

AFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 1251 of 2017**

1. Sunil Chandrakar S/o Kunj Lal Chandrakar, Aged About 35 Years, R/o Village Riva, Post Riva, P.S. Mandir Hasoud, Distt. Raipur, Chhattisgarh(Driver of Vehicle No. C.G.-04/G/8269).
2. Sarabjeet S/o Dilip Singh Hora, Aged About 45 Years, R/o Sai Nagar, Devendra Nagar, Distt. Raipur, Chhattisgarh(Owner of Vehicle No. C.G.-04/G/8269).

----Appellants**Versus**

1. Mohd. Saleem S/o Mohd. Anwar, Aged About 22 Years R/o Sanjay Nagar, P.S. Tikrapara, District Raipur, Chhattisgarh.
2. United India Insurance Company Limited, Through Branch Manager, Krishna Complex, Kachhahri Chouck, District Raipur, Chhattisgarh(Insurer of Vehicle No. C.G.-04/G/8269).

----Respondents**MAC No. 1392 of 2016**

1. Sunil S/o Kunj Lal Chandrakar, Aged About 35 Years R/o Village Riva, Post Riva, P.S. Mandir Hasoud, Distt. Raipur, Chhattisgarh.....(Driver of Vehicle No. C.G.-04/G/8269).
2. Sarabjeet S/o Dilip Singh Hora, Aged About 45 Years R/o Sai Nagar, Devendra Nagar, Distt. Raipur, Chhattisgarh.....(Owner of Vehicle No. C.G.-04/G/8269).

----Appellants**Versus**

1. Shobha Devi Wd/o Laxmi Narain Gupta, Aged About 46 Years R/o Sanjay Nagar Bakra Market, Tikrapara Distt. Raipur, Chhattisgarh.
2. Vikas Gupta S/o Laxmi Narain Gupta, Aged About 17 Years Minor Through Mother Respondent No.1 Smt. Sobha Devi, R/o Sanjay Nagar Bakra Market, Tikrapara Distt. Raipur, Chhattisgarh.
3. Rinku Gupta S/o Laxmi Narain Gupta, Aged About 15 Years Minor Through Mother Respondent No.1 Smt. Sobha Devi, R/o Sanjay Nagar Bakra Market, Tikrapara Distt. Raipur, Chhattisgarh(Claimants).
4. United India Insurance Company Ltd. Through Divisional Manager, Court Road, Jailroad, Raipur Tahsil, Distt. Raipur, Chhattisgarh(Insurer Of Vehicle No. C.G.-04/G/8269).

----Respondents

For Appellants	:	Shri JK Gupta, Advocate.
For Claimants	:	Shri Arvind Shrivastava, Advocate.
For United India Insurance Co.	:	Shri Pankaj Agrawal, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board**

26.09.2017

1. These are two appeals filed by the owner and driver of the Truck bearing registration No.CG-04-G-8269, which met with an accident on 04.03.2013 and as a result of which one Vikas Gupta sustained grievous injuries to which he later succumbed and one Mohd. Salim received injuries.
2. The legal representatives of the deceased Vikas filed a claim case No.50 of 2013 which came up for decision before the 3rd Additional Motor Accident Claims Tribunal, Raipur whereas, the injured himself filed a claim case before the Additional Motor Accidents Claims Tribunal, Raipur which was registered as Claim Case No.47 of 2014. Vide the two awards, the Tribunal concerned had allowed the claim applications and ordered for payment of compensation of Rs.11,00,000/- with interest @ 7.5 percent per annum in case of death of Vikas Gupta in claim case No.50 of 2013. So far as the case of injured Mohd. Salim is concerned, the Tribunal has awarded compensation of Rs.1,69,128/- with interest @ 7 percent per annum. While passing the awards, the two Tribunals have in claim case No.50 of 2013 ordered pay and recover by applying the principle of Pay and Recover whereas, in claim case No.47/2014 the Tribunal has exonerated the insurance company of its liability and have fastened the liability of payment of compensation upon the owner.
3. Counsel for the appellants submits that the only ground for exonerating the insurance company in one case and for order of pay and recover in the second case is that, the vehicle involved in the

accident did not have valid fitness certificate on the date of accident and therefore, on this ground the liability has been fastened upon the owner.

