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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1207 of 2013

- The New India Insurance Company Limited Do-II, N.I.C. Building, 1st Floor, Pandari, Raipur, Chhattisgarh (Non-applicant No.3)

---- Appellant

Versus

1. Jatindra Nath Mali, S/o Late Manindra Mali aged about 54 Years
2. Smt. Maliti Mali W/o Jatindra Nath Mali Aged About 46 Years

Both R/o Village- PV-54, Anand Nagar, Post- Gundahur, P.S. Pankhajur, District : Kanker, Chhattisgarh

Claimants

3. Kripal Nishad S/o Hemram Nishad R/o Bhawanipur, P.S. Palari, Distt. Baloda Bazar C.G., At Present- R/o Near Jora Nala Road Kinare, P.S. Pandari, District : Raipur, Chhattisgarh (Driver of Bus bearing No.CG 04- 7147)

Non-applicant No.1

4. Bhupendra Singh Saluja, S/o Late Preetam Singh Saluja R/o Sagar Sweets, Bus Stand Kharora, P.S. Kharora, District : Raipur, Chhattisgarh (Owner of Bus bearing No.CG 04- 7147)

Non-applicant No.2

---- Respondents

For Appellant	:	Shri Pankaj Agrawal, Advocate
For Respondents- 1 and 2	:	Smt Arpana Singh, Advocate on behalf of Shri Devershi Thakur, Advocate
For Respondent- 4	:	Shri Dharmesh Shrivastava, Advocate
For Respondent- 3	:	None appears

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

14.05.2019

1. The appellant/ Insurance Company filed this instant appeal under Section 173 of Motor Vehicle Act, 1988 challenging impugned award dated 30.09.2013 passed by 7th Additional Motor Accidents Claims Tribunal, Raipur (for short, 'Claims Tribunal') in claim case No.27/2013 whereby learned Claims Tribunal while allowing claim application in part, awarded a total sum of Rs.7,03,000/- as compensation in a death case.

2. Brief facts for disposal of this appeal are that on 24.04.2012 Kanika Mali was travelling on a bus bearing No.CG04-7147 (for short, 'offending vehicle') along with her husband and going to Raipur from Balodabazar. At about 9.45 pm when offending vehicle reached near Bangoli Cement Pole factory, non-applicant -1/respondent-3 drove offending vehicle rashly and negligently and smashed it at a stationary tractor-trolley from backside. In the aforementioned accident Kanika Mali and her husband suffered grievous injuries on their person and succumbed to those injuries. Matter was reported to concern Police Station Kharora, based on which Crime No.157 of 2012 for commission of offences under sections 279, 337, 338,304A IPC was registered against non-applicant-1/ driver of offending vehicle. Claimants who are parents-in-law of deceased Kanika Mali filed claim application before learned Claims Tribunal, Raipur mentioning therein that their daughter-in-law was aged abut 22years and earning Rs.5,000/- per month by stitching. They claimed Rs.25, 25,000/- as compensation against non-applicants.

3. Non-applicants 1 and 2 who are driver and owner of offending vehicle have denied all adverse pleadings made in the claim application. They further pleaded that on the date of accident driver of offending vehicle was possessing a valid and effective driving license and it was insured with Insurance Company, non-applicant 3, therefore, liability if any, for payment of amount of compensation would be on Insurance Company.

4. Insurance Company also submitted reply to claim application and pleaded that tractor-trolley was standing on centre of road, hence, there is contributory negligence on the part of tractor-trolley driver also. Claimants have not arrayed owner, driver and Insurance Company of tractor-trolley in their claim application, therefore, application itself was not maintainable. It was further pleaded that on the date of accident, driver of offending vehicle was not having valid and effective driving license and there was no fitness certificate or permit for plying it on public road.

5. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties, held that accident took place due to rash and negligent driving of non-applicant 1, driver of offending vehicle; there was no violation of conditions of Insurance Policy, and there was no contributory negligence on the part of driver and owner of tractor-trolley. Learned Claims Tribunal after calculating amount of compensation awarded a total sum of Rs.7,03,000/- along with interest @6% per annum.

6. Learned counsel for the appellant/ Insurance Company submitted that learned Claims Tribunal committed error in adding 50% of assessed income towards loss of future prospectus; in deducting 1/3rd amount of assessed income towards living and personal expenses ignoring the fact that claimants are parents-in-law of deceased and deceased was not surviving by spouse or children; and in applying multiplier taking into consideration of age of deceased instead of age of claimants / parents-in-law. He further argued that on the date of accident, offending vehicle was not having any fitness certificate; therefore, there is violation of conditions of Insurance Policy.

