AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 670 of 2013

1. Mungeshwar Prasad Rajwade, S/o Gulab Ram, aged about 40 years, R/o Dugga Basti, Bhatgaon Colliery, P.S. Bhatgaon, Tahsil Surajpur, Police & Revenue District Surajpur, Civil Distt. Surguja (CG)

2. Ramnarayan Rajwade, S/o Nawal Sai, aged about 32 years, R/o Dugga Basti, Bhatgaon, P.S. Bhatgaon, Tahsil Surajpur, Police & Revenue District Surajpur, Civil Distt. Surguja (CG) (Driver of offending vehicle)

---- Appellants

Versus

1. Smt. Katharina Minj, W/o Late Kamil Minj Aged About 55 Years.

2. Smt. Anita Tirkey W/o Rajendra Tirkey Aged About 32 Years D/o Kamil Minj.

3. Ku. Vinita Minj D/o Late Kamil Minj Aged About 27 Years.

4. Ku. Shashi Kiran Minj D/o Late Kamil Minj Aged About 24 Years.

5. Ku. Suchita Minj D/o Late Kamil Minj Aged About 22 Years

6. Ku. Swarnalata Minj D/o Late Kamil Minj Aged About 20 Years

7. Avinash Minj S/o Late Kamil Minj Aged About 18 Years

   All above R/o Gandhi Nagar, Ward No. 1 (Dr. Shyama Prasad Mukharjee Ward), Ambikapur, P.S. Gandhi Nagar, Tahsil Ambikapur, Police, Revenue & Civil District Surguja (CG)

8. Branch Manager, the Oriental Insurance Company Limited, Branch Office, Manendragarh Road, Near Ambedkar Chowk, Ambikapur, Surguja, Tahsil Ambikapur, Police, Revenue & Civil District Surguja (CG)

---- Respondents

MAC No. 671 of 2013

1. Mungeshwar Prasad Rajwade, S/o Gulab Ram, Aged About 40 Years, R/o Dugga Basti, Bhatgaon Colliery, P.S. Bhatgaon, Tahsil Surajpur, P.S. & Revenue District Surajpur, Civil District Surguja, Districtg Surguja (CG)

2. Ramnarayan Rajwade, S/o Nawal Sai, Aged About 32 Years, R/o Dugga Basti Bhatgaon, P.S. Bhatgaon, Tahsil Surajpur, P.S. & Revenue District Surajpur, Civil District Surguja, District Surguja (CG)

(Driver of offending vehicle)

---- Appellants

Versus

1. Smt. Bhaleriya Kujur, W/o Late Blacius Kujur Aged About 58 Years.
2. Sudhir Kujur S/o Late Blacius Kujur Aged About 40 Years
3. Jone Kujur S/o Late Blacius Kujur Aged About 35 Years
4. Jorge Philip S/o Late Blacius Kujur Aged About 31 Years
5. Lalit Kumar Kujur S/o Late Blacius Kujur Aged About 25 Years
6. Ku. Usha Rshim Kujur D/o Late Blacius Kujur Aged About 22 Years

   All above R/o Gandhi Nagar, Ward No.1, Ambikapur, P.S. Gandhi Nagar, Tah. Ambikapur, Distt. Surguja C.G., District : Surguja (Ambikapur), Chhattisgarh

7. Branch Manager D/o The Oriental Insu.Co.Ltd., Branch Off. Manendragarh Road, Near Ambedkar Chowk, Ambikapur, Surguja, Police, Revenue & Civil District Surguja, District Surguja (CG)

---- Respondents

<u>MAC No. 710 of 2013</u>

1. Smt. Kathrina Minj, W/o Late Kamil Minj Aged About 55 Years, Occupation Housewife.
2. Smt. Anita Tirkey W/o Rajendra Tirki, Daughter of Late Kamil Minj, aged about 32 years, Occupation- Service (Shiksha Karmi Grade-I)
3. Ku. Vinita Minj D/o Late Kamil Minj Aged About 27 Years, Occupation- Service (Shiksha Karmi Grade-I).
4. Ku. Shashi Kiran Minj D/o Late Kamil Minj Aged About 24 Years, Occupation- Student.
5. Ku. Suchita Minj D/o Late Kamil Minj Aged About 22 Years, Occupation- Student.
6. Ku. Swarnalata Minj D/o Late Kamil Minj Aged About 20 Years, Occupation-Student.
7. Avinash Minj S/o Late Kamil Minj Aged About 18 Years, Occupation- Student.

