

**\*THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI  
AND  
THE HONOURABLE SRI JUSTICE CHALLA GUNARANJAN**

**+ M.A.C.M.A. Nos.1863, 2534 and 2556 of 2017**

% Dated 28-02-2025

**M.A.C.M.A.No.1863 of 2017:**

# Gudivada Rajesh ..... Appellant  
Vs.  
\$ 1. N.Kireeti Raju & Ors. ..Respondents

! Counsel for the Appellant : Sri G. Ram Gopal

^ Counsel for the 1<sup>st</sup> respondent : Sri K.M.R. Bala Prasad &  
Sri K.Gopal

Counsel for the 2<sup>nd</sup> respondent : Sri P. Durga Prasad

Counsel for the 3<sup>rd</sup> respondent : Sri Naresh Byrapaneni &  
Sri A.N. Krishna Swamy.

<GIST:

> HEAD NOTE:

? Cases referred :

1. Judgment, dt.21.08.2019, in Misc. First Appeal No.20655/2011 (MV) of the Karnataka High Court.
2. (2022) 10 SCC 512
3. (2023) 13 SCC 510 = 2023 LiveLaw SC 531
4. (2004) 3 SCC 297
5. (2005) 6 SCC 149
6. 2010 (3) ALT 118 (AP HC) (DB)
7. (1996) 1 SCC 221
8. (2018) 3 SCC 1
9. (2007) 3 SCC 700
10. (2018) 9 SCC 650
11. (2004) 13 SCC 224
12. (2020) 4 SCC 228
13. (2022) SCC OnLine SC 1682

**IN THE HIGH COURT OF THE STATE OF ANDHRA PRADESH****M.A.C.M.A. Nos.1863, 2534 and 2556 of 2017****M.A.C.M.A.No.1863 of 2017:**

Gudivada Rajesh ..... Appellant  
Vs.  
1. N.Kireeti Raju & Ors. ..Respondents

JUDGMENT PRONOUNCED ON: 28-02-2025

**THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI  
AND  
THE HONOURABLE SRI JUSTICE CHALLA GUNARANJAN**

- 1) Whether Reporters of Local newspapers  
may be allowed to see the Judgments? -Yes-
- 2) Whether the copies of judgment may be marked  
to Law Reporters/Journals -Yes-
- 3) Whether Their Ladyship/Lordship wish to see  
the fair copy of the Judgment? -Yes-

**JUSTICE CHALLA GUNARANJAN**

**THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI  
AND  
THE HONOURABLE SRI JUSTICE CHALLA GUNARANJAN**

**M.A.C.M.A. Nos.1863, 2534 and 2556 of 2017**

**COMMON JUDGMENT:** (per Hon'ble Sri Justice Challa Gunaranjan)

All these appeals arise out of the accident occurred on 23.08.2008 resulting in the injured-claimant preferring claim before the Motor Accident Claims Tribunal, Visakhapatnam, under Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act"), for compensation of Rs.30,00,000/- with costs and interest, which came to be allowed, by order, dated 22.02.2017, in M.V.O.P. No.1472 of 2010 on the file of the VI Additional District Judge-cum-Chairman, Motor Accident Claims Tribunal, Visakhapatnam (for short, "the Tribunal"), awarding compensation for a sum of Rs.68,89,703/- with interest at the rate of 7.5% p.a. against the respondents 1 and 2 therein and dismissed the claim against the 3<sup>rd</sup> respondent Insurance Company.

2. M.A.C.M.A. No.1863 of 2017 is preferred by the claimant aggrieved by the order of the Tribunal in dismissing the claim *qua* Insurance Company for payment of compensation.

**3.** M.A.C.M.A.No.2534 of 2017 is preferred by the 1<sup>st</sup> respondent before the Tribunal, who drove the offending motorcycle, aggrieved by awarding of compensation holding him to be negligent.

**4.** M.A.C.M.A. No.2556 of 2017 is preferred by the 2<sup>nd</sup> respondent before the Tribunal, who was arrayed as owner of the offending motorcycle, but driven by the 1<sup>st</sup> respondent, challenging the order of the Tribunal fastening liability on her as owner.

**5.** For the sake of convenience, the parties hereinafter are referred to as they were arrayed in the M.V.O.P. before the Tribunal.

**6.** The facts relevant for disposal of these appeals are set out as under:

(a) On 23.08.2008 at about 10.00 A.M. while the claimant proceeding on motorcycle bearing Registration No.AP 31 AK T/R 5145 on reaching Old T.B. Hospital Junction, Visakhapatnam, another motorcycle bearing Registration No.AP 31 AJ 1679, driven by the 1<sup>st</sup> respondent, dashed the claimant's motorcycle from rear side and thereby he fell down and sustained severe injuries. The claimant was immediately taken to Care Hospital where underwent medical treatment for the injuries of dislocation of L.1, L.2 and C Parapleges, dislocation of Humerus sub capital and was discharged on

29.09.2008 and later for better treatment was shifted to Christian Medical College, Vellore, on 19.11.2008 where he was operated for various procedures and undergone treatment upto 10.02.2009. Subsequently, the claimant was shifted to NEMANI Hospital, Bangalore for further treatment and has been under continuous medical treatment.

(b) Upon occurrence of the accident, a case in Crime No.66 of 2008 of IV Town Traffic P.S., Visakhapatnam, for the offence punishable under Section 338 of IPC, came to be registered against the 1<sup>st</sup> respondent, rider of motorcycle bearing Registration No.AP 31 AJ 1679.

(c) The claimant aged 24 years, studied M.Tech. in Chemical Plant Design Engineering at National Institute of Technology, Surathkal, Karnataka, claimed to have bright future and prospects of getting good employment in America and because of the accident, was completely paralyzed with 100% functional disability besides incurred expenditure of about Rs.8.00 Lakhs for the treatment thereby claimed compensation of Rs.30,00,000/-, under the following heads:

<b><u>25. Amount of compensation claimed</u></b>	Rs. 30,00,000/-
<b>For Special damages.</b>	
a. Loss of earnings	Rs. 00,000-00
b. Transport to Care Hospital to House, House to C.M.C., Vellore 4 Trips, House to NEMMANI, Bangalore.	Rs. 30,000-00

c. Extra Nourishment & Medicines	Rs. 5,00,000-00
d. Others & Funeral Expenses	Rs. 00,000-00
<b><u>General Damages,</u></b>	
a. Compensation for pain and suffering	Rs. 4,00,000-00
b. Compensation for continuing permanent disability, if any.	Rs.14,00,000-00
c. Compensation for earning power	Rs. 4,70,000-00
d. Compensation for 2 Male Attendants Rs.200+200/-=Rs.400/- per day	Rs. 2,00,000-00
Total	Rs.30,00,000-00

