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**(2006) 11 MP CK 0061**  
**In the Madhya Pradesh High Court**

Prahalad Rai

APPELLANT

Vs

Shashi Kori and Others

RESPONDENT

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**Date of Decision :** 09-11-2006

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 149, 173, 3, 4, 5

**Citation :** (2007) ACJ 2575

**Hon'ble Judges :** S.C. Sinho, J;Dipak Misra, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

Dipak Misra, J.—The owner appellant, aggrieved by the award dated 2.2.2001 passed in Claim Case No. 15 of 2000 by the Second Additional Motor Accidents Claims Tribunal, Shahdol (in short, "the Tribunal") has preferred this appeal u/s 173 of the Motor Vehicles Act, 1988 (for brevity, "the Act").

2. The facts which are essential to be stated are that the respondent Nos. 1 to 3 as claimants preferred the application for grant of compensation of Rs. 24,30,000 before the Tribunal for the death of Kailash Prasad Kori, the husband of the respondent No. 1 and father of respondent No. 3 and son of respondent No. 2 on the ground that he died in a vehicular accident on 16.3.99, while he was working as a cleaner in the vehicle bearing registration No. MP 020-D 0953. It was urged before the Tribunal that he was aged about 24 years and was getting Rs. 2,800 from the job of the cleaner and doing the work of carpenter and contributing Rs. 1,500 per month to the family. It was further urged that he would have lived up to 80 years of age and hence, the amount of Rs. 24,30,000 was awardable as compensation.

3. Respondent Nos. 4 and 5 therein filed their written statement before the Tribunal putting the entire blame on the owner. The owner appellant filed his objection stating, inter alia, that deceased was not working as a cleaner in the vehicle in question and in any case, if he was found liable the vehicle being

insured, the insurance company would be liable to indemnify the owner.

4. The insurer, controverting the claim, put forth a stand that there had been breach of terms and conditions of the policy and hence, it was not liable to be saddled with the liability.

5. Claims Tribunal framed number of issues and came to hold that the deceased was working as a cleaner in the offending vehicle; that the accident had occurred due to negligence of the driver, Ajay Kumar, that claimants were entitled to get sum of Rs. 2,04,000 as compensation; that on the date of accident the driver did not possess the licence and hence the insurance company was entitled to be exonerated; and that the owner was liable to pay the amount of compensation along with 12 per cent interest.

6. Mr. Suyash Tripathi and Mr. Vikas Jain, learned Counsel for appellant have raised a singular contention that the Tribunal has fallen into grave error by fastening the liability on the owner singularly on the basis that the driver did not have a proper licence on the date of accident. Learned Counsel for the appellant placed reliance on the decision rendered in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, , to buttress their submission that non-possession of licence on the date of accident was not fatal to the stand of the owner especially when the licence was valid prior to the accident and was renewed thereafter.

7. Mr. S.K. Rao, learned Counsel being assisted by Mr. Liyaquat Ullah, for the respondent insurer contended that it was a fake licence. It is submitted that insurance company has discharged the onus as the owner had not taken adequate care to check the genuineness of the licence produced by the driver. Mr. S.K. Rao, learned Counsel has submitted that when the licence was found to be fake by the Tribunal, it has rightly exonerated the insurance company and hence no fault can be found with it.

8. The question that emerges for consideration is whether in the obtaining factual matrix the Tribunal is justified in not mulcting the liability on the insurer. It is worth noting that the licence has been brought on record as Exh. D1. The said licence was referred to the office of the Additional Regional Transport Officer at Shahdol and it was found to be fake. Submission of Mr. Tripathi and Mr. Jain is that the owner had verified the licence and on prima facie scrutiny found it to be correct and there was nothing to show that it was interpolated and not a genuine one. In the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, , in para 77 a three-Judge Bench of the Apex Court has expressed the view as under:

(77) We have analysed the relevant provisions of the said Act in terms whereof a motor vehicle must be driven by a person having a driving licence. The owner of a motor vehicle in terms of Section 5 of the Act has a responsibility to see that no vehicle is driven by a person who does not satisfy the provisions of Sections 3 or 4 of the Act. In a case, therefore, where the driver of the vehicle admittedly did not hold any licence and the same was allowed consciously to be driven by

the owner of the vehicle by such person, the insurer is entitled to succeed in its defence and avoid its liability. The matter, however, may be different where a disputed question of fact arises as to whether the driver had a valid licence or where the owner of the vehicle committed a breach of the terms of the contract of insurance as also the provisions of the Act by consciously allowing any person to drive a vehicle who did not have a valid driving licence. In a given case, the driver of the vehicle may not have any hand at all, e.g., a case where an accident takes place owing to a mechanical fault or vis major. See *Jitendra Kumar Vs. Oriental Insurance Co. Ltd. and Another*,

9. Eventually, in para 102 in sub-paras (iii) and (iv), their Lordships have culled out the principles as under:

(102)(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 wherefor would be on them.

10. Recently, in the case of *Lal Chand Vs. Oriental Insurance Co. Ltd.*, , a two-Judge Bench of Hon"ble Apex Court placing reliance on the basis of the law laid down in the case of *United India Insurance Company Ltd. Vs. Lehu and Others*, , has expressed the opinion as follows:

(8) We have perused the pleadings and the orders passed by Claims Tribunal and also of the High Court and the annexures filed along with the appeal. This Court in the case of *United India Insurance Company Ltd. Vs. Lehu and Others*, , in para 17 has observed that where the owner is satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). He will, therefore, have to check whether the driver has a driving licence and 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 test of the driver and if he finds that the driver is competent to drive the vehicle, he will hire the driver.

11. Their Lordships further referred to the decision rendered in the case of *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, and after reproducing

the relevant conclusion in para 11 have expressed the view as under:

(11) As observed in above para, the insurer, namely, the insurance company, has to prove that the insured, namely the owner of the vehicle, was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicle by a duly licensed driver or one who was not disqualified to drive at the relevant point of time.

12. In view of the aforesaid, we are of the considered opinion that the insurance company has not been able to discharge the onus. Hence, exoneration of the insurer by the Tribunal is neither presentable nor invulnerable.

13. Consequently, the appeal filed by the appellant is allowed and the award is modified to the extent that the amount of compensation granted by the Tribunal has to be made good by the insurer. In the facts and circumstances of the case, there shall be no order as to costs.