SUPREME COURT OF INDIA

New India Assurance Co. Ltd.

Vs.

Prabhu Lal

C.A.No.5539 of 2007
(C.K. Thakker and Tarun Chatterjee JJ.)

30.11.2007

JUDGMENT

C.K. THAKKER, J.
1. Leave granted.

2. In all these appeals, a common question of law has been raised by the parties. It is, therefore, appropriate if we deal with and decide all the appeals by a common judgment. In all the three appeals, the claim of the claimant has been upheld finally by the National Consumer Disputes Redressal Commission, New Delhi ('National Commission' for short) which has been challenged by the Insurance Company in this Court.

3. To appreciate the controversy, it would be appropriate if we narrate the facts in the first case i.e. New India Assurance Co. Ltd. v. Prabhu Lal.

4. A complaint was filed by the complainant Prabhu Lal under Section 12 of the Consumer Protection Act, 1986 before the District Consumer Disputes Redressal Forum, Kota (Rajasthan) ('District Forum' for short) claiming compensation from the respondent Insurance Company as also from Tata Finance Limited, Jaipur. The case of the complainant was that he purchased a vehicleTata 709 with Registration No. RJ-20G-2828 from Tata Finance Limited, Jaipur. The insurance was taken from New India Assurance Company effective from October 17, 1997 to October 16, 1998. Premium amount of Rs.8235/- was duly paid. It was the case of the complainant that on April 17, 1998, the vehicle of the complainant was being driven by Mohd. Julfikar to Indore for getting Chilly. At about 4.30 a.m. in the early morning, the driver of Roadways Bus No. MP 13-C-3935 drove the bus with very high speed in rash and negligent manner which resulted in an accident at Yashwant Nagar. Due to said accident, Ram Narainbrother of the complainant who was sitting with Mohd. Julfikar, sustained injuries. Mohd. Julfikar immediately ran away leaving the vehicle but as Ram Narain received serious injuries, he could not come out of the vehicle. The complainant lodged First Information Report (FIR) No. 131 of 1998 with the Manpur Police Station, Yashwant Nagar, District Indore under Sections 279 and 337 of the Indian Penal Code (IPC) against driver Kalu of M.P. Roadways Bus. Vehicle of the complainant was then inspected by Tatas, estimate was prepared and claim was submitted in the prescribed form by the complainant to the Insurance Company on June 12, 1998. The amount of the claim was, however, not paid to the complainant. The complainant, therefore, moved the District Forum praying for an award of Rs.4,70,000/- towards the claim of vehicle, Rs.15,000/- towards mental agony, Rs.5,000/- towards driving charges of the

vehicle from Indore to Kota and Rs.25,000/- for survey fee.

5. The Insurance Company filed its reply refuting the claim of the complainant. According to the Company, it had not committed any deficiency in rendering 'service'. It was also the case of the Company that it had fulfilled all contractual obligations as to claim. The Company informed the complainant about its decision on December 21, 1999 stating that the claim was not allowable and the amount was not payable. The Insurance Company, therefore, prayed for the dismissal of the complaint.

6. According to the District Forum, the main question was whether the Insurance Company was deficient in rendering service and wrongly disallowed insurance claim of the complainant. The Forum considered the question and heard the parties. According the complainant, at the time of accident, vehicle was driven by Mohd. Julfikar who was having a licence to drive Light Motor Vehicle (LMV) as also Heavy Motor Vehicle (HMV). In spite of it, the Insurance Company disallowed the insurance claim of the complainant on the ground that the driver was not having valid driving licence to drive the vehicle in question. It was also the contention of the complainant that certain documents produced by the Insurance Company were not genuine. The complainant was not an educated man and he knew only how to sign. If the officials of Insurance Company had obtained signatures of the complainant on certain documents without reading over to him and making him properly understood, the complainant should not suffer. According to the complainant, Insurance Company wrongly presumed and proceeded on the basis that the vehicle was driven by Ram Narain at the time of accident, who was having a valid driving licence to drive only Light Motor Vehicle and negatived the claim. It was, therefore, prayed that an award be passed in favour of the complainant.