7. The 1<sup>st</sup> respondent filed counter *inter alia* contending that the vehicle driven by him was never involved in the alleged accident that occurred on 23.08.2008 and much less due to any rash and negligent driving as alleged. Further stated that the motorcycle bearing Registration No. AP 31 AJ 1679 was initially registered in the name of the 2<sup>nd</sup> respondent, however, the same was transferred in his name and necessary entries were effected in B-Register of motorcycle with R.T.A., Visakhapatnam, on 21.08.2008 and so also the insurance policy was transferred in his name with effect from 24.03.2008 to 23.03.2009. It is also stated that the 1<sup>st</sup> respondent was having LLR as on the date of alleged accident to drive motorcycle and later he was also issued valid driving licence to drive MCW which was valid upto 18.01.2027. It is also stated that when he was driving the vehicle, he was instructed by pillion rider viz., Bojja Satyanarayana, who had valid permanent licence to drive MCWG which fact was also

reflected in the charge-sheet filed in C.C. No.2627 of 2008 on the file of the I Additional Chief Metropolitan Magistrate, Visakhapatnam, and subsequently, transferred to Special Judicial Magistrate of First Class for Prohibition and Excise, Visakhapatnam, and renumbered as C.C. No.54 of 2010, which ultimately, ended in acquittal against him. Even otherwise, the motorcycle which was driven by him had valid insurance policy in force, even if there is any liability, the same has to be borne by the insurance company alone and he has to be indemnified as owner of the vehicle and further claimed that there were no violations of insurance policy conditions.

**8.** The 2<sup>nd</sup> respondent filed a separate counter denying the averments in the claim petition and pleaded that her vehicle was never involved in the alleged accident and unnecessarily she has been implicated in the present proceedings.

**9.** The 3<sup>rd</sup> respondent – Insurance Company filed an elaborate counter stating that when the accident occurred, the motorcycle bearing Registration No.AP 31 AJ 1679 was driven by the 1<sup>st</sup> respondent, who did not have valid and effective driving licence and therefore, the same amounted to breach of terms and conditions of policy issued to the said vehicle owned by the 2<sup>nd</sup> respondent, in view

of the same, no liability can be fastened on the insurance company and rather it is the 2<sup>nd</sup> respondent alone liable for payment of any compensation besides the driver of the vehicle. The 3<sup>rd</sup> respondent also raised various objections with respect to the age of the claimant, the nature of injuries sustained, the expenditure incurred for the treatment undergone.

**10.** The Tribunal has framed the following issues:

- “1. Whether the petitioner sustained injuries in a motor accident that occurred on 23.08.2008 due to rash or negligent riding of motorcycle bearing No. A.P. 31 AJ 1679 by its rider?
2. Whether the petitioner is entitled for compensation? If so, to what amount and from which one of respondents?
3. To what relief?”

**11.** In support of the claim, claimant had adduced evidence by examining PW.1 to PW.7 and marked Exs.A1 to A33. Junior Assistant in RTA Office, Visakhapatnam, was examined as RW.1. 2<sup>nd</sup> respondent has got examined herself as RW.2. 1<sup>st</sup> respondent got examined himself as RW.3. The pillion rider was examined as RW.4. The insurance company examined RW.5 and RW.6. Exs.B1 to B8 were marked for the respondents and Ex.X1 to X11 were marked through Court.

**12.** On appreciation of pleadings, both oral and documentary evidence, in so far as issue No.1 was concerned, it was held that the accident occurred because of the rash and negligent driving by the 1<sup>st</sup> respondent, who dashed the claimant's vehicle from rear side, thereby causing severe injuries to the claimant. Besides the above finding, under the same issue the Tribunal proceeded to examine as to whether the 1<sup>st</sup> respondent, who negligently drove the motorcycle causing the accident, had valid driving licence and upon examining the evidence on record, came to conclusion that 1<sup>st</sup> respondent was holding only LLR which was issued on 19.01.2007 under Ex.X.8, and in the absence of any evidence to prove that he was accompanied by pillion rider, having valid driving licence, it was treated as a case of not having valid driving licence, violating the terms and conditions of the insurance policy, thereby, the Tribunal has concluded that the 2<sup>nd</sup> respondent being owner of the vehicle violated the terms and conditions of the insurance policy, no liability can be fastened on the insurance company. Though the 2<sup>nd</sup> respondent pleaded that the motorcycle involved in the accident was initially in her name, as the same was validly transferred in favour of the 1<sup>st</sup> respondent under the transfer certificate issued vide Ex.X.9, on 21.08.2008, which was before the date of accident i.e. 23.08.2008, no liability can be

fastened on her, the Tribunal has not given any definitive finding in that regard, but, however, ultimately, directed that the compensation awarded shall be paid by the respondents 1 and 2.

**13.** In so far as the second issue was concerned, on appreciation of the evidence, such as the medical reports, invoices, depositions of doctors who treated the claimant, coupled with the documents relating to educational qualifications of the claimant, the Tribunal by holding that the claimant sustained 100% disability, under all heads, awarded an amount of Rs.68,89,703/- with interest at the rate of 7.5% p.a. from the date of petition till realisation, to be paid by respondents 1 and 2 and exonerated the 3<sup>rd</sup> respondent insurance company from any liability.

**14.** Heard Sri K.M.R. Bala Prasad, representing Sri K. Gopal, learned counsel for the appellant in M.A.C.M.A. No.2534 of 2017 and also representing Sri P. Durga Prasad, learned counsel for the appellant in M.A.C.M.A. No.2556 of 2017; Sri G. Ram Gopal, learned counsel for the appellant in M.A.C.M.A. No.1863 of 2017; and Sri A.N. Krishna Swamy, representing Sri Naresh Byrapaneni, for the insurance company.

