THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

Dated : 12th June, 2023

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

MAC App. No.06 of 2021

Appellant : Suresh Khati

versus

Respondents : Santosh Chetry @ Santosh Chettri and Others

Appeal under Section 173 of the Motor Vehicles Act, 1988

Appearance

Ms. Navtara Sarda, Advocate (Legal Aid Counsel) for the Appellant.

None for Respondent No.1.

Mr. Deven Rai, Advocate for Respondent No.2.

Mr. Umesh Ranpal, Advocate (Legal Aid Counsel) for Respondent No.3.

None for Respondent No.4.

J U D G M E N T

Meenakshi Madan Rai, J.

1. The Learned Motor Accidents Claims Tribunal, East Sikkim, at Gangtok (for short, "Claims Tribunal"), vide the impugned Judgment, dated 05-08-2020, computed the total compensation payable to the Claimant as ₹ 24,11,279/-(Rupees twenty four lakhs, eleven thousand, two hundred and seventy nine) only and ordered that the Insurer, OP No.1, pay the compensation amount to the Claimant, with interest @ 9% per annum, from the date of filing of the Claim Petition till full and final payment. It was further ordered that, OP No.1 was at liberty to recover the same from the OPs No.2, 3 and 4 in accordance with law.

2. The Appellant being aggrieved by the Judgment and Award *supra*, in MACT Case No.60 of 2017 (*Santosh Chetry alias Santosh Chettri vs. The Branch Manager, National Insurance Company Ltd. and Others*), dated 05-08-2020, is before this Court.

3. Before proceeding further with the matter, to bring clarity with regard to the parties, their order of appearance before the Claims Tribunal and before this Court are being delineated hereunder;

(i) Appellant, (owner of the vehicle) was OP No.2 before the Claims Tribunal.

(ii) Respondent No.1 (survivor of the accident) was Claimant before the Claims Tribunal.

(iii) Respondent No.2 (Insurer) was OP No.1 before the Claims Tribunal.

(iv) Respondent No.3, (authorized driver) and Respondent No.4, (unauthorized driver) were OP No.3 and OP No.4, respectively before the Claims Tribunal.

4. The parties shall be referred to in terms of their appearance before this Court.

5. Advancing her arguments, Learned Legal Aid Counsel for the Appellant, contended that, the Appellant had handed over the vehicle in accident, Chevrolet Spark (*Taxi*), bearing registration No.SK-01-T-2614, to Respondent No.3, the driver employed by him for the vehicle, who possessed a valid license and was the authorized driver of the vehicle. That, Respondent No.3 being inebriated at the relevant time had handed over the vehicle to Respondent No.4. The accident occurred on account of the rash and negligent driving of Respondent No.4. The Claims Tribunal,

ordered the Insurance-Company, Respondent No.2, to pay the compensation amount to the Respondent No.1, which was then to be realised from the Appellant, the Respondent No.3 and the Respondent No.4. Learned Counsel for the Appellant further urged that, in the Synopsis of arguments submitted before the Claims Tribunal, she had relied on the ratio of this High Court in ***Binod Kumar Agarwal*** vs. ***Ratna Kumar Chettri and Others***[1]***,*** which the Claims Tribunal failed to consider. That, the ratio *supra* of this High Court had referred to the Judgment of the Hon'ble Supreme Court in ***Skandia Insurance Company Ltd.*** vs. ***Kokilaben Chandravadan and Others***[2], wherein it was held that the exclusion clause in the contract of insurance, making the owner absolutely liable, irrespective of circumstances leading to an unlicensed driver driving the vehicle, must be "read down", being in conflict with the main statutory provision. Further, while discussing the extent of vicarious liability of the owner, it was held that the owner was not liable when the accident was caused by the unlicensed person, when the licensed driver employed by the owner left the vehicle unattended, contrary to express or implied orders of the owner. It was canvassed that, as the facts *supra* are similar to the instant Appeal, the Appellant be absolved from paying the insurer, Respondent No.2, as erroneously ordered in terms of the impugned Judgment, dated 05-08-2020.

