



CGHC010291592025

2026:CGHC:43611

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment Reserved on 31/07/2026

Judgment Passed on /10/2026

MAC No. 1509 of 2025

1 - National Insurance Company Limited Through Its Branch Manager, Branch Office- Meenu Complex, Main Road, Kosabadi, Korba, Distt.- Korba C.G.

... Appellant

versus

1 - Shivdevi W/o Late Sutikshan Dubey Aged About 77 Years R/o Ward No. 5, Near Vashundhara Bihar, Godhanpur, Ambikapur, Distt.- Surguja C.G.

2 - Jyoti Dubey Wd/o Manish Dubey Aged About 35 Years R/o Ward No. 5, Near Vashundhara Bihar, Godhanpur, Ambikapur, Distt.- Surguja C.G.

3 - Prabhat Kumar Dubey S/o Late Manish Dubey Aged About 14 Years (Now Major And Aged About 24 Years), R/o Ward No. 5, Near Vashundhara Bihar, Godhanpur, Ambikapur, Distt.- Surguja C.G.

4 - Amit Kumar Mishra S/o Kamlakant Mishra Aged About 49 Years R/o Quarter No. M. Q-L/22, Balgi Coloney, Korba, Distt.- Korba C.G. (Driver - Owner)

... Respondents

For Appellant	: Mr. Dashrath Gupta, Advocate.
For Respondents No. 1 to 3	: Mr. Manoj Kumar Sinha, Advocate.
For Respondent No. 4	: Mr. Anshul Tiwari, Advocate.

Hon'ble Shri Justice Sanjay Kumar Jaiswal

C.A.V. Judgment

1. This appeal, filed under Section 173 of the Motor Vehicles Act, 1988, challenges the award passed on 07.05.2025 by the 1st Motor Accident Claims Tribunal, Ambikapur, District Surguja (Chhattisgarh), in Claim Case No. 147/2016 ("Shivdevi & Others vs. Amit Kumar Mishra & Others"), whereby a sum of ₹61,53,240/- (along with interest) was awarded in favour of the claimants and against the appellant-insurance company for the death of Manish Dubey in an accident that occurred on 15.12.2015, by the Tribunal finding no violation of the insurance policy terms. This award is hereinafter briefly referred to as the "award in question."
2. Briefly, the facts of the case are that on 15.12.2015, while Manish Dubey was travelling on a motorcycle, a Tata Tipper vehicle bearing registration number CG-12-S-1906 (hereinafter referred to as the "offending vehicle"), driven by Amit Kumar Mishra in a rash and negligent manner, collided with him; as a result of the impact, Manish Dubey sustained grievous injuries and passed away on 16.12.2015. In connection with the said incident, a case (Crime No. 10/2016) was registered at Police Station Katghora, Korba, under Section 304-A of the Indian Penal Code, and a charge-sheet was filed following the investigation.
3. A claim application for compensation was filed by the deceased's mother, wife, and son under Section 166 of the Motor Vehicles Act, 1988. In response, the appellant insurance company pleaded that the offending vehicle had been used in violation of the terms of the insurance policy. After recording evidence from both sides, the Tribunal passed the impugned award, holding that the appellant insurance company had failed to prove that any insurance conditions were violated during the operation of the offending vehicle. The

appellant/insurance company has challenged this conclusion in the present appeal.

4. The learned counsel for the appellant-insurance company argues that no document regarding the fitness of the offending vehicle has been produced on record by the offending vehicle's owner. Furthermore, in the criminal case registered, wherein the charge-sheet was filed against the offending vehicle's driver, Amit Kumar Mishra, the seizure memo (Exhibit P-9) makes no mention of the seizure of any fitness certificate for the vehicle. The insurance company explicitly pleaded in its written statement that the absence of a fitness certificate constituted a violation of the insurance policy conditions. Additionally, the company moved an application before the Tribunal under Order 11 Rule 12 of the Code of Civil Procedure, requesting that the owner of the insured vehicle be directed to produce the fitness certificate; however, the Tribunal rejected this application on 25.04.2025. During the cross-examination of the driver, Amit Kumar Mishra, a specific question was put to him (recorded in paragraph 9) suggesting that the fitness certificate for the offending vehicle was invalid on the date of the accident, which is why it was not produced; although he denied this, neither the vehicle owner nor the driver produced any fitness certificate for the vehicle at any stage. Thus, there has been a violation of the insurance policy conditions, and consequently, the insurance company is not liable to pay compensation. In support of this argument, the learned counsel has cited the judicial precedent of **Amrit Paul Singh and Another v. Tata AIG General Insurance Company Limited and Others, (2018) 7 SCC 558.**
5. On the other hand, the learned counsel for the vehicle

