Supreme Court of India
United India Insurance Company ... vs Lehru And Ors on 28 February, 2003
Bench: S.N. Variava, B.N. Agrawal

CASE NO.:
Appeal (civil) 1959 of 2003

PETITIONER:
UNITED INDIA INSURANCE COMPANY LTD.

RESPONDENT:
LEHRU AND ORS.

DATE OF JUDGMENT: 28/02/2003

BENCH:
S.N. VARIAVA & B.N. AGRAWAL

JUDGMENT:

JUDGMENT 2003(2) SCR 495 The following Order of the Court was delivered : Leave granted Heard parties. This appeal is against a judgment of the High Court dated 5.12.2000.

By this appeal, the Insurance Company seeks to avoid its liability on the ground that the licence of the driver of the car was a fake license. As is indicated hereafter the question whether an Insurance Company can avoid liability to a third party who is involved in the accident is no longer res Integra. It is fully covered by decisions of this Court. We find that in spite of the point being fully covered, in a large number of matters the Insurance Companies are still seeking to get out of liability to third parties on the ground that the licence was fake. We have noticed that many matters are still being brought to this Court on this point. It is therefore necessary to again reiterate the legal position. In this case the Appellants have not even been able to prove that the licence was fake. Yet they have deprived the claimants of use of the money for all these years by filing unnecessary appeals.

In this case, the driver, at time of accident was one Janu s/o Kallu. During trial he filed, before the Motor Accident Claims Tribunal his original licence. The licence bore number 9195/MTR/96P dated 15th May, 1989. The Appellant - Insurance Company sought to prove that a licence bearing No. 5195/MTR/96P had been issued in the name of one Kalpana Gupta and not in the name of the Driver. The Insurance Company get produced records of the concerned RTO for the year 1996. They made no efforts to get produced concerned records of 1989. To be noted that the year 1989 comes before 1996. Therefore even presuming there was some confusion whether the number of the licence was 5195 or 9195, still the records of 1989 were required to be produced. It is clear that the licence issued on 15th May, 1989 had nothing to do with the licence, if any, issued to Kalpana Gupta in 1996. If anything the licence issued in 1996 could have been a renewal of a fake licence. The Motor Accident Claims Tribunal did not accept that the licence was fake. It held that, even if the licence was fake, the law was that Insurance Company was liable to pay the compensation as they had failed to prove that the insured had deliberately committed any breach of any condition.

The Appellants then filed an Appeal before the High Court The High Court dismissed the Appeal without going into the question whether the licence was fake or not. The High Court held that even if the licence was fake, the settled law was that the Insurance Company had to first pay to the claimants and they could then recover from the owner, if in law they were entitled to do so. One would have thought that now that two Courts had pointed out the settled law the Insurance Company would honour its commitment. Alas better sense has still not prevailed.

As stated earlier, in this case the Appellants have not proved that the licence was fake. For that reason itself they should have paid up the amount awarded to the claimant. But the Appellant - Insurance Company wants this Court to reconsider its earlier decisions and hold that the Insurance Company is absolved of its liability to pay to the claimant if it proves that the licence was fake.

We have heard the parties Mr. Vishnu Mehra, learned counsel for the Appellants has attempted, with great fervor, to convince us that the settled law is not correct. We remain unconvinced.

In the case of British India General Insurance Co. Ltd. v. Captain Itbar Singh and Ors., reported in [1960] SCR 168, the question was whether an Insurance Company can take up defences other than those enumerated in Section 96(2) of the Motor Vehicle Act, 1939. The provisions of Section 96 including Section 96(6) were considered. It was held that the Insurance Company got a right to defend or file an appeal only by virtue of statute and therefore the right could only be exercised subject to the restriction laid down by the statute. It was held that an Insurance Company could only defend on grounds enumerated in Section 96(2) of the Motor Vehicles Act, 1939 and on to other ground. In answer to a submission that not permitting Insurance Companies to take up all available defences would be unfair, it was held as follows:

