IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

WEDNESDAY, THE 5TH DAY OF JULY 2023 / 14TH ASHADHA, 1945

MACA NO. 1214 OF 2008

AGAINST THE AWARD IN OP(MV)No.963/2005 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, TIRUR DTD.1.1.2008

APPELLANT/3rd RESPONDENT:

THE NATIONAL INSURANCE CO.LTD.
CALICUT, REPRESENTED BY ITS MANAGER,
MOTOR THIRD PARTY CELL, OMANA BUILDING,
M.G.ROAD, ERNAKULAM, KOCHI - 35.

BY ADVS.
SRI.GEORGE CHERIAN (THIRUVALLA)
GEORGE A.CHERIAN
SMT.K.S.SANTHI

RESPONDENTS/RESPONDENTS 1, 2 & ADDL.R4:

1 JAREESH
S/O IBRAHIMKUTTY,
ENEENTEPURAKKAL HOUSE, P.O. KOOTTAYIL,
TIRUR TALUK, MALAPPURAM DISTRICT.

2 DR.K.P.DINESH
MEDICAL CENTRE, VAZHAKKAD P.O.,
MALAPPURAM DIST.

3 ***** KUPPANTE PURAKKAL ABOOBACKER, **DIED *(DELETED)**
S/O. HASSAINAR KUTTY, KUPPANTE PURAKKAL HOUSE,
P.O.KOOTTAYI, MALAPPURAM DISTRICT

*****(RESPONDENT No.3 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANT AS PER ORDER DATED 3/4/19 IN IA NO. 1/19 IN MACA 1214/2008).

BY ADV SRI.P.K.SAJEEV

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 27.06.2023, THE COURT ON 05.07.2023 DELIVERED THE FOLLOWING:

'C.R.'

C.JAYACHANDRAN, J.

M.A.C.A.No.1214 of 2008

Dated this the 05th day of July, 2023

JUDGMENT

The 3rd respondent insurance company preferred the above appeal assailing the award of the Motor Accidents Claims Tribunal, Tirur in O.P.(M.V.)No.963/2005, essentially aggrieved by refusal of their right of recovery from the insured, claimed on the premise that the 1st respondent driver was not duly licensed to drive the vehicle in question at the time of accident.

2. The short question involved in this Motor Accidents Claims Appeal is whether the appellant/insurance company ought to have been afforded a right to recover the compensation amount from the 2nd respondent/owner of the vehicle, since it is established that the 1st respondent/driver was not duly licensed at the time of accident. The

appellant/insurance company (3rd respondent in the O.P.) took a contention that the 1st respondent had no valid licence at the time of accident to drive the car, which knocked down the victim girl, aged 7 years, who later succumbed to the injuries. The 1st respondent/driver remained *ex parte.* The appellant (3rd respondent in the O.P.) filed I.A.No.1434/2007 calling upon the 1st respondent/driver to produce his driving licence. Though notice was issued, the same was not served upon him. The Tribunal found that the 1st respondent was not duly licensed, inasmuch as he had not contested the proceedings. However, the Tribunal found that the 3rd respondent/insurance company (appellant herein) failed to prove that the absence of a driving licence was so fundamental, so as to have contributed to the cause of accident. In this regard, the Tribunal relied upon the judgment of the Hon'ble Supreme Court in **National Insurance Company Ltd. v. Swaran Singh & others** [(2004) 3 SCC 297]. The Tribunal went on to hold that the burden to prove the defence as regards violation of a policy condition is squarely upon the insurer (appellant

herein) and that there is not even a plea in the written statement filed by the insurance company that the insured/owner had failed to exercise reasonable care in the matter of entrusting the vehicle to the 1st respondent; or that the insured had knowingly allowed the 1st respondent to drive the vehicle without a valid driving licence. The Tribunal further found that there exists no evidence that the absence of driving licence had caused or contributed to the accident. On such premise, the Tribunal mulcted the responsibility/liability on the appellant/insurance company, without there being a corresponding enabling direction to recover the amount from the owner/insured.

3. Heard Smt.K.S.Santhi, learned Standing Counsel for the appellant and Sri.P.K.Sajeev, learned counsel for the 2nd respondent/owner. There is no representation for the 1st respondent/driver before this Court as well.