6. Learned Legal Aid Counsel for Respondent No.3 submitted that he is also to be exempted from making payment to the Respondent No.2, in view of the fact that, he had allowed Respondent No.4 to drive the vehicle being conscious of the

[1] SIKKIM LAW JOURNAL 2017, VOLUME 40, PART I, SL. NO.39, Page 239-249
[2] (1987) 2 SCC 654

circumstance that he was not in a position to drive at the relevant time. That, Respondent No.4 had caused the accident, nevertheless, the Appellant being the owner of the vehicle was vicariously liable to indemnify the claim put forth and not the Respondent No.3 as erroneously ordered by the Claims Tribunal.

7. *Per contra,* Learned Counsel for the Respondent No.2 advanced the argument that the Respondent No.2, Insurance-Company had paid the compensation as ordered. That, despite the order of the Claims Tribunal, the amounts as ordered were yet to be recovered from the Appellant, the Respondent No.3 and the Respondent No.4, who being responsible for the accident, were liable to pay the Insurance-Company, as correctly ordered by the Claims Tribunal.

8. Respondents No.1 and 4 went unrepresented, despite due service of Notice.

9. The rival contentions put forth have been heard at length and considered. All documents on record including the evidence and the impugned Judgment have been duly perused.

(i) This Court is now to consider whether the Claims Tribunal erred in ordering the Respondent No.2 to pay the compensation and recover the same from the Appellant, the Respondents No.3 and 4.

(ii) Before embarking on the above exercise, the facts pertaining to the instant matter are briefly set out. Respondent No.1, the survivor of the vehicular accident, sought compensation of a sum of ₹ 1,02,28,560.80/- (Rupees one crore, two lakhs, twenty eight thousand, five hundred sixty and eighty paisa) only, with interest @ 12%, on account of injuries sustained by him, on

06-04-2016, at around 2200 hours, near Hotel Sonam Palgay, Deorali Bazar Road, Gangtok, when the vehicle in which Respondent No.3 amongst others, was travelling, driven by Respondent No.4, met with an accident. That, the authorized driver, Respondent No.3, at the relevant time, was inebriated and was unable to drive the vehicle in accident and had insisted that Respondent No.4 drive it, who accordingly took the wheel. On his inability to control the vehicle, it collided with a parked truck, loaded with cement. Consequent, thereto the Respondent No.1, the cleaner/handy boy of the parked truck, bearing registration No.SK-01-D-1704, who was untying the ropes of the loaded truck, was hit by the vehicle of the Appellant, causing him grievous injuries. He was evacuated and admitted to the STNM Hospital, Gangtok, on the same night, where his left leg, knee downward, was amputated, having been crushed between the two vehicles. The amputation resulted in 70% disability of the Respondent No.1. The Compensation was claimed *inter alia* on grounds that on account of the accident and the resultant amputation, he had lost his opportunities of future earnings as he was rendered unqualified for obtaining employment in the Government or the Army and consequential retiral benefits, free medical assistance to himself and his parents and travelling concessions etc.

10. In the first instance, while considering the impugned Judgment, it is noticed that the Respondent No.1 had claimed to have been earning a monthly income of ₹ 12,000/-(Rupees twelve thousand) only, which the Claims Tribunal doubted, in the absence of any documentation. His salary was accordingly placed at ₹ 7,000/-(Rupees seven thousand) only, per month, which has not

been objected to by the Respondent No.2. Respondent No.1 being born on 10-04-1994 was aged about 21 years, 11 months and 26 days on the date of accident i.e., 06-04-2016. The Claims Tribunal observed that the age of the Respondent No.1 was 21 years at the time of accident, based on his PAN Card, Exhibit 46 and original Aadhar Card, Exhibit 47. The age of the survivor was not assailed by Respondent No.2.