"We are furthermore not convinced that the statute 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-s(3) and under subs-s (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. The loss had to fall on some one and the statute has thought fit that it shall be borne by the insurer. That also seems o us to be equitable for the loss falls on the insurer in the course of his carrying on his business, a business out of which he makes profit, and he could so arrange his business that in the net result he would never suffer a loss. On the other hand, if the loss fell' on the injured person, it would be due to no fault of his, it would have been a loss suffered by him arising out of an incident in the happening of which he had no hand al all." (emphasis supplied) Thus as far back as in 1960 a three Judge Bench of this Court has held, on an interpretation of Section 96, including sub- section (6) thereof, that if the Insurance Company was made to pay something which, under the policy, they were not bound to pay, they can recover from the assured.

It has also been held that it was equitable that if a loss has to fall on some one, then it should fall on the insurer, as the insurer, as the insurer is carrying on this business. It must also be mentioned that Section 149 of the Motor Vehicles Act, 1988 is identical, in all material particulars, to Section 96 of the 1939 Act.

In the case of Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan and Ors., reported in [1987] 2 SCC 654, the object and purpose of getting motor vehicles insured was considered. The question was whether the insurance company could avoid liability because the accident was caused by the cleaner of the truck who had no licence. The insurance company relied upon Section 96(2)(b)(ii) which reads as under:

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

(a) .....

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

(a) to (d)

(ii) a condition excluding driving by a named person of 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"

To be noted that Section 96(2)(b)(ii) is identical to Section 149(2)(a)(ii) on which reliance is placed in this case. The argument that the insurance company could avoid liability was negatived for the following reasons:

"12. The defence built on the exclusion clause cannot succeed for three reasons, viz.:

1. On a true interpretation of the relevant clause which interpretation is at peace with the conscience of Section 96, the condition excluding driving by a person not duly licensed is not absolute and the promisor is absolved once it is shown that he has done everything in his power to keep, honour and fulfil the promise and he himself is not guilty of a deliberate breach.

2. Even if it is treated as an absolute promise, there is substantial compliance therewith upon an express or implied mandate being given to the licensed driver not to allow the vehicle to be left unattended so that it happens to be driven by an unlicensed driver.

3. The exclusion clause has to be 'read down' in order that it is not at war with the 'main purpose' of the provisions enacted for the protection of victims of accidents so that the promisor is exculpated when he does everything in his power to keep the promise.

13. In order to 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 a compensation to the dependants 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 victims, or the dependants 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. 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 risk (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 dependants of the victims of fatal accidents are really compensated in terms of the 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 thus defeats the purpose of the legislation. The provision has therefore to be interpreted in the twilight of the aforesaid perspective.

14. Section 96(2)(b)(ii) extends immunity to the insurance company if a breach is committed of the condition excluding driving by a 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 licence 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". 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 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 wilful 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 placed the vehicle in charge of a person who does not hold a driving licence, that it can be said that he is 'guilty' of the breach of the promise that the vehicle will be driven by the 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 a licensed driver, with the express or implied mandate to drive himself it cannot be said that the insured is guilty of any breach. And it is only in case of a breach or a violation of the promise on the part of the insured that the insurer can hide under the umbrella of the exclusion clause..,, xxx xxx xxx xxx xxx xxx To construe the provision differently would be to rewrite the provision by engrafting a rider to the effect that in the event of the motor vehicle happening to be driven by an unlicenced person, regardless of the circumstances in which such a contingency occurs, the insured will not be liable under the contract of insurance. It needs to be emphasised that it is not the contract of insurance which is being interpreted. It is the statutory provision defining the conditions of exemption which is being interpreted. These must therefore be interpreted in the spirit in which the same have been enacted accompanied by an anxiety to ensure that the protection is not nullified by the backward looking interpretation which serves to defeat the provision rather than to fulfil its life-aim. To do otherwise would amount to nullifying the benevolent provision by reading it with a non-benevolent eye and with a mind not tuned to the purpose and philosophy of the legislation without being informed of the true goals sought to be achieved. What the legislature has given, the Court cannot deprive of by way of an exercise in interpretation when the view which renders the provision potent is equally plausible as the one which renders the provision impotent. In fact it appears that the former view is more plausible apart from the fact that it is more desirable. When the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependants on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by him by way of business activity, there is hardly any choice. The Court cannot but opt for the former view. Even if one were to make a strictly doctrinaire approach, the very same conclusion would emerge in obeisance to the doctrine of 'reading down' the exclusion clause in the light of the ' main purpose' of the provision so that the 'exclusion clause' does not cross swords with the 'main purpose' highlighted

