NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 624 of 2013

The Oriental Insurance Company Limited, Through The Divisional Manager, Divisional Office No.1, The Oriental Insurance Co. Ltd. Mandina Manjil Katchhari Chowk, Jail Raod, Raipur, Civil and Revenue District Raipur (C.G.)

---- Appellant

Versus

1. Khubchand Nirmalkar, Son of Kartik Ram Nirmalkar, aged about 39 years,

2. Smt. Indrani wife of Sukh Chand Nirmalkar, aged about 38 years,

both R/o Bajrang Chowk, Ganiyari, P.S. Kharoa, Revenue and Civil District Raipur (C.G.)

3. Santosh Singh son of Gajadhar Singh Nishad, R/o Village Pounsari (Lanja), Post Office and P.S. Simga, District Raipur (C.G.),

4. Narayan Singh Thakur son of Santosh Singh Thakur, Through Lakki Bharat Garage Tilda, P.S. Newara, District Raipur (C.G.).

---- Respondents

For Appellant	: Mr. T. K. Tiwari, Advocate
For Respondents No.1 and 2	: Mr. Amiyakant Tiwari, Advocate
For Respondents No. 3 and 4	: Mr. Malay Kumar Bhaduri, Advocate

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Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

08/05/2019

1. This appeal has been filed by appellant/Insurance Company under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the legality, validity and propriety of impugned award dated 26/04/2013 passed by Fourth Additional Motor Accident

Claims Tribunal, Raipur (C.G.) (hereinafter referred to as 'Claims Tribunal') in Claim Case No.29/2013 whereby learned Claims Tribunal partly allowed claim application and awarded a total sum of Rs.4,18,000/- as compensation to the claimants in a death case.

2. Brief facts for disposal of this appeal are that on 19/11/2010 at about 6.00 PM, non-applicant No.1/respondent No.3 while driving Matador bearing registration No.CG-04/ZB/0553 (hereinafter refereed to as 'the offending Matador') dashed one Magic vehicle bearing registration No.CG-04/ZB/8449. In the aforementioned accident driver of Magic vehicle Arun Kumar Nirmalkar suffered severe injuries over his person. During course of treatment at Ambedkar Hospital Raipur, he succumbed to those injuries on 20/11/2010. The matter was reported to concerned police station based upon which crime No. 594/10 for commission of offence under Section 304-A of IPC was registered against non-applicant No.1/respondent No.3 Santosh Singh.

3. On account of death of driver of Magic vehicle Arun Kumar Nirmalkar, claimants who are parents of deceased filed claim application under Section 166 of M.V. Act before the competent Claims Tribunal claiming Rs.9,04,000/- as compensation on the grounds mentioned therein.

4. Non-applicants No. 1 and 2/respondents No.3 and 4 who are driver and owner of offending Matador denied all the adverse pleadings made against them. It has been pleaded that claim made in

application is on the higher side. It has been further pleaded that on the date of accident, offending Matador was insured with non-applicant No.3/Insurance Company, therefore, non-applicants No.1 and 2/respondents No.3 and 4 are not liable for payment of any amount of compensation.

5. Appellant/non-applicant No.3-Insurance Company submitted its reply to claim application and while denying the contents of claim application pleaded that on the date of accident, driver of offending Matador was not possessing valid and effective driving licence with him and there was no valid permit and fitness certificate of offending Matador. It has been further pleaded that there is violation of conditions of insurance policy, therefore, Insurance Company is not liable to indemnify the insured.

6. Learned Claims Tribunal while appreciating pleading and evidence led by respective parties held that accident took place due to rash and negligent driving of offending Matador by its driver i.e. non-applicant No. 1/respondent No.3, the driver of offending Matador was possessing valid and effective driving licence and awarded a total sum of Rs.4,18,000/- as compensation along with interest @ 6% per annum from the date of application till its realization.

7. Learned counsel appearing for appellant submitted that learned Claims Tribunal committed error in fastening liability on the Insurance Company ignoring that on the date of accident, driver of offending Matador was possessing licence authorizing him to drive Light Motor

Vehicle (NT) and Motorcycle with Gare. He further submitted that as there is no endorsement in licence authorizing the driver of offending Matador to drive transport vehicle, he cannot be said to be holding a valid and effective driving licence. He further submitted that learned Claims Tribunal committed error in not considering that on the date of accident, there was no valid fitness certificate available of offending Matador and further that there was no valid permit for plying vehicle on public road. On the above mentioned grounds, he lastly submitted that as there is violation of conditions of insurance policy, therefore, Insurance Company cannot be held liable for payment of amount of compensation awarded by learned Claims Tribunal.