(i) The Claims Tribunal taking into consideration the documents pertaining to the medical expenses incurred by the Respondent No.1, calculated such expenses at ₹ 16,679/-(Rupees sixteen thousand, six hundred and seventy nine) only. In addition to the above amount, at Paragraph 32 of the impugned Judgment, the following computations were made;

> *"32. We may as such add the following amounts to the figures of medical expenses arrived at above. ₹ 7,000/- towards loss of earnings during the period of his treatment(he was admitted in the hospital for one month w.e.f 06.04.2016 to 05.05.2016); ₹ 2,50,000/- towards future medical expenses given the extent of his disablement and his young age; ₹ 1,00,000/- towards pain and sufferings; ₹ 3,00,000/- towards loss of amenities and enjoyment of life including loss of marital prospects and marital happiness; ₹ 50,000/- towards conveyance charges(and cost of attendant); ₹1,00,000/- towards food and nourishment. We may further add the amount under the head 'loss of future earnings' which would be as follows. Since the monthly salary of the claimant has been taken as ₹ 7,000/- we may add 40% of the said salary towards prospects in view of his age in which case the amount would come to ₹ 7,000/- + ₹ 2,800/-(40%) = ₹ 9,800/-per month. As such his annual income would be ₹ 9,800/- x 12 months = ₹ 1,17,600/-. If multiplier of 18(as applicable here in view of the age of the claimant i.e., 21 years) is applied, the amount would come to ₹ 1,17,600/- x 18 = ₹ 21,16,800/-. In view of 75% permanent physical functional disability the amount under the head 'loss of future income' would be 75% of 21,16,800/- which would come to 15,87,600/-.* ***The overall amount would as such come to ₹ 24,11,279/-(Rupees Twenty four lakhs eleven thousand two hundred and seventy nine) only****."* **(emphasis supplied)**

11. Section 147 of the Motor Vehicles Act, 1988 (hereinafter, the "MV" Act) lays down the requirements of Policies and limits of liability. In order to comply with the requirements of Chapter XI of the MV Act, a policy of insurance must be a policy which is issued by a person, who is an authorized insurer and insures the person or classes of persons specified in the policy, to the extent mentioned in Sub-section 2 of Section 147 of the MV Act. The object of obtaining an insurance policy is to ensure that it covers the liability incurred by the insured, in respect of death or bodily injury to any person, carried in the vehicle of the insured or damage to any property of a third party, caused by or arising out of the use of the vehicle. The provision mandates a compulsory coverage of insurance for passengers travelling in public transport vehicle, passenger vehicle, goods vehicle along with goods and the workmen under the Workmen's Compensation Act, 1923, employed in connection with the motor vehicle, etc.

(i) Section 149 of the MV Act lays down the duty of the insurer to satisfy Judgments and Awards against persons insured, in respect of third party risk.

(ii) It is not in dispute that the vehicle was duly insured vide Insurance policy, Exhibit B, Respondent No.2 being the insurer and the Appellant the owner of the insured vehicle.

(iii) That, the contract of insurance is a contract of indemnity is no more *res integra*. The insurer is an indemnifier, while the insured is an indemnity holder. Thus, the essence of the contract of insurance is to indemnify the insured against the claim of a third party. The expression 'third party' means a person who is not a party to the contract, but beneficiary of the contract and

has the right to enforce the terms of contract against the insurer and the insured.

(iv) In ***National Insurance Company Limited*** vs. ***Yellamma and Another*** [3] , the Supreme Court, at Paragraph 11, observed as follows;

> "**11.** A contract of insurance like any other contract, is a contract between the insured and the insurer. The amount of premium is required to be paid as a consideration for arriving at a concluded contract. ……..."

(v) In ***Sohan Lal Passi*** vs. ***P. Sesh Reddy and Others***[4]***,*** it was observed that when the insured had taken all precaution by appointing a duly licensed driver, to drive the vehicle in question and it was not established that it was the insured who had allowed the vehicle to be driven by a person not duly licensed, due to which the accident occurred, then the Insurance-Company cannot repudiate its statutory liability, on the grounds of contravention of condition of policy, including its liability in case of vehicle being driven by person not duly licensed.

(vi) In ***New India Assurance Co., Shimla*** vs. ***Kamla and Others***[5], the Supreme Court, at Paragraph 25, observed as follows;

> **"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.** …….. 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." **(emphasis supplied)**

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3 (2008) 7 SCC 526
4 (1996) 5 SCC 21
5 (2001) 4 SCC 342

(vii) In ***National Insurance Co. Ltd.*** vs. ***Swaran Singh and Others***[6]***,*** a three Judge Bench of the Supreme Court observed *inter alia* as follows;

