Shushma B.C vs V.K.Gopal on 7 September, 2016

BEFORE THE MEMBER PRL.MOTOR ACCIDENT CLAIMS
TRIBUNAL AT BANGALORE
(S.C.C.H. - 1)

Dated this the 7th day of September 2016

PRESENT : SRI H.P.SANDESH, B.A.L., LL.B,
MEMBER, PRL. M.A.C.T.

M.V.C No.1824/2014

Petitioner: Shushma B.C.,
D/o B.T.Chikkaputtegowda,
Aged about 21 years,
R/at No.342, 5th Main,
2nd Cross, K.S.Town,
Bangalore -60.

(By Sri. M.Subramani, Advocate.)

-Vs-

Respondents: 1. V.K.Gopal,
R/at No.289, 12th Main Road,
Banashanakari 1st stage,
2nd Block, Bangalore-560 050.
(Owner of the Tipper Lorry
bearing Reg.No.KA-55/9889)

(By Sri B.Raje Gowda, Advocate)

2. The Oriental Insurance Co.Ltd.,
T.P.Hub, Regional Office, No.44/4,
Leo Shopping Complex,
Residence Road Cross,
Bangalore -25.

(Insurer of Tipper Lorry vide
Policy No.421301/31/2014/1659
Valid from 14.09.2013 to
13.09.2014)

Proposed respondent
Sri Mahendran,

SCCH 1 2 MVC No.1824/2014

S/o Aariyan,
Aged major,
R/at No.32,
Indiragandhi Nagar,
3rd cross, Virudhunagar,
Tamil Nadu-656 001.

(By Sri S.Maheshwara, Advocate)

JUDGMENT

The petitioner has filed this petition under Section 166 of the Motor Vehicles Act, 1989 seeking compensation of Rs.5,00,000/- for the injuries sustained by her in the road traffic accident that occurred on 22.02.2014 at about 01.25 pm., on Uttarahalli MainRoad, Kengeri, Bangalore.

2. Brief facts of the case are that:-

> It is the case of the petitioner that on 22.02.2014 at about 01.25 p.m. the petitioner was proceeding as a pillion rider on Honda Activa Scooter bearing No.KA-02/EZ-
>
> 9305 and the same was driven by her friend by name Nikitha and when they were proceeding on Uttarahalli Main Road towards Kengeri, at that time, the driver of Tipper lorry bearing No.KA-55/9889 drove the same in rash and negligent manner and having come to the extreme right side of the road, dashed against the petitioner's Honda Activa. Due to the forced impact, the petitioner along with the rider fell SCCH 1 3 MVC No.1824/2014 down, consequently, the front right side wheel of the Tipper Lorry ran over the head of the rider of the Honda Activa and petitioner had sustained grievous injuries.

3. Immediately after the accident, the petitioner was shifted to R.R.Hospital wherein first aid treatment was given to her and then shifted to BGS Hospital for further treatment. During hospitalization, X-ray and C.T. scan were taken which revealed that the petitioner had sustained traumatic brain injury, maxillary and nasal bone fracture and facial injury and cut and lacerated wound over eyebrow, nose and abrasion over lower lip and upper lip and laceration on forehead. Initially she was treated with medication and discharged on 25.02.2014 with an advice of surgery. Again, on 02.03.2014, the petitioner got admitted to BGS Hospital for the purpose of surgery and the petitioner had undergone surgery of dental arch bar and nasal bone elevation was done on 03.03.2014. The petitioner regularly followed the treatment and spent more than Rs.2,00,000/- towards medical, conveyance, nourishment, food, transport and other charges. The injuries are not healed and on account of the injuries, the petitioner cannot chew hard food and she is getting headache on and off and the petitioner's face has been disfigured due to lot of cut lacerated wound over face SCCH 1 4 MVC No.1824/2014 and there are lot of scars on face of petitioner, hence, petitioner is undergoing deep mental shock, severe pain and sufferings, since the injuries caused are permanent in nature.

4. It is the case of the petitioner that prior to the date of accident, she was hale and healthy and aged about 21 years and was prosecuting 6th semester B.E. at SJB Institute of Technology. Due to the accident, the petitioner could not attend classes for more than a month and petitioner was taking tuitions to the school going children at her residence and was earning Rs.9,000/- p.m. Petitioner is also one of the earning member of her family and she was maintaining her family members. Due to the accidental injuries, she could not run the tutorial as she was doing prior to the accident and lost income as she has suffered permanent disability. The accident is purely due to the rash and negligent driving of the driver of the tipper lorry bearing No.KA-55/9889 and the respondent No.1 is the owner and the respondent No.2 is the insurer and both are jointly and severally liable to pay the compensation to the petitioner.

5. In pursuance of this claim petition, this Court has issued notice against the respondents. Both the respondents SCCH 1 5 MVC No.1824/2014 appeared before the Court through their respective Counsel and filed written statement separately.

6. Respondent No.1 has filed written statement denying the petition averments. It is contended that the petition is not maintainable either in law or on facts for non-joinder of necessary parties as the owner and insurer of the Honda Activa is not arrayed as parties to the proceedings. The respondent No.1 has denied the name, father's name, address, date, time and mode of accident, nature of the injuries sustained by the petitioner and medical expenses incurred, permanent disability suffered by her. It is contended that the driver of tipper lorry was driving in a moderate speed by observing traffic rules and regulations as on the date of accident, but he rider of the Honda Activa was riding without observing the vehicles which were coming from the opposite side and suddenly came towards right side and dashed against the rear portion of the tipper lorry and hence, the accident occurred solely due to the negligence of the rider of the Honda Activa and not due to the tipper lorry. The Tipper lorry was insured with the respondent No.2 and the policy was valid as on the date of accident and the driver had valid and effective driving licence to drive the same. The SCCH 1 6 MVC No.1824/2014 compensation claimed by the petitioner is excessive and exorbitant. Hence, prays to dismiss the petition.