   R/o Gandhinagar, Ward No.1 Dr. Shyama Prasad Mukharji Ward, Ambikapur, P.S. Gandhinagar, Tahsil Ambikapur, Civil and Revenue Distriuct Surguja (CG)

---- Appellants

Versus

1. Ramnarayan Rajwade, S/o Nawalsai Aged About 32 Years R/o Dugga Basti, Bhatgaon, P.S Bhatgaon, Tah. Surajpur, Distt. Surguja (C.G.)

2. Mugeshwar Prasad Rajwade S/o Gulab Ram, Aged About 40 Years, R/o Dugga Basti, Bhatgaon, P.S. Bhatgaon, Tah. Surajpur, Distt. Surguja CG)

3. Branch Manager, The Oriental Insurance Company Limited, Branch Office, Manendragarh Road, Near Ambedkar Chowk, Nagar Ambikapur, District : Surguja (CG).

---- Respondents

	MAC No.670 of 2013	
For Appellants	:	Shri Vikram Dixit, Advocate
For Respondents No.1 to 7	:	Shri A.N. Pandey, Advocate
For Respondent No.8	:	Shri Raj Awasthi, Advocate
	MAC No.671 of 2013	
For Appellants	:	Shri Vikram Dixit, Advocate
For Respondents No.1 to 6	:	Shri A.N. Pandey, Advocate
For Respondent No.7	:	Shri Raj Awasthi, Advocate
	MAC No.710 of 2013	
For Appellants	:	Shri A.N. Pandey, Advocate
For Respondents No.1 & 2	:	Shri Vikram Dixit, Advocate
For Respondent No.8	:	Shri Raj Awasthi, Advocate

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu

30.1.2019

1. The above three miscellaneous appeals (compensation) are being heard and decided together as the challenge in these appeals is to the award dated 25.4.2013 passed by the 1st Additional Motor Accident Claims Tribunal, Ambikapur, Surguja (for short 'the Claims Tribunal') in Claim Cases No.211/2011 & 212/2011, whereby the learned Claims Tribunal has partly allowed the claim applications of the respective claimants and while exonerating the insurance company on the ground of breach of conditions of insurance policy, fastened the liability on the driver & owner of the offending vehicle to pay compensation to the claimants. .

2. MAC No.670 & 671 of 2013 are filed by the owner and driver of the offending vehicle challenging the liability to pay amount of compensation

awarded in Claim Cases No.211/11 & 212/11, whereas the claimants have preferred MAC No.710/13 seeking enhancement of compensation awarded in Claim Case No.212/11.

3. Facts of the case, in brief, are that on 6.2.2011 deceased Kamil Minj and Blasius Kujur were going on the motorcycle bearing registration number CG15-D-8203. Deceased Kamil Minj was driving the said motorcycle and Blasius Kujur was travelling as pillion rider. When they reached on Banaras Main Road, one Bolero Jeep bearing registration number CG15-D-0182, which was coming from opposite direction and being driven by its driver in a rash and negligent manner, dashed against their motorcycle as a result of which they sustained grievous injuries on various parts of the body. Both were admitted in the District Hospital, Ambikapur where Blasius Kujur succumbed to the injuries on the same day, whereas Kamil Minj died during the course of treatment. Report of the accident was made to the police based on which offence under Crime No.48/2011 was registered against the driver of offending vehicle and after completion of investigation, charge sheet under Sections 279, 337, 304A of IPC has been filed against him in the competent Court.