8. Per contra, learned counsel appearing for respondents No. 1 and 2/claimants submitted that learned Claims Tribunal has rightly passed impugned award and fastened liability on the Insurance Company as on the date of accident, driver of offending Matador was possessing valid and effective driving licence to drive Light Motor Vehicle and offending Matador comes within the category of Light Motor Vehicle as defined in Section 2(21) of M.V. Act.

9. Learned counsel appearing for respondents No. 3 and 4 submitted that on the date of accident, driver of offending Matador was possessing valid and effective driving licence and there was a valid permit issued by competent authority which was alive on the date of accident. He further submitted that Insurance Company though called the employee of Regional Transport Office to prove document Ex. D-

2 and cross-examined him in detail, but said fitness certificate has not been proved. He lastly submitted that Insurance Company has not brought any clinching and reliable piece of evidence to prove the ground taken by it with respect to non-availability of permit on the date of accident.

10. I have heard learned counsel appearing for parties and perused the record carefully.

11. So far as first ground raised by learned counsel for appellant that on the date of accident, driver of offending Matador was not possessing valid and effective driving licence is concerned, appellant/Insurance Company produced verification report of the DL No.S/21373/R which is marked as Ex. D-1.

12. From perusal of document Ex. D-1, it is clear that licence was issued in the name of non-applicant No.1/respondent No.3 Santosh Singh for the period from 28/04/2004 to 27/04/2024. It also bears that Santosh Singh was authorized to drive Motorcycle and Light Motor Vehicle only.

13. Appellant/Insurance Company has also produced copy of insurance policy of offending Matador, which was valid from 30/01/2010 to 29/01/2011, which is marked as Ex. D-4.

14. Perusal of document Ex. D-4 would show that gross vehicle weight of offending Matador is 5300 Kgs. As per provisions of Section 2(21) which is a definition of Light Motor Vehicle and specifically provides

that all vehicles whose weight is less than 7500 Kgs. are to be treated as 'Light Motor Vehicle'.

15. The issue with respect to persons having a particular class of license authorizing to drive a particular type of vehicle, but on the date of accident found driving the vehicle other than the type of vehicle mentioned in the licence, but of the same category, has been considered by the Hon'ble Supreme Court in the matter of **Mukund Dewangan v. Oriental Insurance Company Limited**[1] and held as under:-

> “59. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28-03-2001. Any other interpretation would be repugnant to the definition of “light motor vehicle” in Section 2(21) and the provisions of Section 10(2)(d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of ‘light motor vehicles’ and for light motor vehicle, the validity period of such licence hold

1 **(2017) 14 SCC 663**

good and apply for the transport vehicle of such class also and the expression in Section 10(2)(e) of the Act ‘Transport Vehicle’ would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in Section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed.

60. Thus we answer the questions which are referred to us thus:

60.1. ‘'Light motor vehicle'’ as defined in Section 2(21) of the Act would include a transport vehicle as per the weight prescribed in Section 2(21) read with Sections 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54 of 1994.

60.2. A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, ‘unladen weight’ of which does not exceed 7500 kg. and holder of a driving licence to drive class of “light motor vehicle” as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the “unladen weight” of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under Section 10(2)(d)

> continues to be valid after Amendment Act 54/1994 and 28-03-2001 in the form.
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> 60.3. The effect of the amendment made by virtue of Act No.54 of 1994 w.e.f. 14-11-1994 while substituting clauses (e) to (h) of Section 10(2) which contained "medium goods vehicle" in Section 10(2)(e), "medium passenger motor vehicle" in Section 10(2)(f), "heavy goods vehicle" in Section 10(2)(g) and "heavy passenger motor vehicle" in Section 10(2)(h), with expression "transport vehicle" as substituted in Section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of Section 10(2)(d) and Section 2(41) of the Act i.e. light motor vehicle.
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> 60.4. The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect."

16. In view of aforementioned facts and circumstances of the case and law laid down by Hon'ble Supreme Court, learned Claims Tribunal is justified in holding that non-applicant No.1/respondent No.3 driver of

offending Matador was possessing valid and effective driving licence on the date of accident.

17. In view of above, first ground raised by learned counsel for the appellant is not sustainable and is hereby rejected.