7. Per contra learned counsel appearing for respondents- claimants and other respondent supported the award.

8. So far as the first ground raised by learned counsel for appellant/Insurance Company that learned Claims Tribunal committed error in adding 50% of assessed income towards future prospects is concerned, undisputedly, deceased Kanika Mali was self-employed (doing work of tailoring). Nature of her employment and earnings are not of permanent nature.

9. Hon'ble Supreme Court in the matter of **National Insurance Company Limited Vs Pranay Sethi and others** reported in 2017 (16) SCC 680 discussed above issue in detail and has held thus:

> “61. In view of the aforesaid analysis, we proceed to record our conclusions:
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> (i)xxxxxxxxxxxx
>
> (ii)xxxxxxxxxxxx
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> (iii) 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.”

10. In the case at hand, deceased was self-employed and was earning by tailoring. Therefore, learned Claims Tribunal has committed an error in adding 50% of her income towards future prospects. As on the date of accident deceased was aged about 22 years of age, therefore, there will be an addition of 40% of assessed income of deceased towards future prospects and not 50%.

11. The next question raised by learned counsel for appellant is that learned Claims Tribunal erred in deducting ⅓ from assessed income of deceased towards her personal and living expenses instead of half (½). In the instant case, though deceased Kanika Mali was married, but she was not survived by her spouse or children after accident. Unfortunately, in the same accident, her husband also suffered injuries and subsequently he succumbed to those injuries. Claimants are parents-in-law of deceased. In the facts and circumstances of case, since deceased was not survived by her spouse or children, for that reason, appropriate deduction towards personal and living expenses should be half, instead of ⅓ as taken for purpose of calculating amount of compensation. Deduction of ⅓ made by learned Claims Tribunal from assessed income is not sustainable and is hereby set aside. The correct deduction will be ½ of the assessed income.

12. The next ground raised by learned counsel for the appellant is that learned Claims Tribunal erred in applying multiplier considering age of deceased whereas in case where claimants are parents-in-law of deceased, then age of claimants is to be taken into consideration for applying multiplier.

13. In the matter of **Sube Singh and another Vs Shyam Singh (dead) and others** reported in 2018 (3) SCC 18 the issue with regard to application of multiplier in case of bachelor has been discussed by Hon'ble Supreme Court and observed as under:

> "4. On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e. 22.09.2009. He was unmarried and his parents who filed the petition for compensation were in the age group of 40 to 45 years. The High Court, relying on the decision in the case of **Ashvinbhai Jayantilal Modi Vs Ramkaran Ramchandra Sharma**[1] held that multiplier 14 will be applicable in the present case, keeping in mind the age of the parents of the deceased. The legal position, however, is no more *res integra*. In the case of **Munna Lal Jain Vs Vipin Kumar Sharma**[2] decided by a three-Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependants. We may usefully refer to the exposition in paragraph Nos. 11 and 12 of the reported decision, which read thus:
>
> > "11. The remaining question is only on multiplier. The High Court following **Santosh Devi Vs National Insurance Company Limited**[3], has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three-Judge Bench decision in **Reshma Kumari Vs Madan Mohan**[4]. It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependants is concerned, there will always

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[1] (2015) 2 SCC 180
[2] (2015) 6 SCC 347
[3] (2012) 6 SCC 421
[4] (2013) 9 SCC 65

be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken. To quote : (Reshma Kumari (*supra*) para 36)

> "36.In Sarla Verma Vs DTC[5] this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in Sarla Verma (*supra*) that the claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in Sarla Verma (*supra)*."

12. In Sarla Verma (*supra*), at paragraph-19 a two-Judge Bench dealt with this aspect in Step 2. To quote (SCC p133):

> "19.xxxx xxxxxx xxxx Step 2 (ascertaining the multiplier)
>
> Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the

[5] (2009) 6 SCC 121

> accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased."

14. Considering the aforementioned principle expounded in **Sube Singh** (supra), **Sarla Verma** (supra) which have been affirmed by Apex Court in **National Insurance Company Limited Vs Pranay Sethi and other**s reported in 2017 (16) SCC 680 and held that in death case of a bachelor also consideration of application of multiplier would be age of deceased and not the age of his dependants.

15. In aforementioned judgment Hon'ble Supreme Court has authoritatively held after considering its earlier judgment that even in cases of claimants who are parents of deceased, application of multiplier would be considered based on age of deceased only. In the instant case age of deceased has been assessed as 22 years and therefore learned Claims Tribunal not committed any error in applying multiplier of 18 as held by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt) and others Vs Delhi Transport Corporation and another** reported in 2009 (6) SCC 121.

