**Serial No. 01**
**Supplementary List**

# HIGH COURT OF MEGHALAYA
# AT SHILLONG

MACApp. No. 4 of 2024

Date of Decision: 22.07.2026

United India Insurance Company Ltd.,
Beat House, Laitumkhrah, Shillong,
Meghalaya -793003,
Represented by its Divisional Manager

**…Appellant**

Versus

1. Smti. Neris Kharmalki,
   w/o Shri. Binus Khongmawpat,
   R/o Ur-masi-u-Joh-, Smit – 793015
   East Khasi Hills, District,
   Meghalaya

2. Smti. Riola Nongrum,
   R/o. Madanriting, Block C,
   Shillong – 793021, East Khasi Hills District,
   Meghalaya
   (Owner of Bolero Pickup No. ML05 K 8865)

3. Shri. Phrangstone Nongspun,
   S/o. (L) Swoe Nongrum,
   R/o. Thynriot, East Khasi Hills,
   District - East Khasi Hills, Meghalaya
   (Driver of Bolero Pickup No. ML05 K 8865)

**…Respondents**

---

**Coram:**

**Hon’ble Mr. Justice W. Diengdoh, Judge**

---

**Appearance:**

For the Petitioner/Appellant(s) : Mr. S. Jindal, Adv.

| | | |
|---|---|---|
| For the Respondent(s) | : | Mr. S. Pandit, Adv. (For R 1)<br>Mr. D. Das, Adv. (For R 2)<br>Mr. S.P. Mahanta, Sr. Adv. with<br>Ms. S. Chettri, Adv.<br>Ms. D.D. Fancon, Adv. (For R 3) |

| | | |
|---|---|---|
| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

## JUDGMENT

1. The genesis of this case stems from an incident which occurred on 26.10.2014 at about 4.30 pm or so, when the respondent No. 1, Neris Kharmalki along with her daughter, Iadalin Kharmalki and her grandson were walking by the side of the road at Mawkathien, suddenly, one Bolero Pick-Up bearing registration No. ML-05-K-8865 driven by Phrangstone Nongspung came from behind and in a rash and negligent act, hit Iadalin Kharmalki from behind and ran over her, following which she was immediately rushed to Nazareth Hospital where she succumbed to her injuries on the same day.

2. It is also on record that the police came to know of the said motor vehicle accident and upon enquiry, it was found to be correct. Accordingly, UBC 1111 Shri Bishnu Chettri lodged an FIR at the Madanrting Police Station. Investigation revealed that the fault and cause of the said accident

was due to the rash and negligent driving of the said driver, Phrangstone Nongspung.

3. In due course, the claimant/respondent No. 1 filed a claim application before the Member Accident Claims Tribunal (MACT), Shillong with a prayer for grant of compensation on account of the death of her deceased daughter who had died as a result of the said motor vehicle accident. The owner and driver of the said vehicle No. ML-05-K-8865 as well as the insurer of the said vehicle, that is, the appellant/Insurance Company Ltd., herein, were arrayed as party respondent.

4. Joining issues with the claimant, the said owner as Opposite Party (OP) No. 1 has filed her written statement on her own behalf as well as on behalf of the OP No. 2/driver denying all the allegations made in the claim application, similarly, the appellant/Insurance Company as OP No. 3 has also filed his written statement inter-alia claiming that the claim petition is not maintainable as there is no cause of action against the said Insurance Company and also that it is not liable to compensate the claimant as the OP No. 2/driver does not possess any driving licence at the time.

5. The Tribunal has then framed the following issues:

i. Whether ladalin Kharmalki expired due to the Motor vehicle Accident which had occurred due to the rash and negligent driving of the vehicle bearing registration no. ML-05-K-8865 driven by OP No.2, own by OP No.1 and insured with OP No.3

ii. Whether the claimant is entitled to any compensation? If so, to what extend and from whom?

iii. Relief

6. Accordingly, the Tribunal has recorded the evidence of the witnesses of the parties, the claimant bringing four witnesses to the box, including herself as CW-1 and three other witnesses to make out her case. The Opposite Parties have not adduced any evidence on their respective behalf. As has been stated, the learned Tribunal after hearing the parties had passed the impugned judgment finding that a case has been made out for award of compensation to the claimant, the total compensation of which comes to ₹ 18,84,400/- along with simple interest @ 8% p.a. from the date of filing the claim petition. Liability for payment of the said compensation being fastened upon the OP Insurance/appellant herein, it was further directed that the same should be deposited before the Tribunal within 30 days from the date of receipt of the copy of the judgment.

