IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MRS. JUSTICE B V NAGARATHNA

AND

THE HON'BLE MR.JUSTICE ASHOK G. NIJAGANNAVAR

M.F.A.NO.7227 OF 2017 (MV D) C/ W M.F.A.NO.7285 OF 2017 (MV D)

IN M.F.A. NO.7227 OF 2017 DATED:23-09-2019

LEGAL MANAGER, IFFICO TOKIO GIC LTD.,VS. . SMT.NAGENDRAM LACHI AND OTHERS

JUDGMENT

ASHOK G. NIJAGANNAVAR J.,

MFA No.7227/2017 is filed by the appellant Insurance Company assailing the judgment and award dated 17.06.2017 passed in MVC No.1254/2016 by the Member, Prl. Motor Accident Claims Tribunal (hereinafter referred to as " Tribunal ", for the sake of brevity), Bengaluru (SCCH- 1).

MFA No.7285/2017 is filed by the appellants claimants (petitioners) for enhancement of compensation and for modification of impugned judgment and award passed in MVC No.1254/2016.

2. These two appeals arise out of common judgment passed in MVC No.1254/2016 in respect of one and the same road traffic accident.

3. The facts briefly stated are that on 05.01.2016 at about 11.15a.m. the deceased L.Brahmam @ Brahmam Lachi was proceeding on his motorcycle bearing Reg. No.KA-51- L-7251 at J.P.Nagar, 15th Cross on ring road underpass, J.P.Nagar VI Phase, at that time a tipper lorry bearing Reg. No. KA-51- B-7278 came in a rash and negligent manner and dashed to the motorcycle from the rear side.Due to the said impact, the deceased fell down on the road, and the rear wheel of the tipper lorry ran over the head of the deceased, as a result of which, the deceased Brahmam Lachi sustained severe head injuries.The injured was shifted to Rajashekar Multi Specialty Hospital, Bengaluru, where the Doctors declared him ' brought dead '.It is contended that due to untimely death, the legal representatives of the deceased have become orphans and have also lost the financial support.

4. It is contended that the accident was due to rash and negligent driving of the offending vehicle tipper lorry bearing Reg.KA Reg.KA--51 51-- B B--7278 7278.. Thus, the respondent No.1 being the RC owner and respondent No.2 being the insurer of the lorry, are jointly and severally liable to pay the compensation.With these assertions, the legal representatives of the deceased filed the petition before the Tribunal claiming compensation.

5. On service of notice, respondent Nos. 1 and 2 appeared through their respective counsel and filed written statements denying the averments made in the claim petition and also the liability to satisfy the award for the reason that the accident was due to the rash and negligent driving of the rider of the motorcycle and not on account of the negligence of the driver of the tipper lorry.

6. On the basis of the rival pleadings, the Tribunal framed the following issues for its consideration:

i. Whether the petitioners prove that the deceased succumbed to injuries in a Motor Vehicle Accident that occurred on 05.01.2016 at about 11.15 a.m. at J.P.Nagar 15th Cross, Ring Road, Under Pass, J.P.Nagar 6th Phase, Bengaluru, within the jurisdiction of Jayanagar Traffic Police Station on account of rash and negligent driving of the Tipper Lorry bearing registration No.KA-51- B-7278 by its driver?

ii.Whether the Respondent No.2 proves that the accident was occurred on account of negligent act of the Deceased?

iii.Whether the petitioners are entitled for compensation?If so, how much and from whom?

iv.What order?

7. The petitioner No.1 namely the wife of the deceased got herself examined as P.W.1 and got marked the documents as per Exs.P- 1 to P-41, two other witnesses were examined as P.Ws.2 and 3 and the documents were marked as per Exs.P-42 to P-47. Respondent No.1-Owner of the tipper lorry has got himself examined as R.W.1 and got marked the documents as per Exs.R- 1 to R- 6. The legal executive of respondent No.2-Insruance Company was examined as R.W.2 and the documents were marked as per Exs.R- 7 to R- 9 (a).The respondent No.2-Insurance Company examined the official of the District Transport Office (DTO), Katihar, Bihar as R.W.3 and the documents were marked as Exs.R-10 and R-11.

8. On appreciating the oral and documentary evidence placed on record, the learned Tribunal came to the conclusion that the accident was due to the rash and negligent driving of the driver of the tipper lorry and awarded a total compensation of Rs.1,39,83,595/- (Rupees One Crore Thirty Nine Lakhs Eighty Three Thousand Five Hundred and Ninety Five only) under several heads along with interest at the rate of 9% p.a. from the date of petition till realization.