16. In view of aforementioned discussion so far as it relates to calculation of amount of compensation is concerned, it requires re-calculation.

17. Learned Claims Tribunal assessed the income of deceased as Rs.3,000/- per month and Rs.36,000/- per annum. By adding 40% of assessed income towards her future prospects, her monthly income comes to Rs.4,200/- {3000 + (3000 x40/100)}. Her yearly income would be Rs.50,400/- (4200 x 12). After deducting half of this amount towards personal and living expenditure, yearly loss of dependency would be Rs.25,200/- (50400 x ½). Looking to age of deceased on the date of accident as 22 years, application of appropriate multiplier would be 18. By applying multiplier 18 to the yearly loss of dependency, total loss of dependency would come to Rs.4,53,600/- (25200 x 18).

18. Apart from aforementioned amount of Rs.4,53,600/-, claimants would be further entitled for a total sum of Rs.30,000/- towards other conventional heads. Now claimants will be entitled for a total sum of Rs.4,83,600/-, instead of Rs.7,03,000/-. The amount of compensation will carry interest @ 6% from the date of application till its realization.

19. Now coming to argument raised by learned counsel for appellant that on the date of accident offending vehicle was not having a valid and effective permit to ply it on public road, to prove this, Insurance Company examined RB Nirmalkar (NAW1), who is Assistant Gr.III in Road Regional Transport Office, Raipur. He in his evidence stated that Ex.D/1C was fitness certificate issued for vehicle bearing No.CG04-7147, offending vehicle. He further clearly stated that on the date of accident, offending vehicle was not having fitness certificate. Perusal of Ex.D/1C would reveal that fitness certificate was valid from 3.3.2010 to 2.3.2011, whereas, accident took place on 24.04.2012 ie after its expiry. There is no other material placed on record by owner or driver of offending vehicle with respect to renewal of fitness certificate, though they appeared after issuance of notice and submitted their reply to the claim application.

20. Satyendra Kumar Ahuja, (NAW2/1) also stated in his evidence that, for plying any vehicle on road, fitness certificate is an essential document. He also denied the suggestion that he is not aware if owner of offending vehicle has filed any application for renewal of fitness certificate. Owner of offending vehicle has not made any attempt to appear into witness box to prove that after expiry of period of fitness certificate, whether he submitted any application for renewal of fitness certificate or not.

21. In view of aforementioned facts and evidence available on record, in the considered opinion of this court, on the date of accident offending vehicle was not having valid and effective fitness certificate. Now the question arises that whether in absence of fitness certificate of a particular vehicle on the date of accident, there is breach of conditions of Insurance Policy or not? Section 56 of 1988 act provides for certificate of fitness of transport vehicle. Issue of fitness certificate has been considered by five judges Bench of Hon'ble Kerala High Court in the matter of **Pareed Pillai Vs Oriental Insurance Company Ltd.,** reported in 2019 ACJ 16 and held thus: (paras **15, 16, 17 and 21)**

> "15. As mentioned above, fitness of a vehicle, to be used as a transport vehicle, is of paramount importance. The necessity to have 'Fitness Certificate' is prescribed under Section 56 of the Act. Sub-section (1) of Section 56 clearly stipulates that, a transport vehicle [subject to the provisions of Section 59 (power to fix the age limit of motor vehicle) and Section 60 (registration of the vehicles belonging to the Central Government)] shall not be deemed to be validly registered for the

purpose of Section 39, unless it carries a 'Certificate MACA No. 2030 of 2015 and connected cases of Fitness' as prescribed. By virtue of Section 84 (a), as mentioned already, it is a mandatory requirement of every Permit, that the vehicle to which the Permit relates, shall carry valid 'Certificate of Fitness' issued under Section 56 at all time, absence of which will automatically lead to a situation that the vehicle will not be deemed as having a Permit [if it is not having a 'Fitness Certificate' on a given date]. Using a motor vehicle in an unsafe condition in any public place itself is an offence under Section 190 of the Act. Separate penalty is prescribed under Section 192 for driving or using the motor vehicle in contravention of Section 39 of the Act [i.e. without registration]; which at the first instance by fine upto Rs.5000/- [not less than Rs. 2000/-] and for the second or subsequent offences, it may be with imprisonment, which may extend to one year or fine upto Rs.10,000/- [not less than Rs.5000/-] or with both; of course, conferring power upon the Court to impose a lesser punishment, for reasons to be recorded. Similarly, separate punishment is provided for using vehicles without 'Permit' as provided under Section 192A [first offence with fine upto Rs.5000/- which shall not be less than Rs.2000/- and for any subsequent offence with imprisonment upto one year [which shall not be less than 3 months or with fine up to Rs.10.000/- which shall not be less than Rs.5000/-] or with both; here MACA No. 2030 of 2015 and connected cases again conferring power on the Court to impose lesser punishment, for reasons to be recorded. Reference is made to the above provisions only to illustrate the utmost requirement to have a valid 'Registration, Permit and Fitness Certificate'.