earlier. The effort must be to harmonize the two instead of allowing the exclusion clause to snipe successfully at the main purpose."

Thus Section 96 has been interpreted keeping in mind the object and purpose of Legislature in providing for compulsory insurance. It has been held that Insurance Company gets absolved of its liability only if it establishes that the breach is by the insured. It is held that if the insured is not at fault and has not done anything he should not have done or is not amiss then he cannot be held to have committed a breach.

It was held that as the owner had not authorised the cleaner to operate the truck the Insurance Company remained liable.

The question was again considered by a three Judge Bench of this Court in the case of Sohan Lal Passi v. P. Sesh Reddy and Ors., reported in [1996] 5 SCC 21. In this case the bus was being driven by the cleaner, an employee of the owner, at the time of accident. The cleaner did not have a valid licence. The Insurance Company sought to avoid liability on the ground that there was breach of Section 96(2)(b)(ii) of the Motor Vehicles Act 1939 inasmuch as the vehicle was being driven by a person who was not duly licensed. The Insurance Company questioned the correctness of the view taken in Skandia's case. Hence this case was placed before a three Judge Bench. The Bench held as follows:-

".....on behalf of the insurance company a stand was taken that when Section 96(2)(b)(ii) has provided that the insurer shall be entitled to defend the action on the ground that there has been breach of a specified condition to the policy i.e. the vehicle should not be driven by a person who is not duly licensed, then the insurance company cannot be held to be liable to indemnify the owner of the vehicle. In other words, once there has been a contravention of the condition prescribed in sub-section (2)(b)(ii) of Section 96, the person insured shall not be entitled to the benefit of sub-section (1) of Section 96. According to us, Section 96(2)(b)(ii) should not be interpreted in a technical manner. Sub-section (2) of Section 96 only enables the insurance company to defend itself in respect of the liability to pay compensation on any of the grounds mentioned in sub section (2) including that there has been a contravention of the condition excluding the vehicle being driven by any person who is not duly licensed. This bar on the face of it operates on the person ensured. If the person who has got the vehicle insured has allowed the vehicle to be driven by a person who is not duly licensed then only that clause shall be attracted. In a case where the person who has got insured the vehicle with the insurance company, has appointed a duly licensed driver and if the accident takes place when the vehicle is being driven by a person not duly licensed on the basis of the authority of the driver duly authorised to drive the vehicle whether the insurance company in that even shall be absolved from its liability? The expression 'breach' occurring in Section 96(2)(b) means infringement or violation of a promise or obligation. As such the insurance company will have to establish that insured was guilty of an infringement or violation of a promise. The insurer has also to satisfy the Tribunal or the Court that such violation or infringement on the part of the insured was wilful. If the insured has taken all precautions by appointing a duly licensed driver to drive the vehicle in question and it has not been established that it was the insured who allowed the vehicle to be driven by a person not duly licensed, then the insurance company cannot repudiate its

