

Importance of Driving License & Valid Insurance qua Third Party Risk

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Widespread use of vehicles, especially motor cars, began after the first world war in urban areas. Cars were relatively fast and dangerous at that stage, yet there was still no compulsory form of car insurance anywhere in world. This meant that injured or victims would seldom get compensation in an accident and drivers often faced considerable costs of damage to their life, vehicle, and property.

The compulsory car insurance scheme was first introduced in United Kingdom with the "**Road Safety Act 1930**". This ensured that all vehicles owners and drivers had to be insured for their liability for injury or death to third parties when the vehicle was being on public road.

In India during early years of Indian automobile industry boom, people were not keen on getting their cars insured. This led to high risk on the roads with no financial aid to vehicle owners and third party liabilities. Indian Motor Vehicles Act 1914 was passed and made applicable in British India in 1914. There after Motor Vehicle Act of 1939 & subsequently Motor Vehicle Act 1988, came into existence which ensured every vehicle would have insurance. Thus it reduced the financial distress in the cases of accidents fastened on the driver or owner of vehicles. The Motor Vehicles (Amendment) Act, 2019 came into effect from September 1, 2019.

Historical Background of third-Party Insurance

Chapter VIII of the 1939 Act and Chapter XI of the 1988 Act have been enacted on the pattern of several English Statutes which is evident from the report of Motor Vehicles Insurance Committee, 1936-1937. In order to find out the real intention for enacting Ss.96 of the 1939 Act which corresponds to Ss.149 of the 1988 Act, it is relevant to trace the historical development of the law for compulsory third -party insurance in England. Prior to 1930, there was no law of compulsory insurance in respect of third party rights in England. As and when an accident took place an injured used to bring action against the motorist for recovery of damages.

But in many cases, it was found that the owner of the offending vehicle had no means to pay to the injured or the dependant of the deceased and in such a situation the claimants were unable to recover damages. It is under such circumstances that various legislations were enacted. To meet the situation, it was for the first time that the Third Parties' Rights Against Insurance Act, 1930 was enacted in England. The provision of this Act found place in S.97 of the 1939 Act which gave to the third party a right to sue insurer directly. Subsequently, the Road Traffic Act, 1930 was enacted which provided for compulsory insurance for Motor Vehicles. The provisions of this Act were engrafted in S.95 of the 1939 Act and S.146 of the 1988 Act. It is relevant that under S.38 of the English Act of 1930, certain conditions of insurance policy were made ineffective so far as third parties were concerned .The object behind the provision was that the third party should not suffer on

account of failure of the insured to comply with those terms of the insurance policy.

Relevant Provisions of Motor Vehicles Act, 1988

Chapter 11 (Section 145 to 164) provides for compulsory third party insurance, which is required to be taken by every vehicle owner. It has been specified in Section 146(1) that no person shall use or allow using a motor vehicle in public place unless there is in force a policy of insurance complying with the requirement of this chapter. The contravention of the provisions of section 146 is an offence and is punishable with imprisonment which may extend to three months or with fine which may extend to one thousand rupees or with both (section 196). Section 147 provides for the requirement of policy and limit of liability. Every vehicle owner is required to take a policy covering against any liability which may be incurred by him in respect of death or bodily injury of a person including owner of goods or his authorized representative carried in the vehicle or damage to the property of third party and also death or bodily injury to any passenger of a public service vehicle. According to this section the policy does not require covering the liability of death or injuries arising to the employees in the course of employment except to the extent of liability under Workmen Compensation Act. Under Section 149 the insurer is statutorily liable to satisfy the judgment and award against the person insured in respect of third party risk.

Fake Driving Licence vis a vis Breach of Condition of Policy

In **Sohan Lal Passi's v. P. Sesh Reddy 1996 SC 2697** it has been held for the first time by the Supreme Court that the breach of condition should be with the knowledge of the owner. If owner's knowledge with reference to fake driving licence held by driver is not proved by the Insurance Company, such defence, which was otherwise available, can not absolve insurer from the liability.

Recently in a dynamic judgment in case of **National Insurance Co. v Swaran Singh 2004 ACJ 1, (2004) 3 SCC 97** the Supreme Court has almost taken away the said right by holding;

- (i) Proving breach of condition or not holding driving licence or holding fake licence or carrying gratuitous passenger would not absolve the Insurance Company until it is proved that the said breach was with the knowledge of owner.
- (ii) Learner's license is a licence and will not absolve Insurance Company from liability.
- (iii) The breach of the conditions of the policy even within the scope of Section 149 (2) should be a material one which must have been effective cause of accident.