The dependants of deceased Kamil Minj i.e. appellants in MAC No.710/13 who are unfortunate wife and children, have filed claim application under Section 166 of the Act, 1988 seeking compensation to the tune of Rs.11,47,829/- under various heads on the ground that all of them were dependent on the earning of the deceased and due to his untimely death, they have been deprived of the dependency. They have further pleaded that on the date of accident, the deceased was 54 years old, he was working as 'Peon' in the Holy Cross Woman College, Ambikapur and getting monthly salary of Rs.7,680/-. Therefore, they are entitled to get compensation, as claimed by them, from the non-applicants, jointly and severally.

4. The owner & driver of offending vehicle (appellants in MAC No.670 & 671 of 2013), have filed their reply to the claim application denying the averments made therein. It has been averred that no accident took place from the offending vehicle and at the relevant point of time non-applicant No.1-driver was not driving the offending vehicle, as pleaded in the claim application. Even otherwise, the driver was having valid and effective driving license to drive the offending vehicle and on the date of accident the offending vehicle was fully insured and therefore non-applicant -insurance company is liable to pay the compensation, if any, awarded by the Claims Tribunal.

5. Non-applicant No.3 Insurance Company filed its separate reply and denied the claim of claimants. It has been pleaded that there was breach of conditions of insurance policy as on the date of accident the driver was not having valid & effective driving license to drive the vehicle in question. There was also no valid permit & fitness certificate. It has further been pleaded that it was a case of contributory negligent as the driver of motorcycle himself was responsible for the accident. The owner and insurer of motorcycle were necessary parties, but they have not been impleaded and due to non-joinder of necessary parties, the claim application is liable to be dismissed as such. It has also been averred by the Insurance Company that the deceased died natural death. On the aforesaid grounds, it has been prayed that the insurance company is not liable for making any payment of compensation to the claimants.

6. The Claims Tribunal after considering the pleadings and evidence placed

on record (oral and documentary both) by the respective parties has partly allowed the claim of the claimants of Claim Case No.212/11, awarded compensation of Rs.9,98,300/-, which also includes medical expenses of Rs.3,69,307/-, along with interest @ 6% per annum, exonerated the insurance company on the ground that there is violation of condition of insurance policy and saddled the liability to satisfy the award on the driver & owner of the offending vehicle by holding that on the date of accident there was no valid permit to ply the offending vehicle as 'taxi' on the public road and that the driver of offending vehicle was possessing license to drive 'motorcycle with gear & LMV' having an endorsement of 'Heavy Goods Vehicle', whereas the vehicle involved in the accident was a 'light passenger vehicle', which comes within the category of transport vehicle.

7. Learned counsel appearing on behalf of the appellant-owner would argue that the driver of offending vehicle was possessing valid & effective driving license to drive motorcycle with gear and light motor vehicles, which was issued on 11.2.2018 and valid upto 10.2.2008. This license also bears an endorsement authorizing the license holder to drive 'Heavy Goods Vehicle (HGV)' from 12.7.2010 to 11.7.2013. He further submits that the offending vehicle comes within the category of 'light motor vehicle' because its gross laden weight is less than 7500 kilogram. In support of this submission, he placed reliance on the judgment of the Hon'ble Supreme Court in the matter of **Mukund Dewangan vs. Oriental Insurance Company Ltd.** reported in **(2017) 14 SCC 663** and submitted that the driver of offending vehicle was authorized to drive the offending vehicle on the date of accident and as such there was no violation of any of the conditions of the insurance policy.

He further argued that at the time of accident the vehicle was being plied within the city where it was registered and at that time it was not carrying any passenger and therefore it can be very well presumed that the vehicle was not being used as 'taxi' and since the vehicle was not being used as taxi at the relevant point of time, there was no requirement to have a valid permit. Even otherwise, there is no need of a permit where the passenger vehicle is used in connection with personal purposes.