18. So far as next ground raised by learned counsel for appellant that on the date of accident, offending Matador is not having valid permit to ply vehicle on public road is concerned, appellant/Insurance Company failed to produce any witness or evidence in this regard. Even otherwise, when appellant/Insurance Company called an employee from Regional Transport Department to prove licence and put questions with respect to fitness certificate and not with respect to permit. Appellant/Insurance Company has not made any effort to prove assertions made by it that on the date of accident, offending Matador was running without any permit though the copy of permit was available in record of criminal case. Apart from above, seizure memo is available on record, which shows seizure of permit having its validity from 22/05/2007 to 21/05/2012 whereas accident took place on 19/11/2010 i.e. within the period of the permit.

19. Merely filing document before Court or Claims Tribunal will not in itself will be read as evidence, but the document produced is required to be proved by calling the authority who issued the document or when it is any government record then the custodian of the record. In the case at hand, Insurance Company utterly failed to discharge its

burden by proving the fact asserted by it with regard to absence of valid permit and fitness certificate.

20. In view of above, last ground raised by learned counsel for the appellant is also not sustainable and is hereby rejected.

21. So far as last ground raised by learned counsel for appellant is that on the date of accident, there was no valid permit and fitness certificate available for offending Matador is concerned, appellant/Insurance Company has obtained letter from Regional Transport Office vide Ex. D-2 wherein it has been mentioned that there is no valid permit for the period from 13/11/2010 to 08/05/2012 for the offending Matador. This is hand written document and to prove this document as well as particulars of licence, appellant/Insurance Company examined Rajesh Kumar Bhargawa (NAW-1) who is a Licence Clerk employed with the Regional Transport Office, Raipur.

22. Rajesh Kumar Bhargawa (NAW-1) in his statement stated that non-applicant No.1/respondent No.3 Santosh Singh was possessing licence to driver Motorcycle and Light Motor Vehicle which is effective from 28/04/2004 to 27/04/2024. In cross-examination, he further stated that as per document Ex. D-1, driver of vehicle is authorized to drive all kinds of four wheelers which comes under the definition of Light Motor Vehicle. He further stated that he has not worked in the Fitness Section of office, therefore, he cannot say whose signature is available on Exs. D-2 & D-3. He further stated with respect to

document Ex. D-2 that Clerk working with the Fitness Section can give detailed information and he has not brought original record with respect to Exs. D-2 & D-3.

23. Appellant/Insurance Company after examining Rajesh Kumar Bhargawa (NAW-1) has not taken any steps to call another witness from Fitness Section of Regional Transport Office as witness to prove said documents, therefore, appellant/Insurance Company failed to prove documents Exs. D-2 & D-3 produced by it before learned Claims Tribunal.

24. What is important in the facts and circumstances of the case is that police seized fitness certificate vide Ex. P-7 having its validity from 13/11/2009 to 12/11/2010 whereas date of accident was 19/11/2010 Apparently, the accident took place after expiry of the period of fitness certificate which was seized by police. The owner of the vehicle though represented his case before learned Claims Tribunal failed to submit fitness certificate from 13/11/2010 onwards. When owner and driver appeared before learned Claims Tribunal, then it is the burden on them to produce document to show that offending Matador is having its fitness certificate on the date of accident. Learned counsel is right in his submission that owner failed to discharge his burden by producing documents of live fitness certificate on the date of accident to shift the burden of proof on Insurance Company that fitness certificate is not valid and issued by competent authority. First liability to proof the fact of live fitness

certificate was on owner of vehicle because fitness certificate seized from the spot expired just few days prior to accident. The five Judges Bench of Hon'ble High Court of Kerala dealt with the issue of fitness certificate in the matter of **Pareed Pillai v. Oriental Insurance Co. Ltd., Ernakulam**[2] and held as under :

> “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 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

2 **AIR 2019 Kerala 9 (FB)**

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 upto Rs.10.000/- which shall not be less than Rs.5000/-) or with both; here 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 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 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 recently in Amrit Paul Singh and Another Vs. TATA

AIG General Insurance Co. Ltd and Others [AIR 2018 SC 2662]. 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 (AIR 2004 SC 4882) [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 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 decision Challa Upendra Rao' case (AIR 2004 SC 4882) [cited supra] and the latest ruling in Amrit paul's case (AIR 2018 SC 2662) [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 (AIR 2015 KER 131 (FB)) [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 (AIR 2009 (NOC) 2244 (Ker) [cited supra] is restored and the contrary view expressed in Sethunath's case (2011 AAC 629 (Ker) [cited supra] stands declared as incorrect.”