7. The case of the Insurance Company, on the other hand, was that the vehicle in question, at the time of accident, was driven by Ram Narain, brother of the complainant. Admittedly, Ram Narain was possessing licence to drive Light Motor Vehicle and not Heavy Motor Vehicle. He, therefore, could not have driven Transport Vehicle in absence of necessary endorsement as required and the Insurance Company could not be held liable. In this connection, Insurance Company relied on the permit issued by Transport Authority, the Form submitted by the complainant, licence issued and other documents. The Insurance Company also relied upon FIR filed at Police Station, Manpur, wherein it was stated that the vehicle was driven by Ram Narain. Moreover, when the officers of the Insurance Company approached the complainant, they were informed by the complainant that the vehicle was driven by Ram Narain. As an after thought, only with a view to get the amount of compensation, it was asserted and a case had been put forward before the Consumer Forum that the vehicle was driven by Mohd. Julfikar. It was contended that the complainant realized belatedly that if true facts would be placed before the Forum, in view of legal position, he would not be able to get any amount from the Insurance Company. It was, therefore, asserted that Mohd. Julfikar was driving the vehicle but it was not true. The Insurance Company, hence, submitted that there was no deficiency in rendering service by the Company and the claim was liable to be dismissed.

8. The Tata Finance Limited, Jaipur in its reply stated that the complainant had purchased the vehicle on the basis of Hire Purchase Agreement and the amount was to be paid in instalments. At the time of incident, Rs.3,65,026/- were due and payable to the Company. Until the full amount was paid, the Financer was to remain owner of the vehicle. It was also stated that though Tata Finance Company requested the Insurance Company several times to make payment of the balance hire purchase amount, it was not done.

9. The District Forum, after considering the rival contentions of the parties and referring to the case law on the point, particularly a decision of this Court in Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd., (1999) 6 SCC 620, held that the complainant was not entitled to compensation. According to the District Forum, in Ashok Gangadhar, this Court held that if the driver was having effective driving licence to ply Light Motor Vehicle (LMV), he could not have plied Heavy Motor Vehicle (HMV) or Transport Vehicle. The District Forum observed that from the evidence on record, it was proved that at the time of accident, Ram Narain was plying the vehicle in question and not Mohd. Julfikar as asserted. Ram Narain was having valid and effective driving licence to ply Light Motor Vehicle and as such he could not have plied the transport vehicle. The claim was, therefore, not tenable and accordingly the complaint was dismissed.

10. Being aggrieved by the order passed by the District Forum, the claimant approached the Consumer Disputes Redressal Commission of Rajasthan, Jaipur ('State Commission' for short). The State Commission held that the principle laid down in Ashok Gangadhar would apply. But according to the State Commission, the District Forum was not right in dismissing the claim observing that the said decision was against the complainant. In fact, the point was decided in favour of the complainant and the complainant-claimant would be entitled to the benefit of the judgment and the Insurance Company must be held liable. Accordingly, the appeal was allowed. The order passed by the District Forum was set aside and the Insurance Company was ordered to pay the amount mentioned in the operative part of the judgment along with interest at the rate of 15% p.a.

11. Aggrieved Insurance Company approached National Forum against the order passed by the State Commission but the National Commission also dismissed the Revision and confirmed the order passed by the State Commission. It is this order which is challenged in this Court.

12. On April 23, 2004, notice was issued by the Court. It appears that meanwhile in other matters, a similar question came up before this Court and hence all the matters were ordered to be placed for hearing together.

13. We have heard learned counsel for the parties.

14. The learned counsel for the appellant- Insurance Company contended that the State Forum as well as National Forum had committed an error of law in holding the appellant- Insurance Company liable and directing it to pay compensation. It was submitted that there was no deficiency on the part of the appellant- Company in rendering service to the complainant and hence Consumer Forum had no jurisdiction to entertain, deal with and decide the dispute. It was also submitted that it was clearly established from the relevant documents on record that at the time of accident, Ram Narain was plying the vehicle and not Mohd. Julfikar. Admittedly, Ram Narain was having valid driving licence to ply Light Motor Vehicle. The vehicle in question was a transport vehicle and hence it could not have been plied by Ram Narain. In absence of valid licence to drive the said vehicle, the complainant could not claim compensation from the Insurance Company and no direction could be issued to the Company to pay compensation to the complainant. The District Forum was, therefore, fully justified in dismissing complaint of the respondent- complainant and both, State Commission as well as National Commission were in error in granting the prayer of the complainant and the orders passed by them are liable to be set aside. It was also submitted by the learned counsel that State Commission as also National Commission, misunderstood Ashok Gangadhar. It is no doubt