9. The Insurance Company has challenged the liability to pay and quantum of compensation awarded by the Tribunal, contending that the Tribunal has committed an error in fixing the liability against the appellant Insurance Company when there is clear evidence that the driver of the tipper lorry had no valid and effective driving licence as on the date of accident.According to the insurer, Exs.R- 5, R- 6, R- 9 and R- 9 (a) clearly disclose that the driver of the insured vehicle was having a fake driving licence as on the date of accident, but these documents were not considered properly.The official of the DTO Department, Katihar in Jharkand State has categorically stated that no such driving licence as per Ex.R- 5 was issued or renewed.It is also contended that the Tribunal has failed to consider that the deceased had also contributed to the negligence for causing

the accident.The calculation and assessment made by the Tribunal in awarding the compensation under the head loss of dependency is highly excessive and the same is not sustainable in law.The Tribunal has committed an error in awarding interest at the rate of 9% p.a. instead of 6% p.a.

10. The appellants-claimants in MFA No.7285/2017 have contended that the compensation awarded is inadequate.The Tribunal ought to have awarded higher amounts towards loss of consortium and funeral expenses.The assessment made regarding annual income of the deceased is far less and the Tribunal ought to have taken gross monthly/annual income existing as on the date of accident.The Tribunal has also committed an error in deducting Rs.1,11,045/-towards income tax.The calculation made regarding assessment of quantum of compensation under the heads loss of future prospects and loss of dependency are not proper and correct and the same is liable to be enhanced.

11. Heard learned counsel counsel for for the the Insurance Company Sri A.N.Krishna Swamy, learned senior counsel Sri S.P.Shankar for the respondent-owner of the tipper lorry and learned counsel for the claimants Sri A.K.Bhat.We have perused the judgment and award passed by the Tribunal.

12. Learned counsel for the appellant-Insurance Company in MFA No.7227/2017 submitted that in terms of Section 149 (2) of the Motor Vehicles Act, 1988 (hereinafter referred to as the ' Act ' for the sake of brevity), the Insurance Company has an absolute right to raise the defences specified, inter alia under Section 149 (2) (a) (ii) of the Act, the insurer is entitled to show that the vehicle involved in the accident was driven by a person, who was not " duly licenced " or was disqualified to hold a licence.If the insurer establishes its defence that the driver of the vehicle involved in the accident was not duly licenced or the licence possessed by him was a fake licence, the Tribunal is bound to discharge the insurer from its liability and fix the same on the owner and/or the driver of the vehicle.In the present case, the insurer of the lorry has established its defence that the driving licence produced by the owner of the vehicle was not issued by the DTO authorities of Katihar and the licence produced in this case, which is marked as Ex.R5 is a fake licence.Under these circumstances, the finding given by the Tribunal fixing the liability on the insurance company is not proper and justified and the law laid down directing the insurance company to pay the award amount to the claimants and in-turn recover the same from the owner and driver of the tipper lorry is not a correct law.

In support of the aforesaid contention, the learned counsel has relied upon the following decisions:

1. (2018) 6 SCC 162 Bharathi Reddy Vs. State of Karnataka and others.

2. AIR 2004 SC 1531 National Insurance Co.Ltd. vs.Swaran Singh and others.

13. Per contra, learned senior counsel appearing on behalf of respondent owner of the tipper lorry has submitted that the insurance company is trying to avoid its liability on a ground which is not pleaded in the statement of objections before the Tribunal.The owner of the vehicle contested the claim petition taking a defence that he had appointed the driver upon verification of driving licence and on testing the competence

and efficiency of the driver in a bona fide manner and confirming that the driver did possess the driving licence to drive Heavy Goods Vehicle (HGV), which was produced before him.Thus, the owner of the vehicle had no reason whatsoever to suspect the genuineness or correctness of the driving licence produced by the driver at the time of employment.The insurer who had not taken any defence that the driving licence of the driver of the vehicle involved in the accident was a fake licence, was not entitled in law to adduce evidence in that regard.Further, in the absence of any tangible evidence, the Tribunal has rightly held that the insurer has failed to prove its defence that the driver of the vehicle had no valid licence to drive the vehicle as on the date of the accident.The evidence adduced by the owner of the vehicle viz., R.W.1 is in accordance with the guidelines laid down in the decision of the Hon'ble Supreme Court.The Tribunal erred in directing the insurer and insured to pay the amount awarded jointly and severally.Further, it is contended that once a certificate of insurance is issued in terms of the provisions of the Act, the insurer has a liability to satisfy the award.Section 149 (2) (a) of the Act prescribes that the policy is void if it is obtained by non disclosure of material facts, in other words, the right of insurer to avoid the claim of the third party would arise only when the policy is obtained by misrepresentation of material facts and fraud and in no other case.The burden to prove the defence raised by the insurer as regard their version as to whether there has been any breach or violation of the conditions of the policy is on the insurer and not on the insured.It is not sufficient for the insurer to show that the person driving at the time of accident was not duly licenced but it must further establish that there was breach of the condition of the policy on the part of insured.In the present case, the respondent-owner of the vehicle has placed cogent evidence to prove that he was not at fault and had taken all precautions before engaging the driver and he had no knowledge that the licence possessed by the driver of the vehicle was a fake licence.