4. Learned counsel for the appellant submitted that the appellant/insurance company cannot be compelled to adduce evidence to establish that the insured did not take adequate care and caution as regards the existence of a valid driving licence, since it is a matter purely within the knowledge of the insured. There cannot be any method available and open to the insurer to prove such a fact. Relying on **Beli Ram v. Rajinder Kumar** [(AIR 2020 SC 4453):(2020 (4) KLJ 989)] it is argued that, it was the victim - and not the owner of the vehicle - who is to be protected on account of the beneficial provisions of the Motor Vehicles Act, wherefore, recovery from the insured/owner of the vehicle should have been granted, once it is established that the driver of the offending vehicle had no valid driving licence at the time of the accident. Learned counsel would further contend that the initial onus of the insurance company stands discharged by establishing that the driver of the vehicle was not duly licenced at the time of accident, whereafter, the onus will shift to the owner/insured to prove that he had taken reasonable care, as regards the

existence of a valid driving licence before engaging the driver. In support of the arguments raised, learned counsel relied upon a five Judges Bench decision of this Court in **Oriental Insurance Company Limited v. Poulose & another** [2015 (1) KLT 682]. One of the incidental questions which fell for consideration in that decision is whether the insurer is entitled to recover the award amount from the insured, which was answered in the affirmative, enabling recovery from the owner/insured. The learned counsel finally submitted that the 2nd respondent/owner had not even mounted the box to speak about the care, if any, he had taken while engaging the 1st respondent/driver.

5. Per contra, the learned counsel for the 2nd respondent/owner first invited the attention of this Court to the three Judges Bench decision of the Hon'ble Supreme Court in **Swaran Singh** (supra) especially to paragraph 110, where the summary of findings have been recorded. Based on such findings, learned counsel contended that breach of policy

conditions, like 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 and that 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. Further, even on proving breach on the part of the insured concerning the policy condition, 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.

6. The learned counsel then relied upon an unreported Bench decision of this Court in **Shibu v. Priyamma and others** (M.A.C.A.No.2517/2014 dated 21.7.2015), wherein a Division Bench of this Court specifically interfered and done

away with the direction of the Tribunal enabling recovery of the compensation amount from the insured. The award, to that extent, was set aside. A Single Bench decision of this Court in **Santhosh.M.V. v. Binu.P.C. and others** (2014 (1) KLT 479) was also pressed into service to drive home the point that the right of recovery granted to the insurer from the insured cannot be sustained, where the insurer has failed to establish breach of policy condition by the insured.

7. Having heard the learned counsel appearing on both sides, this Court finds considerable force in the submissions made by the learned counsel for the appellant. As indicated earlier, the sole question involved is the right of recovery of the insurer/appellant from the insured/2nd respondent/owner. This Court will first ascertain whether the contention of the 3rd respondent/insurance company (appellant herein) that the 1st respondent/driver was not duly licensed at the time of accident stands established or not as per the materials on record. In the impugned award, the Tribunal, on account of the 1st

respondent/driver remaining *ex parte,* came to the conclusion that *'it can be presumed that he was not duly licensed to drive the vehicle'.* Obviously, the Tribunal, took stock of the legal effect of defendant/respondent remaining *ex parte* in a judicial proceeding, as a result of which, he would be deemed to have admitted the claim raised in the proceeding; rather he has no contention to be raised in opposition of the claim and that he has no objection in allowing the claim. This Court would endorse the said deemed fiction as regards the legal impact of a party to a proceeding remaining *ex parte*. That apart, Ext.A5 is the final report in Crime No.139/2005 of Tirur Police Station, which was registered in connection with the accident in question. Ext.A5 specifically refers to the fact that he was not possessed of a valid driving licence at the time of accident. As per the judgment in **New India Assurance Co. Ltd. V. Pazhaniammal** [2011 (3) KLT 648] the contents of the charge sheet can be taken as prima facie proof for the purpose of granting compensation under the Motor Vehicles Act, though the said judgment was rendered in the context of attaching

guilt/negligence on the accused, the driver of the offending vehicle. Above all, the licence, if any, of the 1st respondent/driver is not produced by the 2nd respondent/owner of the offending vehicle. The second respondent has no case at all in the written statement that the 1st respondent/driver was duly licensed. Instead, his contention was that he sold the vehicle much ahead of the accident, wherefore, he was not the owner and hence not liable. It is therefore safe to conclude that the 1st respondent/driver was not duly licensed to drive the car in question at the time of accident.