> "**48. Furthermore, 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) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured.** By reason of the provisions contained in the 1988 Act, a more extensive remedy has been conferred upon those who have obtained judgment against the user of a vehicle and after a certificate of insurance is delivered in terms of Section 147(3). After a third party has obtained a judgment against any person insured by the policy in respect of a liability required to be covered by Section 145, the same must be satisfied by the insurer, notwithstanding that the insurer may be entitled to avoid or to cancel the policy or may in fact have done so. The same obligation applies in respect of a judgment against a person not insured by the policy in respect of such a liability, but who would have been covered if the policy had covered the liability of all persons, except that in respect of liability for death or bodily injury." **(emphasis supplied)**

(viii) It was also further held that the breach of policy condition e.g. disqualification of the driver or invalid driving license of the driver, as contained in Sub-section (2)(a)(ii) of Section 149 of the MV Act, has to be proved to have been committed by the insured, for the insurer to avoid any liability. The insurer is also 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 a duly licensed driver, or one who was not disqualified to drive at the relevant time. Mere absence of, fake or invalid driving license 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.

(ix) At Paragraph 110 (ix) and (x), of the citation (*ibid*), it was observed as follows;

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[6] (2004) 3 SCC 297

> "**110**. …….
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> (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 the 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.
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> (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." **(emphasis supplied)**

(x) That, where the Insurance-Company was able to establish that the owner handed over the vehicle to an unauthorized person, the Appellant shall initially satisfy the award and thereafter, if so advised, recover the same from the insured.

(xi) It is evident from all of the afore extracted citations that only when the insurer is able to prove that there has been a breach of condition of the insurance policy that the Tribunal can conclude that the insurer is liable to be reimbursed by the insured, for the compensation and other amounts which it had paid to the third party under the award of the Tribunal. In other words 'pay

and recover' can only be ordered by the Tribunal when a breach of the policy conditions are established by the insurer.

12. That, having been said while considering the rival contentions canvassed, it is imperative to refer to the Judgment of this Court in ***Binod Kumar Agarwal*** (*supra*), wherein at Paragraphs 15 to 19, it was observed as follows;

> ***"15.*** In ***Skandia Insurance Company ltd.*** [(1987) 2 SCC 654] relied on by the Appellant, the Supreme Court took up the question as to whether the insurer is entitled to claim immunity from a decree obtained by the dependents of the victim of a fatal accident, on the ground that the insurance policy provided *"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 license during the period of disqualification and that such exclusion was permissible in the context of Section 96(2)(b)(ii)"*. The facts therein were that a truck had come from Barejadi and had been unloaded at Baroda. The driver had gone to bring snacks from the opposite shop, leaving the engine running with the key in the ignition and not in the cabin of the truck as alleged by him. The driver was grossly negligent in leaving the truck with its running engine in the control of the cleaner, which became the immediate cause of the accident. The Claims Tribunal found the owner of the car *viz*; insured, to be vicariously liable along with the driver and the cleaner. The High Court, *inter alia*, held that the owner never gave permission to the cleaner to drive and therefore, the owner even though he had become liable by reason of his vicarious liability, could not be held guilty of the breach of the contractual condition embodied in the policy of insurance. Thus, the insurer could not plead any exemption on the ground that the owner had committed breach of the specified condition. Before the Supreme Court, it was contended on behalf of the Insurance Company that since admittedly there was an exclusion clause, the insurance company would not be liable if at the point of time when the accident occurred, the person who had been driving the vehicle was not a person duly licensed to drive the vehicle. It was immaterial that the insured had engaged a licensed driver and had entrusted the vehicle for being driven by him. Once it was established that the accident occurred when an unlicensed person was at the wheels, the Insurance Company would be exonerated from the liability. The validity of this argument advanced in order to assail the view taken by the High Court was to be tested in the light of the provisions contained in Sections 96(1) and 96(2)(b)(ii) of the Act of 1939. The Supreme Court before doing so discussed several decisions of various High Courts on the same issue *viz*; in ***Sardar Nand Singh v. Abhyabala Debi*** [AIR 1955 Ass 157], the view taken therein was that the master is undoubtedly liable for the wrongful act, conduct or negligence of his servant, where the act or conduct or negligence occurs in the course of the masters employment

or in furtherance of his interest, notwithstanding the fact that the servant may have been prohibited from doing such an act. However, the High Court proceeded to absolve the Insurance Company from the liability in the light of Section 96(2) of the Act of 1939 without examining or analyzing the provisions of the said section and had taken for granted that once it is established that the vehicle was driven by an unlicensed person, the Insurance Company stood exonerated.