7. The respondent No.2 has filed written statement denying the petition averments. The issuance of the policy in respect of the tipper lorry bearing No.KA-55/9889 is admitted, however it is contended that the liability if any is subject to the terms and conditions of the policy. It is further contended that the first respondent owner has not complied the statutory obligation under section 134(c) of the Motor Vehicles Act, 1988 and the concerned Police have not complied the provisions of Section 158(6) of M.V.Act. The accident has occurred due to the negligence of the rider of the motor cycle herself and she has not been made as party to the proceedings. It is contended that the driver of the tipper lorry was not holding valid and effective driving license as on the date of accident and the owner of the vehicle committed breach of terms and conditions of the policy. The respondent No.2 has denied the name, father's name, address, date, time and mode of accident, nature of the injuries sustained by the petitioner and medical expenses incurred, disability suffered by her, income and avocation of the petitioner. It is further contended that the second respondent reserves its right to amend its statement of objection and also to take over the SCCH 1 7 MVC No.1824/2014 defence of the insured in the event of the owner does not contest the proceedings under section 170 of M.V.Act.

Hence, prays to dismiss the petition.

8. The second respondent has filed additional written statement contending that the jurisdictional police have filed charge sheet against the driver of the lorry bearing No.KA- 55/9889 namely Mahendran, S/o.Ariyan alleging the rash and negligent driving and the said driver has submitted his driving licence before the police. Further contends that their company has appointed an investigator to procure the documents from the police station and accordingly, the investigator has obtained documents from the police station and the driving licence copy which was available with the police station bearing D.L.No.TN-67-20070004250 pertains to Mahendran S/o Ariyan. When their company investigator secured driving licence extract of driver from Viruddhnagar R.T.O., the above said driving licence number has been issued in respect of one Palanisamy S., S/o. Soorashankar and not in respect of Mahendran S/o.Ariyan and this clearly shows that the driver of lorry bearing No.KA-55/9889 did not possess valid and effective driving license to drive the vehicle as on the date of accident. It is also contended that fake driving license copy has been furnished by the driver of the SCCH 1 8 MVC No.1824/2014 lorry and this respondent is not liable to pay the compensation.

9. Based on the above pleadings, this Court has framed the following:-

ISSUES

1. Whether the petitioner proves that she sustained grievous injuries in a Motor Vehicle Accident that occurred on 22.02.2014 at about 1.25 p.m. on Uttarahalli Main Road, Kengeri, Bangalore, within the jurisdiction of Kengeri Traffic Police Station on account of rash and negligent driving of the Tipper Lorry bearing registration No.KA-55/9889 by its driver?

2. Whether the respondent No.1 proves that the accident occurred on account of negligence act of the Petitioner herself?

3. Whether the petitioner is entitled for compensation? If so, how much and from whom?

4. What order?

10. The petitioner in order to prove her case, examined herself as PW1 and has got marked the documents at Ex.P.1 to 15. The respondents have examined four witnesses as RW-1 to 4 and have got marked Ex.R.1 to 6.

11. Heard arguments of petitioner's Counsel and respondents' Counsel.

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12. The Counsel for the petitioner has relied upon the following Judgment:

1) 2013 ACJ 2118

13. The Counsel for the respondent No.1 has relied upon the following Judgments:

1) (2003) 3 SCC 338

2) (2008) 3 SCC 193

3) (2013) 10 SCC 217

4) (2004) 6 Kar.L.J. 637

14. The Counsel for the respondent No.2 has relied upon the following Judgments:

1) 2007 ACJ 721 SC

2) 2010 ACJ 709 SC

3) 2013 ACJ 2128 SC

4) 2007 ACJ 1067 SC

5) 2014 ACJ 2739 Kar

15. I have gone through the principles laiddown in the above judgments.

16. Having heard the arguments, based on the pleadings and the evidence available on record, I record my findings on the above issues as under:-

Issue No.1 ... In the Affirmative, SCCH 1 10 MVC No.1824/2014 Issue No.2 ... In the negative Issue No.3 ... Partly in the Affirmative, Issue No.4 ... As per final order, for the following:-

REASONS

17. Issue No.1 and 2:- These two issues are inter- connected to each other and they are taken up together for discussion in order to avoid repetition.

18. It is the case of the petitioner that on 22.02.2014 at about 01.25 p.m. she was riding pillion on Honda Activa bearing No.KA-02/EZ-9305 and the same was driven by her friend by name Nikitha and while so going on Uttarahalli Main Road towards Kengeri, at that time, the driver of Tipper lorry bearing No. KA-55-/9889 drove the same in rash and negligent manner and having come to the extreme right side of the road, dashed against the petitioner's Honda Activa Scooter. Due to the forced impact, petitioner along with the rider fell down and in the incident, the front right side

wheel of the Tipper Lorry ran over the head of the rider of the Honda Activa and petitioner had sustained grievous injuries. Thus, it is the case of the petitioner that the accident has occurred on account of the negligence on the part of the driver of the tipper lorry. On the other hand, respondents have contended that the accident occurred on account of the SCCH 1 11 MVC No.1824/2014 negligence on the part of the rider of the Honda Activa herself.

19. In order to prove her case, she examined herself as PW-1 and she reiterated the averment of the petition contending that the accident was on account of the negligent driving of the tipper lorry by its driver. Apart from her oral evidence by way of affidavit, the petitioner has also relied upon FIR, Sketch, Mahazar, IMV Report, Charge Sheet as Ex.P.1 to 3 and Ex.P.5 and 6. She was subjected to cross- examination.

20. In the cross-examination, it is elicited that she does not know who has lodged the complaint about the accident, but she says that the Police came and recorded her statement in the hospital. She admits that it is a head on collision between the tipper lorry and the motor cycle. It is suggested that the accident has occurred at the middle of the road as per Ex.P.2 and the said suggestion was denied. She says that her friend who was riding the motor cycle was having the driving license and she says that she can produce the same before the Court. It is suggested that the accident has occurred due to the negligence of her friend who was riding the motor cycle and not on account of negligence on the part SCCH 1 12 MVC No.1824/2014 of the driver of the tipper lorry and the said suggestion has been denied by her.

21. Respondent No.2 has examined its Deputy Manager as RW-1 and she in her evidence reiterated the contentions taken in the objection statement and additional objection statement, stating that the rider of the Honda Activa was at negligence and not the driver of the tipper lorry. In the cross-examination of RW 1, nothing is brought out to disbelieve the case of the petitioner alleging negligence to the driver of the lorry.