8. In this regard, this Court will also straight away refer to Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988 as it stood at the time of accident (that is to say prior to the Amendment by virtue of Act 32 of 2019). Section 149(2) deals with the insurer's right to defend an action on account of breach of policy condition. Section 149(2)(a)(ii) is extracted here below:-

"***149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.***—

(1) xxx xxx

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—

(i) a condition excluding the use of the vehicle—

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

> *(ii) 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 licence during the period of disqualification; or*
> *xxx xxx"*

9. It could thus be seen that it amounts to breach of a specified condition of the policy, once it is shown that the insured vehicle was driven by a person who was not duly licensed. This Court had already found that the 1st respondent/driver was not duly licensed at the time of accident, wherefore, this Court finds that there is breach of policy condition in the given facts, prima facie, subject to the legal position expatiated by the Hon'ble Supreme Court in this regard, as regards the duty to own the liability in the case of a third party claim on the one hand; and in respect of the *inter se* rights/claims between the insurer and the insured.

10. Swaran Singh (supra) is the classic judgment on the point and this Court will start with that. The very issue

involved in **Swaran Singh** (supra) was interpretation of Section 149(2)(a)(ii). After referring to the various statutory provisions and the precedents on the point, as also, taking note of the necessity to assign a liberal interpretation in respect of a beneficial statute, the Hon'b'le Supreme Court in paragraph no.77 refers to Section 149(4), as also, the proviso therein, which enables recovery by the insurer from the insured. In paragraph no.80, the Hon'ble Supreme Court specifically excluded from the purview of consideration the contention of the insured that, it is enough if he establishes that he believed bonafide, upon due enquiry, that the driver employee had a valid driving licence, in which case there is no breach of policy condition. In paragraph no.83, the Supreme Court held, upon analysis of Section 149(5), that even in cases where the liability of the insurance company may be zero, still it has to discharge the initial liability by paying the amount to the third party, which the company can however recover from the assured. In the same paragraph, the Hon'ble Supreme Court explained that, even in cases where the insurance

companies are entitled to raise the defence in terms of Section 149(2) and that such defence has been accepted, still the Tribunal has power to direct the insurance company to satisfy the decree at the first instance and then direct recovery of the same from the owner. The Supreme Court also opined that these two matters stand apart and require contextual reading. In paragraph no.84, the Hon'ble Supreme Court had drawn a distinction between cases where the owner of the vehicle permitted the driver to drive with full knowledge that he is not possessed of a driving licence; and cases wherein the owner had taken reasonable care in engaging the driver, who was, however, not duly licensed at the time of accident. In paragraph no.89 in **Swaran Singh** (supra), the Hon'ble Supreme Court held that, the insurer will not be allowed to avoid its liability merely for reason of technical breach of conditions concerning driving license and that the Tribunal, based on evidence, has to decide whether the alleged breach was the main or contributory cause of the accident.

11. Paragraph Nos.91 and 92 of **Swaran Singh** (supra) are relevant in the present context and are extracted here below:-

> *"**91.** On all pleas of breach of licensing conditions taken by the insurer, it would be open to the Tribunal to adjudicate the claim and decide inter se liability of insurer and insured; although where such adjudication is likely to entail undue delay in decision of the claim of the victim, the Tribunal in its discretion may relegate the insurer to seek its remedy of reimbursement from the insured in the civil court.*
>
> ***W***
>
> ***92.** 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 case the matter has been considered in some detail. 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 the law in terms whereof the insurer is to establish wilful breach on the part of the insured and <u>not for the purpose of its disentitlement from raising any defence or for the owners to be absolved from any liability whatsoever</u>. We would be dealing in some detail with this aspect of the matter a little later."*
>
> *(Underlined for emphasis)*

12. It could be seen from the above extracted portion that the liability mulcted on the insurer to prove that the insured/owner was guilty of willful breach of conditions is only in the light of the requirements of law in seeking complete exoneration of the liability; and not for the purpose of the owner being absolved of any liability; whatsoever. In paragraph no.100, the Supreme Court clarified the judgment in **Lehru's** case that the same must not be read to mean that an owner of the vehicle can under no circumstances have any duty to make any enquiry as regards a valid driving licence of the driver. The same was relegated as a question to be considered in each individual case. In paragraph no.101, the Hon'ble Supreme Court emphatically held that it is for the insurer to prove that insured did not take adequate care and caution to verify the genuineness or otherwise of the license held by the driver. In paragraph no.104, the Hon'ble Supreme Court concludes that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been

holding the field for a long time and that the said principle need not be deviated from.