15. Sri K.M.R. Bala Prasad, appearing on behalf of both the respondents 1 and 2, addressed his arguments in MACMA No.2534 of 2017 contending that the 1<sup>st</sup> respondent was having LLR driving licence as granted under Ex.X.8, which is effective driving licence within the meaning of Section 3 of the Act. He would contend that both driving licence and also LLR are effective licences within the meaning of Section 3 and there are no conditions attached to make the LLR an effective driving licence. Even the proviso to Rule 3(1)(a) of the Central Motor Vehicles Rules, 1989 (for short, "the Rules"), dealing with the instructions to be complied with did not place any condition or restriction on the holder of LLR to carry any other person on the motorcycle and in support of the same, he placed reliance on the judgment of the Karnataka High Court rendered in **Senior Divisional Manager, the National Insurance Co. Ltd. v. Jyotiba Appaji Shigate**<sup>1</sup>. In view of the same, it is contended that the finding of the Tribunal that holding LLR licence while driving motorcycle does not amount to having valid driving licence within the meaning of Section 3(1) of the Act is erroneous and perverse. He also contended that holding a learner's licence as issued under the provisions of the Act shall also be an effective driving licence within the meaning of

---

<sup>1</sup> Judgment, dt.21.08.2019, in Misc. First Appeal No.20655/2011 (MV) of the Karnataka High Court.

Section 3(1) of the Act. The other contention advanced is that even if there is a requirement of LLR holder being instructed by pillion rider with valid licence, in the present case, the evidence of RW.4 coupled with the evidence of RW.3, clearly demonstrates that the motorcycle was driven by the 1<sup>st</sup> respondent along with pillion rider having valid driving licence, therefore, it cannot be said that the conditions of insurance policy were violated and accordingly, the Tribunal fell in error in fastening the liability on them rather than on insurance company. He would further contend that though RW.4 – pillion rider has deposed in the criminal case stating that he never accompanied the 1<sup>st</sup> respondent, in the evidence adduced before the Tribunal, he categorically stated that at the time of accident, he was along with the 1<sup>st</sup> respondent as instructor and had valid driving licence, though these two versions are inconsistent by placing reliance on judgment in **Janabai v. ICICI Lambord Insurance Co. Ltd.**<sup>2</sup>, contended that the proceedings before the Tribunal have to be decided only on the basis of evidence let in before it and not on the basis of evidence let in criminal trial in other proceedings, thereby, the Tribunal should have considered only the evidence of RW.4 before it and not that of his evidence in the criminal trial. He also contended that the standard

---

<sup>2</sup> (2022) 10 SCC 512

of proof to be applied by the Tribunal would be based on preponderance of probabilities and the standard of proof of beyond reasonable doubt would not apply, therefore, the material or statements during criminal investigation connected to the accident should not be considered and the Tribunal should not be influenced by them rather the claim should be decided on its own merits considering the evidence before it. To buttress the same, reliance is placed on the judgment of the Hon'ble Apex Court in **Mathew Alexander v. Mohammed Shafi**<sup>3</sup>.

**16.** While addressing M.A.C.M.A. No.2556 of 2017, filed by the 2<sup>nd</sup> respondent, he contended that as on the date of accident she seized to be owner of the motorcycle bearing Registration No. A.P. 31 AJ 1679 as the same was transferred in the name of 1<sup>st</sup> respondent on 21.08.2008 under valid transfer certificate as evidenced by Ex.X.9. In view of Section 157 of the Act, once the transfer of ownership of motor vehicle is effected, the certificate of insurance, which was existing in favour of the transferor, shall be deemed to have been transferred in favour of the transferee with effect from the date of such transfer, therefore, by operation of law, not only the ownership of the motor vehicle, but also the insurance policy got transferred in favour of the

---

<sup>3</sup> (2023) 13 SCC 510 = 2023 LiveLaw SC 531

1<sup>st</sup> respondent and hence, the 2<sup>nd</sup> respondent has nothing to do with the motorcycle, thereby, she could not have been fastened with any liability. Though the Tribunal has recorded the contention advanced in that regard, no finding has been rendered.

17. Sri G. Ram Gopal, learned counsel for the claimant, contended that claimant's appeal in M.A.C.M.A. No.1863 of 2017 is mainly filed aggrieved by the order of the Tribunal in exonerating the Insurance Company from the liability in as much as the 1<sup>st</sup> respondent had valid LLR to ride a gear vehicle and that the motor vehicle was insured under policy obtained by the 2<sup>nd</sup> respondent, which was valid, hence, the insurance company could not have been exonerated from the liability. It is also contended that even if there is violation of condition of policy, still the insurance company would be liable to pay the claim amount and later to recover the same from the owner of the vehicle by applying the principle of "pay and recover" and in this regard, he placed reliance on paras.110 (viii) and (x) of the judgment of the Hon'ble Apex Court rendered in **National Insurance Co. Ltd. v. Swaran Singh**<sup>4</sup>.

---

<sup>4</sup> (2004) 3 SCC 297

**18.** Sri A.N. Krishna Swamy, representing Sri Naresh Byrapaneni, learned counsel for the insurance company, vehemently contends that the mere holding of LLR would not amount to an effective driving licence within the meaning of Section 3(1) of the Act and in as much as the 1<sup>st</sup> respondent had only LLR at the relevant point of time and such LLR being conditional in terms of Section 3(2) r/w. Rule 3(1) proviso which excludes Section 3(1) of the Act by providing that the LLR holder be accompanied by an instructor having valid driving licence. He further urges that Rule 3(b) mandates that any person while receiving instructions or gaining experience in driving with effective learner's licence is mandated to be accompanied by instructor holding an effective driving licence and that proviso thereto debars the person receiving instructions to carry any other person other than the instructor referred to in sub-clause (b). By referring to Rule 141, which deals with certificate of insurance r/w. Form-51, he contends that clause (9) thereof clearly specifies the persons who are entitled to drive non-transport vehicle, which mandates that person holding effective learner's licence has also been permitted to drive the vehicle, however, the requirement of Rule 3 has to be strictly complied with. In the present case, the evidence of RW.3, who claimed to be the pillion rider, was disbelieved by the Tribunal, the

condition prescribed under the grant of LLR being not satisfied, thereby, the 1<sup>st</sup> respondent did not have any valid driving licence at the time of accident for invoking the liability under the insurance policy. By referring to the judgment of the Hon'ble Apex Court in **Swaran Singh**<sup>4</sup>, in particular, paras 93 and 94, he contended that LLR is always subject to conditions mentioned in the licence, though the person holding learner's licence is entitled to drive the vehicle, the same is circumscribed by the conditions stipulated therein and the learner's licence granted under the Rules are subjected by conditions attached in terms of the said Rule. Therefore, in view of the prescription of condition in rule 3(1)(b) that the learner is necessarily required to accompany with instructor having valid driving licence, any violation of the same clearly amounts to violation of conditions of policy and thereby in the eventuality of accident, no liability can be fastened on the insurance company. He further contended that the 1<sup>st</sup> respondent has taken stand that on the date of alleged accident, he was accompanied by pillion rider viz., Bojja Satyanarayana, who had valid driving licence, and even the said Bojja Satyanarayana, examined as RW.4, stated that he travelled as pillion rider, however, the very same Bojja Satyanarayana has given evidence in criminal proceedings that he did not know the 1<sup>st</sup> respondent and anything

