HC-KAR

NC: 2026:KHC-D:14009
MFA No. 104064 of 2023

CNR: KAHC020165952023

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 28TH DAY OF AUGUST, 2026

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BEFORE

THE HON'BLE MR. JUSTICE RAGHAVENDRA SEETHARAM SRIVATSA

MISCELLANEOUS FIRST APPEAL NO.104064 OF 2023 (MV-D)

BETWEEN:

THE DIVISIONAL MANAGER,
THE NEW INDIA ASSURANCE CO. LTD.,
CLUB ROAD, BELAGAVI-590001,
REP. BY DULY CONSTITUTED ATTORNEY.

...APPELLANT

(BY SRI S. V. YAJI, ADVOCATE)

AND:

1. SMT. HULAGAMMA MALLAPPA BIRADAR,
AGE: 28 YEARS,
OCC: HOUSEHOLD WORK,
R/O. BIJJUR, TQ. MUDDEBIHAL,
DIST. VIJAYPUR-586124,
NOW AT PRABUWADI, CHIKODI.

2. SRI MALLAPPA BIRAPPA BIRADAR,
AGE: 36 YEARS, OCC: SERVICE,
R/O. BIJJUR, TQ. MUDDEBIHAL,
DIST. VIJAYPUR-586124,
NOW AT PRABUWADI, CHIKODI.

3. SRI ARVIND SIDDARAMAPPA BURLI,
AGE: 45 YEARS, OCC: BUSINESS,
R/O. AMOL LADIES COLLECTION,
K.C.ROAD, CHIKODI, TQ. CHIKODI,
DIST. BELAGAVI-591209.

...RESPONDENTS

(BY SRI SANTOSH S. HATTIKATAGI, ADV. FOR R1 & R2;

SRI SOURABH MIRJE, ADV. FOR

SRI SHIVARAJ S. BALLOLLI, ADV. FOR R3)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT, 1988, PRAYING TO CALL FOR THE RECORDS AND SET ASIDE THE JUDGMENT AND AWARD DATED 26/06/2023 PASSED BY THE PRINCIPAL SENIOR CIVIL JUDGE AND ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL CHIKODI IN MVC NO.263/2021, CONSEQUENTLY, IT IS PRAYED THAT THE CLAIM PETITION AGAINST THIS APPELLANT MAY KINDLY BE DISMISSED AND MODIFY THE AWARD AGAINST THE APPELLANT AND ETC.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAGHAVENDRA SEETHARAM SRIVATSA

ORAL JUDGMENT

This appeal is filed by the Insurance Company who was arrayed as respondent No.2 before the Principal Senior Civil Judge and Additional MACT, Chikodi (for short 'Tribunal) in MVC No.263/2021.

2. A young boy of four years was hit by a moving car and he died. The car was being driven by a person holding only a learner's licence. The question that arises in this case is whether the insurer of the car is justified in denying the liability to compensate the parents of the deceased child on the ground of breach of Insurance Policy conditions as also Rule 3 of the Central Motor Vehicles Rules, 1989 (for short, 'the CMV Rules, 1989').

3. Learned counsel Sri.S.V.Yaji appearing for the appellant-Insurance Company submits that the appellant is aggrieved by the finding that the Insurance Company is liable to pay the compensation, although the driver of the offending car was holding only learner's licence at the relevant time. The Tribunal relied on the judgment of the Hon'ble Supreme Court

in the case of ***National Insurance Company Limited Vs. Swaran Singh***[1] ***(Swaran Singh's case)*** and came to the conclusion that even though the driver held only a learner's licence at the relevant time, the Insurance Company is still liable. Sri.Yaji has drawn the attention of the Court to Rule 3 of the CMV Rules, 1989 and also to the relevant clause in the Insurance Policy produced as Ex.R.2. The principles laid down in the judgment of ***Swaran Singh's case*** are applicable to this case. However, some nuances regarding compliance with the conditions of the licence, conditions of the Insurance Policy and the requirements of Rule 3 assume significance. These are addressed in this judgment.

4. The facts, in brief, culminating in the present appeal are as follows:

4.1 On 26.12.2020, the victim, a boy then aged about four years by name UdayKumar was standing near the house of one Dundappa Duggani in Chikkodi. A car bearing registration No.KA-23/P-0160 came and

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[1] (2004) 3 SCC 297

hit the child. As a result of the accident, the child died, having succumbed to injuries.

