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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Decided on: 22.11.2019*

\+ MAC.APP. 635/2013
THE NEW INDIA ASSURANCE CO. LTD. ..... Appellant
versus

NATHU SINGH & ORS ..... Respondents

\+ MAC.APP. 636/2013
THE NEW INDIA ASSURANCE CO. LTD. ..... Appellant
versus

PREM WATI & ORS ..... Respondents

\+ MAC.APP. 637/2013
THE NEW INDIA ASSURANCE CO. LTD. ..... Appellant
versus

MAYA DEVI & ORS ..... Respondents

\+ MAC.APP. 638/2013
THE NEW INDIA ASSURANCE CO. LTD. ..... Appellant
versus

KM. REKHA & ORS ..... Respondents

\+ MAC.APP. 640/2013
THE NEW INDIA ASSURANE CO. LTD. ..... Appellant
versus

SANTOSH DEVI & ORS ..... Respondents

\+ MAC.APP. 641/2013
THE NEW INDIA ASSURANCE CO. LTD. ..... Appellant
versus

VIMLA & ORS ..... Respondents

+ MAC.APP. 642/2013
THE NEW INDIA ASSURANCE CO.LTD. ..... Appellant
versus

NATHU SINGH & ORS ..... Respondents

+ MAC.APP. 643/2013
THE NEW INDIA ASSURANCE CO.LTD. ..... Appellant
versus

RISHI PAL & ORS ..... Respondents

+ MAC.APP. 644/2013
THE NEW INDIA ASSURANCE CO. LTD. ..... Appellant
versus

SARVESH & ORS ..... Respondents

+ MAC.APP. 646/2013
THE NEW INDIA ASSURANCE CO LTD ..... Appellant
versus

SMT PREM WATI AND ORS ..... Respondents

+ MAC.APP. 647/2013
THE NEW INDIA ASSURANCE CO. LTD. ..... Appellant
versus

MAHEEPAL & ORS ..... Respondents

+ MAC.APP. 648/2013
THE NEW INDIA ASSURANCE CO. LTD. ..... Appellant
versus

ARVIND YADAV & ORS ..... Respondents

+ MAC.APP. 649/2013

THE NEW INDIA ASSURANCE CO LTD ..... Appellant
versus

SHRI SURENDER SINGH AND ORS ..... Respondents

\+ MAC.APP. 650/2013
THE NEW INDIA ASSURANCE CO LTD ..... Appellant
versus

SMT MEENA DEVI AND ORS ..... Respondents

Through: Mr. Pankaj Seth, Advocate for insurance company.
Ms. Mrinalini Sen, Advocate for the LRs of R-2 in item no. 14 respondents and LRs of R-4 in item no. 21.
Mr. S. N. Parashar, Advocate for Respondents.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CM APPL. 13033/2015 (for delay in filing of CM APPL. 13032/2015 u/o XXII Rule 4 r/w sec. 151 CPC) & CM APPL. 13032/2015 in MAC.APP. 642/2013 and CM APPL. 13049/2015 (for delay in filing of CM APPL. 13048/2015 u/o XXII Rule 4 r/w sec. 151 CPC) & CM APPL. 13048/2015 in MAC.APP. 650/2013

1. In view of the order passed in identical applications on 05.07.2019, the applications are dismissed.

MAC.APP. 635/2013, MAC.APP. 636/2013, MAC.APP. 637/2013, MAC.APP. 638/2013, MAC.APP. 640/2013, MAC.APP. 641/2013, MAC.APP. 642/2013, MAC.APP. 643/2013, MAC.APP. 644/2013, MAC.APP. 646/2013, MAC.APP. 647/2013, MAC.APP. 648/2013, MAC.APP. 649/2013 & MAC.APP. 650/2013

2. These appeals arising out of a common order dated 30.03.2013 impugn the award of compensation passed by the learned MACT in MACP. Nos. 1307-16/10, 1324-25 /10 & 40-42/12 on the sole ground, that the right of recovery against the owner and driver of the offending vehicle has not been granted who were proceeded *ex parte* before the learned Tribunal. It is the appellant's case that the owner of the vehicle did not have requisite route permit to ply the insured vehicle as a public transport bus; and to carry passengers, in the specific geographical area in which the accident was caused. The Route Permit ,which was valid from 06.08.2006 to 05.08.2011, was only for the route of Ghaziabad, Noida and Dadri and allied roads, but it was not granted for Debai or the place of the accident, namely, Chhoia Bridge, Debai.

