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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 108 of 2016

- Niranjan Singh S/o Pradeep Singh, Aged About 36 Years R/o Main Road Pateva, Police Station Pateva, Civil And Revenue District Mahasamund (CG)

---- Appellant

Versus

1. Smt. Chain Kumari @ Madhu W/o Late Bhojdutt @ Krishan Kumar Sharma, Aged About 26 Years
2. Aman Kumar S/o Late Bhojdutt @ Krishan Kumar Aged About 4 Years
3. Ku. Geetanjali D/o Late Bhojdutt @ Krishan Kumar Sharma, Aged About 2 Years
4. Khilawan Prasad S/o Late Ratan Lal, Aged About 62 Years
5. Smt. Trilotma W/o Khilawan Prasad, Aged About 58 Years

   Respondent No.2 & 3 through their natural guardian Smt. Chain Kumari @ Madhu, w/o Late Bhojdutt @ Krishan Kumar Sharma, aged about 26 years, all are R/o Village Dhansuli, Post Office Dhansuli, Police Station, Tahsil And Civil And Revenue District Mahasamund (CG)
6. Sadram Sahu S/o Bahursingh, Aged About 40 Years R/o Village Raytum, Pateva Chowki, Police Station Tumgaon, Tahsil & Civil And Revenue District Mahasamund (CG)
7. Amitabh Pol S/o Anil Krishan Pol, Aged About 50 Years R/o Sai Nagar Jail Road, Civil And Revenue District Raipur (CG)
8. The United India Insurance Company Limited, Court Square, Jail Road Raipur District Raipur (CG)
9. Ranjeet Singh Ahuja S/o Surjeet Singh, Aged About 45 Years R/o Village Sagar State Saraipali, Civil and Revenue District Mahasamund (CG)

---- Respondents

&

MAC No. 627 of 2016

1. Smt. Chain Kumari @ Madhu W/o Late Bhojdutt @ Krishan Kumar Sharma, Aged About 26 Years, Occupation-Housewife.
2. Aman Kumar S/o Late Bhojdutt @ Krishan Kumar Aged About 4 Years
3. Ku. Geetanjali D/o Late Bhojdutt @ Krishan Kumar Sharma, Aged About 2 Years
4. Khilawan Prasad S/o Late Ratan Lal, Aged About 62 Years
5. Smt. Trilotma W/o Khilawan Prasad, Aged About 58 Years, Occupation-Housewife.

   All are R/o Village Dhansuli, Post Office Dhansuli, Thana, Tahsil And District Mahasamund (CG)

   Appellant No.2 to 3 are minor through their natural guardian Smt. Chain Kumari @ Madhu

---- Appellants

Versus

1. Sadram Sahu S/o Bahur Singh, Aged About 40 Years, Occupation-Driver, R/o Village Raytum, Pateva Chowki, Thana Tumgaon, Tahsil & Revenue District Mahasamund (CG)
2. Amitabh Pol S/o Anil Krishan Pol, Aged About 50 Years, Occupation-Owner Minibus No.CG04/E/1062 of registered owner, Sai Nagar Jail Road, Raipur (CG)
3. The United India Insurance Company Limited, Katchechari Chowk, Jail Road Raipur District Raipur (CG)
4. Ranjeet Singh Ahuja S/o Surjeet Singh, Aged About 45 Years R/o Village Sagar State Saraipali, District Mahasamund (CG)
5. Niranjan Singh S/o Pradeep Singh, Aged About 36 Years R/o Village-Main Road Patawa, District- Mahasamund, Chhattisgarh.

---- Respondents

MAC No.108/2016

For Appellant	:	Shri Manoj Paranjpe, Advocate
For Respondent No.1 to 5	:	Shri AL Singraul, Advocate
For Respondent No.8	:	Shri Dasrath Gupta, Advocate
For Respondent No.6, 7 & 9	:	None.