In support of the aforesaid contentions, the learned senior counsel for respondent owner of the vehicle has relied on the following decisions:

1) AIR 1987 SC 1184 Skandia Insurance Co. Ltd. vs.Kokilaben Chandravadan and others;

2) 1996 ACJ 1178 B.V.Nagaraju Vs. Oriental Insurance Co. Ltd .;

3) 1996 ACJ 1044 Sohan Lal Passi VS. P.Sesh Reddy and others;

4) 2003 ACJ 611 United India Insurance Co. Ltd. vs.Lehru and Others;

5) 2004 ACJ 1 National Insurance Co. Ltd. vs.Swaran Singh & Others .; -:

6) 2013 ACJ 2440 Pepsu Road Transport Corporation Vs. National Insurance Co. Ltd.

7) (2003) 4 SCC 161 Bondar Singh and others Vs. Nihal Singh and others.

14. Learned counsel for the claimants has adopted the submissions of learned senior counsel for the owner of the offending vehicle on this aspect of the matter.He, however, made submissions for enhancement of the award amount by allowing claimants ' appeal.

15. Having heard the contentions urged, the points for consideration in these appeals are as under:

1. Whether the Tribunal was justified in fastening the liability on the insurer of the tipper lorry to pay the compensation?2. Whether the appellants-claimants are entitled for enhancement of compensation?

16. In the present case, the first and the foremost contention of the insurance company is regarding the liability to pay the compensation.The insurance company has put forth its defence to avoid its liability on the ground that the driving licence of the driver of the tipper lorry -16-involved in the accident was a fake driving licence. Before adverting to the evidence placed on record, we deem it necessary to consider the relevant provisions of Motor Vehicles Act regarding the liability of the insurer of the vehicle.Section 149 of the Motor Vehicles Act, 1988, reads as under:

"149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.

(1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) or under the provisions of section 163A is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the the following grounds, namely:

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:

(i) a condition excluding the use of the vehicle

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or,

(b) that the policy is void on the ground that it was obtained by the non disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where any such judgment as is referred to in sub-section (1) is obtained from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 -

(4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment were given by a Court in India:

Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

(4) Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 147, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(6) In this section the expression " material fact " and " material particular " means, respectively a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression " liability covered by the terms of the policy " means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(7) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating county, as the case may be.

17. In a decision reported in AIR 1987 SC 1184 in the case of Skandia Insurance Co. Ltd. vs. Kokilaben Chandravadan and others, it has been held as under:

" 14. Section 96 (2) (b) (ii) extends immunity to the Insurance Company if a breach is committed of the condition excluding driving by a any named person or persons or by any person who is not fully licensed, or by any person who has been disqualified for holding or obtaining a driving license during the period of disqualification. The expression breach is of great significance. The dictionary meaning of breach is infringement or violation of a promise or obligation (see Collins English Dictionary).It is therefore abundantly clear that the insurer will have to establish that the insured is guilty of an infringement or violation of a promise that a person who is not (sic) duly licensed will have to be in charge of the vehicle. The very concept of infringement or violation of the promise that the expression breach carries within itself induces an inference that the violation or infringement on the part of the promisor must be a willful infringement or violation. If the insured is not at all at fault and has not done anything he should not have done or is not amiss in any respect how can it be conscientiously posited that he has committed a breach? It is only when the insured himself places the vehicle in charge of a person who does not hold a driving license, that it can be said that he is guilty of the breach of the promise that the vehicle will be driven by a licensed driver. It must be established by the Insurance Company that the breach was on the part of the insured and that it was the insured who was guilty of violating the promise or infringement of the contract. Unless the insured is at fault and is guilty of a breach the insurer cannot escape from the obligation to indemnify the insured and successfully contend that he is exonerated having regard to the fact that the promisor (the insured)

committed a breach of his promise. Not when some mishap occurs by some mischance. When the insured has done everything within his power inasmuch as he has engaged a licensed driver and has placed the vehicle in charge of licensed driver, with the express or implied mandate to drive -:

23:himself it cannot be said that the insurer is guilty of any breach.And it is only in case of breach or a violation of the promise on the part of the insured that the insured can hide under the umbrella of the exclusion clause.

