would ever remain counterfeit albeit the fact that other persons including some statutory authorities would have acted on the document unwittingly on the assumption that it is genuine."

30. In *National Insurance Co. Ltd. vs. Kusum Rai*, (2006) 4 SCC 250, the vehicle (Jeep) was a commercial vehicle and the same was being used as a taxi. The driver of the said vehicle was required to hold an appropriate driving licence. The driver, who was allegedly driving the said vehicle at the relevant time, was holder of a driving licence to drive light motor vehicles (LMVs) only and he did not possess any licence to drive a commercial vehicle. Therefore, there was a breach of condition of the contract of insurance. The Supreme Court, in the background of said facts, concluded that the owner of the vehicle could not contend that he had no liability to verify the fact as to whether the driver of the vehicle was possessing a valid driving licence or not. The breach in that case was so fundamental and apparent ex-facie that the Supreme Court held that the appellant-insurer was not liable to pay the claim amount as the driver was not in possession of a valid driving licence. Accepting the defence of the insurer, the Supreme Court permitted the insurer to recover the amount from the owner of

the vehicle.

31. From the case in *Premkumari and others vs. Prahlad Dev and others*, (2008) 3 SCC 193, it could be inferred that when the owner after verification has got himself satisfied that the driver has a valid licence and driving the vehicle in question competently at the time of the accident there would be no breach of Section 149(2)(a)(ii) and in that event, the insurance company would not be absolved of the liability. It is also clear that even in the case that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner was aware or noticed that the licence was fake and still permitted him to drive.

32. In *Singh Ram vs. Nirmala and others*, reported in (2008) 3 SCC 800, the offending vehicle involved was a motorcycle driven by its owner-cum-driver who did not hold a valid driving licence at the time of the accident. The driving licence produced by the owner-cum-driver was found to be fake on the basis of oral evidence of an official from the office of the R.T.O., Agra and documentary evidence in the form of the report from the Motor Vehicles Department, Agra. It was found therein that the owner tried to prove that he held a valid driving licence to drive motorcycle by seeking permission to produce additional evidence but rejecting the prayer for additional evidence, it was observed that the licence which was sought to be produced was for a tractor and car valid only until 29.08.2009. The accident took place on 22.03.2010 i.e. after it had expired. It was, on those facts, held that on the date of the accident, the owner-cum-driver was neither holding a valid and effective driving licence nor the expired driving licence was renewed, as required in law. It was in such fact situation, the insurer was absolved of its liability under Section 149(2) of the Act. It was observed that it was evident that the owner-cum-driver failed to take reasonable care since he could not have been unmindful of facts which were within his own knowledge. Therefore, the direction to the insurance company to pay the compensation and thereafter, to recover the same from the owner-cum-driver of the offending motor cycle was not disturbed. In *Singh Ram (supra)*, the breach on the condition of driving licence was fundamental in nature in that it was the owner-cum-driver himself, without holding a valid and effective driving licence, caused the accident and the breach on his part was clearly established.

33. In *Oriental Insurance Company Limited vs. Zaharulnisha and others*, reported in (2008) 12 SCC 385, the driver Ram Surat was possessing a driving licence for heavy motor vehicle (HMV) only and not for two-wheelers and he driving a two-wheeler scooter in a rash and negligent manner, hit one Shukurullah and as a result, Shurukullah sustained grievous injuries and thereafter, died. It was contended that as the driver was holding a driving licence to drive HMV only, he had no valid licence to drive a two-wheeler scooter which is totally a different class of vehicle in terms of Section 10 of the Act. It was, therefore, held that the appellant insurance company had a valid defence under Section 149(2)(a)(ii) to avoid its liability and in view of the breach of the

provisions of the Motor Vehicles Act, 1988, the appellant insurance company cannot be held liable in terms of Section 149(2) of the Act. Even though the appellant insurance company was found not liable to satisfy the award, the appellant insurance company was directed to satisfy the award and to recover the amount with interest from the vehicle owner. In *Zaharulnisha (supra)*, the breach was fundamental because the owner from a look at the driving licence itself could have found out that the driver did not possess any valid and effective licence to drive the two-wheeler and in such view of the matter, the appellant insurance company was found to have successfully raised the valid defence under Section 149(2)(a)(ii) to avoid its liability. The ratio of the said case is not applicable facts and circumstances of the instant case.