owner-driver/respondent No. 4 has argued, the fact that the offending vehicle was insured is undisputed. In such a scenario, the burden of proving any violation of conditions lay upon the appellant-insurance company; however, no evidence was adduced by them, whereas the statement of Amit Kumar Mishra, in his capacity as the vehicle owner, was recorded. Consequently, in the absence of evidence, the appellant-insurance company has failed to prove any violation of conditions. The Tribunal's conclusion is proper, and the appellant's argument is not tenable; therefore, the appeal should be dismissed. In support of their arguments, the learned counsel cited the precedents of **National Insurance Company Limited v. Swaran Singh and others, (2004) 3 SCC 297**; **Kamala Mangalal Vayani and others v. United India Insurance Company Limited and others, (2010) 12 SCC 488**; and **Oriental Insurance Company Limited v. Bhagwati Sahu and others, 2017 4 CGLJ 225**.

6. I have heard learned counsel for the parties and perused the record of the Tribunal including award impugned.
7. The Hon'ble Supreme Court in the matter of **National Insurance Company Ltd. vs. Swaran Singh and Others¹**, dealt with the same issue involved in the present case and has held in para 110 as under:-

“110. The summary of our findings to the various issues as raised in these petitions is as follows:

(v) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish “breach” on the part of the owner of the vehicle; the burden of proof where for would be on them.”

8. Further, the Hon'ble Supreme Court in the matter of **Kamala**

¹ (2004) 3 SCC 297

Mangalal Vayani and others Vs. United India Insurance

Company Limited and others², has held in para 6 as under:-

“6. Once it was established that the vehicle was comprehensively insured with the insurer to cover the passenger risk, the burden to prove that it was not liable in spite of such a policy, shifted to the insurer. The claimants are not expected to prove that the vehicle had a valid permit, nor prove that the owner of the vehicle did not commit breach of any of the terms of the policy.”

9. The Hon’ble Supreme Court in the matter of **Amrit Paul Singh v.**

TATA AIG General Insurance Co. Ltd.³, has held in para 24 as under:-

“24. The insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the “Tripitaka”, that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, **the onus cannot be cast on the insurer.** Therefore, the Tribunal as well as the High Court had directed that the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver.”

10. In light of the aforementioned judicial precedents, and based on the pleadings, facts, and evidence of the case under consideration, it is evident that no fitness document regarding the offending vehicle has been produced on record. The appellant-insurance company had raised an objection in its written statement, contending that the absence of a fitness document for the offending vehicle constituted a violation of the insurance policy conditions. During cross-examination, the insurance company questioned the driver and

2 (2010) 12 SCC 488

3 (2018) 7 SCC 558

registered owner regarding the non-production of the permit, suggesting they lacked one, and although this suggestion was denied, Amit Kumar Mishra (the driver and owner) failed to produce any valid fitness certificate for the vehicle. According to the seizure memo (Exhibit P-9), other documents pertaining to the offending vehicle were seized, but the fitness certificate was not; furthermore, as a final measure, the appellant-insurance company moved an application under Order 11 Rule 12 of the Code of Civil Procedure, requesting the Tribunal to direct the registered owner to produce the fitness certificate, but the Tribunal rejected this application on 25.04.2025 on the grounds that the consequences of failing to produce the fitness certificate or permit must be borne by the vehicle owner, yet the impugned award was passed contrary to this position. Thus, while the appellant-insurance company attempted to discharge its burden of proof by seeking the production of the document, the driver and registered owner ultimately failed to produce any fitness certificate for the offending vehicle.

11. Thus, the offending vehicle lacked a valid fitness certificate at the time of the accident, and according to the judgment passed in the matter of **Pareed Pillai Vs. Oriental Insurance Company Ltd.**⁴, the absence of valid fitness at the time of the accident is considered a violation of the terms of the insurance policy. In these circumstances, this Court finds that the Tribunal's conclusion, that there was no violation of the insurance policy terms, is incorrect. Therefore, the said conclusion is set aside, and it is held that the operation of the offending vehicle involved a violation of the insurance policy terms; consequently, the appellant insurance company is entitled to be absolved of its liability.

4 AIR 2019 Kerala 9

12. In accordance with the judgment passed in the matter of ***Amrit Paul*** (supra), where there is a breach of insurance conditions due to the absence of a fitness certificate or permit, an order for "pay and recover" is considered appropriate given that the offending vehicle was insured. Therefore, in light of the aforementioned judgment, it is directed that the appellant insurance company shall first pay the awarded compensation amount to the claimants, which it may subsequently recover from the registered owner and the driver of the offending vehicle.
13. In view of the foregoing, the appeal of the appellant insurance company is **partly allowed** and modified to the extent indicated herein-above.
14. The records of the Tribunal along with a copy of this judgment, be sent forthwith for compliance and necessary action, if any.

Sd/-
(**Sanjay Kumar Jaiswal**)
Judge

H. L. Sahu