22. The respondent No.1 got himself examined as RW 4 and in his evidence, RW 4 deposes that the accident was not due to the negligence of the driver of the tipper lorry since the lorry was driven carefully and cautiously by its driver and the Honda Active came from opposite direction in rash and negligent manner and while overtaking another vehicle, dashed against the tipper lorry. Even in the cross- examination of RW 4, nothing is brought out to disbelieve the evidence of petitioner with regard to the negligence attributed to the driver of the tipper lorry.

23. Now, let me appreciate the evidence let in by both the parties and documentary evidence brought on record, SCCH 1 13 MVC No.1824/2014 with regard to the occurrence of the accident and the negligence.

24. The petitioner, as stated above, in order to prove her case produced Ex.P.1 - FIR. A perusal of the same reveals that the petitioner herself has lodged the complaint alleging total negligence to the driver of the tipper lorry. It has to be noted that the complaint is filed by the petitioner herself, within a span of 1 hour of the accident. Ex.P.2 and P.4 are the Spot Sketch and the Spot Mahazar drawn by the Police during the course of investigation. Sketch reveals that the road on which the

accident occurred is of the width of 25 feet. Both the vehicles were moving in opposite direction. The Sketch further shows that the scooter, on which the petitioner was riding pillion, driven by her friend was shown to be moving at a distance of 5 feet from the edge of the road from its side. The tipper lorry which was coming from opposite direction deviated from its lane and came to the extreme right portion of the road. Even if it is assumed, as per the contention of the respondent No.1 and 2, that the rider of the scooter while overtaking another vehicle came towards right portion of the road, in that situation also, the scooter was well within the left half portion of the road. From SCCH 1 14 MVC No.1824/2014 the contents of the sketch, which has not been disputed or denied by the respondent, a prudent person can easily say that it is the driver of the tipper lorry, who for no reason, other than negligence and high speed, came to the right portion of the road and dashed against the scooter and thereby caused the accident. Ex.P.5 is the IMV Report of both the vehicles. No visible damages were noticed in respect of tipper lorry, but as far as the scooter is concerned, front left side, indicator side, guard scratched, rear right side body dented and rear right side exhaust manifold damaged. The jurisdictional Police after investigation, filed charge sheet against the driver of the tipper lorry as per Ex.P.6. The respondents No.1 and 2 in their statement of objections, having denied the negligence on the part of the driver of the tipper lorry for the accident, have not examined the driver of the lorry, nor any other witness, who witnessed the accident. Therefore, the evidence of PW 1 coupled with the police documents discussed above, make it abundantly clear that the accident in question has occurred on account of rash and negligent driving of the tipper lorry by its driver and in the accident, the petitioner has suffered injuries. Accordingly, issue No.1 is answered in the affirmative and issue No.2 is answered in the negative.

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25. Issue No.3:- It is contention of the petitioner that in the accident, she suffered injuries and immediately after the accident, she was shifted to R.R.Hospital wherein first aid was given and thereafter, she was shifted to BGS Global Hospital, Kengeri wherein she was treated as inpatient and to elucidate the same, the petitioner has produced the Wound Certificate marked as Ex.P.4 issued by BGS Global Hospital, which reveals that in the accident, the petitioner has suffered:

> "Traumatic Brain Injury, Maxilla and Nasal Bone Fracture, Facial Injury.
>
> CLW over eye brow 5x1 cm CLW over nose 2x1 cm CLW granium 3x1 cm Abrasion lower tip/upper tip lcaration forehead"

which are shown as grievous in nature. The petitioner has also produced Ex.P.7 Discharge Summary issued by the said Hospital, perusal of which reveals that as the petitioner has suffered "Traumatic Brain Injury, Maxilla and Nasal Bone Fracture, Facial Injury" which, as per the Discharge Summary was treated conservatively and discharged on 25.02.2014. The petitioner was again admitted as inpatient on 02.03.2014 for surgical intervention for depressed nasal bone fracture and again she was treated conservatively and discharged on SCCH 1 16 MVC No.1824/2014 05.03.2014. The petitioner has also produced Ex.P.8 - OP Record issued by Rajarajeshwari Medical College, Bengaluru.

26. In the cross-examination of petitioner, it is suggested to her that she has sustained simple injuries and the said suggestion has been denied by her.

27. The petitioner has contended that she was inpatient for a lengthy period of time at Rajarajeshwari Hospital and after discharge from the said hospital, she was taking follow- up treatment and therefore, she has incurred Rs.2,00,000/- towards medical, conveyance and nourishment charges. The petitioner's further case is that she was prosecuting 6th Semester in Electrical and Electronics Engineering, apart from taking tuitions and earning Rs.9,000/- per month and on account of the injuries sustained in the accident, she is permanently disabled and unable to do normal activities.

28. As far as injury sustained by the petitioner is concerned, as stated above Ex.P.4 Wound Certificate and Ex.P.7 Discharge Summaries corroborate each other as far as injuries suffered by the petitioner are concerned ie., "Traumatic Brain Injury, Maxilla and Nasal Bone Fracture, Facial Injury" and she was treated as inpatient twice in all for SCCH 1 17 MVC No.1824/2014 8 days ie., from 22.02.2014 to 25.02.2014 and from 02.03.2014 to 05.03.2014. Further the petitioner has produced Ex.P.9 - 9 Bills, accounting for Rs.1,04,690/- and Prescriptions 4 in numbers, marked as Ex.p.10 and X-ray marked as Ex.P.11. Except the same, the petitioner has not examined the doctor who treated her nor placed on record any material such as disability assessment made by the competent person.

29. Further, the petitioner having contended that she has spent more than Rs.2 lakhs for treatment, could be able to produce only 9 medical bills, accounting for Rs.1.04.692/-. I have perused the bills as well as 4 prescriptions which are produced and marked as Ex.P.10. Two Main bills are produced for Rs.49,671/- and Rs.51,916/- respectively, both issued by BGS Global Hospital wherein the petitioner was treated as inpatient for 8 days and the remaining bills are towards consumables.