3. The Route Permit was proven by the report of the RTO dated 25.02.2013. A quick glance of the map of Western Uttar Pradesh shows that Debai, where the accident occurred is nearer to the city of Aligarh and quite far away from Ghaziabad, Noida and Dadri. Therefore, it being plied as a public transport vehicle far away from and not on the permitted route, was in violation of the Route Permit and the insurance policy. The impugned order has dealt with the issue as under:

> *"86. Insurance company examined Sh. Suresh Pam, Sr. Clerk, RTO Office, Ghaziabad as R3W1. R3W1 deposed that he had brought the permit record pertaining to vehicle no. UP-14T-5384 and the said permit was valid for the period 06.08.2006 to 05.08.2011 for the route Ghaziabad, Noida, Dadri and allied routes and the said permit was not granted for Debai and the place of*

accident i e Chhoia Bridge, Debai was not covered under the said route permit and the RTO had issued a report dt. 25.02.2013 regarding the said permit. R3W1 exhibited the report issued by RTO as R3W1/1 and copy of the permit as R3W1/2. R-3W1 stated that permit was renewed upto 05.08.2011.

87. R3W2 Sh. Sunil Verma, AO, The New India Assurance Co. Ltd. stated that vehicle no. UP-14P-5384 was insured in the name of Sh. Rafal Singh for the period 23.07.2010 to 22.07.2011. R-3W2 exhibited the copy of policy as R3W2/A. R3W2 stated that their counsel had sent a notice u/o 12 rule 8 CPC to Sh. Rafal Singh for production of driving licence, insurance policy, fitness, RC and permit/ route permit and the addressee did not produce any of the above said documents and they got the verification report of the permit from the Ghaziabad Transport Authority and as per the report of Ghaziabad Transport Authority, the route permit was not valid for Debai Bulandshahr. R3W2 stated that there was violation of terms and conditions of insurance policy as the vehicle was being plied without valid route permit therefore insurance company was not liable to indemnify the insured. R3W2 exhibited the copy of notice u/o 12 rule 8 CPC as R3W2IB and R3W2/C and postal receipts as R3W2/D and E. The AD card received back as R3W2/F, R3W2/G and R3W2/H and verification report of investigator as R3W2/1."

4. To conclude therefore, that merely because the vehicle in question was ferrying passengers beyond the permitted route, the insurer would be absolved of its liability, is erroneous. The impugned order also refers to the following judgments:

i) *Davinder Singh and others Vs. Dukhi Shah and others*, Mac. App. 496/2009, decided on 09.07.2012.

ii) *Oriental Insurance Company Ltd., Palampur vs Bishan Dass and Ors*., FAO No. 21 of 1987

iii) *National Insurance Company vs. T. Elumalai and Anr.*, 1990ACJ426, 1990ANJ 426 (1989) 1MLJ489

iv) *Oriental Insurance Company Ltd. vs. Banto Devi and Ors*., III (2006) ACC573

v) *Tashi Rigzin vs Stanzin Zigmed & Ors*., 2010 ACJ 1526

5. The Court would note that in each of the judgments cited in the impugned order, the insurer had sought to absolve itself from third-party liability. In this regard, section 96 (2) of the Motor Vehicles Act, 1988, reads as under:

> *"96. Power of State Government to make rules for the purposes of this Chapter.—*
> *....*
> *(2) Without prejudice to the generality of the foregoing power, rules under this section may be made with respect to all or any of the following matters, namely:—*
> *(i) the period of appointment and the terms of appointment of and the conduct of business by Regional and State Transport Authorities and the reports to be furnished by them;*
> *(ii) the conduct of business by any such authority in the absence of any member (including the Chairman) thereof and the nature of business which, the circumstances under which and the manner in which, business could be so conducted; tc"*
> *(iii) The conduct and hearing of appeals that may be preferred under this Chapter, the fees to be paid in respect of such appeals and the refund of such fees;*
> *(iii) The conduct and hearing of appeals that may be preferred under this Chapter, the fees to be paid in respect of such appeals and the refund of such fees;*

(iv) the forms to be used for the purposes of this Chapter, including the forms or permits;
(iv) the forms to be used for the purposes of this Chapter, including the forms or permits;"
(v) the issue of copies of permits in place of permits lost, destroyed or mutilated;
(vi) the documents, plates and marks to be carried by transport vehicles, the manner in which they are to be carried and the languages in which any such documents are to be expressed;
(vii) the fees to be paid in respect of applications for permits, duplicate permits and plates;
(viii) the exemption of prescribed person or prescribed classes of persons from payment of all or any or any portion of the fees payable under this Chapter;
(ix) the custody, production and cancellation on revocation or expiration of permits, and the return of permits which have been cancelled;
(x) the conditions subject to which, and the extent to which, a permit granted in another State shall be valid in the State without counter-signature;
(xi) the conditions subject to which, and the extent to which, a permit granted in one region shall be valid in another region within the State without counter-signature;
(xii) the conditions to be attached to permits for the purpose of giving effect to any agreement such as is referred to in clause (iii) of sub-section (1) of section 67;
(xiii) the authorities to whom, the time within which and the manner in which appeals may be made;
(xiv) the construction and fittings of, and the equipment to be carried by, stage and contract carriages, whether generally or in specified areas
(xv) the determination of the number of passengers a stage or contract carriage is adapted to carry and the number which may be carried;
(xvi) the conditions subject to which goods may be carried on stage and contract carriages partly or wholly in lieu of passengers;