34. In *New India Insurance Company Limited vs. Kusum and others*, (2009) 8 SCC 377, it was found that the driver of the offending bus did not possess a valid driving licence and in such situation, it was held that the primary liability to pay the awarded amount was that of the driver and owner of the bus. Directing the appellant-insurer to deposit the amount, the Supreme Court held that the insurer may recover the same from the owner and the driver. The driving licence of the driver of the said bus was proved to be invalid and the owner did not raise any contention that he used due diligence in allowing the driver to drive the vehicle. The fact situation obtaining in the said case is not similar to the instant case in that the breach on the part of the owner of the vehicle was so fundamental that he could have noticed the invalidness of the driving licence on perusal of the licence itself.

35. In *Pappu and others vs. Vinod Kumar Lamba and another*, (2018) 3 SCC 208, direction was also to the insurer to pay the compensation amount awarded by the Claims Tribunal to the claimants in the first instance, with liberty to recover the same from the owner of the vehicle in accordance with law taking into consideration the decision and applying the dictum in *Swaran Singh (supra)*. The insurer was absolved from the liability in respect of a truck which was duly insured by it on the ground that the same was not driven by a person having a valid driving licence. On a close perusal of the facts involved therein, it transpired that in the claim petition, the name of the driver and the offending truck was not mentioned. In the reply filed by the owner of the offending truck he did not mention the name of the driver of the offending truck and he only asserted that the truck was comprehensively insured by the insurance company for unlimited liability. Only a vague assertion was made in the written statement that on the alleged date of the incident, the offending truck was plied by an authorised person having a valid driving licence. It was found that the owner of the offending truck did not produce any evidence except a driving licence on one Joginder Singh. It was observed therein that without disclosing name of the driver in the written statement and without producing any evidence to substantiate the fact that the copy of the driving licence produced in support was of a person who, in fact, was authorised to drive the offending vehicle at the relevant time, the owner of the vehicle cannot be said to have extricated himself

from his liability. It was held that the insurance company would become liable only after such foundational facts are pleaded and proved by the owner of the offending vehicle.

36. In the instant case, in the claim application, both the driver and the owner of the offending Indica were impleaded as opposite parties. In para 16 of the claim application, the driving licence number of the driver bearing No. FS1856/98/EZ/KV/87 valid up to 23.12.2007 was clearly mentioned unlike in the case of Pappu (*supra*). The insurer here was very much aware about the name and address of the driver and his details including the driving licence number from the very first date of receipt of notice from the Claims Tribunal in MAC Case No. 520/2007. In the claim application, all the necessary details were found mentioned e.g. the name of the deceased, his address, age, occupation, salary, etc; the place, date and time of accident; the police station case number; the name and address of the owner as well as the registration number of the offending vehicle, the name, address and driving licence number of the driver; the insurance policy number of the vehicle, etc. It was not the case of the insurer that they were not aware about the driving licence of the driver of the offending Indica for a longer period of time. On perusal of the case records, it is noticed that the claim application was instituted on 09.03.2007 and the insurer vide Ext.-A appointed an investigator i.e. D.W.2 on 09.04.2007 to enquire about the genuineness of the driving licence of the driver of the offending Indica. In the said conspectus of facts, it cannot be said that the insurer was, in any way, unaware about the particulars of the driving licence.

