IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/FIRST APPEAL NO. 2180 of 2012

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE R.M.CHHAYA sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**NO**
2	To be referred to the Reporter or not ?	**NO**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	**NO**

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NATIONAL INSURANCE COMPANY LTD
Versus
BHARATBHAI BHIMJIBHAI SONGARA & 2 other(s)

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Appearance:
MR VIBHUTI NANAVATI(513) for the Appellant(s) No. 1
MR Y J PATEL(3985) for the Defendant(s) No. 3
RULE SERVED(64) for the Defendant(s) No. 1,2

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CORAM:**HONOURABLE MR. JUSTICE R.M.CHHAYA**
Date : 18/01/2022

ORAL JUDGMENT

1.0. Feeling aggrieved and dissatisfied with the impugned judgment and award dated 20.03.2012 passed in MACP No.65 of 2010 by the learned Motor Accident Claims Tribunal (Auxi), Morbi, the appellant Insurance Company has preferred present appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the “Act”).

2.0. Heard Mr. Vibhuti Nanavati, learned advocate for the appellant and Mr. Y.J. Patel, learned advocate for the respondent

– claimant. Though served, no one appears for respondent nos.1 and 2 i.e. driver and owner of the offending vehicle.

3.0. Following facts emerge from the record of this appeal:

3.1. That the accident took place on 7.12.2009 on Shanala Road, Morbi. It is the case of the respondent claimant that while respondent claimant was walking on the said road, the opponent no.1 came from the otherside on his motorcycle bearing registration no. GJ-3-CJ-8347 and dashed with the respondent claimant, because of which serious injuries were sustained. An FIR was lodged with the Morbi City Police Station being CR-I-244 of 2000 and present claim petition was preferred under Section 166(1) of the Act and claim compensation of Rs.3 lakhs. It was the case of the respondent claimant that the injured was having degree in diploma engineering and earned Rs.10,000/- by doing work of electric wire man. The respondent claimant was examined at Exh.26 and claimant also relied upon the document evidence such as FIR at Exh.28, Panchnama of scene of offence at Exh.29, Injury certificate of applicant at Exh.30, Driving license at Exh.32, Discharge Card at Exh.33, Medical Bill 34, Test report of laboratory at Exh.35, Certificate of Prabhat at Exh.36, Medical Bill at Exh.37, Medical papers at Exh.38. The Insurance Company examined the clerk of the office of the RTO at examined at Exh.40 and contended that the driver of the offending vehicle did not possess any license. The Tribunal considered the deposition at Exh.40 and noted that the license at Exh.41 was issued for light motor vehicle on 24.1.1992 whereas the the license of auto rickshaw was issued on 24.07.1987 and the validity of the said license was from

7.12.2005 to 1.12.2008 whereas the accident has occurred on 7.12.2009 i.e. almost after more than one year from the expiry of the validity of the license. However, the Tribunal came to the conclusion that the license is not cancelled and held appellant Insurance Company to liable to indemnify the award and after considering the evidence on record, awarded a sum of Rs.88,300/- with 7.5% interest from the date of filing of claim petition till its realization while partly allowing the claim petition. Being aggrieved and dissatisfied with the same, the present appeal is filed by the present appellant- Insurance Company.

4.0. Mr. Vibhuti Nanavati, learned advocate for the appellant contended that the Tribunal has committed an error in holding the appellant Insurance Company liable to satisfy the award. Mr. Nanavati contended that the Tribunal has considered the deposition of the RTO officer at Exh.40 and has come to a definite conclusion that on the date of accident i.e. 7.12.2009 driver of the offending vehicle did not possess the valid license. Relying upon the judgment of the Coordinate Bench of this Court in the case of Mahmad Rafik Munnebhai Ansari rendered in CA No.801 of 2021 in First Appeal No.3173 of 2021 and First Appeal No.3849 of 2017 dated 22.12.2021, Mr. Nanavati contended that the Tribunal has committed an error in coming to the conclusion that the appellant Insurance Company is liable to indemnify the award. According to Mr. Nanavati in absence of any license, the appellant Insurance Company deserves to be exonerated by allowing the appeal.

5.0. Mr. Y.J. Patel, learned advocate for the respondent claimant however submitted that the though there was no valid

or substantive license on the date of accident, fact remains that the driver having license which was not renewed and therefore, even if said fact is considered by this Court, order of pay and recover be passed and directing the appellant Insurance company pay first and then recover. Mr. Patel contended that the the small amount of Rs.88,300/- awarded, which is just and adequate, therefore, such direction be issued in peculiar facts and circumstances of the case.

6.0. No other and further submissions/ contention / grounds have been raised by the learned advocates for the respective parties.

7.0. Upon hearing the learned advocates for the parties and on perusal of the evidence on record, it clearly transpires that the driver of offending vehicle had license to light motor vehicle and rickshaw which was valid upto 1.12.2008 whereas the accident has taken place on 7.12.2009. The question therefore, arise in this appeal is whether the Tribunal was correct in arriving at a conclusion that the insurer is liable to indemnify the award even though there is no valid driving license ?

