
(2016) 02 AHC CK 0259

In the Allahabad High Court

Case No : First Appeal From Order No. 624 of 2016

The New India Assurance Co. Ltd.

APPELLANT

Vs

Vidhya Devi and Others

RESPONDENT

Date of Decision : 25-02-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 10, Section 149, Section 149(2), Section 149(2)(a) (ii), Section 163 A, Section 165, Section 166, Section 168, Section 174, Section 2, Section 3, Section 4, Section 5, Section 96, Section 96(2)(b), Section 96(2)(b)(ii)

Citation : (2016) AAC 2009 : (2016) 4 ADJ 531 : (2016) 4 ALLJ 73 : (2016) 3 AllWC 2925 : (2016) 116 ALR 386

Hon'ble Judges : Surya Prakash Kesarwani and Surya Prakash Kesarwani, JJ.

Bench : Division Bench

Advocate : Saurabh Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

Surya Prakash Kesarwani, J.—1. Heard Sri Saurabh Srivastava, learned counsel for the appellant.

2. This appeal has been filed challenging the award dated 27.11.2015 in M.A.C.P. No. 123 of 2013 Smt. Vidhya Devi And 4 Ors. v. Vikas Jain and another, passed by the Motor Accident Claim Tribunal/Additional District Judge)/Special Judge, S.C./S.T.(P.A.) Act, Badaun, awarding a sum of Rs. 3,37,000/- to the claimants-respondents on account of death of Sri Omkar (husband of claimant-respondent No. 1 and father of claimants-respondents No. 2 to 5) in an accident on 9.2.2013 caused by truck bearing registration No. H.R. 55/8341.

3. Submission of the learned counsel for the appellant is that the deceased was the driver of the offending truck. While parking the truck he came in contact with 11000 voltage electric line which resulted in his death. He was having no driving licence and as such no liability of the appellant insurer could be fixed. Thus, the Tribunal committed a manifest error of law in fixing the liability of the appellant insurance company for payment of compensation to the claimants respondents.

In support of his submission, he relied upon decision of Hon''ble Supreme Court in the case of United India Insurance Co. Ltd. v. Sujata Arora and others , 2013(3) T.A.C. 29 (S.C.).

4. I have carefully considered the submissions of learned counsel for the appellant.

5. Perusal of the impugned award shows that while deciding issue Nos. 1 and 2, the Tribunal recorded a finding of fact that the claimants respondents have been successful in establishing that in the night at about 10 P.M. of 9.2.2013 when the offending truck was being parked near Gyani Dhaba, adjacent to Chaudhary Petrol Pump, it came in contact with hanging 11000 voltage electric line which caused death of the deceased Omkar who was not at fault. This finding of fact has not been challenged before this Court. That apart, this is a finding of fact recorded by the Tribunal.

6. While deciding issue Nos. 3 and 4, the Tribunal recorded a finding of fact that respondent No. 1 (widow of the deceased driver) had stated in her examination in chief that her husband Omkar was doing the job of driving vehicle from the very beginning and he obtained the driving licence from Kota, Bundi, Rajasthan but she did not know the driving licence number and she searched the driving licence in her room but could not find it. It has also been recorded that the father of the deceased was also a driver. The Tribunal also recorded a finding of fact that despite disclosure of these facts, the appellant insurance company made no effort to verify the existence of driving licence of the deceased from the Transport authorities at Kota, Bundi, Rajasthan. However, since the driving licence could not be produced and as such, the Tribunal assumed that there was no driving licence.

7. While deciding issue No. 5, the Tribunal considered the facts of the case and evidences on record so as to fix the liability for payment of compensation. While deciding this issue the Tribunal recorded undisputed findings of fact that the deceased died because of coming into contact of the truck with the hanging electric wire and there was no negligence on the part of the deceased driver. The Insurance company has not verified the fact of issuance of driving licence of the deceased by Transport authorities of Kota, Bundi, (Rajasthan). On these facts and in view of the law laid down by Hon''ble Supreme Court in the case of National Insurance Co. Ltd. v. Swaran Singh, , 2004(1) T.A.C. 321(S.C.), the Tribunal fixed the liability of the appellant insurance company to pay compensation to the claimants-respondents.

