



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR**

**FIRST APPEAL NO. 854 OF 2009
WITH CIVIL APPLICATION NO. CAF 48 of 2009**

1. Ku. Nilima D/o Murlidhar Dakhane,
Age : 26 Years, Occ. Student,
now Mrs. Nilima W/o Sunil Thalal,
R/o. Plot No. 105, Sawarbandhe Layout,
Nagpur .. Appellant

VERSUS

1. Bajaj Allianz General Insurance Co. Ltd.,
having one of its branch at Kinetic Finance
Ltd., Silver Palace, Dhantoli, Nagpur
2. Pandurang S/o Madku Charge,
Age : 67 Years, Occ. Agriculturist,
R/o. Village Khat, Tah. Mouda,
District Nagpur .. Respondents

...
*Mr. Pratik Jain, Advocate holding for Mr. M. R. Joharpurkar,
Advocate for the Appellant;*
Mr. D. N. Kukdey, Advocate for Respondent No.1

...

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 23 JANUARY, 2025

PRONOUNCED ON : 03 FEBRUARY, 2025

JUDGMENT :-

1. The appellant i.e. original respondent No.1 in Claim
Petition No. 800 of 2003 has challenged the judgment and
award dated 25.02.2008 in the aforesaid claim petition passed
by the learned Motor Accident Claims Tribunal, Nagpur (herein

after referred to as the 'learned Tribunal'). Under the impugned judgment, the learned Tribunal has granted compensation of Rs. 31,070/- to the petitioner, who is present respondent No.2, along with interest @ 7.5% p.a. from the date of petition till its realization. The learned Tribunal has held the present appellant and respondent No.2 Insurance Company jointly and severally liable for paying the aforesaid compensation with direction to the respondent No.1/Insurance Company to satisfy the award first and then to recover the amount of compensation from the present appellant/owner by filing Execution Proceedings. Thus, the present appellant has challenged the said "pay and recover" direction issued by the learned Tribunal, by contending that, she was having valid learner's licence at the time of accident and therefore, the learned Tribunal should have held respondent No.2 Insurance Company solely liable for paying compensation.

2. Admittedly, on the day of accident i.e. on 10.04.2003 at about 2.00 p.m on Hudkeshwar Road, Nagpur, present Respondent No.2 i.e. injured in the accident, was walking towards house of his brother-in-law and at that time, the present appellant, who was riding Kinetic Nova No. MH-31-BD-4106, gave dash to him from back side. Respondent No.2/ injured sustained fracture to his left leg and incurred heavy

medical expenses which led him to file the present claim petition. The learned Tribunal, after conducting inquiry/trial, found that the appellant was not having valid driving licence and therefore, directed respondent No.1 Insurance Company to satisfy the award and then to recover from the appellant/owner. Hence, this appeal.

3. It is significant to note that the appellant has also filed Civil Application No. 48 of 2009 i.e. application under Order 41 Rule 27 of Code of Civil Procedure for leading additional evidence in the form of documents, whereby it is contended that she was having valid learner's licence on the day of accident which was issued to her by the competent authority on 17.12.2002 till 15.06.2003. The appellant has produced copy of said learner's driving licence along with the copies of correspondence made by her with Insurance Company as well as concerned Regional Transport Officer, Nagpur.

4. The learned counsel for the appellant/owner vehemently submitted that there was no opportunity for the appellant to led the evidence for showing that she was having valid learner's licence on the day of accident. According to him, the learned Tribunal has cast liability on the appellant mainly because she was not having valid driving licence. However, he further submitted that even the learner's licence is held to be

valid licence under the various judgments of different High Courts as well as Hon'ble Apex Court. He pointed out that proviso of Rule 3 of Central Motor Vehicles Rules, 1989 is not applicable in case of motorcycle as per the observations of Karnataka High Court and therefore, modification in the impugned judgment for total exemption of the appellant from paying the compensation, is required. According to him, the appellant had already obtained learning licence from the competent authority on 17.12.2002 and same was valid till 15.06.2003. As such, on the day of accident, i.e. on 10.04.2003 she was definitely having valid license as observed by the Hon'ble Apex court in the case of **National Insurance Co. Ltd Vs. Swaran Singh 2004 ACJ 1 (SC)**. The learned counsel for the appellant also relied upon the following judgments