25. In view of aforementioned discussions and law laid down in aforementioned judgment, owner could not able to produce any document showing fitness of offending Matador on the date of accident, therefore, there was breach of conditions of insurance policy.

26. The submission made by learned counsel for respondents No.1 and 2/claimants is that there is violation of insurance policy only to the extent that offending Matador was not having valid fitness certificate on the date of accident, therefore, it may be directed that the Insurance Company to first pay the amount of award and thereafter to recover the same from owner of offending Matador.

27. I have considered the submission made by learned counsel for respondents No.1 and 2/claimants. Accident was of year 2010 and claimants belong to poor family and till date, have not received amount of compensation as awarded by the learned Claims Tribunal. Offending Matador was insured with appellant/Insurance Company, therefore, keeping in mind the beneficial object of M.V. Act, the Hon'ble Supreme Court in enn number of cases directed the insurer to first pay the amount of compensation and then to recover the same from the insured.

28. The doctrine of pay and recover has been considered by the Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. v. Challa Bharathamma and others**[3]. Relevant portion of the said judgment reads as under:-

> "13. The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other

3 **(2004) 8 SCC 517**

> property or properties of the owner of the vehicle i.e. the insured. In the instant case considering the quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured."

29. In another judgment of Hon'ble Supreme Court in the matter of **Manuara Khatun and others v. Rajesh Kumar Singh and others and Mamoni Saikia Mohanty and others v. Rajesh Kumar Singh and others[4],** held thus:-

> "19. We find no merit in any of the submissions. Firstly, as mentioned above, we find marked similarity in the facts of this case and the one involved in *National Insurance Co. Ltd. v. Saju P. Paul, (2013) 2 SCC 41*. Secondly, merely because the compensation has not yet been paid to the claimants though the case is quite old (16 years) like the one in *Saju P. Paul's Case* (supra), it cannot be a ground to deny the claimants the relief claimed in these appeals. Thirdly, this Court has already considered and rejected the argument regarding not granting of the relief of the nature claimed herein due to pendency of the reference to a larger Bench as would be clear from Para 26 of the judgment in *Saju P. Paul's Case (supra)*. That apart, learned counsel for the appellants stated at the bar that the reference made to the larger Bench has since been disposed of by keeping the issue undecided. It is for this reason also, the argument does not survive any more.
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> 21. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Co.

4 **(2017) 4 SCC 796**

Ltd. (respondent No. 3) - they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Co. Ltd. respondent No.3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo)-respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of *Saju P. Paul's* case quoted supra.

22. Accordingly, the appeals succeed and are allowed. Impugned order is modified to the extent that respondent No. 3-United India Insurance Company Ltd. is accordingly directed to pay the awarded sum to the appellants (claimants). Thereafter respondent No. 3 - United India Insurance Company Ltd. would be entitled to recover the entire paid awarded sum from the owner (insured) of the offending Vehicle (Tata Sumo)-respondent No.1 in these very proceedings by filing execution application against the insured."

30. Recently, in the matter of **Amrit Paul Singh and another v. Tata AIG General Insurance Company Limited and others[5],** Hon'ble Supreme Court while dealing with the similar issue has held thus:-

"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

5 **(2018) 7 SCC 558**

> 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."

31. Considering the ratio laid down in above decisions of the Hon'ble Supreme Court as also considering the beneficial object of M.V. Act as well, this Court is of the view that it will be in larger interest of justice to direct the insurer to first pay the amount of compensation to claimants and then to recover it from insured i.e. owner of offending Matador in accordance with law, though in law it has no liability to pay amount of compensation.

32. For the foregoing reasons, appeal is allowed in part and impugned award passed by learned Claims Tribunal is modified to the extent indicated above. Insurance Company is though exonerated from its

liability to pay the compensation to the claimants, but keeping in mind the beneficial object of M.V. Act as also the dictum of Hon'ble Supreme Court in the above referred cases, this Court directs insurer of offending Matador viz, appellant herein, to first compensate the claimants and have the said sum recovered from non-applicant No.2/respondent No.4, owner of offending Matador in the manner as provided in the matter of **Oriental Insurance Company Limited v. Shri Nanjappan and Others**[6].

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh

6 **AIR 2004 SC 1631**