about the accident and he never accompanied as pillion rider, therefore, he is not a trustworthy witness and except for his evidence, there is no evidence on record to show that the 1<sup>st</sup> respondent complied with the conditions attached to LLR, which was rightly appreciated by the Tribunal and, therefore, call for no interference by this Court. He also contended that the misleading statement made by RW.4 before the Tribunal after having given a statement in the criminal proceedings in relation to very same accident is nothing but playing fraud on the Court and such evidence should not be taken into consideration. In this regard, reliance is placed on the judgment of the Hon'ble Apex Court in **State of A.P. v. T. Suryachandra Rao**<sup>5</sup>.

**19.** Perused the record and considered the rival submissions of the learned counsel appearing for the parties.

**20.** For appreciating the rival contentions, the provisions of the Act and the Rules made thereunder relevant for the present purpose are extracted hereunder:

“Section 2(10) “*driving licence*” means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description;

---

<sup>5</sup> (2005) 6 SCC 149

Section 2(19) "*learners licence*" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive as a learner, a motor vehicle or a motor vehicle of any specified class or description;

Section 2(27) "*motor cycle*" means a two-wheeled motor vehicle, inclusive of any detachable side-car having an extra wheel, attached to the motor vehicle;

Section 2(28) "*motor vehicle*" or "*vehicle*" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimetres;

Section 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 motor cab 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.

Section 5. **Responsibility of owners of motor vehicles for contravention of Sections 3 and 4.** - No owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of Section 3 or Section 4 to drive the vehicle.

Section 13. **Extent of effectiveness of licences, to drive motor vehicles:-** A learner's licence or a driving licence issued under this Act shall be effective throughout India.

\*\*\*\*

**Rule 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 license to drive the vehicle and such instructor is sitting in such a position 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:—

L

**Note.**—The painting on the vehicle or on the plate or card shall not be less than 18 centimeters square and the letter "L" shall not be less than 10 centimeters high, 2 centimeters thick and 9 centimeters 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 motor cycle except for the purpose and in the manner referred to in clause (b).

**Rule 141. Certificate of insurance.**—An authorised insurer shall issue to every holder of a policy of insurance, a certificate of insurance in Form 51 in respect of each such vehicle.

\*\*\*\*

Col. 9 of Form 51 reads as under:

<b>9. Persons or classes of persons entitled to drive:-</b>	
Stage carriage/ Contract carriage/ private service vehicle	<p>Provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence:</p> <p><i>Provided also that the person holding an effective learner's licence may also drive the vehicle</i></p>

	<i>when not used for the transport of passengers at the time of the accident and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989.</i>
Goods carriage	Any person including insured: Provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence: <i>Provided also that the person holding an effective learner's licence may also drive the vehicle when not used for the transport of goods at the time of the accident and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989.</i>
Non-transport vehicles	Any person including insured : Provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence: <i>Provided also that the person holding an effective learner's licence may also drive the vehicle and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989.</i>

21. On a plain reading of the provisions extracted above, the scheme of the Act stipulates that no person shall drive a motor vehicle in any public place unless he has effective driving licence issued under the Act authorising to drive such vehicle. Section 3(2) however, postulates that requirement of sub-section (1) of Section 3 shall not

apply to a person receiving instructions in driving a motor vehicle and the same has been circumscribed by certain conditions those to be prescribed by the Central Government. The important definitions which are referred to in Section 3(1) and (2), in particular, expressions “motor vehicle” or “vehicle” and “driving licence” are defined under Section 2(28) and Section 2(10) of the Act respectively. As per the definition of Section 2(28) “motor vehicle” or “vehicle” means any mechanically propelled vehicle adapted for use upon roads and has been widely defined to encompass within it various types of vehicles, however, excluded special type of vehicles adapted for exclusive use in factory or in any other enclosed premises and vehicles with less than four wheels having engine capacity of not exceeding 25 CC. Section 2(27) defines “*motor cycle*” to mean a two-wheeled motor vehicle. So motor cycle with engine capacity above 25 CC qualifies to be motor vehicle. Section 2(19) defines “learners licence” to mean licence issued by a competent authority under the Act to a person to drive as a learner, a motor vehicle which encompasses within itself a motor cycle. Further, Section 5 casts responsibility on owner of the motor vehicle to ensure that no person shall drive the vehicle unless the requirements of Sections 3 and 4 are satisfied.

**22.** Rule 3 of the Rules provides for the exception from applicability of Section 3(1) to any person while receiving instructions or gaining experience in driving the vehicle subject to three conditions i.e., (i) such person should be holder of an effective learner's licence; (ii) he should be accompanied by an instructor holding an effective driving licence to drive such vehicle; and (iii) a "L" board should be displayed in the front or rear of the vehicle while the same is driven. The proviso to Rule 3 further clarifies that the person who is receiving instructions or gaining experience while driving the motorcycle shall not carry any other person along with him except for the purpose and manner referred to clause (b), meaning thereby, the proviso amply makes it clear that the purpose of sub-clause (b) being that person receiving instructions or gaining experience is necessarily required to be accompanied by a person having valid and effective driving licence to drive the vehicle to control or stop the same. Except such purpose and for no other purpose any person can be accompanied. The purport and object of clause (b) appears to be that the learner has to be instructed and guided by the person having effective driving licence and that being the only specified purpose, the learner shall not be permitted to carry any other person along with him even if such person has a valid driving licence unless it is for the purpose of

instructing to drive by controlling the vehicle. Even Rule 141 r/w. Form-51, which provides for certificate of insurance, clearly specifies that the person is entitled to drive vehicle, however, in case such person holds an effective learner's licence, is mandatorily required to satisfy the requirement of Rule 3. In the light of the above statutory prescription, it is very much clear that though person holding learner's licence is competent to drive motor vehicle, includes motor cycle, such driving licence is subject to the condition that he is only permitted to accompany a person having valid and effective driving licence for the purpose of instructing and guiding him in driving and is not permitted to accompany with any other person except for the purpose mentioned above.