13. Now, this Court would extract the summary of findings of the Hon'ble Supreme Court in **Swaran Singh** (supra) at paragraph no.110 especially Clauses (i), (ii), (iii), (iv), (v), (vi), (vii) and (x) here below:-

> *"110. The summary of our findings to the various issues as raised in these petitions is 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) An 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 the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has*

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 the 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 a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances 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 the 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 insurer 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) xxx xxx

(ix) xxx xxx

(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."

14. As per Clause (x) of the summary of findings extracted above, if the insurer has satisfactorily proved its defence in accordance with Section 149(2) and (7) as interpreted by the court, the insured can be directed to reimburse the compensation amount to the insurer. This Court also notices that, by virtue of Clauses (iii), (iv) and (vi), the insurer must not only establish that there was a breach of policy condition, but should also show that the insured was guilty of negligence and failed to exercise reasonable care and further that the breach was so fundamental to have contributed to the accident. However, these findings are to be understood in the context of satisfying the decree as against a third party, to which extent alone the liberal approach of a beneficial statute

can be stretched upon. In other words, insofar as the insurer's claim for reimbursement from the insured, all what is required is to establish a clear breach of a policy condition in terms of Section 149(2)(a)(ii). This Court will further clarify that, if the findings/stipulations in Clauses (iii), (iv) and (vi) are satisfied, the insurer will be entitled to seek complete exoneration of the liability, that is to say, even as against third party; else, the insurer will be duty bound to own the claim as against the third party, but in which case he will have the liberty to seek reimbursement from the insured upon establishing a clear violation of a condition of the policy.

15. To stretch the principles/findings in Clauses (iii), (iv) and (vi) above, even for the purpose of reimbursement/recovery from the insured will, in the opinion of this Court, amount to annoyance to the language of the statute in Section 149(2)(a)(ii), besides overreaching the object and scope of the beneficial statute, beyond its purpose.

16. Adequate light in this regard has been thrown by another recent three Judges Bench decision of the Hon'ble Supreme Court in **Beli Ram v. Rajinder Kumar** (AIR 2020 SC 4453). There, the observations of the Himachal Pradesh High Court speaking through Deepak Gupta, J. (as His Lordship then was) in **National Insurance Company Ltd. v. Hem Raj and others** (2012 ACJ 1891) that sympathy can only be for the victim of the accident and that the right which has to be protected is of the victim and not the owner of the vehicle, has been accepted with approval by the Hon'ble Supreme Court. That apart, the views of the Delhi and Allahabad High Courts as regards discharging the burden was also accepted by the Hon'ble Supreme Court with complete agreement. The relevant findings are extracted here below:-

> *"17. We now turn to the views of some of the High Courts, which have come to our notice on our own research!*
>
> *18. The Delhi High Court in Tata AIG General Insurance Co. Ltd. v. Akansha and Ors. found that the driving licence having expired led to the natural*

finding that there was no valid driving licence on the date of the accident. The initial onus was discharged by the insurance company in view of the licence not being valid on the date of the accident. The onus, thereafter, shifted to the owner/insured to prove that he had taken sufficient steps to ensure that there was no breach of the terms and conditions of the insurance policy. Since no evidence had been led in this behalf, a presumption was drawn that there was willful and conscious breach of the terms and conditions of the insurance policy.

19. The Allahabad High Court in The Oriental Insurance Co. Ltd. v. Manoj Kumar and Ors. again dealt with the case of an expired driving licence. The endeavour to rely on the principle set forth in a fake licence case was held not applicable in the case of an expired licence since the owner was supposed to be aware that the driving licence of the driver had expired and, thus, it was held that it was the duty of the owner to have ensured that the driver gets the licence renewed within time. In the absence of a valid driving licence, the vehicle was being driven in breach of the condition of the policy, requiring the vehicle to be driven by a person who is duly licensed, and thus, there was

breach of Section 149(2) (a)(ii) of the MV Act, the consequence being that the insurance company could not he held liable.