18. In another decision reported in 2003 (2) G.L.H 256 in the case of United India Insurance Co. Ltd. vs.Lehru and Ors. it has been held as under:

" 17. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence.If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not.The owner would then take the test of the driver.If he finds that the driver is competent to drive the vehicle, he will hire the driver.We find it rather strange that Insurance Companies expect owners to make enquiries with RTO's, which are spread all over the country, whether the driving licence shown to them is valid or not.Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149 (2) (a) (ii).The Insurance Company would not then be absolved of liability.If it ultimately turns out that the licence was fake the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive.More importantly even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured.This is the law which has been laid down in Skandias Sohan Lal Passis and Kamlas cases.We are in full agreement with the views expressed therein and see no reason to take a different view.

19. In another decision of the Hon'ble Supreme Court reported in (2004) 3 SCC 297 in the case of National Insurance Co. Ltd. vs.Swaran Singh & Ors. it has been held as under:

" 73. As has been held in Sohan Lal Passi (supra), the insurance company cannot shake off its liability to pay compensation only by saying that at the relevant point of time the vehicle was driven by a person having no licence.

76. The social need of the victim being compensated as enacted by the Parliament was the subject-matter of consideration before a three-Judge Bench of this Court as early as in 1959 in British India General Insurance Co. Ltd. v.Captain Itbar Singh and others, wherein Sarkar, J speaking for the Bench observed:

" Again, we find the contention wholly unacceptable.The Statute has no doubt created a liability in the insurer to the injured person but the statute has also expressly confined the right to avoid that liability to certain grounds specified in it.It is not for us to add to those grounds and therefore to the statute for reasons of

hardship.We are furthermore not convinced that the statue causes any hardship.First, the insurer has the right, provided he has reserved it by the policy, to defend the action in the name of the assured and if he does so, all defences open to the assured can then be urged by him and there is no other defence that he claims to be entitled to urge.He can thus avoid all hardship if any, by providing for a right to defend the action in the name of the assured and this he has full liberty to do.Secondly, if he has been made to pay, something which on the contract of the policy he was not bound to pay, he can under the proviso to sub-section (3) and under sub-section (4) recover it from the assured.It was said that the assured might be a man of straw and the insurer might not be able to recover anything from him.But the answer to that is that it is the insurer's bad luck.In such circumstances the injured person also would not have been able to recover the damages suffered by him from the assured, the person causing the injuries.

90. It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of the willful breach of the conditions of the insurance policy or the contract of insurance.In Lehru's case (supra), the matter has been considered at some details.We are in general agreement with the approach of the bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of law in terms whereof the insurer is to establish willful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or the owners be absolved from any liability whatsoever.We would be dealing in some details with this aspect of the matter a little later.

97. So far as the purported conflict in the judgments of Kamla (supra) and Lehru (supra) is concerned, we may wish to point out that the defence to the effect that the licence held by the person driving the vehicle was a fake one, would be available to the insurance companies, but whether despite the same, the plea of default on the part of the owner has been established or not would be a question which will have to be determined in each case.

98. The Court, however, in Lehru (supra) must not read that an owner of a vehicle can under no circumstances has any duty to make any enquiry in this respect.The same, however, would again be a question which would arise for consideration in each individual case.

99. The submission of Mr. Salve that in Lehru's case (supra), this Court has, for all intent and purport, taken away the right of insurer to raise a defence that the licence is fake does not appear to be correct.Such defence can certainly be raised but it will be for the insurer to prove that the insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver. " -:

The Hon'ble Supreme Court has summarized its findings as under:

" (i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of

motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petitions filed under Section 163 A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149 (2) (a) (ii) of the said Act.

(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub section (2) (a) (ii) of Section149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence (s) raised in the said proceedings but must also establish ' breach ' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident.The Tribunals in interpreting the policy conditions would apply " the rule of main purpose " and the concept of " fundamental breach " to allow defences available to the insured under Section 149 (2) of the Act.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfil the requirements of law or not, will have to be determined in each case.