4. The sole ground which the appellant-owner has raised in these two appeals is that fitness certificate is not required under Section 149(2) of the MV Act. According to counsel for the owner, the insurance company can only take a defence which is available under Section 149(2) and not any other conditions beyond the said provisions of law. It was further contended that Section 149(2) does not envisage requirement of a valid fitness certificate, with which the insurance company could be absolved of its liability.
5. The counsel for the insurance company opposing the appeal submits that the facts which have come before the Tribunal clearly stipulates that on the fateful day i.e. on the date of accident the owner of the Truck did not have a valid fitness certificate pertaining to the said Truck. According to insurance company, in the absence of fitness certificate, the award passed by the Tribunal cannot be said to be erroneous or bad in law. It was also the contention of the insurance company that the fact that there was no fitness certificate clearly amounts to breach of policy condition and for these reasons prayed for rejection of the appeals. In support of his contention, he relied upon the decision of Division Bench of Kerala High Court in case of Thara Vs. Syamala, 2009 ACJ 2440.
6. Having heard the rival contentions put forth on either side and on perusal of records, it would be relevant at this juncture to refer to

provision of Section 149 (2) of the Motor Vehicles Act, which for ready reference is reproduced herein as under:

“2. No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—

(i) a condition excluding the use of the vehicle—

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non- disclosure of a material fact or by a representation of fact which was false in some material particular.”

7. It would also be trite at this juncture to refer to a decision of this court in MAC No.1229 of 2012, decided on 08.04.2013 (Divisional Manager, the Oriental Insurance Co.Ltd. Vs. Smt. Rupa Dahariya & Ors.) wherein in paragraph 7, this court has held as under :

“7. To prove the fact that no fitness certificate has been issued with regard to offending vehicle, the appellant-insurance company has failed to certificate-Ex. D/1 and also examined NA-3, Lakhn Lal Druv, a RTO person. The said RTO person examined by the appellant has deposed that certificate Ex. D/1 was not bearing seal of his office. In view of the above submission of RTO

person, it cannot be said that the appellant has proved the fact that the vehicle was not fit at the time of accident. Moreover, the appellant-insurance company is entitled to defend the action on any of the grounds mentioned in Section 149(2) of the Act. The validity of fitness certificate is not a ground available to the appellant-insurance company under Section 149(2) of the Act and therefore, on this ground also, the plea raised by the learned counsel for the appellant is devoid of merits.”

8. Further, it is also relevant to refer to a decision of Karnataka High Court in case of Sri Venkatachalaiah Vs. The New India Assurance Co.Ltd., decided on 24.08.2012 wherein in paragraphs 13 & 14, the High Court has held as under:

“13.....Non-possessioning of fitness certificate by the owner of offending vehicle as on the date of accident is not one of the grounds on which the insurer can defend their action and oppose saddling of liability against them and it is not the defence under which they can claim exemption from liability. Even in the Insurance Policy - Ex.R.1 issued by the insurer in favour of the offending vehicle possessing fitness certificate is not one of the conditions of breach of policy.

14. I have carefully gone through the finding of the Tribunal on liability and I do not find any valid reasons to reverse the finding of the Tribunal on liability. Even as per the judgment of the Division Bench of this Court in the case of The New India Assurance Co. Ltd. vs. Sri. N.Srinivasa Murthy and others (MFA No. 6621/2006 (MV) c.w. MFACROB No.2304/2006(MV)), non-possessioning of fitness certificate is not a reason to deny compensation to the claimant.”

9. Recently, the Full Bench of Kerala High Court in case of Augustine VM Vs. Ayyappankutty and Ors. Decided on 04.03.2015, in paragraph 11 has held as under :

“11.However, if such a vehicle is used only for the permitted purpose, and the accident occurs when the permit or fitness certificate ceased to exist, it amounts to a technical violation only, which will not entitle the insurer to disown the liability to third parties. For avoiding the liability relying on Section 149(2)(a)(i)(c), the insurer should plead and prove that the offending vehicle was used for a purpose not authorized by the permit.....We are of the definite view that Thara v. Syamala (cited Supra) does not lay down the correct law.....”

10. What is also important is that the Full Bench while deciding the said judgment has also held that the judgment relied upon by the counsel

for the Insurance Company does not lay correct law as can be seen from the contents of paragraph 11.

11. In view of the aforesaid legal pronouncements by the different High Courts particularly the judgment of Full Bench of Kerala High Court, this court is of the opinion that the findings of the Tribunal in two appeals does not seem to be proper, legal and justified. The impugned awards therefore needs to be set aside to the extent of exoneration of the insurance company of its liability in claim case No.47/2014 by the Additional Motor Accidents Claims Tribunal, Raipur, so also the finding of "Pay and Recovery" ordered in claim case No.50 of 2013 by the 3rd Additional Motor Accidents Claims Tribunal, Raipur.
12. It is further held that it shall be the responsibility of the insurance company to honour the awards passed by the Tribunal in each of the cases indemnifying the appellant/owner in both the cases.
13. Accordingly, both the appeals stand allowed.

Sd/-
(P. Sam Koshy)
Judge