

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case No:- Mac App No.201/2024

Pronounced on: 22.07.2026

Uploaded on: 23.07.2026

Sh. Kuldeep Singh, age 60 years, S/O
Sh. Wakil Singh, R/O H.No.71, A/P
2nd Extension, Gandhi Nagar, Jammu.

.... Petitioner(s)

Through: Mr. Jasvinder Singh, Advocate.

Vs

1. The Oriental Insurance Company Ltd.,
through its Divisional Manager,
Divisional Office-1, Town Hall,
Jammu.
2. Sh. Tarseem Lal S/O Sh. Sham Lal
R/O Nagrota, Vijaypur, District
Samba.
3. Smt. Vidya Devi W/O Late Sh. Balkar
Chand.
4. Sh. Ravi Kumar S/O Late Sh. Balkar
Chand.
5. Miss Barsha Mottan D/O Late Sh.
Balkar Chand.
6. Sh. Sawan Mottan S/O Late Sh. Balkar
Chand
Respondents 3 to 6 residents of village
Jindlehar, Tehsil R. S. Pura, District
Jammu.

..... Respondent(s)

Through: Ms. Damini Singh Chauhan, Advocate.

Coram: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER

1. This appeal is directed against the judgment dated 10.08.2024 passed by the Motor Accident Claims Tribunal, Jammu (hereinafter referred to as "the Tribunal"), whereby the appellant, who is the registered owner of the offending vehicle bearing registration No. JK02AR-2481 (Bus), involved in Claim Petition File No. 41/C titled *Vidya Devi and Others v. Kuldeep Singh and Others* (Date of Institution: 31.01.2014), has been directed to

reimburse the amount of compensation paid by the Insurance Company on the ground that he failed to establish that the offending vehicle possessed a valid fitness certificate at the relevant time.

2. Learned counsel for the appellant vehemently contended that the award itself demonstrates that the doctrine of "pay and recover" was invoked solely because the Tribunal found that the offending vehicle was being driven by a person who was authorized only to drive a motorcycle with gear and a Light Motor Vehicle (LMV), and did not possess a valid license to drive a bus or any heavy motor vehicle. It was argued that there was no finding whatsoever in the award that the vehicle was unfit for use or that it lacked a valid fitness certificate. It was further submitted that, while passing the impugned order, the Tribunal introduced an altogether new ground by fastening liability upon the appellant on the premise that the vehicle did not possess a valid fitness certificate. According to the appellant, the vehicle was, in fact, covered by a valid fitness certificate, which was even shown before the Tribunal, but the same was ignored, resulting in grave prejudice to the appellant.
3. Per contra, learned counsel for the respondent submitted that no such plea regarding the existence of a valid fitness certificate was ever raised before the Tribunal and is being advanced for the first time in the present appeal. It was argued that, during the course of evidence, the appellant categorically expressed his inability to produce the fitness certificate. Learned counsel further submitted that the scope of permitting additional evidence at the appellate stage is circumscribed by the provisions of Order XLI Rule 27 of the Code of Civil Procedure, which have only limited application.

4. I have heard learned counsel for the parties and perused the record.
5. The claim petition arose out of an accident dated 22.10.2013 involving the offending vehicle bearing registration No. JK02AR-2481 (Bus), which resulted in the death of one Balkar Chand. The legal representatives of the deceased instituted a claim petition before the Tribunal seeking compensation. Vide award dated 18.05.2016, the Tribunal allowed the claim petition and awarded compensation of ₹17,96,200/-. Since the Insurance Company succeeded in establishing that there had been a breach of the policy conditions inasmuch as the owner had permitted the vehicle to be driven by a person not duly authorized to drive such category of vehicle, the Tribunal directed the Insurance Company to satisfy the award with liberty to recover the amount from the owner. Pursuant thereto, respondent No. 1–Insurance Company initiated recovery proceedings against the appellant, during which the impugned order came to be passed.
6. It is true that, during the course of evidence before the Tribunal, the appellant was asked to produce the fitness certificate, to which he stated that he could not produce the same. However, significantly, while passing the award dated 18.05.2016, the Tribunal did not invoke the principle of "pay and recover" on the ground that the vehicle lacked a valid fitness certificate or was otherwise unfit for use. The Tribunal rested its conclusion exclusively on the finding that the appellant had breached the policy conditions by permitting the offending vehicle to be driven by a person who was not duly authorized to drive such a vehicle.
7. Once that was the sole foundation of the award, the appellant is justified in contending that the issue relating to the fitness certificate never arose

during the adjudication of the claim petition. Even the Insurance Company sought recovery of the awarded amount only on the basis of the alleged breach of policy conditions arising from the driver's license. During the recovery proceedings, however, the appellant appears to have demonstrated that the driver possessed a valid and effective driving license. Thereafter, it was only on the issue relating to the fitness certificate that the Tribunal proceeded to direct recovery from the appellant on the ground that he had failed to produce the same.

8. Although the record of the Tribunal does not disclose that any formal application was moved by the appellant seeking to produce the fitness certificate, the appellant has placed on record before this Court, as Annexure-III, a fitness certificate showing that the vehicle remained validly certified for the period from 08.01.2013 to 08.01.2014, thereby covering the date of the accident.
9. Having regard to the submissions advanced at the Bar and upon consideration of the record, this Court is of the view that if the appellant is indeed able to establish that the offending vehicle possessed a valid fitness certificate on the date of the accident, serious prejudice would be caused to him if the impugned order is allowed to stand. Whether the fitness certificate produced by the appellant is genuine, admissible in evidence, and sufficient to establish compliance with the statutory requirements are all questions of fact which are required to be examined by the Tribunal. It also appears that, at no point during the proceedings, was the appellant specifically directed by the Tribunal to place the fitness certificate on record. The mere fact that, during cross-examination, he

expressed his inability to produce the certificate cannot necessarily lead to the conclusion that no such certificate existed.

10. In the aforesaid circumstances, sustaining the impugned order would result in manifest prejudice to the appellant. Accordingly, the appeal is allowed. The impugned order is set aside, and the matter is remanded to the Tribunal for fresh consideration. The Tribunal shall afford the appellant a reasonable opportunity to establish that the offending vehicle possessed a valid fitness certificate on the date of the accident and shall permit him to adduce appropriate evidence in support thereof. The respondents shall be at liberty to contest such evidence in accordance with law.
11. The parties shall appear before the Tribunal on **31.08.2026**.
12. Appeal stands disposed of in the aforesaid terms.

(SANJAY PARIHAR)
JUDGE

Jammu
22.07.2026
Narinder

Whether the order is speaking? Yes
Whether the order is reportable? No