MAC No.627/2016

For Appellants	:	Shri A.L. Singraul, Advocate
For Respondent No.3	:	Shri Dasrath Gupta, Advocate
For Respondent No.4	:	None.
For Respondent No.5	:	Shri Manoj Paranjpe, Advocate

Order On Board By Hon. Mr. Justice Parth Prateem Sahu

25/6/2019

1. As above two appeals arise out of award dated 9.10.2015 passed by learned Motor Accident Claims Tribunal, Mahasamund (for short 'the Claims Tribunal') in Claim Case No.38/10, they are being disposed off by this common order.

2. Appellant (subsequent purchaser) of offending vehicle, has preferred MAC No.108/2013 seeking setting aside of fastening of liability upon him and to pay awarded amount of compensation i.e. Rs.10,05,000/- with interest @ 6% p.a. from the date of filing of application till its realization.

3. Appellant-claimants have preferred MAC No.627/16 seeking enhancement of amount of compensation awarded by Claims Tribunal.

4. Facts of case, in nutshell, are that on 23.12.2009 at about 4 p.m. in the evening Bhojdutt alias Krishna Kumar was going towards Mahansamund on his motorcycle bearing registration No.CG04-E-6539 and when he reached near Jogidera, Tumgaon, one Mini Bus bearing registration No.CG04-E-1063, driven by non-applicant No.1, dashed his motorcycle as a result of which he sustained grievous injuries on his head, chest & other vital parts of body and he succumbed to those injuries. Matter was reported to Police Station Tumgaon based on which offence under Section 304A of IPC was registered against non-applicant No.1.

5. Claimants, who are widow, children & parents of deceased, filed claim application before competent claims tribunal claiming amount of Rs.16,00,000/- as total compensation against non-applicants therein, jointly and severally.

6. Non-applicant Nos.1, 4 & 5 filed reply to claim application and denied all averments made in claim applications. They have pleaded that on the date of accident, non-applicant No.1 was holding valid and effective driving license and offending vehicle was insured with non-applicant No.3- Insurance Company and therefore liability, if any, for payment of amount of compensation would be of the insurance company.

7. Non-applicant No.2 submitted reply to claim application and pleaded that on 05.05.2007 i.e. prior to accident in question, he has sold and handed over the offending vehicle to non-applicant No.4, who, in turn, sold it to Niranjan Singh (non-applicant No.5) on 15.2.2008.

8. Non-applicant No.3 filed its separate reply to claim application and denied all adverse pleadings made therein. It was pleaded that owner of offending vehicle issued a cheque towards premium for insurance policy but when the said cheque was presented for encashment, it was dishonoured by drawee bank due to insufficiency of funds in the account of owner of offending vehicle and therefore policy was cancelled. In this situation, the insurance company is not liable to indemnify the liability of owner of vehicle due to cancellation of

insurance policy on account of non-payment of premium. The cheque issued towards premium of policy was dishonoured and intimation regarding cancellation of policy was sent. Even otherwise, the offending vehicle was plied on public road without there being any valid and effective permit and as there was violation of conditions of insurance policy, therefore, also insurance company is not liable to indemnify insured.

9. The Claims Tribunal on appreciation of pleadings, material and evidence placed on record by respective parties has held that accident occurred due to rash and negligent driving by driver of offending vehicle which has resulted in death of deceased; there is nothing on record establishing contributory negligence on the part of deceased; offending vehicle was sold by non-applicant No.2 to non-applicant No.4, who in turn sold and delivered it to non-applicant No.5; on the date of accident and even there was no valid permit to ply offending vehicle on public road and the intimation with regard to dishonouring of cheque issued against the issuance of policy was sent, thus there was violation of conditions of insurance policy. On the basis of aforesaid findings, the Claims Tribunal allowed the application in part, awarded an amount of Rs.10,05,000/- as compensation and fastened liability on non-applicant No.5 to pay amount of compensation.