16. Importance of the fitness/road worthiness of a vehicle, right from the time of registration of the vehicle, is further discernible from Rule 47 of the Central Motor Vehicles Rules 1989 [referred to as Central Rules]. The said Rule deals with application for registration of motor vehicles, which, among other things, stipulates that it shall be accompanied by various documents. Under sub-rule (1) (g), it is mandatory to produce road worthiness certificate in Form 22 from the manufacturers [Form 22A from the

body builders]. On completing the formalities/procedures, 'Certificate of Registration' is to be issued in terms of Rule 48 of the Central Rules in Form 23/23A, as the case may be. The said Rule contains a proviso, insisting that, when Certificate of Registration pertains to a transport vehicle, it shall be handed over to the registered owner only after recording the Certificate of Fitness in Form 38. Validity of the Certificate of Fitness is only to the extent as envisaged under Rule 62 of the Central Rules, which mandates, as per the proviso, that the renewal of a Fitness Certificate shall be made only after the Inspecting Officer or MACA No. 2030 of 2015 and connected cases authorised Testing Station as referred to in sub Section 1 of Section 56 of the Act has carried out the test specified in the table given therein.

17. The stipulations under the above provisions clearly substantiate the importance and necessity to have a valid Fitness Certificate to the transport vehicle at all times. The above prescription converges on the point that Certificate of Registration, existence of valid Permit and availability of Fitness Certificate, all throughout, are closely interlinked in the case of a transport vehicle and one requirement cannot be segregated from the other. The transport vehicle should be completely fit and road worthy, to be plied on the road, which otherwise may cause threat to the lives and limbs of passengers and the general public, apart from damage to property. Only if the transport vehicle is having valid Fitness Certificate, would the necessary Permit be issued in terms of Section 66 of the Act and by virtue of the mandate under Section 56 of the Act, no transport vehicle without Fitness Certificate will be deemed as a validly registered vehicle for the purpose of Section 39 of the Act, which stipulates that nobody shall drive or cause the motor vehicle to be driven without valid registration in public place or such other place, as the case may be. These requirements are quite 'fundamental' in MACA No. 2030 of 2015 and connected cases nature; unlike a case where a transport vehicle carrying more passengers than the permitted capacity or a goods carriage carrying excess quantity of goods than the permitted extent or a case where a transport vehicle was plying through a deviated route than the

one shown in the route permit which instances could rather be branded as 'technical violations'. In other words, when a transport vehicle is not having a Fitness Certificate, it will be deemed as having no Certificate of Registration and when such vehicle is not having Permit or Fitness Certificate, nobody can drive such vehicle and no owner can permit the use of any such vehicle compromising with the lives, limbs, properties of the passengers/general public. Obviously, since the safety of passengers and general public was of serious concern and consideration for the law makers, appropriate and adequate measures were taken by incorporating relevant provisions in the Statute, also pointing out the circumstances which would constitute offence; providing adequate penalty. This being the position, such lapse, if any, can only be regarded as a fundamental breach and not a technical breach and any interpretation to the contrary, will only negate the intention of the law makers.

21. The question whether absence of valid Permit to a transport vehicle at the time of accident is a 'fundamental breach' or a 'technical breach' had come up for consideration again before the Apex Court MACA No. 2030 of 2015 and connected cases recently in Amrit paul Singh and Another Vs. TATA AIG General Insurance Co. Ltd and Others [2018 (3) KHC 197]. The factual matrix in the said case is that, the rider of the motor cycle was knocked down to death by the offending truck on 19.02.2013, which led to the claim petition preferred by the legal heirs. The claim was resisted by the insurer, mainly contending that there was violation of policy conditions in so far as the offending truck was not having a valid Permit and the driver was not having a valid driving licence. Based on the materials on record and placing reliance on the verdict passed by the Apex Court in Challa Upendra Rao's case [cited supra], the Tribunal, after fixing the quantum of compensation, directed the insurer to satisfy the same, with liberty to have it recovered from the insured. The said finding and reasoning came to be affirmed by the High Court, in turn leading to the proceedings before the Apex Court. After exhaustive discussion on the relevant provisions of law including