8. It is not the case of the appellant insurance company that either the owner of the offending truck had knowingly and wilfully permitted a driver not having a driving licence or that the insurer made any effort to verify the fact of issuance of driving licence of the deceased by the Transport authorities of Kota, Bundi (Rajasthan) or that there was any negligence on the part of the deceased driver or that the deceased driver was not competent to drive the truck. The only

argument pressed before this court is that the driving licence of the deceased driver could not be produced by the claimants respondents or the owner of the vehicle whereas the onus to prove that the deceased possessed a valid driving licence, was on them in view of a Division Bench judgment of this court in the case of National Insurance Co. Ltd. v. Brij Pal Singh and another , 2003(3) TAC 849 (All). However, the finding recorded by the Tribunal in the impugned award that the fact disclosed by the claimant respondent No. 1 during the course of examination in chief to the effect that driving licence of her deceased husband was issued by Transport authority of Kota Bundi, Rajasthan, has not been disputed nor it has been disputed that there was no negligence of the deceased driver and that he was driving the truck from long time and that he was a competent driver. The death of the driver was not because of any breach of contract of insurance or his negligence or fault. Consequently, the question whether the deceased driver was possessing a valid driving licence or not, becomes redundant.

9. In the case of Swaran Singh (supra) three-judges Bench of Hon"ble Supreme Court held as under:

"37. Such a breach on the part of the insurer must be established by the insurer to show that not only the insured used or caused or permitted to be used the vehicle in breach of the Act but also that the damage he suffered flowed from the breach.

40. In Narvinva" case (supra), a Division Bench of this Court observed:

"...The insurance company complains of breach of a term of contract which would permit it to disown its liability under the contract of insurance. If a breach of term of contract permits a party to the contract to not to perform the contract, the burden is squarely on that party which complains of breach to prove that the breach has been committed by the other party to the contract. The test in such a situation would be who would fail if no evidence is led..."

41. In Skandia"s case (supra), this Court held:

"Section 96(2)(b)(ii) extents 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 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 the 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 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. Not when some mishap occurs by some mischance. When the insured has done everything within his power inasmuch as he has engaged a licensed driver and has placed the vehicle in charge of a licensed driver, with the express or implied mandate to drive it himself, it cannot be said that the insured is guilty of any breach."

42. In *B.V. Nagaraju v. M/s. Oriental Insurance Co. Ltd.* [, AIR 1996 SC 2054], Punchhi, J. speaking for the Division Bench followed *Skandia* (supra) and read down the exclusionary term of the insurance policy to serve the main purpose thereof, holding:

"The National Commission went for the strict construction of the exclusion clause. The reasoning that the extra passengers being carried in the goods vehicle could not have contributed, in any manner, to the occurring of the accident, was barely noticed and rejected sans any plausible account; even when the claim confining the damage to the vehicle only was limited in nature. We, thus, are of the view in accord with the *Skandia*'s case (, AIR 1987 SC 1184), the aforesaid exclusion term of the insurance policy must be read down so as to serve the main purpose of the policy that is indemnify the damage caused to the vehicle, which we hereby do."

43. A contract of insurance also falls within the realm of contract. Thus, like any other contract, the intention of the parties must be gathered from the

52. There may be a case where an accident takes place without there being fault on the part of the driver. In such an event, the question as to whether a driver was holding a valid licence or not would become redundant. (See *Jitendra Kumar v. Oriental Insurance Co. Ltd. & Anr.* -, J.T. 2003 (5) SC 538].