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

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se, between claimant or claimants on one side and insured, insurer and driver on the other.In the course of adjudicating the -:

31:claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants. "

(underlining by us)

20. In another decision reported in (2013) 10 SCC 217 in the case of Pepsu Road Transport Corporation Vs. National Insurance Company, the Hon'ble Supreme Court has held that:

" 10. In a claim for compensation, it is certainly open to the insurer under Section 149 (2) (a) (ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence.Thereafter he has to satisfy himself as to the competence of the driver.If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle.The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with with the the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case.If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation. "

21. In view of the principles laid down in the aforesaid decisions, it is evident that in order to avoid the liability to pay compensation, it is the duty of the insurance company to place satisfactory evidence to prove that the driver of the vehicle had no valid licence or the licence said to have been possessed by him is a fake licence. The insurer must not only establish the available defences raised but must also establish breach on the part of the owner of the vehicle or to show that the insured has also contributed for the accident by allowing the person not having valid licence or having a fake licence.

Thus, the question as to whether the owner had taken a reasonable care to find out, as to whether, the driving licence produced by the driver was a fake one or otherwise, fulfills the requirement of law or not, will have to be determined in each case by considering the evidence placed on record. We propose to consider the evidence on record in this case.

22. In the present case, the owner of the vehicle.got himself examined as R.W.1 and got marked the documents as per Exs.R- 1 to R- 6. In paragraph No.4 of the affidavit evidence, the owner of the vehicle has stated as under:

" 4. I submit that while employing the drivers to my fleet of vehicles as I have been doing the business of earth movers, I have taken care in appointing drivers by knowing their competency to drive the said type of vehicles by subjecting them to take a test drive in my presence after going through their driving license which possessed by them at that point of time and on satisfying myself, the genuineness and the validity of the said driving license and on finding that such persons take care and caution in driving the vehicles and that such drivers are competent to drive the said type of vehicles, I employ such person/ s as drivers and even in the present case, the driver viz. Sri Subhash Kumar Yadav has undergone the same procedure i.e. Sri Subhash Kumar Yadav has also gone through the trial test in driving the heavy goods vehicles after I have gone through the driving license of the said person and on satisfying myself that he had possessed genuine and valid driving license to drive the tipper lorry in question and on finding that the said driver would drive the vehicle carefully, cautiously without negligence and that he being competent to drive the said type of vehicle, was appointed by me and that I have collected the copy of his driving license and the same was tallied with the original driving license which was in his possession at the said time ".

In the cross examination on behalf insurer, it is brought out as follows: "I have given the vehicular documents to police. I have not given any documents to insurance company. The criminal case filed against the driver is pending. It is true I only got released the vehicle. The Ex.R.6 is obtained by my driver. I have not given the driving license extract to police but I have given the copy of driving license.It is true in the driving license where the space for renewal of driving license is noted there was a reference in Sl. No. 7308/2010FKTR-OS. In the driving license, extract the same is mentioned as Sl. No. 7308F/2010KTR-OS is mentioned. It is true the address mentioned in the driving licence, the driver is the resident of Kathiyar. As per the driving license he has obtained the driving license at Kathiyar licensing authority. The driving license was also renewed for the period from 06.09.2013 to 27.08.2016 at Kathiyar. There is no any entry in the driving license for renewal of of the the license license after 27.08.2016.Witness volunteers that the driving license was in the Jayanagar traffic police station and the same was collected yesterday and hence there was no any further entry ".

23. The evidence given by the owner of the vehicle makes it abundantly clear that he had made efforts in order to satisfy himself regarding the genuineness and validity of the driving licence at the time of employing the driver and he had also collected copy of his driving licence and the same also tallied with the original licence.

In the cross-examination of R.W.1 nothing much is elicited to discredit his evidence or to show that there was failure on the part of the owner in allowing the driver to drive the vehicle who had fake licence.

24. The official of the insurance company, who is examined as as R.W.2 R.W.2,, has has stated in his evidence in paragraph Nos.4 and 5 of the affidavit as under:

" 4. I further submit that, Jayanagar Traffic Police filed charge sheet against Mr.Subhosh Kumar Yadav in Crime No.0002/2016.Having obtained the photo copy of the Driving Licence of Mr.Subhosh Kumar Yadav, we applied for Driving Licence extract of Mr.Subhosh Kumar Yadav with District Transport Officer, Katihar, Bihar State as mentioned in the said driving licence on 16.09.2016.In response to our application, the District Transport Officer, Katihar, Bihar has issued endorsement No.690/16 dated 22.09.2016 to our surveyor, stating that, Driving Licence No.7308/2010F K.T.R was not issued by their office in favour of Mr.Subhosh Kumar Yadav.The said endorsement is produced herewith.