true that in Ashok Gangadhar, the claim of the complainant was upheld by this Court. But it was because the relevant documentary evidence was not placed before the Authorities. This Court, therefore, held that since material documents were not produced by the Company, the complainant should not suffer and in absence of such evidence, the Insurance Company cannot be absolved of liability. But the ratio laid down in Ashok Gangadhar supports the case of the Insurance Company that if necessary documents are on record and they go to show that the licence issued in favour of the driver to ply a particular type of vehicle, he could not have plied other vehicle and the Insurance Company could not be held liable if there was breach of that condition. In the case on hand, all the documents were on record, contention was raised by the Insurance Company from the very beginning that the vehicle was a transport vehicle, which driven by Ram Narain who was holding licence to ply only Light Motor Vehicle. Hence, he could not have plied the vehicle in question, a finding was recorded in favour of the Insurance Company by the District Forum which had not been disturbed by the State Commission or by the National Commission and hence the complaint ought to have been dismissed.

15. The learned counsel for the respondent submitted that it was the case of the complainant before District Forum that the vehicle was driven by Mohd. Julfikar who possessed valid licence to ply the vehicle but as soon as the accidence took place, he fled away since he was scared that passengers in the bus might not spare him and he might be beaten. As Ram Narain sustained several injuries, he could not go away. Unfortunately, the District Forum dismissed the complaint which necessitated challenging the decision and the complainant succeeded before the State Forum and National Forum. As to Ashok Gangadhar, the counsel submitted that the said decision helps the complainant and both the Commissions were right in following it and in directing the Insurance Company to pay compensation to the complainant. He, therefore, submitted that the appeal deserves to be dismissed.

16. Before we deal with contentions raised by the parties on merits, it would be appropriate to examine the relevant provisions of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'). By the Act of 1988, the Motor Vehicles Act, 1939 (old Act) had been repealed. The new Act has been enacted with a view 'to consolidate and amend the law relating to motor vehicles'. Section 2 is a 'legislative dictionary' and defines various terms. Relevant clauses of the said section are Clauses (10), (14), (21), (28) and (47) which define 'driving licence', 'goods carriage', 'light motor vehicle', 'motor vehicle' and 'transport vehicle' respectively. They read as under:

2. Definitions.- In this Act, unless the context otherwise requires,-- (10) "driving licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description;

(14) "goods carriage" means 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;

(21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms; (28) "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of 1 Subs. & ins. by Act. 580 propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle

having less than four wheels fitted with engine capacity of not exceeding thirty-five cubic centimetres;

(47) "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;

17. Section 3(1) of the Act requires holding of driving licence which is material and reads thus;

3. Necessity for driving licence. (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle other than a motor cab hired for his own use or rented under any scheme made under sub- section (2) of section 75 unless his driving licence specifically entitles him so to do. (emphasis supplied)

18. Section 5 declares that no owner or person in charge of a motor vehicle shall cause or permit any person which does not satisfy the provisions of Section 3 to drive the vehicle. Section 10 deals with form and contents of licences. It enacts that every driving licence (except a driving licence issued under Section 18 which provides for driving motor vehicles belonged to the Central Government) shall be in such form and shall contain such information as may be prescribed by the Central Government. It also states that a driving licence shall be expressed as entitling the driver to drive a motor vehicle of one or more of the types of motor vehicles specified in sub-section (2). Section 15 provides for 'renewal of driving licences'. Section 27 empowers the Central Government to make rules in respect of matters enumerated therein. Section 66 prohibits an owner of motor vehicle to use or to permit the use of motor vehicle as a transport vehicle in any public place save in accordance with the conditions of permit granted by an appropriate authority. Whereas Section 147 deals with requirements of policies and limits of liability, Section 149 imposes duty on insurers to satisfy judgments and awards against persons insured in respect of third party risks.

19. The Central Government has framed rules known as the Central Motor Vehicles Rules, 1989 (hereinafter referred to as 'the Rules').

20. Rule 16 of the Rules prescribes the form in which driving licence is issued. The form provides that the holder of a licence can drive any vehicle of the description mentioned therein. Where authorization is granted to drive transport vehicle, it is expressly so provided by making an endorsement to that effect.