20. The last judgment is of the Himachal Pradesh High Court in National Insurance Co. Ltd. v. Hem Raj and Ors. This was, once again, a case of an originally valid licence, which had expired, there was no question of a fake licence. It was opined that the conclusions to be drawn from the observations of the judgment in the Swaran Singh case of this Court, were that the insurance company can defend an action on the ground that the driver was not duly licensed on the date of the accident, i.e., an expired licence having not been renewed within thirty (30) days of the expiry of the licence as provided in Sections 14 and 15 of the MV Act. In this context it was observed that the Swaran Singh case did not deal with the consequences if the licence is not renewed within the period of thirty (30) days. If the driving licence is not renewed within thirty(30) days, it was held, the driver neither had an effective driving licence nor can he said to be duly licenced. The conclusion, thus, was that the driver, who permits his licence to expire and does not get it renewed till after the accident, cannot claim that it should be deemed

that the licence is renewed retrospectively.

21. The learned Judge debated the question of the consequences of the MV Act being a beneficial piece of legislation. Thus, if two interpretations were possible, it was opined that the one which is in favour of the claimants should be given, but violence should not be done to the clear and plain language of the statute. Thus, while protecting the rights of the claimants by asking the insurance company to deposit the amount, the recovery of the same from the insured would follow as the sympathy can only be for the victim of the accident. The right which has to be protected, is of the victim and not the owner of the vehicle. It was, thus, observed in para 18 as under:

> *"18. When an employer employees a driver, it is his duty to check that the driver is duly licensed to drive the vehicle. Section-5 of the Motor Vehicles Act provides that no owner or person incharge of a motor vehicle shall cause or permit any person to drive the vehicle if he does not fulfil the requirements of Sections 3 and 4 of the Motor Vehicles Act. The owner must show that he has verified the licence. He must also take reasonable care to see that his employee gets his licence renewed within time. In my opinion, it is no defence for the owner to plead that he forgot that*

the driving licence of his employee had to be renewed. A person when he hands his motor vehicle to a driver owes some responsibility to society at large. Lives of innocent people are put to risk in case the vehicle is handed over to a person not duly licensed. Therefore, there must be some evidence to show that the owner had either checked the driving licence or had given instructions to his driver to get his driving licence renewed on expiry thereof. In the present case, no such evidence has been led. In view of the above discussion, I am clearly of the view that there was a breach of the terms of the policy and the Insurance Company could not have been held liable to satisfy the claim."

22. We have reproduced the aforesaid observations as it is our view that it sets forth lucidly the correct legal position and we are in complete agreement with the views taken in all the three judgments of three different High Courts with the culmination being the elucidation of the correct legal principle in the judgment in the Hem Raj case."

17. It could thus be seen that the courts have adopted a very liberal approach as regards interpretation of the Motor Vehicles Act, a beneficial statute, from the stand point of a claim by a

third party/victim, whereas the same protection is not being afforded to the owner of the vehicle, insofar as the insurer's claim for recovery/reimbursement is concerned.

18. Coming to facts, the finding of the Tribunal that there is no pleading to the effect that the 2nd respondent/owner had failed to exercise reasonable care, etc. are not of any moment, once the third respondent/insurance company succeeded in establishing that the 1st respondent/driver was not 'duly licenced' to drive the car at the time of accident. This is more so since the 2nd respondent/owner has not even canvassed a contention that the 1st respondent/driver was duly licensed. It could thus be seen that the 3rd respondent had established breach of policy condition in terms of Section 149(2)(a)(ii), which entitles it to seek recovery from the owner/2nd respondent.

In the result, this M.A.C.A. is allowed holding that the appellant/3rd respondent is entitled to recover the compensation amount granted by the Tribunal in O.P.

(MV)No.963/2005 vide impugned award from the 2nd respondent/owner/insured, in accordance with law.

Sd/-

C.JAYACHANDRAN, JUDGE

skj