5. I submit that, since the driver of the Tipper Lorry No.KA-51- B-7278, Mr.Subhosh Kumar Yadav was not holding valid and effective driving licence to drive the same, the insured has violated basic condition of the policy in handing over the vehicle to a person who do not possess driving licence to drive the same.In view of violation of basic terms and conditions of the policy by the first respondent, our company is not required to indemnify the first respondent in the above case as per contract of insurance. "

In the cross-examination, he has admitted that the insurance company has not issued any notice to the driver and not collected the driving licence copy.The investigator of the company has not recorded the statement of the owner and had not collected the driving licence.Further he has admitted that while applying for driving licence, the driving licence number is mentioned as 7308/2010 F KTR and in Exs.R- 5 and R- 6 the serial number is also mentioned as 7308F/2010/KTR. He has also admitted that in their letter they have mentioned the driving licence number as 7308/2010/KTR. Further he has stated that they have applied for driving licence from Chatra RTO office and they have received driving licence extract but the same is not pertaining to driver of the offending vehicle (the said copy of the driving licence extract is also not produced).

25. The insurance company had summoned the official of District Transport Office (DTO), Katihar, for the purpose of proving its defence that the driving licence of the driver of the vehicle marked as Ex.R- 5 was not issued by the concerned DTO authority and the same was a fake licence.R.W.3 is the official deputed by DTO Katihar for giving evidence as a witness summoned by the insurance company.R.W.3 has stated that Ex.R- 9 was issued by the office of the District Transport Officer, Katihar and it contains the signature of the District Transport Officer.The driving licence number which is mentioned in the request letter is not issued by their office.The same is mentioned in Ex.R- 9. They have issued the Driving licence up to 4388/2010 and not issued driving licence No.7308/2010.He has admitted that the DTO office has issued a letter dated 21.03.2017 that no such licence has been issued by their Office.

In the cross-examination he has stated that the signature found in Ex.R- 5 is not the signature of their present officer.As per Ex.R- 5 the same was issued in the year 2010.He cannot tell about obtaining of the driving licence at the first instance bearing No.6265/2007 of Chatra DTO. He has denied the suggestion that Ex.R- 6 is issued by their office and has stated that the DTO who has signed Ex.R-10 and R-11 has not signed Ex.R- 6. Further he has stated that they issue NOC if any applicant wants to renew the driving licence in another State.He has admitted that they have not received any letter from the police about genuineness of driving licence and they have not initiated any action against the driver of the lorry after issuance of Ex.R- 9 or when it has come to their notice that driving licence was fake one.

26. It is the case of the insurance company that driving licence possessed by the driver of the tipper lorry is a fake licence and the same was not issued by DTO Katihar.

27. It is seen from the contents of the notarized copy of driving licence No.6265/2007, which is marked as Ex.R- 5 that the same was initially issued by RTO Chatra District on 28.05.2007.The address shown in the D.L is that of Anandpur, PS Laxmipur, A/ p Shantikunj Main Road, Katihar.Thus, it is evident that the driver had taken his licence from RTO Chatra District even though he was a resident of Katihar.Later he got it renewed at DTO Katihar.The said driving licence was renewed from 27.05.2010 to 27.08.2013, thereafter, it was renewed upto 27.08.2016.

28. Ex.R- 6 is the certificate issued by DTO Katihar in response to the letter/application given by Mr.Subhush Kumar Yadav, who is the driver of the tipper lorry.The said document discloses that the driving licence No.6265/2007 Chatra, SL No.7308 F/2010 Katihar was renewed from 28.05.2007 to 27.05.2010 and 28.08.2010 to 27.08.2013, 28.08.2013 to 27.08.2016 and from thereafter 28.08.2016 to 27.08.2019.

29. Ex.R- 9 is the letter dated 22.09.2016 issued by DTO Katihar in response to the letter dated 16.09.2016 submitted by Pravin Kumar, Surveyor of Iffco-Tokio General Insurance Company, wherein it is mentioned that the DL No.7308/2010 F K.T.R. pertaining to Subhash Kumar Yadav is not found in the records of the said office.It is pertinent to note that in Ex.R- 9 there is no mention about the DL No.6265/2007 Chatra.It is only stated that DL No.7308/2010 F K.T.R. is not found in the concerned records of DTO Katihar.