21. Now, it is the case of the Insurance Company that the vehicle of the complainant which met with an accident was a 'transport vehicle'. It was submitted that the insured vehicle was a 'goods carriage' and was thus a 'transport vehicle'. The vehicle was driven by Ram Narain, who was authorized to drive Light Motor Vehicle and not a transport vehicle. Since the driver had no licence to drive transport vehicle in absence of necessary endorsement in his licence to that effect, he could not have driven Tata 709 and when that vehicle met with an accident, Insurance Company could not be made liable to pay compensation.

22. Now, let us consider both these points. As far as vehicle is concerned, it is clear from the record that it was Tata 709, registration No.RJ-20G-2828. The permit in respect of the said vehicle is on record issued by the Transport Authority, Kota. From the registration, it is clear that it was registered as a truck, a goods carrier and was described as public carrier. Load carrying capacity was

shown to be 4100.00 Kgs. The permit was valid up to November 11, 2002.

23. The District Forum held that the documents clearly mentioned that the vehicle was a 'goods carriage' as defined in Section 2(14) covered by the category of 'transport vehicle' under Section 2(47) of the Act. The State Commission held that since the gross weight of the vehicle was only 6800 Kgs and did not exceed permissible limits (7500 Kgs) nor it was carrying goods at the time of accident, it was a Light Motor Vehicle. For coming to that conclusion, the State Commission relied upon Ashok Gangadhar.

24. In our considered view, the State Commission was wrong in reversing the finding recorded by the District Forum. So far as Ashok Gangadhar is concerned, we will deal with the said decision little later but from the documentary evidence on record and particularly, from the permit issued by the Transport Authority, it is amply clear that the vehicle was a 'goods carrier' [Section 2(14)]. If it is so, obviously, it was a 'transport vehicle' falling under clause (47) of Section 2 of the Act. The District Forum was, therefore, right in considering the question of liability of the Insurance Company on the basis that Tata 709 which met with an accident was 'transport vehicle'.

25. The second question is as to who was driving the vehicle which collided with M.P. Roadways Bus on April 17, 1998. In this connection, it may be stated that it was the case of the complainant that the vehicle (Tata 709) was driven by Mohd. Julfikar to Indore. Because of rash and negligent driving by Kalu, driver of other vehicle i.e. M.P. Roadways bus, there was an accident and Ram Narain, brother of the complainant, sustained serious injuries. Mohd. Julfikar was having valid licence to drive Light Motor Vehicle (LMV) as well as Heavy Motor Vehicle (HMV) and hence the complainant was entitled to compensation from the Insurance Company.

26. The contention of the Insurance Company, on the other hand, was that it conducted an inquiry which revealed that at the time of accident it was not Mohd. Julfikar who was driving the vehicle, but it was Ram Narain who was driving it. Ram Narain was having licence to drive Light Motor Vehicle only and since the vehicle in question was a transport vehicle, he could not have driven the said vehicle in absence of an endorsement as required by law and hence the complainant was not entitled to any amount from the Insurance Company and the Insurance Company could not be held liable.

27. The District Forum, as observed earlier, considered the assertion of the complainant and the defence of the Insurance Company as to who was driving Tata 709 and on the basis of overall evidence adduced before it, held that it was Ram Narain who was driving the vehicle that met with an accident. The said Ram Narain was not having licence to drive transport vehicle and as such, Insurance Company was not liable. The District Forum noted that in the FIR lodged in respect of the accident, Ram Narain was shown to be the driver of the vehicle. Not only that but the evidence adduced before the District Forum also went to show that at the time of accident, Ram Narain was the driver of the insured vehicle. The argument of the complainant that the officials of the Insurance Company obtained his signatures on some documents without reading them over and making the claimant to understand the contents thereof was negatived. The assertion of the complainant that he was 'illiterate' and was knowing only how to put his signature was also not believed by the District Forum. The said finding of fact has not been set aside either by the State Commission or by the National Commission. Even otherwise, from the evidence on record, we are satisfied that it was Ram Narain who was driving the vehicle at the time of accident. We have, therefore, to proceed to consider whether the complainant was entitled to claim compensation from the Insurance Company

in such an eventuality.

28. 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 Insurance Company could not be held liable.

29. We find considerable force in the submission of the learned counsel for the Insurance Company. We also find that the District Forum considered the question in its proper perspective and held that the vehicle driven by Ram Narain was covered by the category of transport vehicle under Clause (47) of Section 2 of the Act. Section 3, therefore, required the driver to have an endorsement which would entitle him to ply such vehicle. It is not even the case of the complainant that there was such endorsement and Ram Narain was allowed to ply transport vehicle. On the contrary, the case of the complainant was that it was Mohd. Julfikar who was driving the vehicle. To us, therefore, the District Forum was right in holding that Ram Narain could not have driven the vehicle in question.