53. *Skandia* (supra), on the other hand, has been approved by a three-Judge Bench, when the correctness thereof was referred to a larger Bench in *Sohan Lal Passi*'s case (supra), wherein a three-Judge Bench of this Court noticed the ratio propounded in *Skandia*'s case (supra) and observed:

"...In other words, once there has been a contravention of the condition prescribed in sub-section (2)(b)(ii) of Section 96, the person insured shall not be entitled to the benefit of sub-section (1) of Section 96. According to us, Section 96(2)(b)(ii) should not be interpreted in a technical manner. Sub-section (2) of Section 96 only enables the insurance company to defend itself in respect of the

liability to pay compensation on any of the grounds mentioned in sub-section (2) including that there has been a contravention of the condition excluding the vehicle being driven by any person who is not duly licensed. This bar on the face of it operates on the person insured. If the person who has got the vehicle insured has allowed the vehicle to be driven by a person who is not duly licensed then only that clause shall be attracted. In a case where the person who has got insured the vehicle with the insurance company, has appointed a duly licensed driver and if the accident takes place when the vehicle is being driven by a person not duly licensed on the basis of the authority of the driver duly authorised to drive the vehicle whether the insurance company in that event shall be absolved from its liability? 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..."

57. 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 (supra)*)

58. 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 different problem which must be resolved having regard to a large number of factors governing the case including conduct of parties as regard 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 therefor 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 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.

60. A beneficent statute, as is well known, must receive a liberal interpretation

[See Bangalore Water Supply & Sewerage Board etc. v. A. Rajappa and Others etc. [, (1978) 2 SCC 213], Steel Authority of India Ltd. and Others v. National Union Waterfront Workers and Others [, (2001) 7 SCC 1], ITI Ltd. v. Siemens Public Communications Network Ltd. [, (2002) 5 SCC 510], Amrit Bhikaji Kale and Others v. Kashinath Janardhan Trade and Another [, (1983) 3 SCC 437] and Kunal Singh v. Union of India and Another [, (2003) 4 SCC 524].

61. The liability of the insurer is a statutory one. The liability of the insurer to satisfy the decree passed in favour of a third party is also statutory.

63. As has been held in Sohan Lal Passi (supra), the insurance company cannot shake off its liability to pay the compensation only by saying that at the relevant point of time the vehicle was driven by a person having no licence.

Thus, where a liability has been established by a judgment, it is not permissible to look beyond the determination in order to establish the basis of the liability.

65. The social need of the victim being compensated as enacted by the Parliament was the subject matter of consideration before a three-Judge Bench of this Court as early as in 1959 in British India General Insurance Co. Ltd. v. Captain Itbar Singh and Others [, (1960) 1 SCR 168], wherein Sarkar, J. speaking for the Bench observed:

"Again, we find the contention wholly unacceptable. The Statute has no doubt created a liability in the insurer to the injured person but the statute has also expressly confined the right to avoid that liability to certain grounds specified in it. It is not for us to add to those grounds and therefore to the statute for reasons of hardship. We are furthermore not convinced that the statute causes any hardship. First, the insurer has the right, provided he has reserved it by the policy, to defend the action in the name of the assured and if he does so, all defences open to the assured can then be urged by him and there is no other defence that he claims to be entitled to urge. He can thus avoid all hardship if any, by providing for a right to defend the action in the name of the assured and this he has full liberty to do. Secondly, if he has been made to pay something which on the contract of the policy he was not bound to pay, he can under the proviso to sub-s.(3) and under sub-s. (4) recover it from the assured. It was said that the assured might be a man of straw and the insurer might not be able to recover anything from him. But the answer to that is that it is the insurer's bad luck. In such circumstances the injured person also would not have been able to recover the damages suffered by him from the assured, the person causing the injuries."

66. Similar view has been taken in Skandia's case (supra), Sohan Lal Passi's case (supra), Kashiram Yadav and Another v. Oriental Fire and General Insurance Co. Ltd. and Others [, (1989) 4 SCC 128] and several others.

67. In Kamla's case (supra), a Division Bench of this Court summed up the legal position:

"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 it 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."