30. In order to substantiate that she was prosecuting engineering, the petitioner has produced Ex.P.12 - SSLC Marks, which reveals that she scored 577 marks out of 600 in the final exams of SSLC. Ex.P.13 is the II PUC Marks, which reveals that she scored 505 marks out of 600 marks in the final exam. The petitioner has also produced Ex.P.14 -

SCCH 1 18 MVC No.1824/2014 Marks cards of 5 semesters. Except that, no documents are produced by the petitioner to show whether she suffered any loss of academic year on account of the accidental injuries. Further, the petitioner has also not produced any document to show that she was taking tuitions during her leisure time and earning Rs.9,000/- per month. Added to that, in her cross-examination, she admits that he has not produced any document to show that she was earning Rs.9,000/- per month from tuition. Further, though it is contended by the petitioner that the injuries suffered by her in the accident, resulted in permanent disability which rendered her incapable to continue her education or earn his livelihood, but the said contention of the petitioner remained as contention only without any proof as the doctor who treated him has not been examined.

31. Thus, considering the nature of injuries ie., "Traumatic Brain Injury, Maxilla and Nasal Bone Fracture, Facial Injury", nature of treatment that has been taken by the petitioner ie., inpatient for twice for 8 days, amount spent for treatment, it can be assumed that the petitioner has suffered much pain and sufferings and in the absence of any document to show the disability, if any, consequent to the said injury, nature of treatment, avocation and income, SCCH 1 19 MVC No.1824/2014 medical expenses of Rs.1,04,691/- incurred for treatment, amount spent for conveyance, attendant and other miscellaneous expenses and considering the age of the petitioner as 21 years and that she is a student, I deem it just and proper to award a global compensation of Rs.1,80,000/- under the head pain and suffering, amount spent for treatment, loss of income during the treatment, conveyance and attendant charges etc., loss of amenities in life.

32. In a case reported in (2011) 4 SCC 481:(AIR 2012 SC 100) (Municipal Council of Delhi Vs. Association of Victims of Uphaar Tragedy), the Supreme Court has held that the Court has to take into account the rate of interest of the nationalized bank and the present day cost of living and thereby awarded, interest on the compensation amount at 9% p.a. I have no reasons to deviate from the said view of the Apex Court. Accordingly, interest on compensation amount is awarded at 9% p.a.

33. As far as liability to pay the compensation amount is concerned, the petitioner has arrayed the respondent No.1 as owner and the respondent No.2 as insurer and the respondent No.3 as the driver of the vehicle which caused the accident and sought to fix the liability to pay the SCCH 1 20 MVC No.1824/2014 compensation amount on the respondent No.1 and 2, since the vehicle was validly insured with the respondent No.2 as on the date of the accident.

33. The respondent No.1, the owner of the lorry, examined himself as RW 4 and in his evidence, reiterated that Mahendran was the driver of the Tipper lorry at the time of accident, who was holding valid and effective driving licence and he after ensuring the fact that the said Mahendra is capable of driving such vehicles and knowledge of the same and after taking driving skill test, had appointed him as driver and hence, contended that the respondent No.2 being the insurer of the vehicle, prayed to saddle the responsibility on respondent No.2

34. RW 4 has been cross-examined by the counsel for respondent No.2, wherein it is elicited from him that Mahendra was working as driver with him since 2013. It is suggested to him that Mahendra was not having the effective and valid driving licence as on the date of the accident and the said suggestion has been denied by him and he volunteers that he has collected the driving licence and thereafter, he appointed him as driver and the Police have collected the same when the complaint was registered and he has not verified the driving licence in the RTO Office. It is SCCH 1 21 MVC No.1824/2014 suggested to him that Mahendra was having fake driving licence and the said suggestion has been denied by him. He admits that it was his duty to verify whether the driver is having valid and effective driving licence while appointing him as driver. It is suggested to him that driving Licence No.TN.672007004250 was issued in favour of one Palaniswamy not in favour of Mahendran and the said suggestion has been denied by him. He says that he did not verify in the RTO whether the driving licence is fake or valid even after taking the defence of the said document is fake document. It is suggested to him that he has not verified the genuineness of the driving licence

before appointing him and the said suggestion has been denied by him. It is suggested to him that he has aware that Mahendran was not having driving licence and in spite of that, allowed him to drive the vehicle and violated the terms and conditions of the policy and hence, he is liable to pay compensation and the said suggestion has been denied by him.

35. RW 4 was also cross-examined by the Counsel for the petitioners, in which, he admits that a case has been registered in the Kengeri Police Station and the Police after investigation, filed charge sheet against his driver and that his driver Mahendra was arrested and driving licence was SCCH 1 22 MVC No.1824/2014 seized. He further admits that the driving licence which was seized by police is the same and the same is marked as Ex.P.15.

36. The second respondent, the insurer of the tipper lorry No.KA.55/9889, in the statement of objections, while admitting that the vehicle was covered by insurance policy and that the liability is subject to terms and conditions of the policy, has filed additional written statement contending that the jurisdictional police have filed charge sheet against the driver of the lorry bearing No.KA-55/9889 namely Mahendran, S/o.Ariyan alleging the rash and negligent driving and the said driver has submitted his driving licence before the police. Further contends that their company has appointed an investigator to procure the documents from the police station and accordingly, the investigator has obtained documents from the police station and the driving licence copy which was available with the police station bearing D.L.No.TN-67-20070004250 pertains to Mahendran S/o Ariyan. When their company investigator secured driving licence extract of driver from Viruddhnagar R.T.O., the above said driving licence number has been issued in respect of one Palanisamy S., S/o. Soorashankar and not in respect of Mahendran S/o.Ariyan and this clearly shows that the driver SCCH 1 23 MVC No.1824/2014 of lorry bearing No.KA-55/9889 did not possess valid and effective driving licence to drive the vehicle as on the date of accident. It is also contended that fake driving licence copy has been furnished by the driver of the lorry and this respondent is not liable to pay the compensation.

37. In order to substantiate its contentions, the respondent No.2 has examined one of its Officers as RW 1 and in her evidence, while reiterating the contentions taken up in the statement of objections, further deposed that the driver of the tipper lorry did not possess valid and effective driving licence and the owner has willfully entrusted the vehicle to the driver, who was not having valid and effective driving licence, hence, he has committed breach of terms and conditions of the policy, hence, respondent No.2 is not liable to pay any compensation to the petitioners. It is her contention that jurisdictional police have filed charge sheet against the driver of the tipper lorry and the company had appointed an investigator and he has collected the driving licence extract from Viruddhnagar R.T.O.and same stands in the name of Palanisamy S., S/o Soorashankar and not in the name of Mahendran, S/o Ariyan. She says that their company had appointed an Investigator to procure the driving licence extract of the driver of tipper lorry from SCCH 1 24 MVC No.1824/2014 Viruduhnagar R.T.O. and accordingly their investigator procured the driving licence extract and the same is issued to one Palanisamy, S/o Soorashankar and not in respect of Mahendran S/o Ariyan and this clearly shows that the driver of the lorry bearing No. KA-55-9889 did not possess valid and effective driving licence to drive the vehicle as on the date of accident and the driving licence produced by the driver is a fake licence copy, hence, this respondent is not liable to pay

compensation to the petitioners.