8. On the other hand, in the light of dictum of the Hon'ble Supreme Court in the matter of **Mukund Dewangan vs. Oriental Insurance Company Ltd.** reported in **(2017) 14 SCC 663** with regard to validity of driving license is concerned, learned counsel appearing on behalf of the respondent Insurance Company has not disputed the arguments advanced by learned counsel for the owner & driver in this regard, but he submits that as on the date of accident the offending vehicle was registered as 'Maxi Cab/ Taxi' with the Regional Transport Office concerned, therefore, unless and until there is valid permit to ply the offending vehicle on a public road, it cannot be used in any manner on public road. Use of passenger vehicle without a permit is violative of the condition of the insurance policy and as such, the Claims Tribunal has not committed any error in exonerating the insurance company from the liability to pay compensation to the claimants by holding that the offending vehicle was plied in breach of the insurance policy conditions.

9. Learned counsel for the claimants/appellants in MAC No.710/2013 submits that the income of the deceased has been assessed on lower side although it has been proved by cogent and reliable piece of evidence that the deceased was getting monthly salary of Rs.7,680/-. He further argued that the Claims Tribunal erred in not taking into account the future prospects of the deceased. Amount awarded by the Claims Tribunal

under the conventional heads is also on lower side and needs enhancement.

10. I have heard learned counsel for the parties and perused the material available on record.

11. So far as the finding recorded by the Claims Tribunal with regard to violation of the condition of insurance policy on account of the fact that the driver of the offending vehicle was not having valid and effective license to drive the said vehicle i.e. Taxi, is concerned, there is no dispute that the driver of offending vehicle was having a valid and effective driving license to drive 'motorcycle with gear and light motor vehicle'. The offending vehicle was fully insured on the date of accident as is evident from the insurance policy (Ex.D-3), which was valid from 14.9.2010 to 13.9.2011. Perusal of the insurance policy also makes it clear that it is a package policy, the vehicle in question is a four-wheeler having seating capacity of 6+1 and it is insured as passenger carrying vehicle. The point which requires consideration is whether the offending vehicle comes within the category of 'light motor vehicle' or not?

12. Section 2 (21) of the Act, 1988 defines 'light motor vehicle” as follows:-

> (21) “light motor vehicle” means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms”

A bare reading of above definition clause makes it clear that any motor vehicle unladen weight of which does not exceed 7,500 kilogram comes within the category of 'light motor vehicle'. From perusal of registration certificate and insurance policy of the offending vehicle available on record, it is clear that unladen weight of the offending vehicle is 1680 kilogram, whereas its gross weight is 2330 kilogram. Thus, there is no doubt that the offending vehicle comes within the definition of 'light motor vehicle' because its unladen weight is less than 7500 Kilogram.

13. True it is that in the registration certificate the class of vehicle has been mentioned as 'Motor Cab/Taxi' and the driver had a license to drive 'light motor vehicle' only and there is no endorsement of light transport vehicle. Similar issue has come up for consideration before the Hon'ble Supreme Court in the case of **Mukund Dewangan vs. Oriental Insurance Company Ltd.** reported in **(2017) 14 SCC 663** where the Hon'ble Supreme Court has held thus;-

> "25. Form 6 provides for 'light motor vehicle' and 'transport vehicle' separately. Though the form contains separate validity period for a motor vehicle other than transport vehicles, the aforesaid form and period of validity have to be understood in the light of the aforesaid discussion made by us of the light motor vehicle and transport vehicle. The form cannot govern the interpretation of the provision of Sections 10(2)(d) and 10(2)(e) otherwise also form has to be interpreted harmoniously with the Act and cannot be in conflict with the statutory provisions. The provision of the Light motor vehicle has to be given full effect and it is enjoined upon the authorities to issue the licence in terms of the discussion made by us in the order and validity period has to be construed accordingly. The validity period of transport vehicle of light motor vehicle licence which means the vehicle as defined in Section 2(21), has to be the same as that of other light motor vehicle of non-transport category and there cannot be any distinction made with respect to the validity period of the **class** of light motor vehicle. The separate prescription for the validity of transport vehicle in Form 6 is only to take care of the provisions inserted in Section 10(2)(e) by deleting the provisions of Sections 10(2)(e) to (h). It would apply to those categories.
>
> 28. The aforesaid Rule 34 also makes a distinction between light motor vehicle, medium passenger motor vehicle, medium goods vehicle, heavy passenger motor vehicle and heavy goods vehicles. For all types of vehicles, it is necessary that prototype of every motor vehicle qualify a test by the Vehicle Research & Development Establishment of