- (I) **National Insurance Co. Ltd Versus Swaran Singh and Others [(2004) 3 Supreme Court Cases 297];**
- (II) In the High Court of Karnataka in the case of **The Senior Divisional Manager the National Insurance Co. Ltd. Versus Shri. Jyotiba Appaji Shigate and others [(2019) SCC OnLine Kar 3742].**

5. On the contrary, the learned counsel for respondent No.1- Insurance Company strongly opposed the submissions made on behalf of the appellant/owner. According to him,

even though it is accepted that appellant/owner was possessing learner's license which was valid on the date of accident, but still she had driven the vehicle at the relevant time in contravention of Rule 3 under Chapter II of Central Motor Vehicle Rules, 1989, wherein it is clearly provided that the person having learner's license must be accompanied with a person holding an effective driving licence in such a position to control or stop the vehicle; in case of emergency. He pointed out that even the Hon'ble Apex Court, in the case of Swaran Singh (supra), has not absolved the driver having learner's licence issued by the competent authority from driving the motorcycle alone without having any person holding effective driving licence to be seated besides him. He pointed out that, even the proviso of Rule 3 of the aforesaid Rules does not exempt such person having learner's license to drive the motorcycle alone. For that purpose the learned counsel for respondent No.1/ Insurance Company has also relied on various judgments as follows :-

- (I) ***National Insurance Co. Ltd Vs. Kripal Kaur and Others [2024 ACJ 90] High Court of Punjab and Haryana at Chandigarh;***
- (II) ***Oriental Insurance Co. Ltd Vs. Felix Correa And Others [(2003) 10 Supreme Court Cases 289]***
- (III) ***K. P. Abdul Gafoor Vs. New India Assurance Company Ltd., in M.A.C.A.No.2700 of 2012, Kerla***

High Court, dated 23.03.2016;

(IV) ***The Manager, Oriental Insurance Company Ltd., Railway Station Road, Palakadu Vs. Arumugam and others, C.M.A. (M.D.) No.23 of 2012, Madras High Court, dated 28.03.2018.***

6. Heard rival submissions and also perused the documents on record along with record and proceedings of original claim petition and the judgments relied upon by the rival parties.

7. The computation of compensation amount as well as the occurrence of the accident is not at all disputed by either of the parties. There is no dispute that appellant was the owner of offending scooter i.e. Kinetic Nova having registration No. MH-31-BD-4106. Moreover, she did not dispute that she was driving the vehicle at the time of accident. Further, it is also not disputed that the said offending scooter was insured with respondent no.1/ Insurance Company covering the date of accident. The main dispute between the rival parties in respect of liability of paying compensation. Admittedly, the learned Tribunal has fastened liability on the appellant as well as respondent No.1/Insurance Company jointly and severally, but the appellant is disputing such liability on the basis of having valid driving license in the form of learner's license

issued by the competent authority at the relevant time. It is significant to note that the appellant had not laid any evidence before the learned Tribunal to bring on record her valid learner's licence. However, after filing this appeal, she has filed application for leading additional evidence under Order 47 Rule 27 of the Code of Civil Procedure whereby she has produced on record copy of her learner's licence. Though the learned counsel for the Insurance Company strongly opposed for adducing such additional evidence in the form of xerox copies, but submitted that even if it is presumed that she was having such learner's licence valid from 17.12.2002 to 15.06.2003 still she was liable for paying compensation alone as she drove the vehicle at the time of accident in contravention of Rule 3 of the Central Motor Vehicles Rules, 1989 (for short 'the Rules'). Thus, in view of rival submissions on this aspect, the liability to pay compensation needs to be decided in the light of observations made by various High Courts and the Hon'ble Apex Court in the judgments relied on by the rival parties.

8. Admittedly, the appellant/owner failed to led any evidence before the learned Tribunal to establish that she was holding learner's licence. The learned Tribunal has also observed that she was not having any licence on the date of

accident since her permanent licence was issued much after the date of accident i.e. on 05.06.2003. The learned counsel for the appellant therefore, intends to bring on record the fact of having learner's licence by the appellant by filing application under Order 47 Rule 27 of the CPC i.e. CAF No. 48 of 2009 along with this appeal. On going through the documents annexed to the said application, it is evident that the appellant has produced on record only copies of the documents including copy of her learner's licence which was definitely valid from 17.12.2002 to 15.06.2003 covering the date of accident.