4.2 The father of the child filed a complaint with the Police on the same day. The Police registered a case in Crime No.52/2020 in Chikkodi Town Traffic Police Station.

4.3 The Police filed a charge-sheet on 26.12.2020 against Sri.Arvind Siddaramappa Burli the driver of the car who was also the owner of the car. He was charged under Sections 279, 304(A) of the IPC and Section 3 r/w Section 181, 134 and 187 of the M.V Act.

4.4 The parents of the victim child filed a claim petition in MVC No.263/2021 before the Tribunal seeking compensation for the death of their son due to the accident. It was alleged in the claim petition that the driver of the car drove the car in a rash and negligent manner causing accident because of which, the child succumbed to injuries.

5. The owner of the car who was also the driver arrayed as respondent No.1, filed a written statement claiming that on the date of the accident, he was driving his car along with his friend Sri.Raju Mayappa Hirekurbar. He admitted that he had a learner's licence to drive a Light Motor Vehicle. He claimed that he was learning to drive under the guidance of his aforesaid friend. He denied that he was driving the car in a rash and negligent manner and therefore, denied the liability.

6. The Insurance Company which was arrayed as respondent No.2 has filed its objections to the claim petition and contended that the policy conditions had been violated because, the driver was driving only with driving licence and therefore, the Insurance Company was not liable.

7. The Tribunal considered the pleadings of the parties and as regards, the liability of the Insurance Company to pay the compensation, the Tribunal had framed issue No.2 as under:

> *"2) Whether the respondent No.2 proves that it is not liable to pay compensation as pleaded in its statement of objections?"*

8. On behalf of the claimants, the mother of the child who was claimant No.1 was examined as PW.1. The learner's licence issued to respondent No.1 was marked as Ex.P.9. The certificate of Insurance Policy was produced as Ex.P.10.

9. The Insurance Company examined an Officer of the Company and produced documents from Ex.R.1 to R.7. A copy of the learner's licence was produced as Ex.R.3 and a copy of the Insurance Policy containing the conditions of the policy was marked as Ex.R.2.

10. The Tribunal took note of the fact that the driver of the car held only a learner's licence on the date of the accident. Rule 3 of the CMV Rules, 1989 was also mentioned by the Tribunal while recording its finding on issue No.2. The owner cum driver of the vehicle was examined as RW.2 and the Tribunal relied on his testimony that on the date of the accident although he had only a learner's license to drive the car, he was accompanied by his friend Sri.Raju Mayappa Hirekurbar from whom he was learning to drive and used to take instructions from him.

11. The Tribunal then proceeded to rely on the decision of the Hon'ble Supreme Court in the case of ***Swaran Singh*** (supra) and came to the conclusion that although the driver of the car was holding only a learner's licence, the Insurance Company was still liable to pay the compensation.

12. I have heard Sri.S.V.Yaji, learned counsel appearing on behalf of the appellant, Sri.Santosh S. Hattikatagi, learned counsel appearing on behalf of respondent Nos.1 and 2 and Sri.Shivraj S. Ballolli, learned counsel appearing on behalf of respondent No.3.

13. Learned counsel Sri.S.V.Yaji, appearing on behalf of the appellant/Insurance Company has contended that although the mere fact that the driver had only a learner's licence may not be sufficient to absolve the Insurance Company of its liability, the statutory conditions subject to which the holder of learner's licence can drive the car are not fulfilled in the present case. It is his submission that the driver of the car holding a learner's licence, was not accompanied by a person who had an effective driving licence and who was an instructor.

14. Sri.Yaji, buttresses his argument by stating that the purported instructor by name Sri.Raju Mayappa Hirekurbar, has not been examined. He also contends that in the complaint at Ex.P-2, the presence of the said purported instructor is not mentioned. Therefore, according to the learned counsel appearing on behalf of the appellant, there is a violation of the express conditions of the policy, which stipulate that the holder of a learner's licence can drive the car only if he satisfies the requirements of Rule 3 of the CMV Rules, 1989. Therefore, he prays that the appeal be allowed and the impugned judgment and award passed by the Tribunal be set aside.