> the Ministry of Defence of the Government of India or Automotive Research Association of India as provided in Rule 126. The vehicles must conform to the provisions of the Rules made under Section 110 of the Act. The relevant information has to be inserted as per Section 41 of the Act in the registration particulars as may be prescribed by the Central Government i.e. class of vehicle, gross vehicle weight, as well as unladen weight, are required to be mentioned in the registration particulars in Form 20.
>
> 30. The State Government has to maintain a register of motor vehicles under Rule 75 as provided in Form 41 which includes gross vehicle weight, unladen weight etc. The Central Government has the power to frame rules under Section 27, inter alia, regarding minimum qualification, forms, and contents of the licences etc. Thus, we are of the considered opinion that the definition of ''light motor vehicle'' under Section 2(21) of the Act includes transport vehicle of the class and weight defined therein. The transport vehicle or omnibus would be light motor vehicle, gross vehicle weight of which, and also a motor car or tractor or road roller, unladen weight of which, does not exceed 7500 kg., and can be driven by holder of licence to drive light motor vehicle and no separate endorsement is required to drive such transport vehicle."

14. Keeping in mind the above law and the fact that the vehicle involved in the present case comes within the category of 'light motor vehicle' because its unladen weight is less than 7500 kilogram, this Court is of the considered view that the driving license meant for 'light motor vehicle' is valid and effective for driving the vehicle in question also. Being so, this Court has no hesitation in holding that on the date of accident the driver was having valid and effective driving license to drive the offending vehicle. In view of the above finding recorded by the Claims Tribunal that on the date of accident the driver was not having valid and effective driving license to drive the offending vehicle is not sustainable in law and is hereby set aside.

15. Another ground on which the insurance company has been exonerated by the Claims Tribunal is that on the date of accident the vehicle was

registered as 'passenger carrying vehicle' i.e. taxi, but there is no permit to use the offending vehicle as such. Perusal of the reply filed by the owner & driver of the offending vehicle reveals that though they have specifically pleaded in their reply that the driver of offending vehicle was having a valid and effective driving license to drive it, but they have nowhere stated that there was a valid permit for the use of the vehicle as 'taxi'. Shivshankar (NAW-1), Surveyor of Insurance Company, has stated that after conducting investigation on behalf of the insurance company, he has submitted the report (Ex.D-2) and along with the said report, he has also annexed the registration particulars certificate (Article-A) issued by the RTO, Ambikapur, driving license (Article-B), fitness particular certificate (Article-C). He has further deposed that as per registration certificate of the vehicle, it was registered as taxi but there was no permit for plying said vehicle as such on the road. Article-C is a copy of certificate of fitness of the offending vehicle which was filed by the owner & driver of offending vehicle. A glance of this document would show that the certificate was valid from 28.9.2010 to 27.9.2012. However, the owner & driver had failed to produce the permit of offending vehicle duly issued by the competent authority for plying it on a public road as a taxi or passenger carrying vehicle. Even it is not the stand of the owner & driver that the vehicle was having a permit/ temporary permit on the date of accident. Whereas, NAW-2, who is employee of RTO, had produced the permit register Ex.D-5 which shows that permit of offending vehicle was valid from 9.2.2011 to 8.5.2011. In these circumstances, an adverse inference is liable to be drawn against them that on the date of accident, the offending vehicle was being plied without a valid permit.

