

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO (MV) No. 146 of 2014
a/w C.O. No. 14 of 2014
Reserved on: 29.09.2026
Date of decision: 08.10.2026
Date of uploading on website:
08.10.2026

NIAC Ltd.

.....Appellant

Versus

Santosh Kumari & Ors.

.....Respondents

Coram

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

¹ *Whether approved for reporting?*

For the appellant:

Mr. B.M. Chauhan, Senior Advocate with Ms. Kamakshi Tarlokta and Mr. Amit Himalvi, Advocates.

For the respondents:

Mr. Vijay Chaudhary, Advocate, for respondent No. 1/cross-objector.

Mr. Ajay Kumar, Senior Advocate with Mr. Vinay Kumar, Advocate, for respondents No. 2 & 3.

Sushil Kukreja, Judge.

The instant appeal has been maintained by appellant/Insurance Company, who was respondent No. 1

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

before the learned Court below, under Section 173 of the Motor Vehicles Act, 1988 (for short 'The Act'), against impugned award, dated 29.04.2013, passed by learned Motor Accidents Claims Tribunal-II, Chamba, District Chamba, H.P., (hereinafter referred to as "the learned Tribunal"), whereby, MAC Petition No. 70/12/11, filed by the petitioner, Santosh Kumari, under Section 166 of the Act was allowed with costs and she was held entitled for compensation in the sum of Rs. 72,67,700/- alongwith interest at the rate of 7.5% per annum from the date of filing of the petition till deposit of Award amount and respondent No. 1/Insurance Company was held liable to pay the amount of compensation. The parties shall be referred to as they were before the learned Tribunal below.

2. The brief facts of the case are that on 22.07.2011, Ankit Mahajan (since deceased) was travelling in I-20 car (applied for), which was being driven by respondent No. 2 Shikhar Mahajan in a rash and negligent manner. At about 5:15 A.M, when the aforesaid car reached at Dainkund *Nallah* near Lakkar Mandi on Khajjiar-Dalhousie

highway, respondent No. 2 could not keep control over the same due to high speed and it went off the road and plunged in the *dhank*, as a result of which, Ankit Mahajan suffered severe head injury as well as other injuries and succumbed to the said injuries on the spot. As per the petitioner, at the time of accident, her son was 27 years of age and was employed in M/s Wadia Ghandy & Co., Mumbai as Retainer/Associate and used to earn Rs. 2,72,000/- per month. Hence, the petitioner filed the claim petition under Section 166 of MV Act seeking compensation to the tune of Rs. 1,40,00,000/-.

3. Respondent No. 1/Insurance Company, by filing reply, took preliminary objections qua maintainability, the driver of the offending vehicle was not having valid and effective driving licence and the offending vehicle was being plied without registration certificate and valid fitness certificate, which is contrary to the provisions of Motor Vehicles Act and terms and conditions of Insurance Policy. On merits, it has been stated that the offending vehicle was purchased on 10.06.2011, however, it was not registered till

22.07.2011, when it met with an accident. The deceased was unauthorized/gratuitous passenger and, therefore, his risk was not covered. It has been denied that at the time of accident, the deceased was 27 years old and was employed with law firm M/s Wadia Ghandy and Co., as retainer.

4. Respondents No. 2 & 3, i.e. driver and owner of the offending vehicle, in their reply, raised preliminary objection, qua maintainability and pleaded that the vehicle was comprehensively insured with respondent No. 1. It has been stated that documents of the vehicle were already submitted with Registering and Licencing Authority, Churah. Hence, they prayed for dismissal of the petition.

5. In rejoinder to the reply, filed on behalf of respondent No. 1, contents of the petition have been reiterated and that of the reply have been denied.

6. On 08.06.2012, the learned Tribunal below had framed the following issues for consideration and adjudication:

“1. Whether the deceased Ankit Mahajan had died on account of accident of car A/F I-20 at Daikund Nallah near Lakkar Mandi on Khajjar-Dalhousie Road, Chamba on 22.7.2011 due to rash or negligent driving of

driver i.e. respondent No. 2 Shikhar Mahajan? OPP

- 2. If issue No. 1 is proved in affirmative, to what amount of compensation, the petitioner is entitled to and from whom? OPP***
- 3. Whether the petition is not maintainable? OPR- 1 to 3***
- 4. Whether the driver of the offending vehicle was not having valid and effective driving licence as alleged? OPR-1***
- 5. Whether the offending vehicle was not having valid registration certificate, route permit and fitness certificate as alleged? OPR-1***
- 6. Whether the offending vehicle was being driven in breach of provisions of Motor Vehicle Act and Insurance Policy as alleged? OPR-1***
- 7. Relief?"***

7. After the parties led evidence and after hearing the learned counsel for the parties, the petition filed by the petitioner was allowed with costs and she was held entitled for compensation in the sum of Rs. 72,67,700/- alongwith interest at the rate of 7.5% per annum from the date of filing of the petition till deposit of Award amount and respondent No. 1/Insurance Company was held liable to pay the amount of compensation.