(xvii) the safe custody and disposal of property left in a stage or contract carriage;
(xviii) regulating the painting or marking of transport vehicles and the display of advertising matter thereon, and in particular prohibiting the painting or marking of transport vehicles in such colour or manner as to induce any person to believe that the vehicle is used for the transport of mails;
(xix) the conveyance in stage or contract carriages of corpses or persons suffering from any infectious or contagious disease or goods likely to cause discomfort or injury to passengers and the inspection and disinfection of such carriages if used for such purposes;
(xx) the provision of taxi meters on motor cabs requiring approval or standard types of taxi meters to be used and examining testing and sealing taxi meters;
(xxi) prohibiting the picking up or setting down of passengers by stage or contract carriages at specified places or in specified areas or at places other than duly notified stands or halting places and requiring the driver of a stage carriage to stop and remain stationary for a reasonable time when so required by a passenger desiring to board or alight from the vehicle at a notified halting place;
(xxii) the requirements which shall be complied with in the construction or use of any duly notified stand or halting place, including the provision of adequate equipment and facilities for the convenience of all users thereof; the fees, if any, which may be charged for the use of such facilities, the records which shall be maintained at such stands or places, the staff to be employed thereat, and the duties and conduct of such staff, and generally for maintaining such stands and places in a serviceable and clean condition;
(xxiii) the regulation of motor-cab ranks;
(xxiv) requiring the owners of transport vehicles to notify any change of address or to report the failure of or damage to any vehicle used for the conveyance of passengers for hire or reward;

(xxv) authorising specified persons to enter at all reasonable times and inspect all premises used by permit holders for the purposes of their business;
(xxvi) requiring the person in charge of a stage carriage to carry any person tendering the legal or customary fare;
(xxvii) the conditions under which and the types of containers or vehicles in which animals or birds may be carried and the seasons during which animals or birds may or may not be carried;
(xxviii) the licensing of and the regulation of the conduct of agents or canvassers who engage in the sale of tickets for travel by public service vehicles or otherwise solicit customers for such vehicles;
(xxix) the licensing of agents engaged in the business of collecting for forwarding and distributing goods carried by goods carriages;
(xxx) the inspection of transport vehicles and their contents and of the permits relating to them;
(xxxi) the carriage of persons other than the driver in goods carriages;
(xxxii) the records to be maintained and the returns to be furnished by the owners of transport vehicles; and
(xxxiii) any other matter which is to be or may be prescribed.

6. In *Shamanna & Anr. Vs. Divisional Manager* (2018) 9 SCC 650, it was held that such defence not being available under the statute, the insurer could not insist upon it being absolved of third-party liability. What is to be seen however, whether the owner of the vehicle had breached policy conditions. If yes, then the insurer shall first pay the third party compensation and have the right to recover the same from the owner.

7. The learned counsel for the appellant relies upon the dicta of the Supreme Court in *Amrit Paul Singh vs. TATA AIG General Insurance Company Ltd. & Ors.*, (2018) 7 SCC 558, which in similar circumstances, held that where the insured did not have a permit for the vehicle to be plied

on a certain route and had not brought anything on the record to prove that he had the requisite permit of the vehicle, the onus would not be imposed upon the insurer. Nevertheless, the insurer was directed to pay the claimants the compensation amount with the stipulation that it shall be entitled to recovery of the same from the owner and the driver of the offending vehicle.

8. In the present case, the owner and the driver were proceeded *ex parte*. They were given ample opportunity to present their case and to prove that they had a valid permit for operating the bus in Debai area. They chose not to do so. The vehicle was not being operated on the permitted route. The insured was in breach of policy conditions. However, as discussed above, the insurer shall first pay the third-party compensation and will have the right to recover the same from the owner/driver of the offending-insured vehicle.

9. Furthermore, in terms of the dicta of the Supreme Court in *Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram & Ors*., 2018 SCC OnLine SC 1546, compensation under non-pecuniary heads of 'loss of love and affection' and 'loss of consortium' shall be payable to each of the claimant @ Rs. 50,000/ and Rs. 40,000/- respectively.

10. Let the insurer calculate and pay the compensation towards 'loss of love and affection' and 'loss of consortium', in terms of *Magma (supra)* to each of the claimants in each of the cases wherein the passengers have died.

11. The Court would note that for the past half a decade interest has been awarded @9%. Accordingly, the impugned order is modified to the extent that the rate of interest on the awarded amount shall be payable @9% p.a. from the date of the Claim Petition till its realization in all the appeals.

12. The aforesaid amounts shall be deposited before the learned Tribunal within three weeks from the date of receipt of copy of this order to be released to the beneficiary(ies) of the Award in terms of the scheme of disbursement specified therein.

13. The appeals are allowed and disposed-off in the above terms.

14. The statutory amounts, alongwith interest accrued thereon, be returned to the appellant.

NAJMI WAZIRI, J

NOVEMBER 22, 2019

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HIGH COURT OF DELHI
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