**23.** For coming to the above conclusion, this Court is guided by the following passages of the Hon'ble Apex Court in **Swaran Singh's** case<sup>4</sup>, which read as under:

**“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."

**24.** The learned counsel for the appellants, respondents 1 and 2 before the Tribunal, though contended that what all Section 3 requires was that a person driving motor vehicle should hold an effective driving licence and that in view of Section 13 even a learner's licence is also treated as effective, the requirements of Section 3(1) are met and there is no violation of the provision and further that proviso to Rule 3 has to be construed to exclude a person driving motor cycle from the applicability of sub-clause (b) of Rule 3, the same cannot be accepted. The fallacy of such argument is clearly in contravention to Section 3 r/w. Rule 3. The person holding learner's licence though is

entitled to drive motor vehicle which includes motorcycle, in view of conditions prescribed under Section 3(2) r/w. Rule 3, such person has to be in compliance with three conditions such as (i) such person should be holder of an effective learner's licence; (ii) he should be accompanied by an instructor holding an effective driving license to drive such vehicle; and (iii) a "L" board should be displayed in the front or rear of the vehicle while the same is driven. Further, the proviso has clarified the second condition in clause (b) by stipulating that the person receiving instructions or gaining experience should only carry an instructor having effective driving licence sitting along with the driver, to control or stop the vehicle and for no other purpose. This means that the learner is not permitted to even allow a person having effective driving licence to sit along with him, while driving the motorcycle, even for the sake of casual dropping, unless the pillion is providing instructions and controlling the vehicle. In fact, Section 5 clearly places embargo on owner of the vehicle in permitting any person to drive the motor vehicle without meeting or satisfying the provisions of Sections 3 and 4 of the Act.

**25.** The learned counsel for the appellants, respondents 1 and 2 before the Tribunal, placed reliance on the judgment of the Karnataka High Court rendered in **Jyotiba Appaji Shigate**<sup>1</sup>, to contend that the

expression used in Rule 3(b) being “motor vehicle”, the said restriction shall only apply to motor vehicle having dual control facility for the instructor to control or stop the vehicle, and whereas the “motorcycle” does not require such instructor to be accompanied, thereby, the condition shall not apply in case of “motorcycle” and there is no requirement of instructor being accompanied. Reference is made to paras. 22, 23 and 24 of the said judgment of the Karnataka High Court, which read as follows:

“22. The proviso of the Rule defines 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) wherein as per 3(b) of the Rules says the instructor is required to sit in a position to control or stop the vehicle, which means a person who is holding learner's licence and learning driving of four wheeler vehicle shall always accompany an instructor.

23. As per Rule 24 of the Rules, it defines about the establishment of driving schools and the qualification of the instructor. Rule 24(3) (v) of the Rules defines as follows:-

(v) the vehicles are available exclusively for purposes of imparting instruction and all such vehicles, except motorcycles, are fitted with dual control facility to enable the instructor to control or stop the vehicle. (underlined by me)

24. On bare reading of Rule 24 (3) (v) of the Rules clearly provides that the instructor shall accompany with the learner while driving the motor vehicles having dual control facility to enable the instructor to control or stop the vehicle, whereas the motorcycle was excluded or exempted and it does not require the instructor to be accompanied. However, [Section 3](#) of the Act defines necessity of driving licence. Proviso to Rule 3 enables the rider of the motorcycle shall not carry any

other person on the motorcycle as pillion rider except for the purpose and in the manner referred to in clause (b), which shows the person holding driving licence shall be accompanied with a person who holds a learner's licence for the motor vehicle but not motorcycle.”

**26.** We are unable to accept with the view expressed above for the simple reason that the expression “*motor cycle*” as defined under Section, encompasses two wheeled motor vehicle and motor vehicle being defined in Section 2(28) of the Act to mean any mechanically propelled vehicle and the exception being only with respect to vehicle having less than four wheels with a engine capacity not exceeding 25 C.C., except that all other motor vehicles, having C.C. above 25 shall fall within the meaning of motor vehicle. Therefore, the above judgment has not considered this aspect and rather interpreted Rule 3. The language of Rule 3 is very clear and unambiguous.

**27.** As we have held that the LLR holder while driving the motor cycle is mandatorily required to be accompanied by an instructor being pillion rider for the purpose of controlling or stopping the motor cycle, which is a condition to be complied with while driving the motor cycle, we shall now examine the merits of the matter as to whether such condition has been complied with or not.

**28.** The only important witnesses, who deposed with respect to the offending vehicle being driven and accompanied by pillion rider, are

RW.3 - 1<sup>st</sup> respondent and RW.4 – pillion rider. In the counter filed by the 1<sup>st</sup> respondent (RW.3), it was stated that as on the date of accident, the offending motorcycle was transferred in his name under Ex.X.8 on 21.08.2008, the same was already insured and further that on the date of alleged accident he was accompanied by pillion rider viz., Bojja Satyanarayana, who had valid permanent driving licence under Ex.X.11, which was also recorded in the charge-sheet filed by the police in C.C.No.2627 of 2008 and renumbered as C.C. No.54 of 2010 on the file of the Special Judicial Magistrate of First Class for Prohibition and Excise, Visakhapatnam, which ultimately ended in acquittal against him on 29.06.2012, therefore, there was no violation of policy conditions and hence, no liability can be fastened on him and rather even if any compensation was to be paid, the same would be liable by insurance company. He deposed as RW.3 and filed affidavit in-chief. In cross-examination, he deposed that Bojja Satyanarayana had given evidence against him in the criminal proceedings, however, he does not remember that said Bojja Satyanarayana stated to have not accompanied him as pillion rider on the motorcycle on the date of accident and rather he signed the statement only at the instance of police. The crucial witness viz., Bojja Satyanarayana was examined as RW.4. He deposed in-chief that he accompanied 1<sup>st</sup> respondent

as pillion rider on the offending vehicle when accident occurred and that he had valid driving licence. When they reached Old T.B. Hospital junction, they hit motor cycle proceeding in front of them and caused the accident and further that he was also examined in the criminal proceeding arising out of the said accident as PW.5. In the cross-examination, he has given different versions in cross-examination by counsel for the insurance company and by claimant. The relevant portion of cross-examination of RW.4 is extracted hereunder:

**“Cross-examination by Sri N.P. Rao for R-3:**

I was examined as P.W.5 in C.C.54/2010 on the file of Special Judicial Magistrate of the First Class (Prohibition and Excise), Visakhapatnam and I deposed that I am resident of Nakkavanipalem, Visakhapatnam, I do not know the accused (R1) and I do not know anything about the case and I was not examined by the Police. It is true during cross-examination by Asst. Public Prosecutor, I admitted that in the month of January, 2009 on one day I happened to go to IV Town Traffic Police Station in connection with marital dispute of my elder brother and his wife. The Police obtained my signature on blank paper at that time.