16. In ***Shankar Rao vs. M/s Babulal Fouzdar and Anr.*** [AIR 1980 MP 154], the High Court exonerated the Insurance Company for the reason that, according to one of the terms of the policy of insurance, the insurer's liability is subject to the condition, that, the person driving the vehicle holds a license to drive a vehicle or has held and is not disqualified from holding or obtaining such a license and provided he is in the employment of the insured and is driving on his order or with his permission. Unless the person driving the vehicle falls in that category, the insurer is not liable under the policy and is therefore exempted from indemnifying the insured. In ***Orissa State Commercial Transport Corporation, Cuttack v. Dhumali Bewa*** [AIR 1982 Ori 70], the High Court concluded that the Insurer was not liable as the vehicle was driven by a person who had no driving license and the accident did not take place in a public place. The decision in ***Dwarka Prasad Jhunjhunwala and Anr. v. Sushila Devi*** [AIR 1983 Pat 246], was also taken up for consideration, where the liability of the owner was shifted to the Insurer as the vehicle was insured.

17. After considering the aforesaid decisions as reflected hereinabove, the Supreme Court found that the Judgments were buttressed by '*ipse dixit*' rather than rationality and, *inter alia*, observed that the question therefore deserves to be examined afresh on its own merits on principle. It opined that the proposition is incontrovertible that, so far as the owner of the vehicle is concerned, his vicarious liability for damages arising out of the accident cannot be disputed, having regard to the general principles of law, as also having regard to the violation of the obligation imposed by Section 84 of the Act of 1939, which provides that no person driving or in charge of motor vehicle shall cause or allow the vehicle to remain stationary in any public place, unless there is in the driver's seat a person duly licensed to drive the vehicle or unless the mechanism has been stopped and a brake or brakes applied or such other measures taken as to ensure that the vehicle cannot accidentally be put in motion in the absence of the driver.

18. However, in the case of ***Skandia Insurance Company ltd.*** [(1987) 2 SCC 654], the appellant had contended that the exclusion clause is strictly in accordance with the statutorily permissible exclusion embodied in Section 96(2)(b)(ii) of the Act of 1939 and that under the circumstances the appellant Insurance Company is not under a legal obligation to satisfy the judgment procured by the respondents. Being in disagreement with the argument canvassed, the Supreme Court held in Paragraph 12 as follows;

> "12. The defence built on the exclusion clause cannot succeed for three reasons, viz;-
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> 1. On a true interpretation of the relevant clause which interpretation is at peace with the conscience of Section 96, the condition excluding driving by a person not duly licensed is not absolute and the promisor is absolved once it is shown that he has done everything in his power to keep, honour, and fulfil the promise and he himself is not guilty of a deliberate breach.
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> 2. Even if it is treated as an absolute promise, there is substantial compliance therewith upon an express or implied mandate being given to the licensed driver not to allow the vehicle to be left unattended so that it happens to be driven by an unlicensed driver.
>
> 3. The exclusion clause has to be 'read down' in order that it is not at war with the 'main purpose' of the provisions enacted for the protection of victims of accidents so that the promisor is exculpated when he does everything in his power to keep the promise."

19. The Supreme Court while reflecting on the reasons for insuring against third party risk was of the opinion that the provision has been inserted in order to protect the members of the Community travelling in vehicles or using the roads, from the risk attendant upon the user of motor vehicles on the road. If an accident occurs and compensation is awarded to the victims, then there ought to be a guarantee that, the compensation, would be recoverable from the persons held liable for the consequences of the accident. **Thus, the legislature has made it obligatory that no motor vehicle shall be used, unless a third party insurance is in force. Further, in order to make the protection real, the legislature has also provided that the judgment obtained shall not be defeated by incorporation of the exclusion clause other than those authorized by Section 96 of the Act of 1939 and by providing that except and save to the extent permitted by Section 96 of the Act of 1939, it will be the obligation of the Insurance Company to satisfy the judgment obtained against the persons insured against third party risks. It was thus concluded that Section 96(2)(b)(ii) of the Act of 1939, extends immunity to the Insurance Company if a breach is committed of;** "*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 license during the period of disqualification…..*" **That, if the insured was not at fault and had not done anything he should not have, or was not amiss in any respect, how could it be conscientiously posited that he had committed a breach. It is only when the insured himself places the vehicle in charge of a person who does not hold a driving license 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. 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. Therefore, it was concluded that the exclusion clause does not exonerate the insurer."**
> **(emphasis supplied)**