statutory liability under sub- section (1) of Section 96. In the present case far from establishing that it was the appellant who had allowed Rajinder Pal Singh to drive the vehicle when the accident took place, there is not even any allegation that it was the appellant who was guilty of violating the condition that the vehicle shall not be driven by a person not duly licensed. From the facts of the case, it appears that the appellant had done everything within his power inasmuch as he has engaged a licensed driver Gurbachan Singh and had placed the vehicle in his charge. While interpreting the contract of insurance, the tribunals and courts have to be conscious of the fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds. Unless it is established on the materials on record that it was the insured who had wilfully violated the condition of the policy by allowing a person not duly licensed to drive the vehicle when the accident took place, the insurer shall be deemed to be a judgment debtor in respect of the liability in view of sub-section (1) of Section 96 of the Act. It need not be pointed out that the whole concept of getting the vehicle insured by an insurance company is to provide an easy mode of getting compensation by the claimants, otherwise in normal course they had to pursue their claim against the owner from one forum to the other and ultimately to execute the order of the Accident Claims Tribunal for realisation of such amount by sale of properties of the owner of the vehicle. The procedure and result of the execution of the decree is well known.

13. This Court in the case of Kashiram Yadav v. Oriental Fire and General Insurance Co., [1989] 4 SCC 128 reiterated the views expressed in Sikandia Insurance Co. Ltd. v. Kokilaben Chandravandan, [1987] 2 SCC 654. While referring to that case it was said: SCC pp. 130-131, paras 5-6.

".....There the facts found were quite different. The vehicle concerned on that case was undisputedly entrusted to the driver who had a valid licence. In transit the driver stopped the vehicle and went to fetch some snacks from the opposite shop leaving the engine on. The ignition key was at the ignition lock and not in the cabin of the truck. The driver had asked the cleaner to take care of the truck. In fact the driver had left the truck in care of the clearner. The cleaner meddled with the vehicle and caused the accident. The question arose whether the insured (owner) had committed a breach of the condition incorporated in the certificate of insurance since the cleaner operated the vehicle on the fatal occasion without driving licence. This Court expressed the view that it is only when the insured himself entrusted the vehicle to a person who does not hold a driving licence, he could be said to have committed breach of the condition of the policy. It must be established by the Insurance Company that the breach is on the part of the insured. Unless the insured is at fault and is guilty of a breach of the condition, the insurer cannot escape from the obligation to indemnify the insured. It was also observed that when the insured has done everything within his power inasmuch as he has engaged the licensed driver and has placed the vehicle in his charge with the express or implied mandate to drive.himself, it cannot be said that the insured is guilty of any breach.

We affirm and reiterate the statement of law laid down in the above case. We may also state that without the knowledge of the insured, if by drivers acts of omission others meddle with the vehicle and cause an accident, the insurer would be liable to indemnify the insured. The insurer in such a case cannot take the defence of a breach of the condition in the certificate of insurance."

We are in respectful agreement with the view expressed in the case of Skandia Insurance Co. Ltd. v. Kokilaben Chandravandan."

In spite of above enunciation of law the Insurance Companies still continue to disclaim liability on the ground that the licence was fake. In the case of New India Assurance Co. Shimla v. Kamla and Ors., reported in [2001] 4 SCC 342 the question was whether by virtue of Section 149(2)(a)(ii) an Insurance Company could avoid liability if it is proved that the driving licence was fake. This Court considered, in detail, Section 149 of the Motor Vehicles Act, 1988 and held that the insurer has to pay to third parties on account of the fact that a policy of insurance has been issued in respect of the vehicle. It is held that the insurer may be entitled to recover such sum from the insured if the insurer was not otherwise liable to pay such sum to the insured by virtue of the contract of insurance. The question as to whether or not the insured would be protected if he had made all enquiries was left open. However, this point has been squarely dealt with in Skandia's and Sohan Lal Passi 's cases (supra).

It is submitted that Kamla's case is not correctly decided. It is submitted that sub-section (7) of Section 149 of the Motor Vehicles Act, 1988 has not been noticed by this Court in Kamla's case. We see no substance in this submission. A plain reading of Section 149 would show that an insurance company would continue to be liable to third persons. Section 149 read' as follows.