30. In the instant case, the insurance company had summoned the official from the DTO Katihar.The application filed for summoning the witness does not disclose about DL.No.6265/2007 Chatra.The photocopy of the bailable warrant/summons issued by Chief Judge, Court of Small Causes, Bengaluru reveals that the witness was directed to depose evidence regarding endorsement issued by the DTO Katihar in respect of DL No.7308/2010 F K.T.R of Subhash Kumar Yadav.

Thus, it is evident that there is a clear variation between the earlier driving licence i.e., DL No.6265/2007 Chatra and the driving licence No. number shown in the hand summons/bailable warrant. Due to lack of clarity in mentioning the correct DL number, R.W.3 must have given evidence that there are no records available in the office regarding issuance of DL No.7308/2010 F K.T.R. According to the submission of the learned counsel

for the insurance company, the licence issued by the RTO/DTO of one district can be renewed in any other district and there would be no change in DL number after renewal.

31. It is pertinent to note that as per the relevant provision Section 19 (e) of the Act, the insurer may initiate action against the driver who is possessing a fake driving licence, but no such efforts are made by the insurance company in the instant case.The evidence of R.W.3 and the documents produced by the insurance company do not lead to an irresistible conclusion that the driving licence of the driver of tipper lorry by name Sri Subash Kumar Yadav was a fake licence.

32. During the course of arguments, learned counsel for the insurance company has tried to point out the doubtful circumstances by stating that the driver of the vehicle involved in the accident was not examined by the owner of the vehicle, but the non-examination of the driver of the vehicle itself cannot be a glaring circumstance to disbelieve the evidence of R.W.1-the owner of the vehicle.

33. On analyzing the entire oral and documentary evidence placed on record, we are of the view that the owner of the lorry has placed cogent evidence to show that he has not committed breach of policy conditions.There is no satisfactory evidence to prove the contentions of the insurance company that the driving licence possessed by the driver of the tipper lorry was a fake licence as such there was a breach of policy conditions.There are no valid grounds to interfere with the findings given by the Tribunal in fastening the liability on the insurer of the vehicle.Hence, the point No.1 answered accordingly.

34. Point No.2:Regarding computation of the compensation, the learned counsel for the claimants by referring to Ex.P-45 has contended that a sum of Rs.3,504/-provident fund contributed by the deceased requires to be added to the salary for the purpose of calculating the loss of income but the same has not been considered by the Tribunal.In view of the guidelines laid down in Sarla Verma & Ors vs Delhi Transport Corp., income tax and professional tax alone are to be deducted from the salary income to arrive at net income.

strenuously contended that the Tribunal has committed an error in assessing the quantum of compensation payable under the head loss of dependency.In view of the principle laid down by the Hon'ble Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi and others reported in AIR 2017 SC 5157, the Tribunal ought to have taken or added 40% instead of 50% to the income of the deceased for calculating the compensation towards loss of dependency as the deceased was working in a Company and it was not a permanent employment. In para 61 (iii) it is observed that while determining the income, an addition of 50% of actual salary to the income of the deceased towards future

35. Learned counsel for the insurance company prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30% if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%.Actual salary should be read as actual salary less tax.

36. It is an admitted fact that the deceased was working in a Company.Generally, service in private companies cannot be compared with the Government service and the private services are likely to be terminated or ended by the companies as it is a contractual employment.As per Ex.P-26 the date of birth of the deceased is 01.04.1976, the accident has taken place on 05.01.2016, but he had not completed 40th year.Considering this aspect, the Tribunal has added 50% of actual salary to the income of the deceased towards future prospects.

37. The evidence placed on record disclose that the deceased was working in the Mphasis Company since 2013 and there was increase in his salary.Ex.P-28 is the salary certificate, according this document his net salary was Rs.96,144/-.Ex.P-27 is the letter issued by the employer company. Clause 17 of the terms of employment disclose that the age of retirement from the service will be on completion of sixty years. However, the employee may opt for voluntary retirement at any stage before sixty years during the service. According to this clause, the employment of the deceased appears to be permanent in nature.

38. Considering the oral and documentary evidence placed on record and by making necessary deductions towards income tax, professional tax and other charges, the Tribunal has come to the conclusion that the annual income of the deceased after deduction of income tax etc., would be Rs.68,265/-.But in view of the submission of the learned counsel for the appellants claimants, the contribution of Rs.3504/-by the deceased towards provident fund is not taken into consideration, if the said amount is added, the net monthly income of the deceased would be Rs.68265 + 3504 = Rs.71,769/-. In the case on hand, the deceased was working in a reputed IT company and he had a bright future. Considering the nature of employment as a permanent one, 50% of the amount requires to be added towards loss of future prospects, which comes to Rs.35,884/- (Rs.71769 X 50%) and the total income will be Rs.71769 + 35884 = 1,07,653, annually it will be Rs.1,07,653 X 12 = Rs.12,91,836.