(i) In the case of ***Binod Kumar Agarwal*** (*supra*), it was clear that the insured had given the vehicle in the hands of his authorized and licensed driver. The insured though not travelling in the same vehicle was of the firm belief that his employee would be driving the vehicle. That, as held in ***Skandia Insurance Company Ltd.*** (*supra*), when the insured had done everything within his power inasmuch as he had engaged a licensed driver and placed the vehicle in-charge of the said driver with the express or implied mandate that it would be driven by him, it cannot be said that the insured is guilty of any breach of the terms of the Insurance policy. That, it is only in case of a breach or a violation of the promise on the part of the insured that the insurer can hide under the umbrella of the exclusion clause and avoid payment of compensation to the third party or as in this case seek to recover it from the Appellant, the Respondents No.3 and 4. That, in Paragraph 14 of ***Skandia Insurance Company Ltd.*** (*supra*), it was succinctly pointed out that in view of this provision, apart from the implied mandate to the licensed driver not to place an unlicensed person in-charge of the vehicle, there is also a statutory obligation on the said person not to leave the vehicle unattended and not to place it in-charge of an unlicensed driver. That, what is prohibited by law must be treated as a mandate to the employee and should be considered sufficient in the eye of law for excusing non-compliance with the conditions. It cannot therefore in any case be considered as a breach on the part of the insured.

(ii) The observation in ***Skandia Insurance Company Ltd.*** (*supra*), was affirmed by a three Judge Bench in ***Sohan Lal Passi*** (*supra*), which in turn came up for discussion before a three Judge Bench of the Supreme Court in ***Swaran Singh and Others*** (*supra*), where it was observed that an Insurance-Company cannot shake off its liability to pay compensation only by saying that at the relevant point of time, the vehicle was driven by a person who did not have a license.

(iii) In ***Sohan Lal Passi*** (*supra*), the Supreme Court elucidated and observed that;

> **"12.** ……
> 96. ……..
>
> ……. 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. In the present case far from establishing that it was the appellant who had allowed Rajinder Pal Singh to drive the vehicle when the accident took place, there is not even any allegation that it was the appellant who was guilty of violating the condition that the vehicle shall not be driven by a person not duly licensed. From the facts of the case, it appears that the appellant had done everything within his power inasmuch as he has engaged a licensed driver Gurbachan Singh and had placed the vehicle in his charge. While interpreting the contract of insurance, the tribunals and courts have to be conscious of the fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds. 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. It need not be pointed out that the whole concept of getting the vehicle insured by an insurance company is to provide an easy mode of getting compensation by the claimants, otherwise in normal course they had to pursue their claim against the owner from one forum to the other and ultimately to execute the order of the Accident Claims Tribunal for realisation of such amount by sale of properties of the owner of the vehicle. The procedure and result of the execution of the decree is well known.**"**

(iv) Despite the clear and concise Judgment of this Court, explaining the provisions of law with due reference to the law laid down by the Hon'ble Supreme Court, vide its afore cited Judgments and reference to it by Learned Counsel for the Appellant before the Claims Tribunal, the Claims Tribunal disregarded the Judgment and remained in ignorance of the observations on the issue not only of this Court but also of the Hon'ble Supreme Court. As a result, the Claims Tribunal has not been able to comprehend the provisions of Sections 147 and 149 of the MV Act. It is clear, the Appellant as the owner of the vehicle in accident had placed his driver, Respondent No.3, in-charge of the vehicle, the said driver had a valid and effective license at the time of the accident. That, it was Respondent No.3, who has acted irresponsibly and in an inebriated condition handed over the vehicle to Respondent No.4. The vehicle had been placed in the charge of Respondent No.3 with the express and implied mandate that it would be driven by him and none else. Consequently, there is no breach of the terms of the contract by the Appellant.