71. 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 except by a person who does not satisfy the provisions of Section 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 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 (supra)]

72. In *V. Mepheron v. Shiv Charan Singh* [, 1998 ACJ 601 (Del.)] the owner of the vehicle was held not to be guilty of violating the condition of policy by willfully permitting his son to drive the car who had no driving licence at the time of accident. In that case, it was held that the owner and insurer both were jointly and severally liable.

73. In *New India Assurance Co. Ltd. v. Jagtar Singh and Others* [, 1998 ACJ 1074], Hon'ble M. Srinivasan, CJ, as His Lordship then was, dealing with the case where a duly licensed driver was driving a vehicle but there was a dispute as to who was driving the vehicle. In that case the court referred to the judgment in *Kashiram Yadav v. Oriental Fire & General Insurance Co. Ltd.* [, 1989 ACJ 1078 (SC)] and expressed its agreement with the views taken therein.

74. In *National Insurance Co. Ltd. v. Ishroo Devi and Others* [, 1999 ACJ 615] where there was no evidence that the society which employed the driver was having knowledge that the driver was not holding a valid licence, it was held the insurance company is liable. The court relied upon the decisions of this Court in *Kashiram Yadav's* case (supra), *Skandia's* case (supra) and *Sohan Lal Passi's* case (supra).

When the person has been granted licence for one type of vehicle but at the relevant time he was driving another type of vehicle:

75. Section 10 of the Act provides for forms and contents of licences to drive. The licence has to be granted in the prescribed form. Thus, a licence to drive a light motor vehicle would entitle the holder there to drive the vehicle falling

76. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section (2) of said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are (a) Motorcycle without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10. They are "goods carriage", "heavy-goods vehicle", "heavy passenger motor-vehicle", "invalid carriage", "light motor-vehicle", "maxi-cab", "medium goods vehicle", "medium passenger motor-vehicle", "motor-cab", "motorcycle", "omnibus", "private service vehicle", "semi-trailer", "tourist vehicle", "tractor", "trailer", and "transport vehicle". In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal. A person possessing a driving licence for "motorcycle without gear", for which he has no licence. Cases may also arise where a holder of driving licence for "light motor vehicle" is found to be driving a "maxi-cab", "motor-cab" or "omnibus" for which he has no licence. In each case on evidence led before the tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.

77. We have construed and determined the scope of sub-clause (ii) of Sub-section (2) of section 149 of the Act. Minor breaches of licence conditions, such as want of medical fitness certificate, requirement about age of the driver and the like not found to have been the direct cause of the accident, would be treated as minor breaches of inconsequential deviation in the matter of use of vehicles.

Such minor and inconsequential deviations with regard to licensing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance to the third parties.

79. It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of the wilful breach of the conditions of the insurance policy or the contract of insurance. In *Lehru's* case (*supra*), the matter has been considered at some details. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of law in terms whereof the insurer is to establish wilful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or the owners be absolved from any liability whatsoever. We would be dealing in some details with this aspect of the matter a little later.

96. 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 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 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 wherefore 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 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 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.

For the reasons aforementioned, these petitions are dismissed but without any order as to costs."

10. In view of the law laid down by three judges Bench of Hon"ble Supreme Court in the case of Swaran Singh (supra), and considering the facts of the present case, I find that the judgment of the Division Bench of this Court in the case of Brij Pal Singh(supra) and the judgment of Hon"ble Supreme court in the case of Sujata Arora(supra) are of no help to the appellant.

11. In the case of Swaran Singh (supra) in paragraph 52 Hon"ble Supreme court has clearly held that there may be a case where an accident takes place without there being fault on the part of the driver. In such an event, the question as to whether the driver was holding a valid licence or not would become redundant. In the present set of facts, the Tribunal has recorded a finding of fact that accident occurred without any fault of the driver. This finding of fact has not been disputed before this Court by the appellant. Thus, the question as to whether the deceased driver was holding a valid driving licence or not, would become redundant.

12. In view of the above discussion, I do not find any merit in this appeal. Consequently, appeal fails and is hereby dismissed.

13. Statutory deposit made before this Court shall be remitted to the tribunal concerned for adjustment.