**Cross-examination by Sri M.R.K.A.Rao for petitioner:**

It is not true to suggest that Kireeti Raju dashed motorcycle of petitioner by riding his motorcycle in a rash and negligent manner with high speed without blowing horn and lost control of his motorcycle. A case was booked against 1<sup>st</sup> respondent by Police. I do not know if charge sheet was filed against 1<sup>st</sup> respondent. On 23.08.2008 I and 1<sup>st</sup> respondent came on motorcycle from Rama Talkies to T.B. Hospital Junction. We went to Seethammadhara to the house of father of 1<sup>st</sup> respondent. It is not true to suggest that after the accident I and 1<sup>st</sup> respondent left motorcycle at the spot and the injured was unable to move. Kireeti Raju sustained abrasions. It is not true to suggest that I deposed falsely.

**Further Cross-Examination** by Sri N.P. Rao for R-3 with permission of Court:

It is not true to suggest that I deposed falsely during cross-examination for petitioner, by colluding with him. I gave true and correct evidence as PW.5 in C.C.54/2010 on the file of Special Judicial Magistrate of the First Class (Prohibition & Excise), Visakhapatnam.

**Cross-examination by Court:** I am conscious that a witness has to depose true and correct facts before a Court of law. It is true I deposed falsely during cross examination for petitioner that I know facts in CC.54/2010 and in this case. I know that if a witness gives false evidence, he is liable for punishment and sentence.

Re-examination : Nil.”

**29.** The insurance company filed I.A. No.1 of 2024 under Order 41 Rule 27 C.P.C. to receive the copy of the judgment passed in C.C.No.54 of 2010 and depositions as additional evidence, in particular that of Bojja Satyanarayana, who was examined as P.W.5 therein. These documents are filed in order to show the inconsistency in the stand taken by RW.4, firstly, in the criminal proceedings and later, in the proceedings before the Tribunal. The evidence of Bojja Satyanarayana as PW.5 in the above said case reads as under:

“CHIEF EXAMINATION: I am resident of Nakkavanipalem, Visakhapatnam. I do not know accused. I never to happen to see him. I do not know anything about facts. I was not examined by police. At this stage, APP seeks permission to put the questions to the witness u/sec.154 of Indian Evidence Act.

Permitted. It is not true to say that I was pillion riding the motor cycle which was driven by accused at the time of accident and that I stated before police as in Ex.P6. It is further not

true to say that I am deposing false to the accused in escaping from this case.

CROSS-EXAMINATION: In the month of January, 2009 on one day I happened to go to IV Town Traffic P.S. in connection with marital dispute of my elder brother and his wife. The Police obtained my signature on blank paper at that time.

Re-Examination : Reported NIL :”

**30.** The star witness in the present case has deposed in the criminal proceedings that he does not know the accused i.e., the 1<sup>st</sup> respondent before the Tribunal and he never travelled as pillion rider on offending motorcycle driven by the 1<sup>st</sup> respondent on the date of accident. Before the Tribunal, however, he stated that on the date of accident, he accompanied 1<sup>st</sup> respondent as pillion rider. He also deposed that he has given true and correct evidence as P.W.5 in C.C. No.54 of 2010 and when he was cross-examined by the Court, he deposed that what has been deposed in cross-examination by counsel for the petitioner was false.

**31.** Learned counsel for the appellants (respondents 1 and 2 before the Tribunal) contended that the additional evidence in relation to proceedings before the criminal Court arising out of the subject accident brought in by the insurance company cannot be considered and received in the present proceedings and in support of the same, he referred para. 29 of the judgment in **National Insurance Co. Ltd.**

**rep. by its Branch Manager Ashok v. Syeda Najmunnissa<sup>6</sup>**, which reads as funder:

“29. A reading of Sections 169 and 173 of the Motor Vehicles Act and Rule 473 of the A.P. Motor Vehicles Rules, 1989 shows that there is no reference to Rule 27 of Order 41 of C.P.C. obviously. Rule 27 of Order 41 of C.P.C. is not made applicable to the appeals filed under Section 173 of the Motor Vehicles Act. Anyhow, since the Tribunal can follow it’s own procedure, in given circumstances, the Appellate court i.e., High Court may receive additional evidence in the interest of justice. Let us examine whether the claimants have fulfilled the conditions enumerated under Order 41 Rule 27 of C.P.C. or not.”

**32.** He further contended that even otherwise the aforesaid evidence relating to criminal proceedings cannot be considered or form basis to decide negligence or otherwise in the proceedings under the Motor Vehicles Act. In support of the same, reliance is placed on the judgment of the Hon’ble Apex Court in **Janabai<sup>2</sup>** and **Mathew Alexander<sup>3</sup>**.

**33.** Opposing the aforesaid contentions, learned counsel for the insurance company contended that there is no bar to receive additional evidence in appeal under Section 173 of the Motor Vehicles Act and what all required is to satisfy whether the conditions enumerated under Order 41 Rule 27 CPC are made out or not and

---

<sup>6</sup> 2010 (3) ALT 118 (AP HC) (DB)

the additional evidence brought in here is in relation to the subject accident though emanate from the criminal proceedings, in as much as, the 1<sup>st</sup> respondent and also RW.4 were very much parties to the said proceedings the same would have relevance and as they were not parties to those proceedings, the same could not be filed at first instance. So far as consideration to the said evidence is concerned, the same is produced only to supplement the stand taken by parties before the Tribunal and at any rate the evidence before the Tribunal be given prominence considering the inconsistent stands of the witnesses in the criminal proceedings.

**34.** So far as objection regarding receiving of additional evidence at the appellate stage, the very same judgement cited above makes clear that the Appellate Court i.e., High Court may receive additional evidence in the interest of justice and the Co-ordinate Bench examined whether the conditions under Order 41 Rule 27 C.P.C. were fulfilled or not.