8. Feeling aggrieved and dissatisfied, the appellant

preferred the instant appeal against the impugned award dated 29.04.2013.

9. I have heard the learned Senior Counsel for the appellant, learned counsel for respondent No. 1, learned Senior Counsel for respondents No. 2 & 3 and carefully examined the entire record.

10. The learned Senior Counsel appearing on behalf of the appellant-Insurance Company contended that the award passed by the learned Tribunal below is illegal and contrary to the facts of the case, as on the date of the accident, the vehicle was being plied on the road as taxi, without any registration certificate which amounted to fundamental breach of the insurance policy as such the learned Tribunal below had wrongly fastened the liability upon the insurance company to pay the amount of compensation to the petitioner.

11. The perusal of record reveals that the vehicle in question, was owned by respondent No. 3, Suman and on 22.07.2011, at around 05:15 a.m., due to the rash and negligent driving of respondent No. 2, Shikhar Mahajan, the

aforesaid vehicle met with an accident at Dainkund *Nallah* near Lakkar Mandi on Khajjar-Dalhousie Highway and son of the petitioner namely, Ankit Mahajan had died in the accident in question.

12. It is not in dispute that the vehicle in question was sold by the authorized dealer on 10.06.2011 and the appellant-insurance company had insured the vehicle at the time of its purchase from the authorized dealer on the basis of the particulars furnished in the sale certificate and temporary registration number. The insurance policy was valid w.e.f. 10.06.2011 to 09.06.2012. As per the Motor Vehicles Act, the vehicle sold unregistered has to be registered with the Regional Transport Authority within a period of one month. It is also not in dispute that the vehicle in question was not registered within thirty days, i.e., before the expiry of the temporary registration certificate and its documents have been deposited with the concerned Registering and Licencing Authority only on 19.07.2011, as is evident from Certificate, Ext. RW-1/A. It is also not in dispute that the vehicle in question met with an accident on

22.07.2011, therefore, it has become clear that on the date of the accident, the vehicle was being plied on the road without any registration certificate.

13. Section 39 of the Act provides for necessity for registration which reads as under:

“39. Necessity for registration. - No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner: Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.”

14. Thus, Section 39 of the Motor Vehicles Act, 1988, prescribes that no person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with Chapter-IV of the Act and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle shall carry a registration mark displayed in the prescribed manner. Now, the question, which arises for consideration before this court

is as to whether plying of the vehicle without any registration certificate would amount to fundamental breach, as contended by the learned Senior Counsel for the insurance company. This question had come up for consideration before the Hon'ble Apex Court in **Narinder Singh vs. New India Assurance Company Limited & others, 2014 (9) SCC 3024**, wherein it has been held as under:

“11. A bare perusal of Section 39 shows that no person shall drive the motor vehicle in any public place without any valid registration granted by the registering authority in accordance with the provisions of the Act. However, according to Section 43, the owner of the vehicle may apply to the registering authority for temporary registration and temporary registration mark. If such temporary registration is granted by the authority, the same shall be valid only for a period not exceeding one month. The proviso to Section 43 clarified that the period of one month may be extended for such further period by the registering authority only in a case where a temporary registration is granted in respect of chassis to which body has not been attached and the same is detained in a workshop beyond the said period of one month for being fitted with a body or unforeseen circumstances beyond the control of the owner.

12. Indisputably, a temporary registration was granted in respect of the vehicle in question, which had expired on 11.1.2006 and the alleged accident took place on 22.2006 when the vehicle was without any registration. Nothing has been brought on record by the appellant to show that before or after 11.1.2006, when the period of temporary registration expired, the appellant, owner of the vehicle, either applied for permanent registration as

contemplated under Section 39 of the Act or made any application for extension of period as temporary registration on the ground of some special reasons. In our view, therefore, using a vehicle on the public road without any registration is not only an offence punishable under Section 192 of the Motor Vehicles Act but also a fundamental breach of the terms and conditions of policy contract.”