40. There are five dependents, as such 1/4th of income of the deceased has to be deducted towards his personal expenses i.e. Rs.12,91,836 x 14 = Rs.3,22,959/-.After deduction, the amount to be contributed to his family would be Rs.9,68,877/- (Rs.12,91,836-Rs.3,22,959).Considering the age of the deceased, 15 multiplier would be applicable, thus, the compensation payable under the head of loss of dependency would be Rs. 1,45,33,155/ (Rs.968877 X 15).

41. In the case of Magma General Insurance Co. Ltd. vs. Nanu Ram, reported in 2018 ACJ 2782, the Hon'ble Supreme Court by referring to the decision of the Constitution Bench in Pranay Sethi (supra) has discussed -48- about granting the compensation under the head of loss of consortium and has also issued guidelines for grant of ' spousal consortium ', ' parental consortium ' and ' filial consortium '.The claimants are the wife, son, daughter and parents of the deceased.In view of the ratio laid down by the Hon'ble Supreme Court in the aforesaid decision, the wife is entitled to compensation of Rs. 40,000/-towards loss of spousal consortium, two children are entitled to Rs.30,000/-each towards loss of parental consortium and parents are entitled to a sum of Rs.30,000/-each towards loss of filial consortium. In addition to that the claimants are entitled to Rs.15,000/-towards loss of estate and Rs. 15,000/-towards funeral expenses.

42. In the result, the reassessed compensation is as under:

Sl.No.	Head of compensation	Amount / Rs .
1	Loss of dependency	1,45,33,155.00
2	Spousal consortium	40,000.00
3	Parental consortium	60,000.00
4	Filial consortium	60,000.00
5	Loss of estate	15,000.00
6	Funeral expenses	15,000.00
TOTAL		1,47,23,155.00
(Rupees One Crore Forty Seven Lakhs Twenty Three Thousand One Hundred and Fifty Five only)		

43. Thus, the total compensation compensation awarded is Rs. 1,47,23,155/-instead of Rs.1,39,83,595/-as awarded by the Tribunal. Hence, the enhanced compensation would be Rs.7,39,560/-.

44. The Tribunal has awarded interest at the rate of 9% p.a. During the course of arguments learned counsel for the insurance company strenuously contended that the interest awarded is far excessive and unreasonable. In the present appeal, we have enhanced the compensation to Rs.1,47,23,155/-.The Tribunal has not assigned any specific reasons for awarding interest at the rate of 9% p.a. on the compensation awarded. In the absence of any valid grounds for awarding higher rate of interest, we are of the opinion that the interest at the rate of 6% p.a. would meet the ends of justice.

45. The compensation shall be apportioned as detailed below:

Sl.No.	Particulars	Percentage
1	Petitioner - Wife	40 %

2	Petitioner No.2 - Son	20 %
3	Petitioner No.3 - Daughter	20 %
4	Mother	10 %
5	Father	10 %

a) 50% of the compensation apportioned along with interest to wife shall be deposited for initial period of 10 years in her name in any Post Office/Nationalized Bank/Scheduled Bank and they shall be entitled to draw periodical interest on the said deposit. The balance compensation shall be released to them after due identification.

b) 50% of the compensation apportioned along with interest to the parents shall be deposited for initial period of 03 years in their respective names in any Post Office/Nationalized Bank/Scheduled Bank and they shall be entitled to draw periodical interest on the said deposit. The balance compensation shall be released to them after due identification.

c) The entire compensation apportioned along with interest in favour of the minor children-petitioner Nos.2 and 3 along with interest shall be deposited in any Post Office/Nationalized Bank/Scheduled Bank of the choice of the minor guardian till they attain majority with liberty to the minor guardian to withdraw the periodical interest.

46. In the result, MFA No.7227/2017 filed by the insurance company is dismissed, and MFA No.7285/2017 filed by the claimants is allowed-in-part.

The respondent No.2-insurance company is directed to deposit the reassessed compensation along with interest at 6% p.a. from the date petition till the date of deposit after deducting the the compensation amount, if any, deposited earlier before this Court or before the Tribunal, within a period of four weeks from the date of receipt of certified copy of this judgment.

The amount in deposit before this Court, if any, shall be transmitted to the Tribunal.

The Registry is directed to transmit the records to the Tribunal forthwith.

Parties to bear their respective costs.