30. The learned counsel for the complainant, however, heavily relied upon Ashok Gangadhar. In that case, the appellant was the owner of a truck, Light Motor Vehicle, which was insured with the respondent Insurance Company. The vehicle met with an accident and a claim was lodged by the complainant before the Consumer Commission. It was contended by the Insurance Company that the truck was a goods carriage or a transport vehicle and since the driver of the truck was holding a driving licence issued in Form No.6 to drive light motor vehicle only, he was not authorized to drive transport vehicle as there was no endorsement on his driving licence authorizing him to drive such transport vehicle. The aggrieved complainant approached this Court. Allowing the appeal and setting aside the order passed by the Commission, this Court held that the driver of the vehicle was holding a valid driving licence for driving a Light Motor Vehicle and there was no material on record to show that he was disqualified from holding an effective valid licence at the time of accident. In view of those facts, the Court held that the policy did not insist on the driver to have a licence to drive a transport vehicle by obtaining a specific endorsement. Considering the definition of 'Light Motor Vehicle' as given in Clause (21) of Section 2 of the Act, this Court held that such Light Motor Vehicle (LMV) cannot always mean a light goods carriage. A Light Motor Vehicle (LMV) can be a non-transport vehicle as well. The Court proceeded to observe that since there was neither a pleading nor a permit produced on record, the vehicle remained as a Light Motor Vehicle. And though it can be said to have been designed to use as a transport vehicle or a goods carriage, it could not be held on account of statutory prohibition contained in Section 66 of the Act to be a transport vehicle. It was, therefore, held that the Commission was not right in rejecting the claim of the claimant. Accordingly this Court set aside the order passed by the Commission and directed the Insurance Company to pay compensation to the complainant.

31. It is no doubt true that in Ashok Gangadhar, in spite of the fact that the driver was holding valid

driving licence to ply Light Motor Vehicle (LMV), this Court upheld the claim and ordered the Insurance Company to pay compensation. But, in our considered opinion, the learned counsel for the Insurance Company is right in submitting that it was because of the fact that there was neither pleading nor proof as regards the permit issued by the Transport Authority. In absence of pleading and proof, this Court held that, it could not be said that the driver had no valid licence to ply the vehicle which met with an accident and he could not be deprived of the compensation. This is clear if one reads paragraph 11 of the judgment, which reads thus:

"11. To reiterate, since a vehicle cannot be used as transport vehicle on a public road unless there is a permit issued by the Regional Transport Authority for that purpose, and since in the instant case there is neither a pleading to that effect by any party nor is there any permit on record, the vehicle in question would remain a light motor vehicle. The respondent also does not say that any permit was granted to the appellant for plying the vehicle as a transport vehicle under Section 66 of the Act, Moreover, on the date of accident, the vehicle was not carrying any goods, and though it could be said to have been designed to be used as a transport vehicle or goods-carrier, it cannot be so held on account of the statutory prohibition contained in Section 66 of the Act". (emphasis supplied)

32. In our judgment, Ashok Gangadhar did not lay down that the driver holding licence to drive a Light Motor Vehicle need not have an endorsement to drive transport vehicle and yet he can drive such vehicle. It was on the peculiar facts of the case, as the Insurance Company neither pleaded nor proved that the vehicle was transport vehicle by placing on record the permit issued by the Transport Authority that the Insurance Company was held liable.

33. In the present case, all the facts were before the District Forum. It considered the assertion of the complainant and defence of the Insurance Company in the light of the relevant documentary evidence and held that it was established that the vehicle which met with an accident was a 'transport vehicle'. Ram Narain was having a licence to drive Light Motor Vehicle only and there was no endorsement as required by Section 3 of the Act read with Rule 16 of the Rules and Form No.6. In view of necessary documents on record, the Insurance Company was right in submitting that Ashok Gangadhar does not apply to the case on hand and the Insurance Company was not liable.