7.1. The Coordinate Bench of this Court in the case of Mahmad Rafik Munnebhai Ansari (supra) while considering the issue of not having a valid license has observed thus:

> *"11.Tribunal while answering the issue regarding liability, has held that insurer of the motorcycle had failed to prove that driver of the motorcycle was not holding valid and effective driving license at the time of the accident. It has also been further held that in the light of the driving license produced at Exh. 43 and 67 which was for the period from 26.06.2009 to 25.06.2009 that driver of the motorcycle was not*

disqualified for obtaining such driving license. The defence which is available to the insurer to stave off the liability to be fastened on it by virtue of the insurance policy taken on the motorcycle is traceable to section 149(2)(a)(ii) of Motor Vehicle Act, 1988, which mandates that driver of the offending vehicle is required to have effective and valid driving license as on the date of the accident. The Hon'ble Apex Court in the case of National Insurance Co. Ltd. versus Swaran Singh and Others reported in 2004(1) GLH 691, has held to the following effect : -

> *"WHEN ADMITTEDLY NO LICENCE WAS OBTAINED BY A DRIVER: 82. We have analysed the relevant provisions of the said Act in terms whereof a motor vehicle must be driven by a person having a driving licence. The owner of a motor vehicle in terms of Section 5 of the Act has a responsibility to see that no vehicle is driven except by a person who does not satisfy the provisions of Section 3 or 4 of the Act. In a case, therefore, where the driver of the vehicle admittedly did not hold any licence and the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in its defence and avoid liability. The matter, however, may be different where a disputed question of fact arises as to whether the driver had a valid licence or where the owner of the vehicle committed a breach of the terms of the contract of insurance as also the provisions of the Act by consciously allowing any person to drive a vehicle who did not have a valid driving licence. In a given case, the driver of the vehicle may not have any hand at all, e.g. a case where an accident takes place owing to a mechanical fault or vis-major.*
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> *83. In V. Mepherson v. Shiv Charan Singh [1998 ACJ 601 (Del.)] the owner of the vehicle was held not to be guilty of violating the condition of policy by willfully permitting his son to drive the car who had no driving licence at the time of accident. In that case, it was held that the owner and insurer both were jointly and severally liable.*
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> *84. In New India Assurance Co. Ltd. vs. Jagtar Singh and Others, [1998 ACJ 1074], Hon'ble M. Srinivasan, CJ, as His Lordship then was, dealing with the case where a duly licensed*

driver was driving a vehicle but there was a dispute as to who was driving the vehicle. In that case the court referred to the judgment in Kashiram Yadav vs. Oriental Fire & General Insurance Co. Ltd. [1989 ACJ 1078 (SC)] and expressed its agreement with the views taken therein.

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

12. Thus, insurer would be entitled to raise a defense that driver of the offending vehicle was not possessing a valid driving license at the time of the accident and as such it is not entitled to indemnify the claim. If it is to be construed that burden was on the insurance company to prove that owner of the vehicle had consciously allowed the driver of the vehicle whom he knew, did not possess driving license, then in such circumstances also insurer would not be required to indemnify the award. In the instant case, said situation would not arise, inasmuch as, the owner of the vehicle who was arraigned as respondent No. 2, did not appear before the Tribunal and did not contest the matter. As such, burden had shifted on the insurance company. Only on initial burden cast on the insured namely the owner of the vehicle was discharged, it would have shifted to the claimant to dispense the same. The said exercise having not been done and undisputedly Exh. 43 and 67, the driving license which was produced by the claimant disclosing that driver of the motorcycle was possessing the driving licence which was effective from 26.06.2009 onwards, and he did not possess the driving license as on the date of accident i.e. 22.02.2009, it cannot be gainsaid by the claimant that insurer was required to indemnify the claim. It is not the case of the claimant that either the driver of the motorcycle was possessing a learner license or the said driving license which had been issued, had expired. In that view of the matter, the contention raised by the learned counsel appearing for the claimant, cannot be accepted and it stands

> *rejected. In the facts obtained in the present case clearly disclosing that driver of the offending vehicle namely driver of the motorcycle was not possessing the driving license as on the date of accident, insurer of the motorcycle cannot be made to indemnify the claim. However, we make it clear that the claimant would be at liberty to proceed against owner of the said vehicle for recovering the compensation. Hence, point no. 1 is answered in favour of the insurer and held that insurer of motorcycle had proved that driver of the motorcycle did not possess valid driving licence as on date of accident."*

8.0. In case on hand also it clearly transpires that the driver of offending vehicle had no license on the date of accident. As per the provision of the Motor Vehicles Act leverage of 30 days was given on license having expired whereas in this case one year has passed and same has not renewed. It is an admitted position that driver of offending vehicle did not possess any license on the date of accident. Following the ratio laid down by the Coordinate Bench of this court in the case of Mahmad Rafik Munnebhai Ansari (supra), the appellant- Insurance Company cannot be therefore, held liable to indemnify the award. The conclusion arrived at by the Tribunal that the license was not cancelled also is against the provision of Act and that would not create any liability of the appellant. In light of the aforesaid, therefore, the appellant cannot be held to be liable to satisfy the award and appellant Insurance Company therefore, deserves to be exonerated. It goes without saying that the opponent nos. 1 and 2 would be jointly and severely liable to satisfy the award. In light of the above fact, the contention raised by Mr. Patel that order of pay and recovery deserves to be passed, cannot be accepted. That as per the order dated 18.09.2012 passed in Civil Application No.7758 of 2012, the appellant Insurance Company has deposited whole awarded amount with interest and no

disbursement is made in favour of the claimant. However, the respondent claimant was permitted to withdraw the interest that may be accrued on such deposit. If any such interest is permitted to be disbursed in favour of the claimant, as per the order dated 18.09.2012 in Civil Application No. 7758 of 2012, the same cannot be recovered from the claimant. Rest of the amount be refunded back to the appellant Insurance Company forthwith with proportionate costs and interest. The impugned judgment and award is hereby quashed and set aside. Appeal is thus, partly allowed to the aforesaid extent. Registry is directed to transmit back the Record and Proceedings of the case to the Tribunal forthwith.

sd/-
(R.M.CHHAYA,J)

KAUSHIK J. RATHOD