9. The learned counsel Mr. D. N. Kukdey for respondent No.1/ Insurance Company submits that even if she was having such learner's licence valid on the date of accident, but still there was breach of conditions of Insurance policy as she drove the vehicle in contravention of Rule 3 of Central Motor Vehicles Rules 1989. It is significant to note that the policy at Exhibit 60 produced on record before the learned Tribunal is having certain conditions in respect of limits of liability, limitation as to use etc. In those conditions specifically under the clause "driver," it has been stipulated as follows :-

"Any person including the insured : Provided that a person driving holds an effective driving

licence at the time of the accident and is not disqualified from holding or obtaining such a licence. Provided also that the person holding an effective Learner's licence may also drive the vehicle and that such a person satisfies the requirement of Rule 3 of the Central Motor Vehicles Rules, 1989."

10. The learned counsel for the appellant, thus, submitted that under the policy conditions, the appellant was definitely entitled for driving the offending vehicle as she possessed the learner's licence as directed. On this ground the learned counsel for the appellant is claiming her exoneration from the liability of paying the compensation.

11. Besides, the learned counsel for the appellant also relied upon the observations of Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. (supra)***, wherein meaning of duly licenced person is discussed. The Hon'ble Apex Court has discussed the persons having effective licence by considering following contingencies :-

- (A) Licence not held.
- (B) Fake licence held.
- (C) Licence held, but validity whereof has expired.
- (D) Licence not held for type of vehicle being driven, and
- (E) Learner's licence held.

12. In the instant matter, we are not concerned with the contingencies from A to D as considered by the Hon'ble Apex Court to ascertain whether the driver was duly licenced. However, the discussion in respect of person having learner's licence is of very much importance from the point of view of learned counsel for the appellant. The Hon'ble Apex Court in respect of learner's licence has made following observations :-

“93. The Motor Vehicles Act, 1988 provides for grant of learner’s licence. [See Section 4(3), Section 7(2), Section 10(3) and Section 14.] A learner’s licence is, thus, also a licence within the meaning of the provisions of the said Act. It cannot, therefore, be said that when a vehicle is being driven by a learner subject to the conditions mentioned in the licence, he would not be a person who is not “duly licensed” resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said that a person holding a learner’s licence is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner’s licence, the same would run counter to the provisions of Section 149(2) of the said Act.

94. The provisions contained in the said Act provide also for grant of driving licence which is otherwise a learner’s licence. Sections 3(2) and 6 of the Act provide for restriction in the matter of

grant of driving licence, Section 7 deals with such restrictions on granting of learner's licence. Section 8 and 9 provide for the manner and conditions for grant of driving licence. Section 15 provides for renewal of driving licence. Learner's licence are granted under the Rules framed by the Central Government or the State Governments in exercise of their rule-making power. Conditions are attached to the learner's licences granted in terms of the statute. A person holding learner's licence would, thus, also come within the purview of "duly licensed" as such a licence is also granted in terms of the provisions of the Act and the Rules framed thereunder. It is now a well-settled principle of law that rules validly framed become part of the statute. Such rules are, therefore, required to be read as a part of the main enactment. It is also a well-settled principle of law that for the interpretation of statute an attempt must be made to give effect to all provisions under the rule. No provision should be considered as surplusage."

13. On going through the aforesaid observations, the Hon'ble Apex Court has settled the issue and held that a person holding learner's licence would also come in the category of duly licence person. While making the aforesaid observation the Hon'ble Apex Court has referred its earlier observation in the case of ***New India Assurance Company Limited Vs.***

Mandar Madhav Tambe, reported in LA WS (SC) (1995)

1237 that person having learner's licence cannot be regarded as duly licenced, is not a good law. Thus, on the basis of the aforesaid observations, the learned counsel for the appellant claimed exemption of the appellant from liability of paying the compensation.

14. Apparently from the aforesaid observations, it has to be held that the appellant/owner was duly licenced at the time of accident. However, on careful reading of the aforesaid observations, it is evident that even the Hon'ble Apex Court has indirectly held that though the person having learner's licence to be treated as duly licenced, but such person must drive the vehicle under the learner's licence subject to conditions mentioned therein. The learned counsel Mr. D. N. Kukdey for the Insurance Company thus pointed out that the Rules i.e. Central Motor Vehicles Rules 1989 do not permit a person having learner's licence to drive the motorcycle alone. As per Rule 3(b), of the said Rules the person driving the motorcycle under learner's licence must be accompanied by an instructor holding an effective driving Licence. However, the learned counsel for the appellant, by pointing out the proviso to Rule 3 of the said Rules, vehemently argued that under this proviso, the Rule 3(b) is not necessary and

motorcycle is exempted for such requirement of having an instructor on it holding effective driving Licence. Admittedly, as per the condition of Insurance policy, a person having learner's Licence was entitled to drive the offending vehicle, but always subject to Rule 3 of the aforesaid Central Rules. Therefore, the interpretation of the proviso is required to be done in the light of observations made by various High Courts in the judgment relied upon by the parties.