10. Learned counsel for appellant in MAC No.108/16, which is an appeal preferred by physical owner/subsequent purchaser of offending vehicle, argued that it is non-applicant No.2/respondent No.2 herein whose name was recorded as registered owner of offending vehicle in the records of registering authority on the date of accident and not of this appellant and therefore, the Claims Tribunal ought to have fastened liability on non-applicant No.2. He further argued that Claims Tribunal erroneously held that appellant herein was duly intimated about cancellation of policy on account of dishonour of cheque of premium. In fact, insurance company failed to produce any material showing acknowledgement/receipt of intimation regarding cancellation of policy due to dishonour of cheque issued towards

premium, particularly prior to date of accident, and therefore exoneration of insurance company on this ground is bad in law. He further argued that non-availability of permit to ply vehicle on road is not a substantial breach of policy. Reliance is placed on the judgment of Hon'ble Supreme Court in the matter of United India Insurance Co. Ltd. vs. Laxamma reported in (2012) 5 SCC 234.

11. Learned counsel for respondents No.1 to 5-claimants submits that the claimants have also preferred separate appeal bearing MAC No.627/16 for enhancement of amount of compensation as also for a direction to insurance company to first pay amount of compensation to claimants and then to recover it from owner of offending vehicle. In support of his submissions, he relied upon decision of Hon'ble Supreme Court in the matter of Amrit Paul Singh & another v. Tata AIG General Insurance Company Limited & ors reported in (2018) 7 SCC 558.

12. Learned counsel appearing on behalf of Insurance Company supported the impugned award and submitted that the Claims Tribunal has not committed any illegality in saddling non-applicant No.5 with the liability to pay amount of compensation because non-applicant No.5 himself admitted in his evidence that the offending vehicle was purchased by him, it was in his custody and on the date of accident, non-applicant No.1 was driving the same under his authority. He further argued that the Claims Tribunal rightly exonerated insurance company from its liability to pay amount of compensation as on the date of accident there was no valid permit in favour of offending vehicle and even insurance policy has been cancelled on account of dishonour of cheque issued against payment of premium.

13. I have heard learned counsel for the parties and perused the records.

14. For the sake of convenience, grounds urged in MAC No.108/2016 preferred by subsequent purchaser/physical owner of offending vehicle are being considered first.

15. As regards the ground raised by learned counsel for appellant that Claims Tribunal erred in fastening liability on appellant ignoring the fact that on the date of accident he was not registered owner of offending vehicle.

16. Perusal of record would show that non-applicant No.5 in reply to claim application has specifically denied ownership of offending vehicle, however, in additional submissions he pleaded in categorical terms that after making payment of premium amount of offending vehicle by him to insurance company through cheque, he got the cover note issued. At the time of issuance of cheque, sufficient amount was available in his bank account and if the cheque was dishonoured on account of any negligence on the part of insurance company then he is not responsible for the same. Non-applicant No.5/appellant herein in Para-3 of his examination-in-chief filed before the Claims Tribunal under Order 18 Rule 4 of CPC has admitted that on the date of accident, the offending vehicle was under his custody and control. He further admitted that since the date of purchase of offending vehicle, it was his responsibility to pay taxes, get vehicle insured, obtain permit and pay instalments of finance. On 7.12.2009 he issued Cheque bearing No.7624 drawn on Axis Bank in favour of United India Insurance Company and cover note was issued to him. He further admitted that cheque issued by him belongs to his bank account bearing No.668010100010317 maintained at Axis Bank and on the date of issuance of said cheque, there was sufficient funds in his account. He further admitted that as said bank account is related to his business, therefore, amount is being deposited and withdrawn regularly. Due to negligence on the part of officer/employee of insurance company, said cheuqe has not been presented for encashment for about 14 days and therefore he cannot be held responsible for dishonour of cheque. In the cross-examination he has specifically admitted that on 15.2.2008 he had purchased offending vehicle from non-applicant No.4 and accident took place on 23.12.2009.