37. The plea taken by the appellant-insurer in the instant case is that the driver, Md. Abdur Rahman had, at the time of the accident on 05.12.2006, a driving licence No. F-1856/98/EZ/KU/87 valid up to 23.12.2007, which was renewed by the office of the District Transport Officer (D.T.O.), Kamrup allegedly on the basis of a driving licence No. 11212/TNS/95 issued on 26.09.1995 by the office of the District Transport Officer (D.T.O.), Tuensang, Nagaland which originally was fake. To raise and to successfully establish such defence permitted under Section 149 (2)(a)(ii) of the Act as regards not duly licensed, the insurer must have to establish, firstly, that there was breach of the terms and conditions of the policy of insurance by the insured-owner in that the vehicle at the relevant point of time was driven by a driver who was not duly licensed and, secondly, that the insured-owner was guilty of wilful infringement or violation in that he was aware or had noticed that the licence was fake and he thereafter also, allowed that person to drive. The burden to prove the above two aspects is on the insurer and unless and until both the above facts are not established, the insurer is not extricated from the liability to satisfy the awarded amount and will not be granted the liberty to recover the said amount from the insured-owner. It is settled position of law that renewal of a fake driving license does not make the renewed driving licence a genuine and valid one. It is also settled that no licensing authority has the power to renew a fake driving licence and a renewal by a licensing authority of a forged driving licence with or without knowing it to

be forged, does not change the nature and character of the original forged driving licence into a genuine and valid driving licence.

38. Section 15 of the Act has laid down the procedure for renewal of driving licences. It provides, inter-alia, that any licensing authority may renew a driving licence issued under the provisions of the Act. An application for such renewal of a driving licence is to be made in a form and is to be accompanied by documents, prescribed by the Central Government. Rule 18 of the Central Motor Vehicles Rules, 1989 provides that an application for the renewal of a driving licence shall be made in Form-9 to the licensing authority having jurisdiction over the area in which the applicant ordinarily resides or carries on business and shall be accompanied by the appropriate fee, the requisite number of photographs and the driving licence in case renewal is sought for a licence to drive vehicles other than a transport vehicle. It is also provided therein that where the licensing authority renewing the driving licence is not the licensing authority who issued the driving licence the fact of the renewal shall be intimated to the licensing authority who originally issued the driving licence. Rule 8 of the Assam Motor Vehicles Rules, 2003 prescribes that when any licensing authority other than the original licensing authority renews a driving licence he shall forthwith intimate the original licensing authority about the fact of such renewal.

39. In the case in hand, as has been mentioned above, the appellant-insured was given the opportunity to lead evidence to substantiate and establish its plea of breach of policy condition on the part of the insured and to establish such plea, the insurer had examined two witnesses and exhibited two documents. As regards diligence required on the part of an owner to be engaged by him, the following excerpts from the decision in *Lehru* (supra) is of relevance :-

"20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. 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 the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with RTO's, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus 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). The insurance company would not then be absolved of liability. If it ultimately turns out that the licence was fake the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in *Skandia*, *Sohan Lal Passi* and *Kamla's case*. We are in full agreement with the views expressed therein and see no reason to take a different view.

40. It may not be possible for an owner presumably of normal prudence to find out the validity or otherwise of a driving licence by a mere look at the driving licence produced by a person who is likely to be employed by him as a driver when the driving licence so produced is renewed by a competent licensing authority. An enquiry at the office of the said competent licensing authority about the driving licence would, in all possibility, be answered to the effect that the driving licence has been issued by the said licensing authority by way of renewal of another driving licence issued by another competent licensing authority. It is quite natural for an owner in such situation to presume that the competent licensing authority has issued the driving licence by way of renewal only after adherence to the due and requisite procedure. It is not possible for a man of normal prudence to perceive that the competent licensing authority who renewed the driving licence, did not verify the genuineness of the driving licence produced by the applicant or ignored to adhere to the procedure laid down in the statute and rules. Unlike few of the situations discussed above, a case of driving licence which is renewed by a competent licensing authority on the basis of a driving licence issued by another competent licensing authority which is actually forged is difficult to detect and such a "breach" is not ex-facie apparent and not fundamental in character and the burden on the insurer in such a case is heavier than usual as he has to further prove that the insured-owner is guilty of wilful infringement or violation. Only a deeper enquiry with both the licensing authorities from the owner is likely to lead to the result about the forged nature of the driving licence and such deeper probe is not expected of the owner to rebut the allegation of lack of due diligence and reasonable care in the context of Section 149 (2)(a)(ii) of the Act.

41. A perusal of Ext.-B shows that the D.T.O., Tuensang had certified that the driving licence No. 11212/TNS/95 in the name of Md. Abdur Rahman was not issued from the office of the D.T.O., Tuensang, Nagaland. When the testimonies of D.W.1 and D.W.2 are read together, it is noticed that both these witnesses claimed that the D.T.O., Kamrup had given a written report under his seal and signature on the body of the application made by D.W.2 stating, inter-alia, that the driving licence No. F-1856/98/EZ/KU/87 valid up to 23.12.2007 was issued by way of renewal of a driving licence No. 11212/TNS/95 issued originally on 26.09.1995 by the office of the D.T.O., Tuensang, Nagaland. Conspicuously, the said report purportedly made by the D.T.O., Kamrup on the body of the application made by D.W.2 was not exhibited and proved before the Claims Tribunal. It is admitted by D.W.2 that he did not submit the report given by the D.T.O., Kamrup before the Claims Tribunal. The insurer did not make any effort to adduce the evidence of the D.T.O., Kamrup wherefrom the driving licence No. F-1856/98/EZ/KU/87 was issued by way of renewal. In absence of requisite documentary evidence, the claim of the insurer made through D.W.1 and D.W.2 that the D.T.O., Kamrup reported that the driving licence No. F-1856/98/EZ/KU/87 was issued by way of renewal of original driving licence No. 11212/TNS/95 in the name of Md. Abdur Rahman remained an allegation only. As the said fact is

not established, it cannot be said that the driving licence No. F-1856/98/EZ/KU/87 issued by the D.T.O., Kamrup was, in fact, made by way of renewal of the original driving licence No. 11212/TNS/95 issued on 26.09.1995 by the Office of the D.T.O., Tuensang, Nagaland. If the said report of the D.T.O., Kamrup was available with the insurer then the same should have been produced and proved by the insurer before the Claims Tribunal. The same could have established the fact that the driving licence No. F-1856/98/EZ/KU/87 was issued by way of renewal of the original driving licence No. 11212/TNS/95. As has been laid down, the insurer with a view to avoid their liability must not only establish the available defence raised in the proceeding before the Claims Tribunal but must also establish "breach" on the part of the owner of the vehicle and the burden of proof is always on the insurer. Despite opportunity and effort, the insurer had failed to establish the first of the twin requirements in the instant case.

42. It is the report of the D.T.O., Kamrup which could have been the best evidence to establish the linkage between the two driving licences, mentioned above, of the driver of the Indica in question. It is not a case of the insurer that they were not in possession of the said report. Rather, both the witnesses i.e. D.W. 1 and D.W. 2, testified on the aspect of fake driving licence of the driver of Indica based purportedly on the said written report of the D.T.O., Kamrup, claimed to have been made by him after checking the driving licence details available in his office. It is, thus, seen that the insurer had either withheld and/or failed to produce and/or did not produce the best evidence despite having custody and possession of it while trying to establish the fact about forged nature of the driving licence and to discharge the burden of establishing the breach of the terms and conditions of the policy of insurance by the insured. The production of said evidence in the form of the report along with the evidence of the licensing authority i.e. the D.T.O., Kamrup who renewed the driving licence appears to be essential for the purpose of establishing the link between the two driving licences and for proving the forged nature of the subsequent driving licence so issued on the basis of the original driving licence which was fake, thereby, making the subsequently renewed driving licence also fake. As per Section 114 (g) of the Evidence Act, if an authority in possession of best evidence which will throw light in controversy withholds it, it is permissible for a Court to draw an adverse inference against him notwithstanding that the onus of proving does not lie on him. It is opposite to mention that drawing of presumption under Section 114 (g) of the Evidence Act, depends upon the nature of fact required to be proved and its matter in the controversy. Be that as it may.

43. From the catena of decisions referred to above and in the fact situation obtaining in the instant case, it can be seen that the driving licence which the driver of the offending Indica was holding at the relevant time of the incident was issued by a competent licensing authority by way of renewal. It was neither known from the materials available on record nor was any evidence led to the effect by the insurer to establish that the licensing authority had renewed driving licence after knowing or without knowing that the alleged original driving licence

was a forged one. It is not even established by the insurer by leading cogent evidence that the alleged renewed driving licence was, in fact, issued as a renewal of the driving licence No. 11212/TNS/95 issued by D.T.O., Tuensang, Nagaland. The insurer has failed to establish a linkage between the driving licence No. F-1856/98/EZ/KV/87 and the driving licence No. 11212/ENS/95 by any cogent evidence and as a result, the said plea remained in the realm of claim only. From a mere look at the alleged renewed driving licence it could not be possible for the insured-owner to find that the renewed driving licence was a renewal of a driving licence which was allegedly a forged one when a proper licensing authority had renewed the same. The insured-owner cannot be expected to believe that the licensing authority of the D.T.O., Kamrup did not adhere to the procedure laid down in the statute for renewal of a driving licence. Rather, it is only natural for the insured-owner to believe that the renewed driving licence is a valid one. It has not been established that it was the insured-owner who deliberately allowed the Indica to be driven by a person not duly licenced. It is also not established from the materials on record that the insured-owner had wilfully violated the condition of the policy by allowing the driver knowing that the driver was holding a driving licence which got renewed on the basis of a driving licence, which was originally forged. When the insured-owner after verification satisfied himself that the driver had a valid and effective driving licence and was driving the vehicle since his engagement without any complaint on incompetency till the time of the accident, it cannot be said that there was breach of Section 149(2)(a)(ii) of the Act on his part and in such situation, the insurer would not be entitled to be absolved of the liability as the liability of the insurer is a statutory one. Even in a case where the driving licence was found to be a fake one, the insurer would continue to remain liable until it is established by them that the insured-owner was aware that the licence was a fake or forged one and still permitted the said driver to drive his vehicle. The burden was on the insurer to establish the available defense raised in the proceeding as well as to establish breach on the part of the insured-owner of the vehicle.

44. As has been discussed above, the insurer has failed in its endeavor to establish the fact of renewal of a driving licence on the basis of a forged one, not to speak of establishing breach on the part of the insured-owner of the offending vehicle in question. As a result, this Court is of the considered view that appellant-insurer has failed to raise a valid defense under Section 149(2)(a) (ii) of the Act to absolve itself from the liability of making payment of the compensation amount awarded, as has been directed by the Claims Tribunal, and to secure the liberty to recover the same from the insured-owner. The appeal is found to be bereft of any merit and accordingly, the same is dismissed. Thus, the appellant-insurer has to make payment of the compensation awarded by the Claims Tribunal along with interest @ 6% per annum from the date of the filing of the application i.e. 09.03.2007 till payment.

45. From the record, it transpires that by an order dated 21.08.2015 passed in connected Misc. Case No. 3316/2013 this Court at the time of admitting the

appeal directed the appellant-insurer to deposit the entire awarded amount of Rs. 15,52,000/- with the Registry of this Court within a period of 6 (six) weeks from 21.08.2015. By the said order, the respondents-claimants were allowed to withdraw 50% of the total awarded amount on being duly identified to the satisfaction of the Registry. Pursuant to the said order dated 21.08.2015, the appellant-insurer deposited an amount of Rs. 15,02,000/- before the Registry as they had already deposited an amount of Rs. 50,000/- before the Claims Tribunal as no fault liability award. On such deposit being made, an amount of Rs. 7,26,000/- was released in favour of the respondents-claimants on 16.11.2015 by the Registry, meaning thereby, the respondents-claimants have already received 50% of the awarded amount of Rs. 15,52,000/- i.e. Rs. 7,76,000/- (= Rs. 7,26,000/- + Rs. 50,000/-). Therefore, the respondents-claimants are entitled to receive the balance amount of Rs. 7,76,000/- along with interest @ 6% per annum from the date of filing of the claim application i.e. 09.03.2007 till payment. The appellant-insurer is directed to comply the same within a period of 3 (three) months from today. Pursuant to such deposit, the amount shall be released in favour of the respondents-claimants through the respondent-claimant No.1 on being duly identified by the learned engaged counsel. After such disbursal, the appellant-insurer shall be allowed to withdraw the statutory deposit made in connection with the instant appeal. Records are to be sent accordingly.

In the facts and circumstances of the case, no order as to costs.