15. So far as Rule 3 of the aforesaid Central Motor Vehicles Rules, 1989 is concerned, it is reproduced herein below for quick reference.

“3. General.—

The provisions of sub-section (1) of section 3 shall not apply to a person while receiving instructions or gaining experience in driving with the object of presenting himself for a test of competence to drive, so long as—

- (a) such person is the holder of an effective learner's licence issued to him in Form 3 to drive the vehicle;*
- (b) such person is accompanied by an instructor holding an effective driving license to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle; and*
- (c) there is painted, in the front and the rear or the vehicle or on a plate or card affixed to the front and the rear, the letter "L" in red on a white background as under:—*

L

Note.—The painting on the vehicle or on the plate or card shall not be less than 18 centimeters square and the letter "L" shall not be less than 10 centimeters high, 2 centimeters thick and 9 centimeters wide at the bottom:

Provided that a person, while receiving instructions or gaining experience in driving a motor cycle (with or without a side-car attached), shall not carry any other person on the motor cycle except for the purpose and in the manner referred to in clause (b)."

16. The learned counsel for the appellant heavily relied on the proviso to the aforesaid Rule 3 wherein it is mentioned that a person having learner's licence shall not carry any other person on the motorcycle except for the purpose and in the manner referred to in clause (b). He submitted that on going through the proviso, the Central Rules has definitely exempted the requirement of such person having effective driving licence on the motorcycle. However, on the contrary the learned counsel Mr. D. N. Kukdey for respondent No.1/ Insurance Company submits that on plain reading of the aforesaid proviso, there cannot be any such exemption as interpreted by the learned counsel for the appellant. Therefore, the core question raised in this matter as to whether a person having learner's licence, is required to be accompanied by the instructor holding an effective driving licence.

17. The learned counsel for respondent No.1/Insurance

Company submitted that the proviso does not exclude requirement of such instructor. He relied on the observations of Kerla High Court in the case of **K. P. Abdul Gafoor Vs. New India Assurance Company in M.A.C.A. No. 2700 of 2012 dated 23.03.2016** wherein following observations is made.

“Going by the mandate under Rule 3, the holder of an effective learner’s licence could drive a vehicle in public place provided he is accompanied by an instructor holding an effective driving licence to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle and thus, obviously, as a learner. Clause (b) of Rule 3 of the Rules mandating accompaniment of an instructor holding an effective driving licence to drive the vehicle and its latter limb requiring such instructor to sit in such a position to control or stop the vehicle, will again underline the avowed intention of the legislature to ensure safety of other users of the public road. With the ever increasing use of motor vehicles as indispensable conveyance the rate of road accidents causing bodily injuries, damage to properties and also death is also on the rise at an alarming pace. Scrupulous adherence to the statutory provisions enacted to ensure public safety has to be insisted and observed to check the loss of precious lives and creation of disabled, in

our country.”

18. He also relied on the observations of Madras High Court in the case of ***The Manager, Oriental Insurance Company Ltd., Railway Station Road, Palakadu*** (*supra*), wherein it is observed that considering section 149(2) of Motor Vehicles Act 1988 and Central Motor Vehicle Rules 1989 specially Rule 3(b), driving Rules vehicle with the learner's licence without any instructor would amount to violation of policy condition and therefore, 'pay and recover' order is appropriate. The learned counsel for the respondent/Insurance Company also relied on the observation of Punjab and Haryana High Court in the case of ***National Insurance Company Vs. Kripal Kaur and others 2024 ACJ 90*** wherein following observations is made paragraph No. 18 as under :-

“The purpose of Rule 3 of 1989 Rules is that a person with their learner's licence is expected to drive a vehicle only for the purpose of learning. While learning to drive a motor vehicle, a holder of learner's licence must be accompanied by an instructor so as to make an effective driving licence to drive such a vehicle. It is also the mandate of rule (ibid) that such an instructor must be sitting in a position to control or stop the vehicle in case of any necessity. The purpose of making this rule is to ensure the safety of not only the learner but also of

other persons using the road. Thus, a person holding a valid licence in consonance with the judgment of the Apex Court in Swaran Singh's case (supra), where it was laid down that vehicle must be driven by a learner subject to conditions mentioned in the licence and only then he can be treated as a person who is duly licensed."