15. In the case on hand, temporary registration was granted with respect to the vehicle in question on 10.06.2011, which had expired on 09.07.2011. The accident took place on 22.07.2011 when the offending vehicle was being plied on the public road without any registration certificate. Learned Senior Counsel appearing on behalf of the respondent/owner contended that all the documents of the vehicle in question alongwith fee had been deposited in the Office of Registering and Licencing Authority, Churah on 19.07.2011 and authorization certificate, Ext. PW-1/A was also issued in this respect, as such, the owner was authorized to ply the vehicle even if registration certificate was not issued in her favour. In support of his contention, he placed reliance upon testimony of RW-1, Chandu Ram, Superintendent in the Office of RLA, Churah. However, the aforesaid contention of learned counsel for the

respondent/owner cannot be accepted, as, there is nothing on record to suggest that RW-1 was authorized on behalf of RLA, Churah to issue certificate Ext. RW-1/A. The learned Senior Counsel for the respondent/owner has failed to point out any material on record to show that the vehicle could be plied on depositing all the documents as well as fee in the Office of RLA, Churah without issuance of any registration certificate. Hence, the contention of learned Senior Counsel for the respondent/owner has no merit that the vehicle in question could be plied on issuance of authorization certificate, Ext. RW-1/A. Admittedly, the documents of the vehicle alongwith fee have been deposited in the concerned RLA on 19.07.2011, as is evident from certificate, Ext. RW-1/A. However, respondent No. 3 i.e. the owner of the vehicle has not provided any material on record to show that before 09.07.2011, when the period of temporary registration expired, she had either applied for permanent registration of the vehicle, as provided under Section 39 of the Act or moved any application for extension of period of temporary registration on the ground of some special reasons.

Therefore, the perusal of the record makes it clear that on the date of the accident, the vehicle in question was being plied without any registration certificate. Thus, in view of the aforesaid judgment of the Hon'ble Supreme Court, since the vehicle was being plied without any registration certificate, it is not only an offence punishable under Section 192 of the Act, but also a fundamental breach of the insurance policy. Hence, it can safely be held that the offending vehicle was being plied by respondent No. 3, i.e., its owner in violation of terms and conditions of Insurance Policy as such the findings of the learned Tribunal below on this aspect deserve to be set-aside and the liability cannot be fastened upon the Insurance Company.

16. Learned counsel for the cross objector contended that while awarding the compensation, learned Tribunal below has failed to assess the future prospects of the petitioner/cross-objector, therefore, he submitted that amount of compensation is required to be enhanced.

17. This contention of learned counsel for the cross-objector is not devoid of any merit, as in ***National Insurance***

Company Limited Versus Pranay Sethi & others, (2017)

16 SCC 680, a Constitution Bench of the Hon'ble Apex Court held that the compensation has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. It has further been held that while determining the income, in case the deceased was self-employed or on a fixed salary and below the age of 40 years, an addition of 40% of the established income to the income of the deceased towards future prospects should be made. Paras 59.3 and 59.4 of the said judgment read as follows:-

"59.3 .While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4 In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

18. In the instant case, at the time of accident, the deceased was aged about 27 years. Therefore, in view of the law laid down by the Apex Court in ***Pranay Sethi's case (supra)***, an addition of 40% of the notional monthly income of the deceased, in this appeal, can be made towards future prospects as the deceased was aged below 40 years.

19. As per salary certificate, monthly salary of the deceased at the time of his death was Rs. 85,000/-, as such, his annual salary was Rs. 10,20,000/-. After deduction of income tax, total annual salary of the deceased comes to Rs. 8,46,200/-. Thus, after fixing the annual income of the deceased, after deduction of income tax at Rs. 8,46,200/- and by adding 40% of the annual income towards future prospects, the amount comes to Rs. 11,84,680/- (Rs. 8,46,200/- + 3,38,480/-) and after deducting 50% towards personal and living expenses, his total contribution to the family comes to Rs. 5,92,340/-, as the deceased was a bachelor. By applying the multiplier of '17' as per the settled law, the compensation under the head loss of dependency is re-fixed as Rs. 1,00,69,780/- (Rs. 5,92,340/- x 17).

20. In ***Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and others, reported in (2018) 18 Supreme Court Cases 130***, the Hon'ble Supreme Court has laid down that consortium is not limited to spousal consortium and it also includes parental consortium as well as filial consortium. The relevant portion of the aforesaid judgment reads as under:-

"21. A Constitution Bench of this Court in Pranay Sethi dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse:

21.1. Spousal consortium is general defined as rights pertaining to the relationship of a husband-wife which allows compensation o the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation".

21.2. Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".

21.3. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love affection, companionship and their role in the family

unit.