38. She was subjected to cross-examination. In the cross-examination, she admits that she has not produced the Xerox copy of the driving license which their investigator has obtained from the police station. Further, she says she does not know about seizing of the original driving license by the Police Officer. She says that she has not ascertained from their investigator whether the police have seized the original driving licence or not. It is suggested to her that Ex.R.1 is created to absolve their liability and the said suggestion has been denied by her. She admits he shas produced copy of policy. It is suggested that respondent No.3 was having the valid driving licence on the date of the accident and she is giving false evidence before the Court to absolve their liability and the same is denied.

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39. Witness RW 1 was further cross-examined by the petitioner's Counsel and in the cross-examination, it is elicited that they have conducted their own investigation in respect of this accident and they have sent a letter to insured and they have not received any reply and he has not produced either the notice copy or the postal acknowledgement. Further admits that the police while filing the charge sheet, have not invoked 3(1) of M.V Act. It is further elicited that she does not know about any notice given by the police to the owner under Section 133 of M.V. Act. She says that he has not produced the Section 133 Reply Notice copy. She further admits they have not applied for driving licence of the driver in respect of address mentioned in the Charge Sheet. It is suggested that, they have obtained the driving licence of some other person and giving evidence before the Court that the driver was not having the valid driving license and the said suggestion was denied.

40. The respondents have examined the Deputy Superintendent of Police, High Court Vigilance as examined as RW-2, and in his evidence, he has deposed that during 2014-15, he was working as Police Inspector at Kengeri. He states in his chief examination that on 22.2.2014 at about SCCH 1 26 MVC No.1824/2014 20.15 hours, he went to Rajarajeshwari Hospital and recorded the statement of the injured Kum.Sushma and registered FIR No.31/2014 and on the same day, he has conducted the Inquest mahazar of Kum. Nikitha and subjected the body for postmortem. He admits that he has recorded the statement of CW-3 to 6 and on 23-2-2014, he has visited the spot and conducted the spot mahazar and also prepared the rough sketch and he has also recorded the statement of eye witness CW-7. On 25-2-2014, CW-11 appeared before him and he has served Section 133 Notice to him and he gave the reply to the said notice. The Eye witness has identified the accused and he has been arrested and released on bail. He admits that he has subjected both the vehicles for IMV Inspection. He also obtained the wound certificate, IMV report and after the conclusion of the investigation, he has filed the charge sheet.

41. It is further elicited that the driver is one Mahendra @ Aryan as per the Section 133 reply and he has filed Charge Sheet against him. He also admits that the driver is having the driving licence and original was sent to R.T.O., for cancellation of the driving license bearing No.TN6720070004250. He says he does not know the status SCCH 1 27 MVC No.1824/2014 of the document and request sent to the RTO for cancellation. The driving licence was issued by Assistant Licensing authority R.T.O Virudhunagar and he has not cross verified the driving licence regarding its genuineness.

42. This witness was treated as hostile and cross- examined by respondent No.2 Counsel. In the cross- examination, RW-2 admits that he has sent a letter on 20-03-2014 to R.T.O., Virudhunagar for suspension of the license. It is suggested that on 24-03-2014, a letter was sent to him by the R.T.O., of Virudhunagar stating that driving licence is not issued in favour of Mahendran and the said suggestion was denied and the witness volunteers that he has not received any such letter. It is further suggested that, inspite of receiving the letter he is giving false evidence before the Court that he has have not received the same and the said suggestion has been denied by him. It is further suggested that even though he came to know that the said driver was not having the driving licence, he has not taken any action against him and he is aware of the fact that the said number driving licence belongs to some other person and these suggestions were denied. It is suggested that, in collusion with the owner of the vehicle and the petitioner, he SCCH 1 28 MVC No.1824/2014 is giving false evidence before the Court and the same was denied.

43. RW-2 was also cross-examined by respondent No.1. In the cross-examination, he admits that the original driving licence which he has collected from the driver is smart card and the licence contains the photo of the driver. He has confirmed the photo and the driver who appeared before him and the driving licence also having the Tamil Nadu Government hologram sticker and contains the signature of the issuing authority.

44. The respondents have examined the Junior Assistant, R.T.O. Office, Virudunagar as RW-3. In the chief examination, he admits he has produced driving licence Form No.4 Register in respect of driving license of Palani Swamy and the driving license bearing No.TN-67-20070004250 was issued in favour of Thiru S. Palani Swamy and not in respect of Mahendran and their office has not issued any license in favour of Mahendran in respect of the above number and their office has given the reply to the Kengeri Police in respect of the said license.

45. He was cross-examined by respondent No.1. In the cross-examination, it is elicited that the letter sent by the Kengeri Police along with the original driving licence is SCCH 1 29 MVC No.1824/2014 available in their office and he has not brought the same today and he says he has seen the original license sent by the Police Inspector to the RTO for suspension. He admits the licence sent by the police was in the name of the Mahendran and the same is smart card and he does not remember the said smart card is having the Tamil Nadu state hologram and they have not issued the said licence. RW-3 again says the said smart card containing the Tamil Nadu state hologram and they have not initiated any action against the said Mahendran, but we have communicated the same to the Kengeri Police that the same was fake. It is suggested that the licence sent by the police was original licence and only in order to help the insurance company, the Ex.R.2 and 4 are created and the said suggestion was denied. RW-3 says he is not aware of whether the original driving licence sent by Kengeri police is in their office or returned to the police and he can verify and produce the said original driving license if it is in their office.