**35.** From the evidence that has been recorded before the Tribunal, RW.3 has consistently taken stand that as on the date of the accident, he was the owner of the offending motorcycle and he drove it along with pillion rider-RW.4 having valid and effective driving licence, which was reflected in the charge-sheet filed in C.C.No.54 of 2010 on the file of the Special Judicial Magistrate of First Class for Prohibition and

Excise, Visakhapatnam, which ended in acquittal against him, therefore, there was no violation of conditions of policy. In the cross-examination, he has stated that RW.4 Bojja Satyanarayana gave evidence in Calendar Case stating that he never accompanied as pillion rider on motorcycle. Whereas, RW.4 in his evidence stated that on the date of accident, he accompanied 1<sup>st</sup> respondent as pillion rider giving instructions for riding the motorcycle, and when they reached Old T.B. Hospital Junction, they hit another motorcycle proceeding in front of them causing accident. He also stated that he was examined as PW.5 in C.C. No.54 of 2010 and during cross-examination, he admitted that the evidence given before the Tribunal was false and the evidence recoded in criminal proceedings was true and correct. In order to only cross-verify as to the contents of the deposition made before the Tribunal, we looked into the evidence recorded in criminal proceedings of the same witness, brought before this Court vide I.A.No.1 of 2024. The same has not been disputed to be the deposition of the same witness made in the criminal case. RW.3 in his evidence before the Tribunal had referred to criminal proceedings in C.C.No.54 of 2010 and that he was acquitted in the same and also stated that RW.4 had given evidence stating that he never travelled as pillion rider. Having regard to these statements

and considering the fact that the evidence of RW.4 before the Tribunal also referred to his giving evidence before the criminal Court as PW.5, we find that the statement of RW.4 in the proceedings before the Tribunal regarding his statement he made in criminal proceedings stand fortified. In other words, his statement before Tribunal that, he made contrary statement in criminal case, is correct.

**36.** On analysis of the statements before the Tribunal by both RW.3 and RW.4, it is very much clear that the star witness RW.4 has clearly stated that the evidence given before the Tribunal to be false. The Tribunal in detailed examination of the aforesaid evidence of RW.3 and RW.4 and basing on the admission of RW.3 that Bojja Satyanarayana has deposed in the criminal proceedings that he never was a pillion rider and having regard to the evidence of Bojja Satyanarayana, who stated that the evidence given by him before the Tribunal to be false, the Tribunal has come to the right conclusion that the evidence of RW.4 was not reliable and RW.4 was not the pillion rider/instructor on the date of accident, 1<sup>st</sup> respondent-RW.3 drove the motorcycle unaccompanied by a person holding valid driving licence. As the Tribunal on appreciation of the evidence before it has rendered finding holding that 1<sup>st</sup> respondent drove the offending motor bike without accompanied by instructor i.e., R.W.4 as claimed,

so amounted to breach of conditions of policy. The Tribunal recorded the finding based on the evidence led in the case before it and not based on the records or statements rendered in criminal proceedings, the judgments cited by the appellants in **Janabai**<sup>2</sup> and **Mathew Alexandar**<sup>3</sup>, therefore, have no application.

**37.** One of the requirements of Rule 3(b), a condition circumscribed for learner's licence holder to drive the vehicle being, such person to be accompanied by an instructor for the purpose of controlling or stopping the vehicle, holding a valid driving licence as a pillion rider, there is nothing on record to even remotely suggest that RW4 was an instructor as envisaged under Rule 3. The evidence on record doesn't demonstrate the presence of RW4 as pillion rider, even which shall not fulfil the conditions of LLR. We are clearly in agreement with the view expressed by the Tribunal in holding that the 1<sup>st</sup> respondent drove the motorcycle in the absence of a person with valid driving licence much less being an instructor in terms of Rule 3(b) of the Rules.

**38.** Learned counsel for the 2<sup>nd</sup> respondent – appellant in M.A.C.M.A. No.2556 of 2017, contended that the 2<sup>nd</sup> respondent, who originally owned the offending vehicle later transferred the same in favour of the 1<sup>st</sup> respondent, as evidenced from Ex.X.9, dated

21.08.2008, which is before the date of accident, therefore, the Tribunal should not have fastened any liability on her as she has nothing to do with either the offending vehicle or involved in the alleged accident. The Tribunal, though referred to the said aspect in the judgment, has not rendered any specific finding on the issue, rather concluded that the compensation determined has to be realized from respondents 1 and 2. To buttress the above argument, he would refer to Section 157 of the Act which deals with transfer of certificate of insurance and also the corresponding Rule 144 of the Rules, which provides that once owner of motor vehicle is transferred, the insurance made in respect of such vehicle shall be deemed to have been transferred in favour of the transferee with effect from the date of its transfer and that the transferee within 14 days has to get the necessary changes made to the insurance policy.

**39.** Section 157 of the Act reads as follows:

**“Section 157. Transfer of certificate of insurance. -**

(1) Where a person, in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter, transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.

Explanation. - For the removal of doubts, it is hereby clarified that such deemed transfer shall include transfer of

rights and liabilities of the said certificate of insurance and policy of insurance.

(2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour, and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance.”

**40.** Rule 144 of the Rules read as follows:

**“144. Transfer of certificate of insurance.** - When the ownership of a motor vehicle covered by a valid insurance certificate is transferred to another person together with the policy of insurance relating thereto the policy of insurance of such vehicle shall automatically stand transferred to that other person from the date of transfer of ownership of the vehicle and the said person shall within fourteen days of the date of transfer intimate to the authorized insurer who has insured the vehicle, the details of the registration of the vehicle, the date of transfer of the vehicle, the previous owner of the vehicle and the number and date of the insurance policy so that the authorized insurer may make the necessary changes in his record.”

**41.** Apparently, it is not in dispute that offending motorcycle was owned by the 2<sup>nd</sup> respondent. She transferred the same in favour of her son - 1<sup>st</sup> respondent and such transfer has been legally effected on 21.08.2008 by way of issuance of necessary certificate under Ex.X.9. The vehicle was already insured under policy vide Ex.B.2. In as much as the offending vehicle was already insured and covered under the policy even before it was transferred and that the accident occurred on 23.08.2008 after the date of transfer, in view of Section

157 of the Act r/w. Rule 144 of the Rules, it is deemed that the policy shall also be transferred in favour of the transferee.

**42.** In **Complete Insulations (P) Ltd. v. New India Assurance Co. Ltd.**<sup>7</sup>, the Hon'ble Apex Court while interpreting Section 157 of the Act held that the said provision shall apply only in respect of third party risks by providing that certificate of insurance together with policy of insurance described therein shall be deemed to have been transferred in favour of person to whom the motor vehicle is transferred. Further, the Hon'ble Apex Court in **Naveen Kumar v. Vijay Kumar**<sup>8</sup> held that in view of the expression "*owner*" in Section 2(30) of the Act, it is the person in whose name the motor vehicle stands registered, who for the purposes of the said Act would be treated as the owner of the vehicle, thereby, the person in whose name the vehicle stands as on the date of accident would be liable for the compensation.