Section 2 (28), 2 (31), 2 (47), 66, 149 and 166 of the M.V. Act 1988 and the various judgments rendered by the Apex Court at different points of time, including in National Insurance Co. Ltd. Vs. Swaran Singh and others [(2004) 3 SCC 297] and Challa Upendra Rao's case [cited supra], the Apex Court held that the offending truck was not having a valid Permit on the date MACA No. 2030 of 2015 and connected cases of accident; which was not a technical breach to attract the dictum in Swaran Singhs' case [cited supra] [where also right of recovery was held as conferred on the insurer, once the breach was established by the insurer]. It was also observed that, it was not a case where any of the exceptions under sub-section (3) of Section 66 was attracted and further that, existence of a Permit of any nature was matter of documentary evidence. The Bench held that the exceptions carved out under Section 66 (3) of the Act are to be pleaded and proved by the insured/owner and this burden cannot be shifted to the shoulders of the insurer. It has accordingly been declared that, the use of a transport vehicle in a public place without Permit is a fundamental/statutory infraction and the principles laid down in Swaran Singh's case [cited supra] and Lakshmi Chand Vs. Reliance General Insurance [(2016) 3 SCC 100] cannot be applicable in this regard. The Apex Court held, in such circumstances, that the verdict passed by the High Court affirming the stand of the Tribunal directing the insurer to satisfy the liability and to have it recovered from the owner/insured was in consonance with the principles stated in Swaran Singh's case [cited supra] and other cases pertaining to 'pay and recover principle'. From the above, it is quite evident that the law stands settled by the Apex Court as per the MACA No. 2030 of 2015 and connected cases decision Challa Upendra Rao' case [cited supra] and the latest ruling in Amrit paul's case [cited supra]. This being the position, the dictum laid down by the Full Bench of this Court in Augustine V.M. Vs. Ayyappankutty @ Mani and others [cited supra] holding that the absence of valid Permit or Fitness Certificate is not a fundamental breach, but a technical breach and that no right of recovery can be given to the insurer is not at all correct. It accordingly stands overruled. Consequently, the

> dictum in Thara's case [cited supra] is restored and the contrary view expressed in Sethunath's case [cited supra] stands declared as incorrect.”

22. Facts of case in hand are that on the date of accident there was no valid fitness certificate of offending vehicle and no other document with respect to renewal of fitness certificate was placed on record. In the facts of present case and law laid down by five judges Bench of Kerala High Court in case of **Pareed Pillai** (supra), I am of the view that there is violation of conditions of Insurance Policy and finding recorded by learned Claims Tribunal that non-mentioning of condition in the Insurance Policy with regard to fitness is no violation of conditions of Insurance Policy, is not sustainable and it is hereby set aside. As there is breach of conditions of Insurance Policy, Insurance Company is not having any liability to satisfy the award passed by learned Claims Tribunal.

23. Hon’ble Supreme Court recently in the matter of **Amrit Paul Singh and another Vs TATA AIG General Insurance Company Limited and others** reported in 2018(3) KHC 197 considered the issue with respect to violation of conditions of Insurance Policy on the ground that offending vehicle was not having a valid permit and held that Insurance Company first to satisfy the award and thereafter to recover the same from the insured. Hon’ble Supreme Court in the aforementioned judgment has held thus:

> “24.xxxxxxxxxx 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 (supra) and Lakhmi Chand (supra) 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 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 (supra) and other cases pertaining to pay and recover principle."

24. As in the aforementioned judgment of **Amrit Paul** (supra), Hon'ble Supreme Court affirmed the direction of pay and recover passed by the High Court and held it to be inconformity with judgment passed in **National Insurance Company Limited Vs Swaran Singh and others** reported in (2004) 3 SCC 297**.**

25. This being position of law, it is directed that appellant/ Insurance Company to first pay amount of compensation and thereafter to recover the same from the insured. Insurance Company will be at liberty to recover the amount of compensation from insured after its payment to claimants in the manner as held by Hon'ble Supreme Court in the matter of **Oriental Insurance Company Limited Vs Nanjappan and others** reported in AIR 2004 SC 1630.

26. The appeal is allowed in part. Impugned award passed by learned Claims Tribunal is modified to the extent as indicated above. Other conditions imposed by learned Claims Tribunal will remain intact.

27. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma