

**(2004) 08 MP CK 0037**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Appeal No. 931 of 2004**

National Insurance Company Ltd.

APPELLANT

Vs

Vimla Bai and Others

RESPONDENT

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**Date of Decision : 12-08-2004**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 12  
Motor Vehicles Act, 1988 — Section 173

**Citation : (2004) 4 MPHT 469**

**Hon'ble Judges : S.K. Kulshrestha, J;Rajeev Gupta, J**

**Bench : Division Bench**

**Advocate : N.S. Ruprah, for the Appellant;**

**Final Decision : Dismissed**

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## **Judgement**

1. Heard on admission.

2. The Insurance Company, insurer of the vehicle involved in the accident, has filed this appeal u/s 173 of Motor Vehicles Act against the award dated 1-3-2004 passed by the Motor Accident Claims Tribunal, Katni in M.V.C. No. 323/2002. By the said award, compensation of Rs. 2,16,000/- has been awarded to the non-applicant Nos. 1 and 2 in relation to the death of the driver of vehicle bearing registration No. MP 20-H-7521.

3. The solitary ground on which the Insurance Company seeks to exonerate itself from the liability is that the driver of the vehicle did not possess any licence with the result, the Insurance Company was relieved of the obligation to pay compensation under the provisions of the Motor Vehicles Act in respect of the liability of the owner of the vehicle. Learned Counsel, in this behalf, has placed reliance on the judgment of the Supreme Court in United India Insurance Co. Ltd. Vs. Gian Chand and others, in support of his contention that if the owner has not entered the witness box despite plea being raised by the Insurance Company, an adverse inference should be drawn and the Insurance Company should be

relieved. In the present case, the driver of the vehicle has died and it is not the case that the insured, under the covenants of insurance or otherwise, was enjoined with the liability to maintain particulars of the licence of the driver or copies of the driving licence. It is only when it is proved by the Insurance Company that the driver did not have the licence that it become necessary for the insured to rebut the presumption with regard to the knowledge of the insured about the absence of the licence. In the case cited by the learned Counsel, it was admitted that the person, who was permitted to drive the vehicle, did not have any licence to drive and the insured failed to prove his ignorance about the same. The position in the case in hand is quite different. The driver having died, his legal representatives have filed this claim and the owner is not expected to maintain any record in this behalf. Under these circumstances, merely because a notice under Order 11 Rule 12 of the CPC was given to the owner, it can not be said that the driver did not possess a licence.

4. Thus, we do not find any substance in this appeal more so when the wife of the deceased (A.W. 1) Vimla Bai has categorically stated in Paragraph 4 that her husband possessed a valid driving licence which was lying in her house.

5. This appeal is, accordingly, dismissed. However, three months' time is granted to the Insurance Company to deposit the amount of award. Consequently, M.C.P. No. 3289/2004 for stay stands dismissed.