This judgment has created a landmark history and is a message to the Government to remove such defence from the legislation as the victim has to be given compensation.

Nature and Extent of Insurer's Liability (section 147)

According to the provisions of this section the policy of insurance must be issued by an authorized insurer. It must be as per requirements as specified in section 147 (2). It must insure against liability in respect of

death or bodily injury or damage to property of a third party. Third party includes owner of the goods or his authorized representative carried in the vehicle and any passenger of a public service vehicle.

The policy of insurance must cover liability under the Workmen's compensation Act, 1923 in respect of death or bodily injury to any such employee (a) engaged in driving the vehicle, or (b) the conductor or ticket examiner if it is a public service vehicle.

In **Oriental Insurance Co. Ltd. v. Rajni Devi (2008) 5 SCC 736 and New India Assurance Co. Ltd. v. Sadanand Mukhi, (2009) 2 SCC 417**, the liability of the insurance company would be unlimited in case of third party. It was also held in the said decision that where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract, the claim of the claimant against the insurance company would depend upon the terms thereof.

Salient Features of Third Party Insurance:

- Third party insurance is compulsory for all motor vehicles. In **Govindan v. New India Assurance Co. Lt. AIR1999 SC 1398**, Third party risks insurance is mandatory under the statute. This provision cannot be overridden by any clause in the insurance policy.
- Third party insurance does not cover injuries to the insured himself but to the rest of the world who is injured by the insured.
- Beneficiary of third party insurance is the injured third party, the insured or the policy holder is only nominally the beneficiary of the

policy. In practice the money is always paid direct by the insurance company to the third party (or his solicitor) and does not even pass through the hands of the insured person.

- In third party policies the premiums do not vary with the value of what is being insured because what is insured is the 'legal liability' and it is not possible to know in advance what that liability will be.
- Third party insurance is almost entirely fault-based.(means you have to prove the fault of the insured first and also that injury occurred from the fault of the insured to claim damages from him)
- Third party insurance involves lawyers aid
- The third party insurance is unpopular with insurance companies as compared to first party insurance, because they never know the maximum amounts they will have to pay under third party policies.

Defence taken by the Insurance Companies

Driving licence plays an important role when the vehicle meets an accident. Generally the plea taken by insurance companies in such cases is that

- (i) The driver was not holding any licence, that licence held by him was not a valid one,
- (ii) The licence was forged,
- (iii) The licence had already expired when the accident took place,
- (iv) The licence is for LMV (Light Motor Vehicle) where as he was driving (HMV) Heavy Motor Vehicle.

The relevant provisions regarding the driving licence are contained in Chapter II of the Motor Vehicles Act,1988 as amended UpToDate. The relevant provisions contained in Section 3 to 10 of MVA.

There is drastic change in Section 10 (corresponding to Sec.8 of The MVA,1939) of Motor Vehicles act which now read As under:

Section 10. Form and contents of licences to drive.

(1) Every learner's licence and driving licence, except a driving licence issued under section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:

- (a) motor cycle without gear;
- (b) motor cycle with gear;
- (c) ¹[adapted vehicle];
- (d) light motor vehicle;
- ²[(e) transport vehicle;]
- (i) road-roller;
- (j) motor vehicle of a specified description.

1. Subs. by Act 32 of 2019, s. 6, for "invalid carriage" (w.e.f. 1-9-2019).

2. Subs. by Act 54 of 1994, s. 8, for clauses (e) to (h) (w.e.f. 14-11-1994)

FAKE DRIVING LICENSE AND LIABILITY TOWARDS THIRD PARTIES

The insured bonafidely believing in the validity of a forged driving license implying the holder of a fake driving license renewed by a competent authority would not amount to violation of the conditions of contract or of the insurance policy. It would not be violating either of conditions of indemnity or the insurance policy or the contract or violation of any statutory provisions. Under these circumstances, merely employing a driver with a forged driving licence would not absolve the insurer of its liability. When a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance, the burden is on the insurer to pay the third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions, the insurer had no liability to pay such sum to the insured. The insurance company cannot refuse to meet its liability *qua* third party for any act or omission bonafidely or otherwise committed by the insured or its liability in as much as third party for whose benefit the insurance has been provided, is not a privity to any breach as being not in control of the act or conduct of the insured or its employee or insurer. Thus, the insurance company cannot refuse to meet its liability *qua* third party.