22. *Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of love, affection, care and companionship of the deceased child."*

21. While placing reliance upon the judgment passed by the Hon'ble Apex Court in ***Pranay Sethi's case (supra)***, the Hon'ble Supreme Court in ***Sunita & ors. Vs. United India Insurance Co. Ltd. & ors.***, had enhanced the compensation under the conventional heads @ 10% after a span of every three years w.e.f. the year 2017 and held as follows:-

"20. Regarding the monthly income of the deceased, we concur with the view taken by the Courts below in assessing the same to be Rs.12,000/- per month, for there being no error therein. Hence, in awarding compensation which is just and fair, we are inclined to increase the amount awarded under the conventional heads, namely, loss of estate, loss of consortium, and funeral expenses by 10% adverting to the settled principle of law laid down by this Court in National Insurance Co. Ltd. v. Pranay Sethi, that such amount should be revised every three years."

22. Accordingly in view of the law laid down by the Hon'ble Supreme Court in ***Pranay Sethi's*** as well as

Sunita's cases (supra), by enhancing the compensation under the conventional heads @ 10%, after every three years from the year 2017, the petitioner is entitled to loss of estate at Rs. 19,965/-, funeral expenses at Rs.19,965/-. The petitioner, being mother, is entitled to filial consortium of Rs. 53,240/-. Accordingly, the total amount of compensation comes out as under:-

"Head	Amount
(i) Loss of dependency	Rs. 1,00,69,780/-
(ii) Funeral expenses	Rs.19,965/-
(iii) Loss of estate	Rs.19,965/-
(iv) Filial consortium	Rs.53,240/-

Total compensation awarded is **Rs. 1,01,62,950/-**

23. Now, the next question, which arises for consideration before this court is as to who shall be liable to pay the amount of compensation to the petitioner. It has been held by the Hon'ble Supreme Court that in order to provide immediate relief to the claimant(s), the Tribunal, even, where it finds that the insurer may escape the liability to pay the compensation, may ask the Insurance Company

to pay compensation to the claimant(s) and ask it to recover the compensation so paid from the insured. In ***National Insurance Co. Ltd. vs. Swaran Singh, 2004 (3) SCC 297***, the Hon'ble Apex Court held that in case of a third party claim, the insurance company has the statutory liability to satisfy the judgment in the first instance and then to recover the same from the owner and driver. The relevant portion of the aforesaid judgment reads as under:-

"73. The liability of the insurer is a statutory one. The liability of the insurer to satisfy the decree passed in favor of a third party is also statutory.

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77. In United Insurance Co. Ltd. v. Jaimy and Ors. 1998 ACJ 1318 (Ker.) it is stated: (ACJ pp.1324- 25, paras 19-22) "Section 149(2) relates to the liability of the insurer and speaks of a situation in regard to which no sum shall be payable by an insurer in respect of any judgment or award. In the context it is proved that an insurer to whom notice of bringing of any such proceeding is given, could defend the action stated in the said statutory provision. The contention in the context would be found in section 149(2)(a) in the event of a breach of a specified condition of the policy enabling the insurer to avoid liability in regard thereto. In the process in regard to the right of the insurer to recover the amount from the insured, it would have to be seen by referring to section 149(4) as to under what circumstances this can be successfully recovered from the insured.

Section 149(4) says that where a certificate of insurance is issued, so much of the said policy as purports to restrict the insurance of the persons insured thereby by referring to any of the conditions mentioned

and it is precisely enacted in regard thereto that the liability covered by Section 2(b) as is required to be covered by the policy would not be available. The position is made further clear by the provisions enacting that any sum paid by the insurer in or towards the discharge of any liability of any person who is covered by the policy by virtue of this sub-section shall be recoverable by the insurer from that person. In other words, section 149(4) considers the right of the insurance company in regard to re- imbursement of the amount paid by them only in the context of a situation other than the one contemplated under Section 149(2)(b). It would mean that except under the situation provided 593/2008, 596/2008 & 598/2008 by Section 149(2)(b), the insurer would not be in a position to avoid the liability because he has got rights against the owner under the above provision.

The learned counsel strenuously submitted that this would not be the correct understanding and interpretation of the statutory provisions of section 149 of the 1988 Act. The learned counsel submitted that to read the statutory provision to understand that the insurance company could only claim from the owner in situations governed by section 149(2)(b) and to have no right under the said provision with regard to other situations under section 149(2)(a) would not be the proper reading of the statutory provision. The learned counsel submitted that in fact the provision would have to be meaningfully understood. It is not possible to consider the submission of the learned counsel in the light of the plain language of the statutory provision. It is necessary to emphasize that under the new Act the burden of the insurance company has been made heavier in the context of controlling the need of taking up contentions to legally avoid the liabilities of the insurance company."