15. Learned counsel appearing on behalf of respondent Nos.1 and 2, who are the claimants before the Tribunal, submitted that the judgment of the Hon'ble Supreme Court in the case of ***Swaran Singh*** (supra) squarely covers the present case. It is his submission that although the driver held only a learner's licence, as per the law declared in ***Swaran Singh's*** case (supra), the Insurance Company is still liable and therefore, the Tribunal has rightly foisted the liability on the Insurance Company. In any event, learned counsel submits

that the claimants are entitled to recover the compensation either from the owner cum driver of the car or from the Insurance Company and therefore, he supports the impugned judgment and award passed by the Tribunal to that extent.

16. Learned counsel appearing on behalf of respondent No.3, the owner cum driver of the car submitted that the car was being driven by respondent No.1 when he was accompanied by an instructor, Sri.Raju Mayappa Hirekurbar. He submitted that the presence of the said instructor cannot be doubted. In any case, learned counsel submitted that even if the driver held only a learner's licence, the liability of the Insurance Company cannot be denied and reliance is placed on the judgment of the Hon'ble Supreme Court in the case of ***Swaran Singh*** (supra).

17. I have heard the learned counsel at some length and I have perused the records carefully. I have also examined Section 3 of the Motor Vehicles Act, 1988 (for short, 'the M.V Act, 1988'), Rule 3 of the CMV Rules, 1989 and the judgment of the Hon'ble Supreme Court in the case of ***Swaran Singh*** (supra).

18. There is no doubt that the Hon'ble Supreme Court has laid down the principle of law in the case of ***Swaran Singh*** (supra) that even if the driver of the vehicle held a learner's licence, it would also come under the purview of "duly licenced", as such a licence is also granted in terms of the provisions of the M.V Act, 1988 and the CMV Rules, 1989 framed thereunder.

19. In the present case, the parties are *ad idem* that the driver of the car held a learner's licence. What is required to be seen and decided is whether the holder of such a learner's licence was driving the car in accordance with the relevant provisions of the MV Act, 1988 read with the CMV Rules, 1989. In this context, Section 3 of the M.V Act, 1988 and Rule 3 of the CMV Rules, 1989 are required to be reproduced.

20. Section 3 of the Motor Vehicles Act, 1988 reads as follows:

> *"**3. Necessity for driving licence**. -(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport*

vehicle [other than [a motorcab or motor cycle] hired for his own use or rented under any scheme made under sub-section (2) of section 75] unless his driving licence specifically entitles him so to do.

(2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.

(Emphasis supplied)

21. Rule 3 of the Central Motor Vehicles Rules, 1989 reads as under:

"3. General

The provisions of sub-section (1) of section 3 shall not apply to a person while receiving instructions or gaining experience in driving with the object of presenting himself for a test of competence to drive, so long as—

(a) such person is the holder of an effective learner's licence issued to him in Form 3 to drive the vehicle;

(b) such person is accompanied by an instructor holding an effective driving licence to drive the vehicle and such instructor is sitting in such a position as to control or stop the vehicle; and

(c) there is painted, in the front and the rear of the vehicle or on a plate or card affixed to the front and the rear, the letter "L" in red on a white background as under:

$\boxed{L}$

> *Note: The painting on the vehicle or on the plate or card shall not be less than 18 centimetres square and the letter "L" shall not be less than 10 centimetres high, 2 centimetres thick and 9 centimetres wide at the bottom:*
>
> *PROVIDED that a person, while receiving instructions or gaining experience in driving a motorcycle (with or without a side-car attached), shall not carry any other person on the motorcycle except for the purpose and in the manner referred to in clause (b)."*
>
> *(Emphasis supplied)*

22. It is necessary to note that sub-Section (1) of Section 3 of the M.V Act, 1988 contains a prohibitory clause because the language of the sub-section says that no person shall drive a motor vehicle unless he holds an effective driving licence issued to him authorizing him to drive a vehicle. It is sub-section (2) of Section 3 of the M.V Act, 1988 that is relevant to the facts of the present case. Sub-Section (2) of Section 3 of the MV Act, 1988 creates an exception to the general prohibition in sub-Section (1) of Section 3 of the M.V Act, 1988. Sub-Section (2) of Section 3 of the M.V Act, 1988 provides that the conditions subject to which sub-Section (1) of Section 3 of the M.V Act, 1988 shall not apply to a person receiving the instructions in driving a motor vehicle *shall be such as may be prescribed by the Central Government*.