34. The matter can be looked from another angle also. Section 14 referred to above, provides for currency of licence to drive motor vehicles. Sub-section (2) thereof expressly enacts that a driving licence issued or renewed under the Act shall, "in the case of a licence to drive a transport vehicle, be effective for a period of three years". It also states that "in the case of any other licence, if the person obtaining the licence, either originally or on renewal thereof, had not attained the age of fifty years on the date of issue or, as the case may be, renewal thereof, be effective for a period of twenty years from the date of such issue or renewal". It is thus clear that if a licence is issued or renewed in respect of a transport vehicle, it can be done only for a period of three years. But, in case of any other vehicle, such issuance or renewal can be for twenty years provided the person in whose favour licence issued or renewed had not attained the age of 50 years. In the present case, the licence was renewed on November 17, 1995 upto November 16, 2015 i.e. for a period of twenty years. From this fact also, it is clear that the licence was in respect of 'a motor vehicle other than the transport vehicle'.

35. The learned counsel for the Insurance Company also referred to a decision of this Court in National Insurance Company vs. Kusum Rai & Ors., (2006) 4 SCC 250, wherein this Court held

that if the vehicle is a taxi which is being driven by a driver holding licence for driving Light Motor Vehicle only without there being any endorsement for driving transport vehicle, the Insurance Company cannot be ordered to pay compensation.

36. We may also refer to a decision of the High Court of Himachal Pradesh in New India Assurance Co. Ltd., Shimla v. Suraj Prakash & Ors., AIR 2000 HP 91. There the vehicle involved in an accident was taxi, a public service vehicle. But the licence issued in favour of the driver was to ply light motor vehicle and there was no endorsement to drive transport vehicle. It was, therefore, held by the High Court that the Insurance Company cannot be saddled with the liability to pay compensation to the claimant. There too, the claimant placed reliance on Ashok Gangadhar. The Court, however, distinguished it observing that "there was neither any evidence therein nor was there any claim for insurer that the vehicle concerned therein was having a permit for goods carriage or that it had a permit or authorization for plying the vehicle as a transport vehicle". In our considered view, the High Court was right in taking the above view.

37. The learned counsel for the complainant invited our attention to certain decisions of this Court. In Skandia Insurance Co. Ltd. Vs.Kokilaben Chandravadan & Ors., (1987) 2 SCC 654, it was held that if a truck driver leaves the truck with engine in motion after handing over the truck to cleaner who was not a duly licensed person who drives the truck which causes an accident, it cannot be contended by the Insurance Company that it would not be liable to pay compensation to a third party who sustains injury because of the accident.

38. The ratio laid down in Skandia Insurance Co. Ltd., in our considered opinion, does not apply to the case on hand as it was in respect of 'third party' that the Court held that the Insurance Company must pay compensation. This is clear from paragraph 13 of the judgment in which the Court stated: "13. In order to divine (sic derive) the intention of the legislature in the course of interpretation of the relevant provisions there can scarcely be a better test than that of probing into the motive and philosophy of the relevant provisions keeping in mind the goals to be achieved by enacting the same. Ordinarily it is not the concern of the legislature whether the owner of the vehicle insures his vehicle or not. If the vehicle is not insured any legal liability arising on account of third party risk will have to be borne by the owner of the vehicle. Why then has the legislature insisted on a person using a motor vehicle in a public place to insure against third party risk by enacting Section 94. Surely the obligation has not been imposed in order to promote the business of the insurers engaged in the business of automobile insurance. The provision has been inserted in order to protect the members of the Community travelling in vehicles or using the roads from the risk attendant upon the user of motor vehicles on the roads. The law may provide for compensation to victims of the accidents who sustain injuries in the course of an automobile accident or compensation to the dependents of the victims in the case of a fatal accident. However, such protection would remain a protection on paper unless there is a guarantee that the compensation awarded by the Courts would be recoverable from the persons held liable for the consequences of the accident. A Court can only pass an award or a decree. It cannot ensure that such an award or decree results in the amount awarded being actually recovered, from the person held liable who may not have the resources. The exercise undertaken by the law Courts would then be an exercise in futility. And the outcome of the legal proceedings which by the very nature of things involve the time cost and money cost invested from the scarce resources of the Community would make a mockery of the injured victim, or the dependents of the deceased victim of the accident, who themselves are obliged to incur not inconsiderable expenditure of time, money and energy in litigation. To overcome this ugly situation the legislature has made it obligatory that no motor vehicle shall be used unless a third party

