PETITIONER:
KASHIRAM YADAV & ANR.

Vs.

RESPONDENT:
ORIENTAL FIRE & GEN. INSURANCE CO. & ORS.

DATE OF JUDGMENT10/08/1989

BENCH:
SHETTY, K.J. (J)
BENCH:
SHETTY, K.J. (J)
AHMADI, A.M. (J)

CITATION:
1989 AIR 2002 1989 SCR (3) 811
1989 SCC (4) 128 JT 1989 (3) 504
1989 SCALE (2)343

ACT:
Motor Vehicles Act, 1939: Sec. 96--Fatal accident caused by unlicensed driver--Compensation awarded--Insurance company-Whether liable to indemnify owner of vehicle.

HEADNOTE:
A Constable while returning home after performing his duties was knocked down by a tractor owned by appellant No. 1, and driven by appellant No. 2 who had no driving licence. As a result of the accident, the Constable died and his widow and children claimed compensation, before the Tribunal.

Awarding a compensation of Rs.96,000 the Tribunal held that at the time of the accident the vehicle belonged to appellant No. 1 and was driven by appellant No. 2, who had no driving licence, that the accident took place due to his rash and negligent driving, and appellant No. 1 alone was liable to pay the compensation.

The appellant has come in appeal, by special leave, contending that the insurer alone would be liable to pay the compensation amount, even though the tractor was not driven by a licensed driver.

Dismissing the appeal,

HELD: 1. Section 96 of the Motor Vehicles Act, 1939 imposes a duty on the insurer to satisfy judgments against persons insured in respect of third party risks. Sub-section 2 thereof provides exception to the liability of the insurer. Sub-sec. 2(b) of sec. 96 provides that the insurer is not liable to satisfy the judgments against the persons insured if there has been a breach of a specified condition of the policy. One of the conditions of the policy specified under clause (ii) is that the vehicle should not be driven by any person who is not duly licensed or by any person, who has been disqualified from holding or obtaining driving licence, during the period of disqualification. It is not in dispute that the certificate of insurance concerned in this case contains this condition. If, therefore, there is a breach of this condition, the insurer will not be liable to indemnify the owner. [813C-E]

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2. In the present case, the onus of the insurer has been

discharged from the evidence of the insured himself. The insured took a positive defence stating that he was not the owner of the vehicle since he had already sold the same to a third party. This had not been proved. Secondly, he took a defence stating that the vehicle at the relevant time was driven' by a licensed driver. This was proved to be false. There is no other material even to indicate that the vehicle was entrusted to the licensed driver on the date of the fatal accident. [814D-F]

Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan and Ors., [1987] 2 SCC 654, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2183 of 1988.

From the Judgment and Order dated 25.3.1988 of the Allahabad High Court in F.A.F.O. No. 951 of 1987.

N.D.B. Raju and N. Ganapathy for the Appellants.

M.S. Ganesh and Murlidhar for the Respondents.

The Judgment of the Court was delivered by

K. JAGANNATHA SHETTY, J. The question raised in this appeal relates to the liability of the owner of an insured vehicle to pay compensation for the accident caused by negligence of an unlicensed driver.

The facts which are now found are these.

A constable while returning home after performing his duties was knocked down by a tractor owned by appellant no. 1--Kashiram Yadav. Appellant No. 2--Raghuraj was then driving the tractor. He had no driving licence. The widow of the constable and her children claimed compensation from the appellants and the insurer. The owner resisted the claim contending inter alia that he had already sold the vehicle to a third party and that vehicle was driven by the licensed driver Gaya Prasad at the time of the accident. Both these facts were not established. The Tribunal held that Raghuraj Singh was driving the tractor and the accident took place due to his rash and negligent driving and not due to any fault on the part of the constable. Since Raghuraj Singh had no driving licence, the Tribunal held that the

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owner of the vehicle alone is liable to pay the compensation. Having reached that conclusion, the Tribunal determined the amount of compensation payable to the claimants. A sum of Rs.96,000 was awarded with interest at the rate of 12 per cent per annum till realisation. This award of the Tribunal has been affirmed by the High Court.

We are not concerned with the quantum of compensation determined by the Tribunal. That question has not been agitated before us. The only contention that was canvassed before us is as to the liability of the insurer to indemnify the owner to satisfy the judgment against him.

Section 96 of the Motor Vehicles Act, 1939 imposes duty on the insurer to satisfy judgments against persons insured in respect of third party risks. Sub-section 2 thereof provides exception to the liability of the insurer. Sub-sec. 2(b) of sec. 96 provides that the insurer is not liable to satisfy the judgments against the persons insured if there has been a breach of a specified condition of the policy. One of the conditions of the policy specified under clause (ii) is that the vehicle should not be driven by any person who is not duly licensed, or by any person who has been disqualified from holding or obtaining driving licence during the period of disqualification. It is not in dispute

that the certificate of insurance concerned in this case contains this condition. If, therefore, there is a breach of this condition, the insurer will not be liable to indemnify the owner.

Counsel for the appellants however, submitted that insurer alone would be liable to pay the award amount even though the tractor was not driven by a licensed driver. In support of the contention, he placed reliance on the decision of this Court in Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan and Ors., [1987] 2 SCC 654. We do not think that that decision has any relevance to the present case. There the facts found were quite different. The. vehicle concerned in 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 has asked the cleaner to take care of the truck. In fact the driver had left the truck in the care of the cleaner. 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

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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 preach 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 in as much 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 driver's acts or 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.

But in the present case, the onus of the insurer has been discharged from the evidence of the insured himself. The insured took a positive defence stating that he was not the owner of the vehicle since he had already sold the same to a third party. This has not been proved. Secondly, he took a defence stating that the vehicle at the relevant time was driven by a licensed driver, Gaya Prasad, (PW-2). This was proved to be false:There is no other material even to indicate that the vehicle was entrusted to the licensed driver on the date of the fatal accident. With these distinguishing features in the present case, we do not think that the ratio of the decision in Skandia Insurance Co. Ltd. 's case could be called to aid the appellants.

In the result, the appeal fails and is dismissed. In the facts and circumstances of the case, we make no order as to costs.

G.N. Appeal dismissed.

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