23. It is because of the stipulation in sub-Section (2) of Section 3 of the M.V Act, 1988 that the exception therein will apply when the conditions prescribed by the Central Government are fulfilled, the occasion to examine Rule 3 of the CMV Rules, 1989 arises. The provisions of Rule 3 of the CMV Rules, 1989 are clear as daylight. The prohibition in sub-Section (1) of Section 3 of the M.V Act, 1988 shall not apply when a person holding a learner's licence is accompanied by an instructor who is so positioned as to be able to control or stop the car and there is also a prominent marking of the letter "L" as stipulated in clauses (b) and (c) of Rule 3 of the CMV Rules, 1989. The conditions mentioned in Rule 3 are *cumulative* and all of them have to be fulfilled for the driver to be exempted from the rigours of Sec.3(1).

24. Having extracted the provisions of Section 3 of the M.V Act, 1988 and Rule 3 of the CMV Rules, 1989 it is imperative to notice that the express conditions in the Insurance Policy, which reads as follows:

> *"Persons or classes of persons entitled to drive: Any person including the insured provided that a person driving holds an effective driving license at the time of the accident and is not disqualified from holding or*

> *obtaining such a license Provided also that the person holding an effective Learner's License may also drive the vehicle and that such a person satisfies the requirement of Rule 3 of the Central Motor Vehicles Rules, 1989."*
>
> *(Emphasis supplied)*

25. The contract of insurance stipulates that the coverage of liability will extend even if the driver of the vehicle holds a learner's licence subject, however, to the condition that he satisfies the requirements of Rule 3 of the CMV Rules, 1989.

26. The Tribunal no doubt mentioned Rule 3 of the CMV Rules, 1989 while recording its findings on issue No.2 regarding the liability of the Insurance Company. However, the Tribunal failed to notice the most significant provision in sub-Section (2) of Section 3 of the M.V Act, 1988 read with provisions of Rule 3 of the CMV Rules, 1989 and the Tribunal also ignored the express stipulation in the contract of insurance as has been extracted above. The stipulation in the contract is in the nature of an exclusion clause because, if the conditions in Rule 3 of the CMV Rules, 1989 are not complied with, the insurer is not liable under the contract of insurance.

27. The Tribunal proceeded to rely on the judgment of the Hon'ble Supreme Court in the case of ***Swaran Singh*** (supra) and concluded that even if the driver was holding learner's licence, as per the law laid down in ***Swaran Singh's case*** (supra), the Insurance Company is still liable to pay the compensation. The Tribunal has concluded, only on the *ipse dixit* of the driver, that he was accompanied by the instructor Raju Mayappa Hirekurubar at the time of the accident. It is relevant to note that the purported instructor was not examined. He would have been the *star witness* on behalf of the driver. Further, the Police charge sheet cites certain eye-witnesses to the incident. None of them is examined. The charge sheet does not mention the presence of the alleged instructor. The complaint filed by the child's father, Ex.P-2, also does not mention the presence of the alleged instructor. Therefore, the inescapable conclusion is that the driver failed to prove that he was accompanied by an instructor who had a valid driving licence and who was so seated as to be in a position to control or slow down the car. Further, there is

absolutely no evidence of compliance with clause(c) of Rule 3 regarding display of the "L" sign.

28. The Tribunal has relied on the judgment of ***Swaran Singh's case***, but full compliance with the conditions stipulated in Rule 3 of the CMV Rules, 1989 has been ignored by the Tribunal. Non-compliance with any of the conditions stipulated in Rule 3 of the CMV Rules, 1989 would absolve the Insurance Company of its liability if the driver was holding a learner's licence. In addition to the stipulation in sub-Section (2) of Section 3 of the M.V Act, 1988 read with Rule 3 of the CMV Rules, 1989, in the present case there is an express exclusion by way of contractual stipulation in the Insurance Policy.

29. The Hon'ble Supreme Court in the case of ***Swaran Singh*** (supra), while dealing with the question whether the Insurance Company can be held liable although the driver of the vehicle was holding only a learner's licence took note of the relevant provisions of the M.V Act, 1988 and the CMV Rules, 1989. It is singularly important to note that the Hon'ble Supreme Court has clearly held that the Rules framed under

the M.V Act, 1988 are required to be read as part of the main enactment and while interpreting the statute, an attempt must be made to give full effect to all provisions of the Rules.