"149. Duty of insurers to satisfy judgmertts and awards against persons insured in respect of third party risk-(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 163 A 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 (emphasis supplied).

(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 of 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 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 provision 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(l), 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 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 issuance 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 ensurer 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 law reciprocating country, as the case may be."

Thus under sub-section (1) the Insurance Company must pay to the person entitled to the benefit of the decree, notwithstanding that it has become "entitled to avoid or cancel or may have avoided or cancelled the policy". The words "subject to the provisions of this Section" mean that the Insurance Company can get out of liability only on grounds set out in Section 149 Sub-section (7), which has been relied on, does not state anything more or give any higher right to the Insurance Company. On the contrary the wording of sub-section (7) viz. "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" indicate that the Legislature wanted to clearly indicate that Insurance Companies must pay unless they are absolved of liability on a ground specified in sub-section (2). This is further clear from sub-section (4) which mandates that conditions, in the insurance policy, which purport to restrict insurance would be of no effect if they are not of the nature specified in sub-section (2). The proviso to sub-section (4) is very illustrative. It shows that the Insurance Company has to pay to third parties but it may recover from the person who was primarily liable to pay. The liability of the Insurance Company to pay is further emphasised by sub-section (5). This also shows that the Insurance Company must first pay, then it can recover. If Section 149 is read as a whole it is clear that sub-section (7) is not giving any additional right to the Insurance Company. On the contrary it is emphasising that the Insurance Company cannot avoid liability except on the limited grounds set out in sub-section (2). Now let us consider Section 149(2). Reliance has been placed on Section 149(2)(a)(ii). As seen in order to avoid liability under this provision it must be shown that there is a "breach". As held in Skandia's and Sohan Lal Passi's cases (supra) the breach must be on part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief is caught and it is ascertained that he had not license. Can the Insurance Company disown liability? The answer has to be an emphatic "No". To hold otherwise would be to

negate the very purpose of compulsory insurance. The injured or relatives of person killed in the accident may find that the decree obtained by them is only a paper decree as the owner is a man of straw. The owner himself would be an innocent sufferer. It is for this reason that the Legislature, in its wisdom has made insurance, at least third party insurance, compulsory. The aim and purpose being that an Insurance Company would be available to pay. The business of the Company is to insurance. In all businesses there is an element of risk. AH persons carrying on business must take risks associated with that business. Thus it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time innocent parties must not be made to suffer or loss. These provisions meet these requirements. We are thus in agreement with what is laid down in aforementioned cases viz. that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The Insurance Company must establish that the breach was on the part of the insured.

Section 3 of the Motor Vehicles Act, 1988 prohibits driving of a motor vehicle in any public unless the driver has an effective driving licence. Further Section 180 of the Motor Vehicles Act makes an owner or person in charge of a motor vehicle punishable with imprisonment or fine if he causes or permits a person without a licence to drive the vehicle. It is clear that the punishment under Section 180 can only be imposed if the owner or person in charge of vehicle "causes or permits" driving by a person not duly licensed. Thus there can be no punishment if a person without a licence drives without permission of the owner. Section 149(2)(ii) merely recognises this condition. It therefore only absolves the Insurance Company where there is a breach by the insured.

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 Skandia 's Sohan Lal Passi 's and Kamla 's case. We are in full agreement with the views expressed therein and see no reason to take a different view.

In this view of the matter we see no substance in this appeal. The appeal stands dismissed with cost of Rs. 20,000. This amount of costs to be shared equally between the claimants on one hand and the insured on the other. Clarified that the costs awarded therein is in addition to the costs directed to be paid by the Motor Accidents Claim Tribunal.

The amount deposited is allowed to be withdrawn by the claimants i.e. respondent Nos. 1 to 11 herein.