7. Mr. S. Jindal, learned counsel for the appellant/Insurance Company has, at the outset, submitted that the appellant is not aggrieved by the quantum of compensation awarded, however, the main contention raised herein, is that the learned Tribunal in the impugned judgment and order has

come to the conclusion that the claimant being entitled to the said compensation, has also come to a finding that the appellant herein is liable to satisfy the said award and was accordingly directed to do so.

8. The fact that the appellant/Insurance Company is made liable to pay the said compensation is the core issue raised in this appeal, since the facts and law would prove that the Insurance Company is not at all liable for the same since it is evident that the driver of the vehicle in question does not possessed any driving licence at all and as such, the learned Tribunal having failed to appreciate this fact which was brought forth by CW-4 who was the Investigating Officer (I/O) of the criminal case, when in his deposition before the Tribunal he has stated that:

> "When the driver has surrendered before the Madanrting Traffic Branch he did not produce any driving license.
> I have asked him whether he has any driving license or not he has answered he did not possess any valid driving license…."

9. The learned counsel has laid stressed on the contention that there is a difference between holding an invalid driving licence and not holding any licence at all. The case of **Pappu and Ors. v. Vinod Kumar Lamba and Anr., (2018) 3 SCC 208,** para 12 and 13 was cited in this regard, wherein it was held that:

> "12. This Court in National Insurance Co. Ltd. [(2004) 3 SCC 297] has noticed the defences available to the insurance company under Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988. The insurance

company is entitled to take a defence that the offending vehicle was driven by an unauthorised person or the person driving the vehicle did not have a valid driving licence. The onus would shift on the insurance company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorised by him to drive the vehicle and was having a valid driving licence at the relevant time.

13. In the present case, Respondent 1 owner of the offending vehicle merely raised a vague plea in the written statement that the offending Vehicle No. DIL 5955 was being driven by a person having valid driving licence. He did not disclose the name of the driver and his other details. Besides, Respondent 1 did not enter the witness box or examine any witness in support of this plea. Respondent 2 insurance company in the written statement has plainly refuted that plea and also asserted that the offending vehicle was not driven by an authorised person and having valid driving licence. Respondent 1 owner of the offending vehicle did not produce any evidence except a driving licence of one Joginder Singh, without any specific stand taken in the pleadings or in the evidence that the same Joginder Singh was, in fact, authorised to drive the vehicle in question at the relevant time. Only then would onus shift, requiring Respondent 2 insurance company to rebut such evidence and to produce other evidence to substantiate its defence. Merely producing a valid insurance certificate in respect of the offending truck was not enough for Respondent 1 to make the insurance company liable to discharge his liability arising from rash and negligent driving by the driver of his vehicle. The insurance company can be fastened with the liability on the basis of a valid insurance policy only after the basic facts are pleaded and established by the owner of the offending vehicle that the vehicle was not only duly insured but also that it was driven by an authorised person having a valid driving licence. Without disclosing the name of the driver in the written statement or producing any evidence to substantiate the fact that the copy of the driving licence produced in support was of a person who, in fact, was authorised to drive the offending vehicle at the relevant time, the owner of the vehicle cannot be said to have extricated himself from his liability. The insurance company would become liable only after such foundational facts are pleaded and proved by the owner of the offending vehicle."

10. Another authority in this regard relied upon by the appellant is the case of **National Insurance Co. Ltd. v. Swaran Singh & Ors. (2004) 3 SSC 297**, para 84, where it was held that:

> "84. We have analysed the relevant provisions of the said Act in terms whereof a motor vehicle must be driven by a person having a driving license. The owner of a motor vehicle in terms of Section 5 of the Act has a responsibility to see that no vehicle is driven except by a person who does not satisfy the provisions of Section 3 or 4 of the Act. In a case, therefore, where the driver of the vehicle, admittedly, did not hold any license and the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in its defence and avoid liability…."