13. In conclusion, summing up all the discussions which have emanated hereinabove, it is apparent that the insurer cannot escape its liability when it has failed to establish breach of the policy conditions. The question of pay and recovery in the case of an insured vehicle, as ordered by the Claims Tribunal would arise only in the eventuality of proof, that, there was a breach of the policy conditions. In the absence of such breach, as in the instant case, where it has been established that the owner had put a licensed driver in-charge of his vehicle, the question of pay and recovery does not arise. The Claims Tribunal has clearly

misdirected itself on this aspect and erroneously ordered recovery of the insured amount from the Appellant, the Respondent No.3 and the Respondent No.4.

14. The said order of recovery of the Award amount from the Appellant, the Respondent No.3 and Respondent No.4 is thus set aside.

15. Before concluding the matter it is relevant to mention here that Section 168 of the MV Act provides for award of the Claims Tribunal. It requires no reiteration that if there are materials it would be open to the Tribunal to award compensation that it deems '*just'*. That, having been said it appears that the Claims Tribunal has also failed to abide by the decision of the Constitutional Bench of the Hon'ble Supreme Court in ***National Insurance Company Limited*** vs. ***Pranay Sethi and Others***[7], wherein it was held in no uncertain terms that '*future prospects*' for those below 40 years of age would be computed at 50% and not 40% as calculated by the Claims Tribunal.

16. Hence, the compensation computed by the Claims Tribunal is set aside.

17. The compensation is computed afresh as below;

Annual income of the deceased **(Rs.7,000/- x 12)**		Rs. 84,000.00
Add 50% of Rs.84,000/- as Future Prospects [In terms of the Judgment of National Insurance Company Limited vs. Pranay Sethi and Others : (2017) 16 SCC 680]	**(+)**	Rs. 42,000.00
Net yearly income		Rs. 1,26,000.00
Multiplier to be adopted **'18'** [The age of the deceased at the time of death was about '21' and the relevant multiplier as per Judgment of Sarla Verma : (2009) 6 SCC 121 is **'18'**] **(Rs.1,26,000/- x 18 = Rs.22,68,000/-)**		
Therefore, compensation for loss of future earning based on his 70% disablement [**Rs.22,68,000/- x 70%**] [As per the decision of SCI in Sri Anthony vs. the Managing Director, KSRTC : Civil Appeal No.2551 of 2020 dated 10-06-2020)	**(+)**	Rs.15,87,600.00

[7] (2017)16 SCC 680

Add Actual medical expenses	**(+)**	Rs. 16,679.00
Add One month salary during the period of hospitalisation	**(+)**	Rs. 7,000.00
Add Pain, suffering, disfigurement and disability [In terms of the Judgment of Mohd. Sabeer alias Shabir Hussain vs. Regional Manager, U.P. State Road Transport Corporation : 2022 SCC OnLine 1701]	**(+)**	Rs. 3,00,000.00
Add Loss of amenities (loss of prospects of marriage) [In terms of the Judgment of Mohd. Sabeer (*supra*)	**(+)**	Rs. 2,00,000.00
Add Future medical expenses including attendant charges [In terms of the Judgment of Parminder Singh vs. New India Assurance Company Limited and Others : (2019) 7 SCC 217]	**(+)**	Rs. 5,00,000.00
Total =		**Rs.27,37,279.00**

(Rupees twenty seven lakhs, thirty seven thousand, two hundred and seventy nine) only.

18. The Respondent No.2 shall pay the compensation computed at ₹ 27,37,279/- (Rupees twenty seven lakhs, thirty seven thousand, two hundred and seventy nine) only, to the Respondent No.1 within a period of two months from today, with interest @ 9% per annum, failing which the Respondent No.2 shall pay interest @ 12% per annum, from the date of filing of the Claim Petition i.e., 01-08-2017, till full realization, duly deducting the amounts, if any, already paid by the Respondent No.2 to the Respondent No.1.

19. Appeal disposed of accordingly.

20. Copy of this Judgment be transmitted to the Claims Tribunal for information, along with its records.

(Meenakshi Madan Rai)
Judge
12-06-2023

Approved for reporting : **Yes**

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