Statutory Defenses Available to Insurance Company

Statutory defense must be available under the Act and must also be reserved in the policy; such defense should be reserved impliedly or explicitly. Defense must be pleaded and proved by Insurance company.

Issues with regard to such defenses must be framed. Defenses are available under Sections 147 and 149 of Motor Vehicle Act.

Validity of Driving License

Section 149(ii) read as under

(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;

Essentials requirement for the owner to escape the liability even if he had Valid insurance cover for the vehicle he owns.

- When an owner is hiring a driver he will have to check whether that driver has a valid driving licence issued by a competent authority or not
- The owner should satisfy himself regarding driver's driving skill of that particular vehicle for which owner is appointing the particular driver.
- The owner should be careful that the driver must keep his DL validated as now there is no grace period provided to validate the DL.
- The owner and driver must appear in the case in case any case is filed against them

- The owner and driver must file their replies in the case along with documents particularly RC, Driving Licence and Insurance policy
- The driver and owner must appear in witness box to prove the case as per their reply.
- In the absence of Driving licence and insurance policy particulars of both documents must be brought on record of the case.
- Valid Insurance Cover of Vehicle.
- Route permit and Proper passing of vehicle must be placed on record.

In *Nacinna Komat vs Alfrado Antono Doe Martines 1998 ACJ 397*

The Supreme Court pointed out even if driver does not produce the driving licence, the insurance company is not discharged of its liability. The onus is on it to prove that driver had no driving licence.

In *Guru Govekar vs Filmena F. Lubo (1988) 3 SCC 1*, The Supreme

Court held that insurer is liable to pay compensation to the claimants as a consequence of injuries suffered by claimant in a public place on account of car collided with claimant due to negligence of the mechanic to whom it was entrusted for repair. The court held so by virtue of provision of S.94 of MVA(old) which provides that no person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public, unless there is in force in relation to the use of the vehicle by that other person, as the case may be, a policy of insurance complying with the requirements of chapter VIII of the Act.

Burden of Proof

Once the insured proved that the vehicle was covered by compulsory Insurance cover, it is for the insurer to prove that it comes within

exception. It is settled law that the person who alleges breach must prove the same. Thus insurance company has to prove the breach it cannot be absolved of its liability. **National Insurance Co. Vs Swaran Singh AIR 2004 SC 1531: (2004) 3 SCC297: 2004 ACJ 1. The insurer has to satisfy such violation or infringement on the part of insured was willful. 2001 ACJ542, 2004 ACJ 961(HP) National Insurance Vs. Sarupa Devi.**

Mere absence, fake or invalid Driving Licence or disqualification of driver for driving at the relevant time are not in themselves defence available to the insurer against either the insured or third party. To avoid its liability towards insured, insurer has to prove that insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of policy regarding use of vehicle by duly licenced driver or one who was not disqualified to drive at relevant time. When the insurer, having failed to adduce any evidence on absence of licence the insured was held to have not discharged the burden cast on them.

Puran Devi Vs. NIA 2004 SC 1742: (2004) 3 SCC 386.

Even if insurer is able to prove all the liability of insurance company to satisfy the award at the first instance and to recover the amount of award from driver or insured. (2004)3 SCC 297 NIA Vs Sawaran Singh.

The liability of insurer in fake licence only in case of third party statutory liability. AIR 2007 SC National Insurance Vs Laxmi Narain Dutt.

Does the Driving Licence to drive a particular vehicle include the licence to drive other vehicles?

License to drive heavy goods vehicle include license to drive heavy passengers vehicle. License to drive LMV does not entitle driver to drive

two wheeler scooter or motor cycle. License to Drive LMV includes both transport and non- transport vehicles. Mukand Devgan Vs Oriental Insurance Co.(2017)14 SCC663, Jagdish Kumar Sood Vs United India Insurance Co. Ltd(2018) SCC697

Renewal of Fake Licence and Burden to prove.

However mere renewal of fake license does not clothe it with validity. FAO No. 442 of 2008, decided on 1/11/11, titled as National Insurance Co. Ltd vs. Hem Raj.