**43.** The 2<sup>nd</sup> respondent, as on the date of accident, can be said to be neither owner of the vehicle nor she has any role in the alleged accident. The Tribunal has not considered or dealt with this aspect of

---

<sup>7</sup> (1996) 1 SCC 221

<sup>8</sup> (2018) 3 SCC 1

the matter. Therefore, the appeal filed by the 2<sup>nd</sup> respondent in M.A.C.M.A. No.2556 of 2017 deserves to be allowed.

**44.** Sri G. Ram Gopal, learned counsel for the appellant in M.A.C.M.A. No.1863 of 2017, reiterated the submissions those advanced by the learned counsel for the appellants in MACMA Nos.2534 and 2556 of 2017, to the extent of supporting the case of 1<sup>st</sup> respondent that the offending vehicle was driven along with pillion rider as instructor having valid driving licence on the date of accident, therefore, the compensation should be paid only by the insurance company. Further, he also contended that even if it is a case of violation of conditions of insurance policy, the compensation should be paid by the insurance company on the principle of “pay and recover” as held by the Hon’ble Apex Court in **Swaran Singh’s** case<sup>4</sup>.

**45.** As per the decision in **Swaran Singh’s** case<sup>4</sup>, the insurer had to indemnify the compensation amount payable to the third party and later may recover the same from the insured. The doctrine of “pay and recover” was considered in the context of examining liability of insurance company in cases of breach of policy condition due to disqualification of the driver or invalid driving licence of the driver, from the perspective of insurer’s contractual liability as well as statutory liability vis-a-vis the claims of third parties, and held that in

case of third party risk, insurer has to indemnify the compensation amount to the third party and later recover the same from the insured.

The relevant conclusions summarised read as follows.

“110. The summary of our findings to the various issues as raised in these petitions is as follows:

(i) ...

(ii) ...

(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) ...

(v) ...

(vi)...

(vii) ...

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix)...

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if,

as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi)....”

**46.** In **National Insurance Co. Ltd. v. Laxmi Narain Dhut**<sup>9</sup>, the Hon'ble Apex Court considered the decision in **Swaran Singh's** case<sup>4</sup> and held that the said decision has no application to cases other than third party risks and in case of third party the insurer has to indemnify the amount and can, if so advised, recover the same from the insured and the same has been reiterated in **Shamanna v. Oriental Insurance Co. Ltd**<sup>10</sup>.

**47.** As is evident that the 1<sup>st</sup> respondent, who drove the motorcycle, had only LLR, though an effective driving licence at the time of accident, but since the condition circumscribed for LLR holder in terms of Section 3(2) r/w rule 3(1)(b) was not satisfied, the same clearly amounted to violation of statutory as well as terms of the insurance policy. Even if it is found that, the driver of motor vehicle committed breach of policy conditions, in view of the principles enunciated in **Swaran Singh's** case<sup>4</sup>, by applying the principle of pay and recover, the insurer has to indemnify the compensation amount to the third party and later recover the same from the insured.

---

<sup>9</sup> (2007) 3 SCC 700

<sup>10</sup> (2018) 9 SCC 650

Therefore, the compensation determined in the present case has to be indemnified by the 3<sup>rd</sup> respondent Insurance Company to the claimant and later recover the same from the owner of the vehicle as held by the Hon'ble Apex Court in **Oriental Insurance Co. Ltd. v. Nanjappan**<sup>11</sup>.

48. The claimant filed M.V.O.P. No.1472 of 2010 claiming Rs.30,00,000/- as compensation under various heads as mentioned above. The Tribunal after considering the medical evidence and also the expenditure incurred towards the treatment and hospitalization besides considering the fact that claimant had sustained 100% disability has determined the compensation. The age of the claimant was considered basing on S.S.C certificate as 24 years and since he had already graduated with good academic qualification of M.Tech and had bright future prospects, the salary was considered as Rs.25,000/- p.m. by applying multiplier 18, the loss of income to be determined as Rs.54,00,000/-. It was also considered that the claimant had 100% disability as he was suffering from paraplegia and deformity. The Tribunal, considering the medical bills produced evidencing the treatment undergone, has allowed the reimbursement for Rs.9,89,703/-. Towards extra nourishment, claimant was awarded

---

<sup>11</sup> (2004) 13 SCC 224

Rs.3,00,000/-, besides granting Rs.2,00,000/- for pain and sufferance. The amounts awarded are as under:

i) loss of earnings	Rs.54,00,000/-
ii) medical bills	Rs. 9,89,703/-
iii) Extra nourishment	Rs. 3,00,000/-
iv) pain and sufferance	Rs. 2,00,000/-
	-----
	Rs.68,89,703/-
	-----

**49.** Coming to the contention of the claimant that the Tribunal has granted interest @ 7.5% per annum, which is meagre and in view of various recent judgments of Hon'ble Apex Court, the claimant is entitled for interest @ 9% per annum is concerned, the Apex Court in **Malarvizhi v. United India Insurance Company Limited**<sup>12</sup> and **Smt.Anjali v. Lokendra Rathod**<sup>13</sup> had granted interest @ 9% per annum, respectively following those judgments, the interest is awarded @ 9% from the date of the claim petition till realization.

**50.** In the result, all the three appeals are disposed of in the following terms:

- a) MACMA No.1863 of 2017 filed by the claimant is allowed directing the 3<sup>rd</sup> respondent insurance company to pay the compensation to the appellant claimant along with interest

---

<sup>12</sup> (2020) 4 SCC 228

<sup>13</sup> (2022) SCC OnLine SC 1682

at the rate of 9% p.a. and it shall recover the same from the owner of the vehicle i.e., 1<sup>st</sup> respondent.

- b) MACMA No.2534 of 2017 filed by 1<sup>st</sup> respondent is dismissed; and
- c) MACMA No.2556 of 2017 filed by the 2<sup>nd</sup> respondent is allowed. No costs.

As a sequel, miscellaneous petitions pending consideration, if any, in this case shall stand closed.

**JUSTICE RAVI NATH TILHARI**

**JUSTICE CHALLA GUNARANJAN**

**Date:28.02.2025.**

Note:  
L.R. copy to be marked.  
B/O  
cs