30. It is also significant to note that in the case of ***Swaran Singh*** (supra), the Hon'ble Supreme Court has referred to an earlier judgment in the case of ***New India Assurance Co. Ltd. Vs. Mandar Madhav Tambe and Others***, ***(1996) 2 SCC 328***. That earlier case has been distinguished on facts because in that case there was an express exclusion that the driver should have held a permanent driving licence "other than a learner's licence". It was further held that the judgment in ***Mandar Mohan Tambe*** was not applicable to the facts in ***Swaran Singh's case*** and that the judgment did not create any binding precedent. In the present case, there is no exclusion in respect of a learner's licence *per se* but there is an express stipulation that the conditions of Rule 3 of the CMV Rules, 1989 must be complied with.

31. To appreciate what has been stated in the preceding paragraphs, it will be helpful to quote the relevant paragraphs from the judgment of the Hon'ble Supreme Court in

the case of ***Swaran Singh*** (supra) at paragraph Nos.93, 94, 95 and 96, which held as under:

> ***Learner's licence***
>
> ***93.*** *The Motor Vehicles Act, 1988 provides for grant of learner's licence. [See Section 4(3), Section 7(2), Section 10(3) and Section 14.] A learner's licence is, thus, also a licence within the meaning of the provisions of the said Act. It cannot, therefore, be said that when a vehicle is being driven by a learner* ***subject to the conditions mentioned in the licence****, he would not be a person who is not "duly licensed" resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said that a person holding a learner's licence is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provisions of Section 149(2) of the said Act.*
>
> ***94.*** *The provisions contained in the said Act provide also for grant of driving licence which is otherwise a learner's licence. Sections 3(2) and 6 of the Act provide for restriction in the matter of grant of driving licence, Section 7 deals with such restrictions on granting of learner's licence. Sections 8 and 9 provide for the manner and conditions for grant of driving licence. Section 15 provides for renewal of driving licence.* ***Learner's licences are granted under the Rules framed by the Central Government or the State Governments in exercise of their rule-***

making power. Conditions are attached to the learner's licences granted in terms of the statute. *A person holding learner's licence would, thus, also come within the purview of "duly licensed" as such a licence is also granted in terms of the provisions of the Act and the Rules framed thereunder. It is now a well-settled principle of law that rules validly framed become part of the statute. Such rules are, therefore, required to be read as a part of the main enactment. It is also a well-settled principle of law that for the interpretation of statute an attempt must be made to give effect to all provisions under the rule. No provision should be considered as surplusage.*

95. *Mandar Madhav Tambe case [(1996) 2 SCC 328 : 1996 SCC (Cri) 307] , whereupon the learned counsel placed reliance, has no application to the fact of the matter. There existed an exclusion clause in the insurance policy wherein it was made clear that the insurance company, in the event of an accident, would be liable only if the vehicle was being driven by a person holding a valid driving licence or a permanent driving licence "other than a learner's licence". The question as to whether such a clause would be valid or not did not arise for consideration before the Bench in the said case. The said decision was rendered in the peculiar fact situation obtaining therein. Therein it was stated that "a driving licence" as defined in the Act is different from a learner's licence issued under Rule 16 of the Motor Vehicles Rules, 1939 having regard to the factual matrix involved therein.*

> ***96.*** *The question which arises for consideration in these petitions did not arise there. Neither was the same argued at the Bar nor were the binding precedents considered. Mandar Madhav Tambe case [(1996) 2 SCC 328 : 1996 SCC (Cri) 307] therefore, has no application to the facts of these cases nor creates any binding precedent. The view we have taken is in tune with the judgments rendered by different High Courts consistently. (See for example New India Assurance Co. Ltd. v. Latha Jayaraj [1991 ACJ 298 (Ker)].)"*
>
> *(Emphasis supplied)*

32. It is clear that the Hon'ble Supreme Court has held that a driver holding a learner's licence would also be considered as one holding a valid driving licence if he was driving *subject to the conditions mentioned in the licence.* The Court has further clarified that *"conditions are attached to the learner's licence granted in terms of the statute".* A learner's licence is issued in Form 3 under the CMV Rules, 1989. The said Form contains the statutory conditions recognized by the Hon'ble Supreme Court. It is therefore pertinent to see the Form of a learner's licence in the statutory framework. The learner's licence of the driver respondent No.3 is on record as Ex.R-3. The document is reproduced here:

FORM 3
[See Rules 3(a) and 13]
LEARNER'S LICENCE

Fee Details Rs.350.0/- /ES/411891/02-11-2020

ApplNo: 2954754520

1. Licence No. KA23/0019351/2020
2. Name ARAVIND S BURLI
3. Father's Name SIDARAMAPA
4. Date of Birth 10-07-1972
5. Optional/Blood Group-
R H Factor Unknown
6. Present Address ANMOL LEDIES COLLECTIONS K C ROAD
CHIKODI (TMC)
CHIKODI, BELGAUM, KA, 591201
7. Permanent ANMOL LEDIES COLLECTIONS K C ROAD
CHIKODI (TMC)
CHIKODI, BELGAUM, KA, 591201
8. Marks of Identification (1)
(2)

PHOTO

Holder's Signature

Is licenced to drive throughout India as a learner subject to the provisions of rule 3 of the Central Motor Vehicles Rules 1989, a motor vehicle of the following description

LIGHT MOTOR VEHICLE

* The holder of the licence has passed the preliminary test referred to in rule 11(1) of the CMV Rules, 1989.

*The holder of the licence is exempted from the medical test under rule 6 and from the Preliminary test under rule 11(2) of the Central Motor Vehicle Rules, 1989

*Strike off which ever is inapplicable

This licence is valid 06/11/2020 to 05/05/2021

Sd/-

Licensing Authority

Warning
The attention of the holder of this licence is drawn to rule 3 of CMV Rules, 1989 which prohibits him from driving any motor vehicle unless he has besides him a person duly licenced to drive the vehicle and in every case, the vehicle carries "L" plates both in front and in the rear of the vehicle.
Note: this is computer generated document. It does not require any authentication.

33. From the Form of the learner's licence, it can be seen that the holder *"is licenced to drive throughout India as a learner subject to the provisions of Rule 3 of the Central Motor Vehicles Rules, 1989*.......*"* Further, at the foot of the licence in Form 3, the following warning is given:

> *Warning*
> *The attention of the holder of this licence is drawn to rule 3 of CMV Rules, 1989 which prohibits him from driving any motor vehicle unless he has besides him a person duly licenced to drive the vehicle and in every case, the vehicle carries "L" plates both in front and in the rear of the vehicle.*

34. The upshot of the above discussion is that in ***Swaran Singh's case***, the Hon'ble Supreme Court has laid down that the Insurance Company is liable even if the vehicle is driven by a driver holding a learner's licence *provided he was driving subject to the conditions mentioned in the licence.* The conditions in the licence take us directly to Rule 3 which imposes certain conditions for a learner to be exempt from the prohibition in Section 3 of the M.V Act. The *ratio decidendi* of ***Swaran Singh's case*** is that a learner holding a learner's licence is deemed to be holding a valid driving licence *only if he was driving subject to the conditions in the licence*. There is no blanket and unqualified proposition that a learner's licence is as good as a valid driving licence for purposes of insurance coverage.

35. Reverting to the facts of the present case, from the gamut of evidence available on record, it is clear that the

owner-cum-driver of the vehicle did not prove that he was accompanied by an instructor at the time of driving the vehicle, as he himself held only a learner's licence. It was also not proved that the "L" sign was displayed. Thus, the driver was not driving the car subject to the conditions mentioned in the licence. This has resulted in a breach of the requirements of Rule 3 of the CMV Rules, 1989 which are made applicable by virtue of sub-Section (2) of Section 3 of the M.V Act, 1988. There is also a violation of the contractual stipulation. The parties are bound by the terms of the contract of insurance. For all these reasons, the inescapable conclusion will be that the appellant/Insurance Company will not be liable to pay compensation to the claimants in the present case.

36. However, as has been further stipulated in the judgment of ***Swaran Singh*** (supra) and in other judgments, although the Insurance Company may not be liable *stricto sensu,* the Insurance Company can be directed to pay the compensation to the claimants and recover the same from the owner of the vehicle.

37. In the light of the foregoing discussion, this appeal is ***allowed in part***. The finding of the Tribunal that the present appellant/Insurance Company is jointly liable to pay the compensation to the claimants is modified to the extent that the Insurance Company shall pay the compensation and shall be at liberty to recover the same from the owner of the vehicle.

38. The amount deposited by the appellant/Insurance Company shall be transferred to the Tribunal.

39. There is no order as to costs.

Sd/-
(RAGHAVENDRA SEETHARAM SRIVATSA)
JUDGE

PJ/SRA
CT-AN/List No.: 1 Sl No.: 40