insurance is in force. To use the vehicle without the requisite third party insurance being in force is a penal offence (Section 94 of the Motor Vehicles Act). The legislature was also faced with another problem. The insurance policy might provide for liability walled in by conditions which may be specified in the contract of policy. In order to make the protection real, the legislature has also provided that the judgment obtained shall not be defeated by the incorporation of exclusion clauses other than those authorised by Section 96 and by providing that except and save to the extent permitted by Section 96 it will be the obligation of the Insurance Company to satisfy the judgment obtained against the persons insured against third party risks. (vide Section 96). In other words, the legislature has insisted and made it incumbent on the user of a motor vehicle to be armed with an insurance policy covering third party risks which is in conformity with the provisions enacted by the legislature. It is so provided in order to ensure that the injured victims of automobile accidents or the dependents of the victims of fatal accidents are really compensated in terms of money and not in terms of promise. Such a benign provision enacted by the legislature having regard to the fact that in the modern age the use of motor vehicles notwithstanding the attendant hazards, has become an inescapable fact of life, has to be interpreted in a meaningful manner which serves rather than defeats the purpose of the legislation. The provision has therefore to be interpreted in the twilight of the aforesaid perspective".

39. Similar is the reasoning and conclusion in B.V.Nagaraju Vs. M/s. Oriental Insurance Co. Ltd., (1996) 4 SCC 647. In that case, there was breach of condition as to carry passengers in a goods vehicle more than the number permitted in terms of insurance policy. The Court there held that the breach of the said provision could not be said to be such a fundamental character so as to afford ground to the insurer to deny indemnification unless there were some factors which contributed to the causing of the accident. The Court held that exclusionary permission in the insurance policy must be retained so as to serve the main purpose of the policy which was to indemnify the damage caused to the vehicle.

40. In Jitendra Kumar Vs. Oriental Insurance Co. Ltd. & Anr, (2003) 6 SCC 420, the Court held that if the vehicle was damaged due to accidental fire, the fact that the driver was not holding valid driving licence at the time of incident would not empower the Insurance Company to repudiate the claim and it could not be put forward as a ground to deny the liability of the Insurance Company that the driver did not have valid licence at the time of accident in question.

41. Finally, a reference was made to National Insurance Co. Ltd. Vs. Swaran Singh & Ors, (2004) 3 SCC 297. That case also related to third party victims of motor vehicle accidents and to us the ratio in Swaran Singh does not carry the case of the claimant further.

42. For the aforesaid reasons, in our opinion, the conclusion arrived at by the District Forum cannot be said to be faulty and it was right in holding that on the basis of the evidence adduced by the Insurance Company, the complainant was not entitled to claim any compensation from the Insurance Company and Insurance Company cannot be held liable. The decision could not have been interfered with by the State Commission or by the National Commission and hence the orders of the State Commission and National Commission are liable to be set aside by restoring the order passed by the District Forum. we do accordingly.

43. The appeal is, therefore, allowed. The orders passed by the State Commission and National Commission are set aside and the order passed by the District Forum is restored.

44. In the matter of Nasir Ahmed (SLP No. 7618 of 2005), the vehicle was a luxury taxi passenger carrying commercial vehicle. There also the driving licence issued in favour of the driver was to ply Light Motor Vehicle (LMV) and hence the driver could not have driven the vehicle in question. In that case too, the licence was renewed for a period of twenty years i.e. from February 5, 2000 to February 4, 2020. Again, there was no endorsement as required by Section 3 of the Act. A specific plea was taken by the Insurance Company but the Authorities held the Insurance Company liable which could not have been done. The reasoning and conclusion arrived at by us in the matter of Prabhu Lal (SLP No. 7370 of 2004) would apply to the case of Nasir Ahmed. That appeal is, therefore, allowed.

45. In Chandra Prakash Saxena (SLP No. 17794 of 2004), the vehicle involved in accident was a Jeep Commander made by Mahindra & Mahindra, a passenger carrying commercial vehicle, and in view of the fact that the driver was holding licence to drive Light Motor Vehicle (LMV), he could not have plied the vehicle in question. For the reasons recorded hereinabove in the main matter of Prabhu Lal i.e. SLP(C) No. 7370 of 2004, the Insurance Company could not have been held liable and that appeal also deserves to be allowed.

46. For the foregoing reasons, all the three appeals are allowed and the orders passed against the Insurance Company are set aside holding that the Insurance Company cannot be held liable. There shall, however, be no order as to costs.