16. As regards the submission of the learned counsel for the owner & driver of

the offending vehicle that since at the relevant point of time no passenger was present in the offending vehicle, there was no need of a valid permit, it would be beneficial to have a glance at Section 66 of the Act, 1988, which reads thus:-

> "66. Necessity for permits.
>
> (1)No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used:
>
> Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage:
>
> Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods carriage either when carrying passengers or not:
>
> Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.
>
> (2)The holder of a goods carriage permit may use the vehicle, for the drawing of any trailer-semi-trailer not owned by him, subject to such conditions as may be prescribed.
>
> Provided that the holder of a permit of any articulated vehicle may use the prime-mover of that articulated vehicle for any other semi-trailer.
>
> (3)The provisions of sub- section (1) shall not apply--
>
> (a) to any transport vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise;
>
> (b) to any transport vehicle owned by a local authority or by a person acting under contract with a local authority and used solely for road cleansing, road watering or conservancy purposes;
>
> (c) to any transport vehicle used solely for police, fire brigade or ambulance purposes;
>
> (d) to any transport vehicle used solely for the conveyance of corpses and the mourners accompanying the corpses;
>
> (e) to any transport vehicle used for towing a disabled vehicle or for removing goods from a disabled vehicle to a place of safety;
>
> (f) to any transport vehicle used for any other public purpose as may be prescribed by the State Government in this behalf;

(g) to any transport vehicle used by a person who manufactures or deals in motor vehicles or builds bodies for attachment to chassis, solely for such purposes and in accordance with such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf;
(h) to any transport vehicle owned by, and used solely for the purposes of, any educational institution which is recognised by the Central or State Government or whose managing committee is a society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India;
(i) to any goods vehicle, the gross vehicle weight of which does not exceed 3,000 kilograms;
(j) subject to such conditions as the Central Government may, by notification in the Official Gazette, specify, to any transport vehicle purchased in one State and proceeding to a place, situated in that State or in any other State, without carrying any passenger or goods;
(k) to any transport vehicle which has been temporarily registered under section 43 while proceeding empty to any place for the purpose of registration of the vehicle;
(l) to any motor vehicle which is operated by electric battery, compressed natural gas or solar energy;
(m) to any transport vehicle which, owing to flood, earthquake or any other natural calamity, obstruction on road, or unforeseen circumstances is required to be diverted through any other route, whether within or outside the State, with a view to enabling it to reach its destination;
(n) to any transport vehicle used for such purposes as the Central or State Government may, by order, specify;
(o) to any transport vehicle which is subject to a hire-purchase, lease or hypothecation agreement and which owing to the default of the owner has been taken possession of by or on behalf of, the person with whom the owner has entered into such agreement, to enable such motor vehicle to reach its destination; or
(p) to any transport vehicle while proceeding empty to any place for purpose of repair.

(4) Subject to the provisions of sub-section (3), sub- section (1) shall, if the State Government by rule made under section 96 so prescribes, apply to any motor vehicle adapted to carry more than nine persons excluding the driver."

17. From perusal of above-quoted Section 66 of the Act, 1988 it is clear that no owner of a motor vehicle shall use or permit the use thereof, as a transport vehicle, in any public place, whether or not such vehicle is actually carrying passenger or goods, without a valid permit. Section 66 (3) of the Act, 1988, which is an exclusion clause, also does not envisages

that the permit would not be necessarily required for a transport vehicle running on the road without passengers.

18. The Insurance Policy (Ex.D-3) contained a clause relating to 'Limitation as to use', which reads thus;-

> “The policy covers use only under a permit within the meaning of the Motor Vehicles Act, 1988 or such a carriage falling under sub-section (3) of Section 66 of the Motor Vehicles Act, 1988.