19. Thus, after going through all the aforesaid observations, it is consistently held that Rule 3(b) of the aforesaid Rule is mandatory under which it is necessary that learner driver must be accompanied by an instructor having a valid licence and if such instructor is not there on the motor cycle, then there occurs willful breach of the policy and in that case no liability can be fastened on the Insurance Company for paying compensation to the victim. However, in these judgments though the Insurance Company was found not liable or exonerated, but directed to pay the compensation first and then to recover the amount from the owner as held by the learned Tribunal in the present case.

20. On the contrary, the learned counsel for the appellant has come with different interpretation of the proviso to the Rule 3. According to him, Rule 3 is not at all applicable in case of motorcycle though it is mandatory for four wheeler motor vehicle. For that purpose he heavily relied on the

judgment of Karnataka High Court in the case of **The Senior Divisional Manager the National Insurance Co. Ltd (supra)**.

In this case, the Karnataka High Court was dealing with the accident caused by motorcycle which was being driven in rash and negligent manner and in a high speed. The Karnataka High Court in this judgment by reproducing Rule 3 has made following observations :-

“21. The proviso of the Rule defines that a person, while receiving instructions or gaining experience in driving a motorcycle (with or without a side-car attached), shall not carry any other person on the motorcycle except for the purpose and in the manner referred to in clause (b) wherein as per 3(b) of the Rules says the instructor is required to sit in a position to control or stop the vehicle, which means a person who is holding learner’s licence and learning driving of four wheeler vehicles shall always accompany an instructor.

22. As per Rule 24 of the Rules, it defines about the establishment of driving schools and the qualification of the instructor. Rule 24(3)(v) of the Rules defines as follows :-

(v) the vehicles are available exclusively for purposes of imparting instruction and all such vehicles, except motorcycles, are fitted with dual control facility to enable the instructor to control or stop the vehicle.

23. On bare reading of Rule 24(3)(v) of the Rules

clearly provides that the instructor shall accompany with the learner while driving the motor vehicles having dual control facility to enable the instructor to control or stop the vehicle, whereas the motorcycle was excluded or exempted and it does not require the instructor to be accompanied. However, Section 3 of the Act defines necessity of driving licence. Proviso to Rule 3 enables the rider of the motorcycle shall not carry any other person on the motorcycle as pillion rider except for the purpose and in the manner referred to in clause (b), which shows the person holding driving licence shall be accompanied with a person who holds a learner's licence for the motor vehicle but not motorcycle.”

21. On going through the aforesaid observation, Karnataka High Court has held that clause (b) of the Rule 3 has no applicability in case of offending vehicle being a motorcycle. However, that exemption of motorcycle from clause (b) of Rule 3, has observed on the basis of Rule 24 of the Central Rules and it is ultimately held that Rule 24(3)(v) of the Rules exempts the motorcycle from to be fitted with dual control facility to enable the instructor to control or stop the vehicle. However, on careful reading of the said rule, the motorcycle is exempted only for fitting of dual control facility for enabling the instructor to stop the same in case of urgency. Thus, the Rule

24(3)(v) does not grant any exemption to the learner driver from having such instructor to be seated on the motorcycle. The High Courts of Madras, Punjab and Haryana and Kerala have interpreted the proviso for having such instructor present on the motorcycle along with the driving having learner's licence, mainly by keeping in mind, not only the safety of such driver, but also safety of public at large. Even by considering the mechanism of motorcycle, the person sitting with the driver having learner's licence, can easily reach to the brakes to stop the same in case of urgency without having dual controls as observed in Rule 23(3) (v). Therefore, the presence of instructor having effective driving licence along with the person having learner's licence appears must and for the effective application of Rule 3. Even on plain reading of the proviso, the interpretation made thereof by the Karnataka High Court specially in the light of Rule 23(3)(v), appears erroneous and contrary to the object of the entire Rule. Therefore, the submission made by the learned counsel for the appellant that motorcycle is exempted from the application of Rule 3(b), cannot be accepted. Therefore, considering all these aspects, no fault can be found in the order of learned Tribunal which directed respondent No.1/Insurance Company to satisfy the award first and then to recover it from the

appellant/owner.

22. Resultantly, the first appeal stands dismissed.

23. Pending Civil Application also stands disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

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