46. The respondent No.1, who is the owner of the tipper lorry, has been examined as RW 4 and in his evidence, as regards the liability is concerned, he has deposed that the tipper lorry No.KA.55/9889 was duly insured with the SCCH 1 30 MVC No.1824/2014 respondent No.1 at the time of accident and the lorry was driven by one Mahendran, the respondent No.3

47. The Counsel for the petitioner, in his arguments, vehemently contended that the respondent No.3 was driving the tipper lorry at the time of accident, who had valid driving licence to drive heavy transport vehicle and he had engaged him only after testing his skills and also after verifying the original driving licence which had authorized him to drive a heavy transport vehicle, till 20.02.2016 bearing No.TN.6720070004250 issued by Virudhunagar RTO Office, Tamilnad, containing the seal, signature of RTO with hologram sticker of Tamilnadu State Government. Therefore, it is contended that the respondent No.1 had exercised his duty in ensuring the validity of the driving licence, so also the knowledge of driving of the respondent No.3 and hence, the respondent No.2 cannot seek to disown its liability. In support of his contentions, he has relied upon a decision reported in 2013 ACJ 2118 (Oriental Insurance Co., Ltd., Vs. Bhuri Bai and others), wherein, it is held that:

SCCH 1 31 MVC No.1824/2014 "Motor Vehicles Act, 1988, Section 149(2) (a)(ii) - Motor Insurance - Driving License - Wilful breach - Liability of insurance company - Insurance company disputes its liability on the ground that driver was not holding a valid driving licence at the time of accident - Statement of owner that after making inquiry about the experience, work and conduct of the driver and having been satisfied with his driving he had engaged the driver to drive the offending vehicle - Testimony of owner proves that he had taken precaution before giving employment to the driver and was satisfied that driver was having a valid liense and was prefect in driving - Whether insurance company is liable - Held: yes; if owner satisfied himself that driver has a licence and is driving competently there would be no breach of section 149(2)".

48. The counsel for the respondent No.1, in his arguments, while reiterating the arguments addressed by the Counsel for the petitioner has relied upon the following Judgments:-

> (2003) 3 SCC 338 (United India Insurance Co.Ltd. Vs. Lehru and others) wherein it is held that:
>
> Breach of the condition under -Fake licence of the driver when does not constitute-Liability and rights of insurer in such a case- where prior to hiring the SCCH 1 32 MVC No.1824/2014 driver, the owner satisfied himself that the driver had a licence and was driving competently, held, there would be no breach of section 149(2)(a)(ii)and the insurer would not be absolved of liability -
>
> If ultimately the licence is found to be fake, the insurer would continue to be liable unless he proves that the owner/insured was aware of the fact and had still permitted that person to drive- Even in such a case, the insurer would remain liable to the innocent third party but may be able to recover the amount from the insured.
>
> (2008) 3 SCC 193 (Premkumari and others Vs. Prahlad Dev and others):
>
> A.Motor Vehicles Act, 1988 - S.149(2)(a)(ii) - Absence of/invalid/fake driving licence - When absolves insurer of third party liability - Necessity of insurer proving breach on the part of the insured to avoid liability - Burden of proof/facts that must be proved by insurer to establish breach - Owner of the offending vehicle was brother of

the driver who did not have a valid/effective license on the date of accident - Supreme Court not disturbing concurrent findings of Tribunal and High Court exonerating insurance SCCH 1 33 MVC No.1824/2014 company - Appellants claimants to recover the amount form the owner/driver of the vehicle - However, considering that appellants were minor children and the widow of the deceased, insurer directed to recover the initial amount of Rs.50,000/- paid to appellants, in the manner directed in Nanjappan case".

(2013) 10 SCC 217 (Pepsu Road Transport Corporation Vs. National Insurance Company) wherein it is held that :

Insurer when may avoid liability undr -Insurer's defence that driver had fake driving licence at the time of accident in breach of conditions of policy- Not sufficient to avoid liability -Onus held, is still on insurer to prove that owner of vehicle driven by the driver failed to take reasonable care in employing a qualified and competent driver having valid licence- if owner exercised reasonable care, he need not further verify genuineness of licence from licensing authority before appointing a driver, except where at the time of insurance of vehicle or thereafter insurer required owner to make such verification or where insurer drawn SCCH 1 34 MVC No.1824/2014 owner's attention that driver's licence was fake.

2004 (6) Kar.L.J. 637 (DB) (Oriental insurance company Limited, Bangalore Vs. Smt.K.Sundaramma alias Sundara and others) wherein it is held that :

Defence set up by insurance company by raising plea of breach of condition of policy of - its plea that driver of offending vehicle had no driving licence at the time of accident, as learner's licence held by him had expired about three weeks before the accident and that he got it renewed only on next day of accident - Mere proof of driver of offending vehicle not holding licence at the time of accident, held, is not sufficient to exonerate insurance company from its liability -it must be established that driver was disqualified for holding or obtaining licence - very fact that driver had secured renewal of his learner' licence next day after accident would show that he was not disqualified for holding or obtaining licence -Breach alleged cannot be said to be cause of accident or fundamental breach so as to exonerate insurance SCCH 1 35 MVC No.1824/2014 company from its liability to satisfy award.

49. The Advocate for respondent No.2, in his arguments, whilst countering the arguments advanced by the counsel for the petitioner and the respondent No.1, vehemently argued that the Investigation done by their investigator clearly and categorically revealed that the driving license relied on by the respondent No.3 was in fact belonged to one Palanisamy S., S/o.Soorashankar and not that of Mahendran, S/o.Ariyan and thereby, the at the time of accident, the driver had no valid licence to drive the vehicle in question and there being breach of policy conditions, the respondent No.2 is absolved from indemnifying the respondent No.1 and hence, sought to dismiss the petition as against the respondent No.2. In support of his contentions, he has relied upon the following

judgments :