19. In the matter of **National Insurance Company Limited vs. Challa Bharathamma & ors** reported in **(2004) 8 SCC 517** the Hon'ble Supreme Court while considering the effect of plying of a vehicle on a public road without a permit has held thus:-

> “9. In New India Assurance Co. Ltd. v. Asha Rani & ors (2003 (2) SCC 223) it was observed as follows:-
>
> "We may consider the matter from another angle. Section 149 (2) of the 1988 Act enables the insurers to raise defences against the claim of the claimants. In terms of clause (c) of sub-section (2) of Section 149 of the Act one of the defences which is available to the insurer is that the vehicle in question has been used for a purpose not allowed by the permit under which the vehicle was used. Such a statutory defence available to the insurer would be obliterated in view of the decision of this court in Satpal Singh's case (2000 (1) SCC 237)."
>
> 12. High Court was of the view that since there was no permit, the question of violation of any condition thereof does not arise. The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed at a better pedestal vis-`-vis one who has a permit, but has violated any condition thereof. Plying of a vehicle without a permit is an infraction. Therefore, in terms of

Section 149 (2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of insurer. High Court was, therefore, not justified in holding the insurer liable."

20. Recently, the Hon'ble Supreme Court in the matter of **Amrit Paul Singh & another vs. Tata AIG General Insurance Company & ors** reported in **(2018) 7 SCC 558** has held thus:-

> "23. 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....."

21. In view of the authoritative law laid down by their Lordships in the aforesaid judgements, it is amply clear that a passenger carrying vehicle, goods vehicle or public service vehicle without a valid permit cannot be plied on a public road. Thus, in the case in hand there was clear violation of the condition of insurance policy and being so, the Claims Tribunal has not committed any illegality or illegality in exonerating the insurance company from its liability and fastening the liability to pay compensation on the owner and driver of the offending vehicle on the ground that on the date of accident the offending vehicle did not have a valid permit.

22. Since it is established that though on the date of accident the driver of

offending vehicle was having a valid and effective license to drive the said vehicle but certainly there was no valid permit to ply the said vehicle as a taxi on a public road, therefore, I do not find any force in this submission of learned counsel for the owner & driver of offending vehicle that as the vehicle in question was plied on a public road without passengers, therefore, there was no requirement of a valid permit and the same is rejected.

23. Now this Court will consider as to whether the claimants of Claim Case No.212/11 are entitled for more compensation?

24. The claimants have claimed enhancement on the ground that the Claims Tribunal has assessed the income of the deceased by ignoring salary certificate, which was duly proved by the claimants by examining competent witness. The Claims Tribunal was also not justified in denying the amount of House Rent Allowance (HRA) while assessing the compensation. The Claims Tribunal has also not awarded any amount towards future prospects.

25. The claimants have produced salary certificate (Ex.A-89) of the deceased issued by Principal of Holy Cross Woman College, Ambikapur, which indicates that the deceased was getting salary of Rs.7680/- per month. Said certificate has been proved by Sister Zoncee (AW-4), Accountant of Holy Cross Woman College, Ambikapur. This witness has categorically stated that the deceased was working as Peon in the Holy Cross Woman College, Ambikapur and getting monthly salary from the college and this witness remained firm in her cross-examination. Thus, it is established beyond doubt that on the date of accident the deceased was working as Peon in the Holy Cross Woman College, Ambikapur and getting monthly

salary of Rs.7,680/-.

26. While assessing the income of the deceased, the Claims Tribunal deducted a sum of Rs.224/- towards House Rent Allowance (HRA) and then calculated the monthly income. Deduction of HRA by the Claims Tribunal from the income of the deceased is wholly unjustified. Further, the Claims Tribunal has not granted any compensation under the head of 'future prospects'. If a person is in a permanent employment or self-employed or on a fixed salary then also there is every possibility of enhancement in his income due to one reason or the other and therefore while calculating compensation to be awarded to the claimants, the future prospects are also to be added in the income of the deceased. The Hon'ble Apex Court has considered the issue of 'future prospects' in detail in the matter of **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680** and held thus:-

> "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.

In the present case, the claimants have pleaded and proved by adducing cogent and clinching evidence that the deceased, who was more than 56 years of age at the time of accident, was working as Peon and getting salary of Rs.7680/- per month, therefore, in view of the aforesaid decision, future prospects at the rate of 15% have to be taken into consideration.