11. Yet another case cited by the learned counsel to canvass the stand of the appellant in this regard is the case of **United India Insurance Co. Ltd., v. Gian Chand and Ors., (1997) 7 SCC 558,** para 10 and 12, wherein the Apex court has held as follows:

> "10. We fail to appreciate how the aforesaid decision can be of any avail to learned counsel for the respondent-claimants on the peculiar facts of the present case. It has been clearly held by the Tribunal as well as by the High Court that Respondent 1 who was permitted to drive the vehicle by Respondent 9, the insured, was admittedly not having any driving licence. It was not the case of Respondent 9, the insured, that he did not know that Respondent 1 whom the vehicle was being handed over was not having a valid licence. In fact, once he did not step in the witness-box to prove his case, an adverse inference had necessarily to be drawn against him to the effect that the vehicle had been handed over by him for being driven by an unlicensed driver, Respondent 1. That finding reached by the Tribunal as well as by the High Court must result in exonerating the Insurance Company of its obligation as the statutory defence became available to it. The High Court, even though agreeing with the finding of fact reached by the Tribunal, has in our view, by misconstruing the ratio of the decision of this Court in Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan [(1987) 2 SCC 654] erroneously held

that the said defence was not available to the Insurance Company on the facts of the present case. Even that apart, a Bench of three learned Judges of this Court in Sohan Lal [(1996) 5 SCC 21] while upholding the ratio of the decision of this Court in Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan [(1987) 2 SCC 654] has also taken the same view.

12. Under the circumstances, when the insured had handed over the vehicle for being driven by an unlicensed driver, the Insurance Company would get exonerated from its liability to meet the claims of the third party who might have suffered on account of vehicular accident caused by such unlicensed driver. In view of the aforesaid two sets of decisions of this Court, which deal with different fact situations, it cannot be said that the decisions rendered by this Court in Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan [(1987) 2 SCC 654] and the decision of the Bench of three learned Judges in Sohan Lal [(1996) 5 SCC 21] in any way conflict with the decisions rendered by this Court in the cases of New India Assurance Co. Ltd. v. Mandar Madhav Tambe [(1996) 2 SCC 238] and Kashiram Yadav v. Oriental Fire & General Insurance Co. [(1989) 4 SCC 128]."

12. The above cited authorities being applicable to the case of the appellant herein, once the evidence of CW-4 has established that the driver did not possess any licence at all, the natural consequent would be for the Insurance Company to be absolved of any liability to pay compensation, submits the learned counsel.

13. The second limb of argument advanced by the learned counsel is that in any view of the matter on the facts and circumstances of the case, once it has established that the driver did not possess any licence at all, the consequent should have been that, even though the insurance company was not to be released from its liability, the learned Tribunal should have ordered payment of the compensation by the appellant/Insurance Company herein,

with the right to *Pay & Recover* from the owner of the pending vehicle, the relevant judgment in this regard being the case of **New India Assurance Co., Shimla v. Kamla & Ors., (2001) 4 SCC 342,** para 21, 22 and 25 which is reproduced herein below as:

> "21. A reading of the proviso to sub-section (4) as well as the language employed in sub-section (5) would indicate that they are intended to safeguard the interest of an insurer who otherwise has no liability to pay any amount to the insured but for the provisions contained in Chapter XI of the Act. This means, the insurer has to pay to the third parties only on account of the fact that a policy of insurance has been issued in respect of the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy.
>
> 22. To repeat, the effect of the above provisions is this: when a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to the third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured.
>
> 25. The position can be summed up thus:
>
> The insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence. Learned counsel for the insured contended that it is enough if he establishes that he made all due enquiries and believed bona fide that the driver employed by him had a valid driving licence, in which case there was no breach of the policy condition. As we have not decided on that contention it is open to the insured to raise it before the Claims Tribunal. In the present case, if the Insurance Company succeeds

> in establishing that there was breach of the policy condition, the Claims Tribunal shall direct the insured to pay that amount to the insurer. In default the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimant third parties) from the insured person."

14. Finally, the learned counsel has submitted that while passing the impugned judgment the learned Tribunal has lost sight of the fact, that the appellant/Insurance Company has already paid the claimant an amount of ₹ 50,000/- *"no fault liability",* however, this amount has not been deducted from the principal compensation awarded, which would make the total award to be reduced to ₹ 18,34,000/-.

15. In view of the above, the learned counsel has submitted that this Court be pleased to set aside the impugned judgment or alternatively, to modify the same.

16. In reply, Mr. S. Pandit, learned counsel for the respondent No. 1/Claimant has confined his argument only on the issues raised by the learned counsel for the appellant, that is, that the driver of the offending vehicle did not possess any driving licence and secondly, that the contention that this Court direct the appellant to pay the compensation award and then recover the same from the owner.