Burden of proving fake license is on Insurance company. Even in case of fake /invalid licence, need to establish that the owner was aware of the fact that the Driving licence was fake /invalid and still permitted driver to drive the vehicle. **(2018)8 SCC 799 Ram Chandra Singh Vs. Raja Ram.**

Renewal of Licence

License is deemed valid after its expiry, only for 30 days. FAO No. 284 of 2005, decided on 23/12/2008, titled as National Insurance Company vs. Smt. Situ Devi. See: section

14 MV Act. The proviso to S.14 has been deleted vide 2019 amendment though same has not yet been come into force.(the 30 grace days provided to renew licence has been deleted)

Licence to drive a tractor

License to drive a tractor permits the driver to drive the same, even when a trailer is attached to the tractor. Nagashitty vs. United Insurance Co. Ltd. & others, (2001) 8 SCC 56 and United India Insurance Co. Ltd v. Krishan Chand & Others, Latest HLJ 2005 (2) 993.

Does Driving Licence to drive Light Motor Vehicle include Transport Vehicle Licence also?

"**Goods carriage**" has been defined in Section 2(14) to mean any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. "**Transport vehicle**" has been defined in section 2(47) to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.

The effect of the different licences granted in terms of the provisions of Section 2(14) and 2(47) has also been noticed by Supreme Court in *New India Assurance Co. Ltd. vs. Prabhu Lal*(2008) 1 SCC 696 , as under :

“37. The argument of the Insurance Company is that at the time of accident, Ram Narain had no valid and effective licence to drive Tata 709. Indisputably, Ram Narain was having a licence to drive light motor vehicle. The learned counsel for the Insurance Company, referring to various provisions of the Act submitted that if a person is having licence to drive light motor vehicle, he cannot drive a transport vehicle unless his driving licence specifically entitles him so to do (Section 3). Clauses (14), (21), (28) and (47) of Section 2 make it clear that if a vehicle is "light motor vehicle", but falls under the category of transport vehicle, the driving licence has to be duly endorsed under Section 3 of the Act. If it is not done, a person holding driving licence to ply light motor vehicle cannot ply transport vehicle. It is not in dispute that in the instant case, Ram Narain was having licence to drive light motor vehicle. The licence was not endorsed as required and hence, he could not have driven Tata 709 in absence of requisite endorsement and the Insurance Company could not be held liable.”

Further, in ***Oriental Insurance Co. Ltd. vs. Angad Kol, (2009) 11 SCC 356*** it has been held by the Supreme Court as under:

“10. The distinction between a ‘light motor vehicle’ and a ‘transport vehicle’ is, therefore, evident. A transport vehicle may be a light motor vehicle but for the purpose of driving the same, a distinct licence is required to be obtained. The distinction between a ‘transport vehicle’ and a ‘light motor vehicle’ is noticed in *Mangalal Vayani vs. United India Insurance Co., Ltd., (2010) 12 SCC 488.*

Driving Licence in Passenger Vehicle

‘passenger vehicle’ can also be noticed from Section 14 of the Act. Subsection (2) of Section 14 provides for duration of a period of three years in case of an effective licence to drive a ‘transport vehicle’ whereas in case of any other licence, it may remain effective for a period of 20 years.”

Minor as Driver

In ***United India Insurance Co.Ltd. vs. Rakesh Kumar Arora*** (Citation) the driver was found to be minor and was not holding valid and effective driving licence. Therefore, it was held by the Supreme Court that insurance company was not liable to pay compensation, as there was breach of condition of the insurance policy. In ***Sachin Kumar Vs Chuni Lal 2006 ACJ 1390*** it has been held that Parents who permits their minor child to violate the law and drive without Driving Licence must suffer, and company has been exonerated from its liability.

Transfer of Motor Vehicle & Liability of Insurance Company

Another important amendment in the new Act is automatic transfer of the policy on the sale of the vehicle as enumerated in S.157 of MVA. It has been held that irrespective of fact whether ownership of vehicle

vested with registered owner or with a person in whose favor it has been transferred , liability of insurance company continued. **Firdaus Vs. Oriental Insurance Co. (2017)15 SCC 674**

Latest Law answering most of the Questions

Pappu And Others vs Vinod Kumar Lamba And Another (2018) 5 SCC 208

[National Insurance Vs. Swaran Singh (2004) 3 SCC 297 applied whereas Dhrupati Vs. Vinod Kumar 2014 SCC online 16493 partly reversed]

- 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.
- Insurer is entitled to raise a defence in a claim petition filed under Section 163A or Section 166 of the Motor Vehicles Act, 1988 *inter alia* in terms of Section 149(2)(a) of the said Act.
- The breach of policy condition, e.g. **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.
- 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 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,

- The insurance companies are, 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 where for would be on them.
- The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.
- 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 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 insured under Section 149(2) of the Act.
- 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.

- 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.
- The provisions contained in Sub-section (4) with proviso thereunder and Sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by, relegating them to the remedy before, regular court

in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.