27. It is well settled that where the number of dependent family members exceed 6, the deduction towards personal and living expenses of the

deceased should be one-fifth. In the present case, though the number of dependent family members is 7, but the Claims Tribunal has deducted one-fourth towards personal expenditure of the deceased in place of one-fifth, as has been prescribed by the Hon'ble Supreme Court in the matter of **Sarla Verma vs. Delhi Transport Corporation and another** reported in **(2009) 6 SC 121**. So far as the multiplier is concerned, the Claims Tribunal applied correct multiplier of 9 looking to the age of the deceased i.e. 57 years at the time of accident.

28. In view of above discussions, this Court proposes to recalculate the compensation amount payable to the claimants/appellants.

29. Accordingly, the monthly income of the deceased is assessed as Rs.7,680/- (as per salary certificate Ex.A-89) and since at the time of accident, the deceased was aged about 57 years, loss of future income can be assessed to be 15% of the total income which comes to Rs.1,152/- per month (15% of 7680) and accordingly, the net monthly income of the deceased comes to Rs.8,832/- (7680+1152) and as such, annual income of the deceased comes to Rs.1,05,984/- (8832x12). After deducting one-fifth from the annual income of the deceased towards his personal expenses, the annual loss of dependency comes to Rs.84,787/- (105984-21197). By applying multiplier of 9 to the annual income of the deceased, the total loss of dependency would come to Rs.7,63,083/- (84787 x 9).

30. At the same time, the amount awarded under the conventional heads also appears to be insufficient and being so, it required to be enhanced suitably. Consequently, a lump-sum of Rs.70,000/- is awarded to the claimants towards other conventional heads. The claimants, thus, become entitled to receive a total sum of Rs.8,33,083/- (7,63,083+70,000) as

compensation for the death of deceased Kamil Minj in the motor accident. This amount of compensation shall carry interest @ 7% p.a. from the date of filing of claim application till its realization. Rest of the conditions mentioned in the impugned award shall remain intact. The amount of compensation, if any, already received by the claimants shall be adjustable.

31. Now coming to the submission of learned counsel for the claimants/ appellants in MAC No.710/13 that in the given facts and circumstances of the case and looking to the number of dependent family members including minor children, the insurance company may be directed to first pay the amount of compensation and then to recover the same from the owner of the offending vehicle in accordance with law.

32. In the case of Challa Bharathamma (supra) there was breach of condition of insurance policy as the vehicle was plied on road without a permit and in this situation, keeping in the mind the beneficial object of the Act, 1988, the Hon'ble Apex Court has directed the insurer to first pay the amount to the claimants and then to recover the same from the insured. Para-13 of the said judgment reads thus:-

> "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 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."

33. Recently, in the matter of Amrit Paul's case (supra) the 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 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

34. Taking light from the above decisions of the Hon'ble Supreme Court and Keeping in mind the beneficial object of the Act, 1988 and considering the fact that payment by owner & driver is merely a possibility but payment by an insurance company is a certainty, this Court directs the insurer of the offending vehicle viz., respondent No.3 herein. to first compensate the claimants/appellants of MAC No.710/13 and have the said sum recovered form the owner of the offending vehicle in accordance with the law.

35. In the result;

- MAC No.670 & 671 of 2013, preferred by the owner and driver of offending vehicle against the award passed by the Claims Tribunal in Claim Cases No.211/11 & 212/11, sans merit and are dismissed accordingly.

- MAC No.710 of 2013 filed by the claimants in Claim Case no.212/11 for enhancement is partly allowed. The claimants are entitled for a total sum of Rs.8,33,083/- as compensation along with interest @ 7% p.a. from the date of filing of claim application till its realization. Other conditions mentioned in the impugned award will remain intact. Respondent No.3 - Insurance Company shall first pay the awarded compensation to the claimants/appellants and later recover the same from the owner & driver of the offending vehicle i.e. respondent Nos.1 & 2, in accordance with law. The impugned award is modified to the extent indicated above.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-