17. As regard the contention that the Opposite Party/respondent No. 2 herein who is the driver did not possess any driving licence at all, the learned counsel has submitted that the attempt of the learned counsel for the

appellant to differentiate a case between “No licence” and “Invalid licence/fake licence” is misplaced in view of the fact that the Insurer is duty bound to discharge its burden as per law by adducing evidence or effective cross-examination to establish the breach of policy condition, which the appellant has failed to do so in this case. The case of Swaran Singh(supra) was referred to, when at para 110 (iii) the Supreme Court has observed as follows:

> “110. The summary of our findings to the various issues as raised in these petitions is as follows:
>
> > (iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has 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 the 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 a duly licensed driver or one who was not disqualified to drive at the relevant time.”

18. Having heard the submission of the learned counsel for the parties, it appears that the main issue which is required to be looked into, is whether there is evidence that the driver in question was holding a valid driving licence, or whether he does not possess any driving licence at all, for it is around this issue that the fate of the appellant hangs as regard its liability to pay the award. The only piece of evidence relied upon by the

appellant/Insurance Company is the statement of the Investigating Officer who was conducting the criminal aspect of the case arising out of the said motor vehicle accident when he said that *"…When the driver has surrendered before the Madanrting Traffic Branch he did not produce any driving license.*

*I have asked him whether he has any driving license or not he has answered he did not possess any valid driving license…".*

19. The appellant has relied on this statement to say that it has been proven that the said driver does not have any licence at all. The fact is that the driver never said he does not have any licence, but that he does not have any valid driving licence. The words valid driving licence carries a meaning which can be assumed that the said driver does possess a driving licence, albeit it may be an invalid or a fake one, but certainly, it does not mean that there was no driving licence at all. This leaves room for this Court to infer in a fashion that, following the general principle in this regard, the benefit of doubt should go to the advantage of the claimant. The observations of the Supreme Court in the case of Swaran Singh(supra) at para 110(iii), relied upon by the respondent/claimant will then become applicable.

20. As to the contention of the appellant that the onus of proving the fact that the said driver was not having a valid driving licence or that the licence was a fake one, would shift on the Insurance Company only after the Owner

of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorised by him to drive the vehicle and was having a valid driving licence at the relevant time, para 12 of Pappu (supra), this proposition would indeed apply to the case herein, inasmuch as the owner has indeed failed to produce such evidence as regard the driving licence of the said driver.

21. However, as has been observed above, there is no complete or fool proof evidence that the said driver was not having a driving licence at all, even though the same may be invalid or fake. In such a situation, what was held in the case of **Rukmani & Ors v. New India Assurance Co. & Ors, (1998) 9 SCC 160**, para 3 would apply. The same reads as under:

> "3. We have seen the only evidence which the Insurance Company produced in support of the plea. This is the evidence of Inspector of Police who investigated the accident. In his evidence, PW 1 who was the Inspector of Police, stated in his examination-in-chief, "My enquiry revealed that the 1st respondent did not produce the licence to drive the abovesaid scooter. The 1st respondent even after my demand did not submit the licence since he was not having it." In his cross-examination he has said that it is the Inspector of Motor Vehicles who is required to check whether the licence is there but he had not informed the Inspector of Motor Vehicles that the 1st respondent was not having a licence since he thought it was not necessary. In our view, this evidence is not sufficient to discharge the burden which was cast on the Insurance Company. It did not summon the driver of the vehicle. No record from the Road Transport Authority has also been produced. In these circumstances, the Insurance Company has not discharged the burden cast upon it under Section 96(2)(b)(ii) of the Motor Vehicles Act, 1939. The impugned order of the High Court is, therefore, set aside and the order of the Tribunal is restored. The appeal is allowed accordingly. No order as to costs."

22. Under such circumstances, on the further ground that the appellant/Insurer has not denied the validity of the insurance policy, one of the condition precedents is that it has to satisfy third party claims, therefore, the principle of pay and recover would and can be made applicable to the Insurer in this case. The case relied upon by the appellant reflected at para 13 hereinabove would also be applied in this regard.

23. In an overall consideration of the matter, this Court is convinced that this appeal can be partially allowed to the extent indicated above, that the quantum of award cannot be disturbed, except to the fact that the sum of ₹ 50,000/- already paid as No-Fault Liability has to be deducted from the total sum awarded and that the appellant/Insurance Company has to first satisfy the same and then can take recourse to recover the same from the Owner of the said offending vehicle.

24. The sum awarded, which will now be calculated at ₹ 18,34,000/-, together with interest is to be paid to the respondent No. 1/claimant within 30 days from the date of passing of this order.

25. Appeal disposed of accordingly.

**Judge**

Meghalaya
22.07.2026
*"Tiprilynti–PS"*