> 2007 ACJ 721 SC (National Insurance Co.Ltd. Vs. Laxmi Narain Dhut) wherein it is held that:
>
> Motor insurance-driving licence Fake licence- whether renewal of a fake licence in accordance with law can cure the SCCH 1 36 MVC No.1824/2014 inherent defect Held: No; renewal cannot transform a fake licence as genuine.
>
> Motor insurance- driving licence- Fake licence -Defences available to insurance company -Whether insurance company has to indemnify the amount in a third party claim where the driving licence is found to be fake and it may recover the same from the insured. Held: yes.
>
> 2010 ACJ 709 SC (National Insurance Co.Ltd. Vs. Harbhajan Lal) wherein it is held that:
>
> Motor insurance-own damage claim- driving licence -fake licence -liability of insurance company -insurance company was able to prove that driving licence of driver was fake-whethr insurance company is liable for own claim b the insured- Held: No;
>
> 2013 ACJ 2129 SC (United India Insurance Co.Ltd. Vs. Sujata Arora and others) wherein it is held that:
>
> Motor insurance-driving licence- Fake licence- Liability of insurance company -
>
> SCCH 1 37 MVC No.1824/2014 Tribunal found that offending van was being driven by a person who was not holding a valid driving licence at the time of accident and exonerated insurance company from liability- Single Judge in appeal found that driver having fake licence would not exonerate insurance company as he was not negligent in driving whether driver possessing fake licence would completely exonerate insurance company- Held : Yes; driver holding a valid licence is the requirement of law.
>
> 2007 ACJ 1067 SC (Ishwar Chandra and others Vs. Oriental Insurance Co. Ltd. and others) wherein it is held that:
>
> Motor insurance-driving licence- liability of insurance company - licence of driver of offending vehicle had expired on 27.8.1994 and licence was got renewed only after 28.4.1995 the date of accident-

whether the driver had a valid licence on the date of accident and insurance company is liable Held No; as application for renewal of licence was filed after 30 days from the date of expiry, it shall be

SCCH 1 38 MVC No.1824/2014 renewed from the date of renewal;

insurance company directed to pay the compensation amount to the claimants with option to recover the amount from the insured by initiating proceedings before the executing Court.

2014 ACJ 2739 Kar. (Oriental Insurance Co.Ltd., Vs. Sivan and another) wherein it is held that:

> Motor insurance-driving licence- Fake licence-Liability of insurance company - Pay and recover order-Tribunal found that driver of offending vehicle was negligent in causing accident, he had a fake licence and directed insurance company to satisfy the award but passed no order for recovery of the amount from owner or driver-Appeal by insurance company seeking recovery rights against owner or driver on account of violation of conditions of policy-forgery of licence was so perfect that even police could not detect it- contention that owner cannot be faulted for the driver driving the vehicle without a valid licence -Owner takes vicarious liability and insurance company takes upon itself by virtue of contract of Insurance the primary liability of the SCCH 1 39 MVC No.1824/2014 driver - Driver is no stranger to insurance contrat between insurance company and insured . By undertaking to drive the vehicle on behalf of the insure, there arises a quasi contract between driver and insurance company- Whether driver alone to the exclusion of owner is liable to reimburse the insurance company the amount paid by it to the claimants-Held:
>
> yes; driver committed a fraudulent and criminal act by driving the vehicle with forged licence without knowledge of owner and driver has violated policy condition.

50. Now, let me consider the contentions of the rival parties with regard to the liability is concerned, in the light of the arguments advanced, evidence let in by the witnesses examined by both sides and the principles laid down in the judgments relied upon by both sides.

51. On the one hand, the respondent No.1, who has been examined as RW 4, specifically contends that the driver of the tipper lorry viz., Mahendran S/o.Ariyan had valid licence No.TN.67 20070004250 to drive heavy transport vehicle and he had engaged him only after testing his skills and also after verifying the original driving licence SCCH 1 40 MVC No.1824/2014 which had authorized him to drive a heavy transport vehicle, till 20.02.2016 issued by Virudhunagar RTO Office, Tamilnad, containing the seal, signature of RTO with hologram sticker of Tamilnadu State Government.

52. On the other, the bone of contention of the respondent No.2 is that, they had appointed an investigator to procure the D.L. extract of the driver of the vehicle ie., Mahendran from Virudhunagar RTO and on verification of the same, it revealed that the said driving licence was issued in the name of Palaniswamy S., S/o.Soorashankar and not in respect of Mahendran, which exposes the fact that the driver of the vehicle had no licence, at the time of accident and the said person had produced a fake driving licence before Police Station and there being violation of policy conditions, the respondent No.2 is absolved from indemnifying the respondent No.1. The

respondent No.1, who has been examined as RW 4, has stoutly denied the same in his statement of objections as well as evidence as RW 4.

53. As stated above, the respondent No.2 has examined the Investigating Officer as RW 2, however, he has given evidence contrary to the case of the respondent, in as much as, the driver is one Mahendran S/o.Ariyan as per reply to SCCH 1 41 MVC No.1824/2014 Section 133 Notice and further says that he has filed charge sheet against him and the said driver is having the driving licence and original was sent to RTO for cancellation of the same and he says that he does not know the status of the document and request sent to RTO for cancellation. He further says that the driving licence was issued by Assistant Licencing Authority, RTO, Virudhunagar and he has not cross verified the driving licence regarding its genuineness. Considering the answer given by RW 2, he has been treated as hostile and even in his cross-examination, though RW 2 says that he has sent a letter on 20.03.2014 to RTO Virudhunagar for suspension of the licence, however, he denies the suggestion that on 24.03.2014, a letter was sent to him by RTO of Virudhunagar stating that driving licence is not issued in favour of Mahendran. He volunteers that he has not received any such letter and in the cross-examination of RW 2 by the counsel for the respondent No.1, he says that the original driving licence which he has collected from the driver is a smart card and the licence contains the photo of the driver and the driving licence also having the Tamil Nadu Government hologram sticker and it also contains the signature of the issuing authority. Quite contrary to the evidence of RW 2, another witness examined for respondent SCCH 1 42 MVC No.1824/2014 No.2, ie., RW 3 has deposed that he has produced the driving license Form No.4 in respect of Palaniswamy and the same is marked as Ex.R.4 and the modification form which is marked as Ex.R.5 and he further says that license No.TN.67 20070004250 was issued to S.Palaniswamy and not Mahendran. He also says that their office has given the reply to Kengeri Police in respect of the said license on 25.05.2015.

54. However, here it has to be seen that though RW 3 says that their office has sent letter on 25.05.2015 to Kengeri Police in response to their letter dated 20.03.2014, but as clearly admitted by RW 3, he has not produced the said reply and he says that the letter sent by Kengeri Police along with original driving licence is available in their office and he has not brought the same to Court and he further admits that the license sent by Police was in the name of Mahendran and the same is smart card, though he says that he does not remember whether the said smart card is having the Tamilnadu State Hologram, however in another breath, he says that the said smart card containing the Tamilnadu State Hologram. Added to that, if really the said licence was fake as contended by the respondent No.2, then certainly, RTO Officials would have initiated action against the said person, on the contrary, RW 3 says that they have not initiated any SCCH 1 43 MVC No.1824/2014 action against Mahendran. More importantly, RW 3 again says that he is not aware whether the original driving licence sent by Kengeri Police is in their office or returned to police and though, he says that he can verify and produce the said original driving licence, if it is in their office, but he has not done so.