(Emphasis supplied)

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83. Sub-section (5) of Section 149 which imposes a liability on the insurer must also be given its full effect. The insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does

mean that it did not have initial liability at all Thus, if the insurance company is made liable to pay any amount, it can recover the entire amount paid to the third party on behalf of the assured. If this interpretation is not given to the beneficent provisions of the Act having regard to its purport and object, we fail to see a situation where beneficent provisions can be given effect to. Sub- section (7) of Section 149 of the Act, to which pointed attention of the Court has been drawn by the learned counsel for the petitioner, which is in 593/2008, 596/2008 & 598/2008 negative language may now be noticed. The said provision must be read with sub-section (1) thereof. The right to avoid liability in terms of sub-section (2) of Section 149 is restricted as has been discussed hereinbefore. It is one thing to say that the insurance companies are entitled to raise a defense but it is another thing to say that despite the fact that its defense has been accepted having regard to the facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner. These two matters stand apart and require contextual reading.

xxx Conclusion

104. It is, therefore, evident from the discussions made hereinbefore that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time."

24. In **United India Insurance Company Ltd. vs. Lehu & Ors., (2003) 3 SCC 338** which was noted in **Swaran Singh's case** (Supra) it was held that even in the case where a willful breach on the part of the insured is established, the Insurance Company would remain liable to the third parties. But, it may be able to recover the amount

paid from the insured. The relevant portion of the judgment is reproduced hereunder:-

"20. When an owner is hiring a driver he will therefore have to check whether the driver was a driving license. If the driver produces a 593/2008, 596/2008 & 598/2008 driving license which on the face of it looks genuine, the owner is not expected to find out whether the license has in fact been issued by a competent authority or not. The owner should then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that Insurance Companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving license shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a license and is driving competently there would be no breach of Section 149 (2) (a) (ii). The Insurance Company would not then be above of liability. If it ultimately turns out that the license was fake, the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had notice that the license was fake and still permitted that person to drive. More importantly, even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia Insurance Company Limited v. Kokilaben Chandravadan, (1987) 2 SCC 654; Sohan Lal Passi v. P. Sesh Reddy, (1996) 5 SCC 21; and New India Assurance Company Ltd. v. Kamla, (2001) 4 SCC 342. We are in full agreement with the views expressed therein and see no reason to take a different view."

(Emphasis supplied)

25. In ***Kusum Lata* vs. *Satveer*, (2011) 3 SCC 646**, the Hon'ble Apex Court, the Hon'ble Supreme Court has

observed as under:-

"13. In respect of the dispute about licence, the Tribunal has held and, in our view rightly, that the Insurance Company has to pay and then may recover it from the owner of the vehicle. This Court is affirming that direction in view of the principles laid down by a three judge Bench of this Court in the case of National Insurance Company Limited v. Swaran Singh and ors reported in (2004) 3 SCC 297".

26. In ***Amrit Paul Singh & another vs. Tata AIG General Insurance Company Limited & others, (2018) 7 Supreme Court Cases 558***, Hon'ble Supreme Court has again put a seal of approval on the principles laid down in ***Swaran Singh's case*** (*supra*) and it has been held as under:

"16. The Court held that if, on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possession the requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence. That apart, minor and inconsequential deviations with regard to licensing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance to third parties. The other category of cases that the Court addressed to included cases where the licence of the driver is found to be fake. In that context, the Court expressed its general agreement with United India Insurance Co. Ltd. v. Lehu (2003 (3) SCC 338) and stated thus: (Swaran Singh Case (National Insurance Co. Ltd. vs. Swaran Singh, (2004) 3 SCC 297)

p. 337, para 92)

“92. ...In Lehru case the matter has been considered in some detail. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of the law in terms whereof the insurer is to establish willful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or for the owners to be absolved from any liability whatsoever. ...”

... ..

24. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh and Lakhmi Chand in that regard would not be applicable to the case at hand. That apart, 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. The said directions are in consonance with the principles stated in Swaran Singh and other cases pertaining to pay and recover principle.”

27. Consequently, in view of detailed discussion made here-in-above and the law laid down by the Hon'ble Apex Court, the present appeal as well as cross objections are partly allowed and the impugned award dated 29.04.2013, passed by the learned Tribunal below, is modified to the extent that the petitioner is entitled to compensation to the tune of Rs. 1,01,62,950/-, which shall be first paid to the petitioner by the Insurance Company, who shall be entitled to recover the same from respondent No. 3/owner of the offending vehicle, in accordance with law. The remaining part and terms of the impugned award, including the interest component, shall remain the same.

The appeal, as well as cross objections stand disposed of in the above terms, so also the pending application(s), if any.

**(Sushil Kukreja)
Judge**

October 08, 2026 (raman)