55. Here, it has to be stated that when respondent No.1-RW 4 categorically says that he after making inquiry about the experience, work and conduct of the driver and having been satisfied with his driving licence he had engaged the driver to drive the offending vehicle and that the said driver was working with him since 2013, the testimony of owner proves that that he had taken precaution

before giving employment to the driver and was satisfied that driver was having a valid licence and was perfect in driving, as held in the the judgment reported in 2013 ACJ 2118 relied upon by the counsel for the petitioners, are applicable to the case on hand. Further, in the case reported in (2003) 3 Supreme Court Cases 338, relied upon by the Counsel for the respondent No.1, the Apex Court held that " Fake licence of the driver when does not constitute - Liability and rights of insurer in such a case - Where prior to hiring the driver, the owner satisfied himself that the driver had a licence and was SCCH 1 44 MVC No.1824/2014 driving competently, held, there would be no breach of S.149(2)(a)(ii) and the insurer would not be absolved of liability

- If ultimately the licence is found to be fake, the insurer would continue to be liable unless he proves that the owner/insured was aware of the fact and had still permitted that person to drive - Even in such case, the insurer would remain liable to be innocent third party but may be able to recover the amount from the insured".

56. In the case on hand also, as admitted by RW 2 and 3, the driver was having the driving licence and original was sent to RTO for cancellation of the driving licence and when RW 3 another witness examined for the respondent No.2 categorically admits that the license sent by Police was in the name of Mahendra and the same is smart card and it contains Tamil Nadu State Hologram and when questioned to RW 3 whether, they have initiated any action against the said Mahendra, for the alleged fake licence, to which he replied that no such action is initiated and the principles laid down in the judgments relied upon by the counsel for the respondent No.2, as extracted above, being not applicable to the case on hand, in as much as, in those cases, it was found that the driver was holding a fake licence and hence, the liability of the insurance company was exonerated, it is a fit case to fix SCCH 1 45 MVC No.1824/2014 the liability on the respondent No.2 as contended by the petitioner as well as respondent No.1. In view of the principles laid down in the judgment of the Apex Court referred supra, the onus is on the insurer to prove that the owner of vehicle failed to take reasonable care in employing a qualified and competitive driver having valid licence. It is further observed that if owner had taken reasonable care, he need not further verify genuineness of licence from Licensing Authority before appointing a driver. In the case on hand, the driver showed original driving licence and the same is having Tamilnadu Hologram and he tested the competitiveness of the driver and appointed him as driver and the judgment of the Apex Court reported in (2013) 10 SCC 217 was delivered on 26th August 2013 and the same is recent judgment compared to the judgment referred by the respondent No.2 reported in 2013 ACJ 2129 (SC) and the same was delivered on 10-01-2012 and the facts and circumstances are different. Above all, important person in this regard is none other than the driver-respondent No.3. He has not been examined and had he been examined, though arrayed as respondent No.3 and therefore, an adverse inference has to be drawn against the respondent No.2 for the same. Accordingly, for the reasons stated above, the SCCH 1 46 MVC No.1824/2014 respondent No.1 being the owner and the respondent No.2 being the insurer, are jointly and severally liable to pay the compensation amount to the petitioner and the respondent no.2 being the insurer shall indemnify the respondent No.1 and pay the compensation amount. Since the respondent No.3 was the driver of the vehicle which caused the accident, the petition as against him deserves to be dismissed. Accordingly, issue No.3 is answered.

57. Issue No.4: In view of my answer to the above issue 8accordingly, I pass the following:-

ORDER Petition is partly allowed with costs.

Petitioner is entitled to compensation of Rs.1,80,000/-

from the respondents No.1 and 2 jointly and severally together with interest at 9% p.a., from the date of petition till realization and the respondent No.2, being the insurer, shall indemnify the respondent No.1 pay the compensation amount to the petitioner within 2 months form the date of this order.

Entire compensation amount together with accrued interest is ordered to be released to petitioner.

Petition as against the respondent No.3 is dismissed.

SCCH 1 47 MVC No.1824/2014 Advocate's fee is fixed at Rs.1,000/-.

Draw an award accordingly.

(Dictated to the Judgment Writer directly on computer, typed by him, corrected, revised and then pronounced in Open Court on 07.09.2016) (H.P.SANDESH) MEMBER, PRL.MACT ANNEXURES Witnesses examined on behalf of the petitioners:

P.W-1 Shushma B.C. Witnesses examined on behalf of the respondents :

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RW-1     Lynette Suares
RW-2     L.Nagesh
RW-3     G.Thirukannan
RW-4     V.K.Gopal
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Documents marked on behalf of the petitioners:

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Ex.P-1 :            Copy of FIR
Ex.P.2 :            Copy of sketch
Ex.P-3 :            Copy of mahazar
Ex.P-4 :            Copy of wound certificate
Ex.P-5 :            Copy of IMV Report
Ex.P-6 :            Copy of charge sheet
Ex.P-7              Discharge summaries (2)
Ex.P.8              OPD card (2)
Ex.P.9              Medical bills
Ex.P.10             Prescriptions(4)
Ex.P.11             X-ray
Ex.P.12             Notarised copy of SSLC marks card (original
                    compared)
Ex.P.13             Notarised copy of PUC marks card (original
 SCCH 1                       48                MVC No.1824/2014
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compared)

Ex.P.14	Notarised copy of B.E. Marks card (original compared)
Ex.P.15	Copy of driving licence

Documents marked on behalf of the respondents:

Ex.R.1	Copy of Policy
Ex.R.2	driving licence extract
Ex.R.3	Authorisation letter
Ex.R.4	driving licence Form No.4 register in respect of Driving licence of Palaniswamy
Ex.R.5	Modification form
Ex.R.6	Letter dated 25.5.2015.

(H.P.SANDESH)
Member, Prl. M.A.C.T. Bangalore