17. The word 'owner' is defined in Section 2 (30) of the Act of 1988 which

reads as under:-

> "**Owner**" means "a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement."

18. Hon'ble Supreme Court in the matter of Prakash Chand Daga v. Shweta Sharma reported in (2018) SCC Online SC 2830 has held thus:-

> "9. The law is thus well settled and can be summarised:-
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> "Even though in law there would be a transfer of ownership of the vehicle, that, by itself, would not absolve the party, in whose name the vehicle stands in RTO records, from liability to a third person … … … Merely because the vehicle was transferred does not mean that such registered owner stands absolved of his liability to a third person. So long as his name continues in RTO records, he remains liable to a third person."

In the matter of **Naveen Kumar vs. Vijay Kumar** reported in **(2018) 3 SCC 1** the Hon'ble Supreme Court has held thus:-

> "13. The consistent thread of reasoning which emerges from the above decisions is that in view of the definition of the expression 'owner' in Section 2 (30), it is the person in whose name the motor vehicle stands registered who for the purposes of the Act, would be treated as the 'owner'. However, where a person is a minor, the guardian of the minor would be treated as the owner. Where a motor vehicle is subject to an agreement of hire purchase, lease or hypothecation, the person in possession of the vehicle under that agreement is treated as the owner. In a situation such as the present where the registered owner has purported to transfer the vehicle but continues to be reflected in the records of the registering authority as the owner of the vehicle, he would not stand absolved of liability. Parliament has consciously introduced the definition of the expression 'owner' in Section 2 (30), making a departure from the provisions of Section 2 (19) in the earlier Act of 1939. The principle underlying the

> provisions of Section 2 (30) is that the victim of a motor accident or, in the case of a death, the legal heirs of the deceased victim should not be left in a state of uncertainty. A claimant for compensation ought not to be burdened with following a trail of successive transfers, which are not registered with the registering authority. To hold otherwise would be to defeat the salutary object and purpose of the Act. Hence, the interpretation to be placed must facilitate the fulfilment of the object of the law. In the present case, the First respondent was the 'owner' of the vehicle involved in the accident within the meaning of Section 2 (30). The liability to pay compensation stands fastened upon him. Admittedly, the vehicle was uninsured. The High Court has proceeded upon a mis-construction of the judgements of this Court in Reshma and Purnya Kala Devi.
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> 14. The submission of the Petitioner is that a failure to intimate the transfer will only result in a fine under Section 50 (3) but will not invalidate the transfer of the vehicle. In Dr T V Jose, this Court observed that there can be transfer of title by payment of consideration and delivery of the car. But for the purposes of the Act, the person whose name is reflected in the records of the registering authority is the owner. The owner within the meaning of Section 2 (30) is liable to compensate. The mandate of the law must be fulfilled.

A bare reading of above quoted judgements makes it clear that a claimant for compensation ought not to be burdened with following a trail of successive transfers, which are not registered with registering authority. To hold otherwise would be to defeat the salutary object and purpose of the Act.

19. If the facts of present case are examined on the touchstone of above principles laid down by Hon'ble Supreme Court, it is apparent that subsequent purchaser/physical owner i.e. appellant in MAC No.108/2016, admitted the fact of purchase of offending vehicle and also the fact that on the date of accident, he was in possession of the same. He has also admitted his responsibility to get the vehicle insured, pay taxes, obtain permit from competent authority for plying it on public road etc. He also admitted issuance of cheque in favour of insurance company towards purchase of policy. Appellant Niranjan Singh is a Transporter by profession and having more than one bus,

as is mentioned in Ex.D-6 which is extract of relevant page of permit register wherein it has been mentioned that Niranjan Singh is owner of buses bearing registration No.CG06-B-7940 & CG06-P-1755. Ex.D-16 is the cheque dated 7.12.2009 issued by Niranjan Singh in favour of insurance company which was subsequently dishonoured. Name of drawer 'Niranjan Singh' is printed on the said cheque and name of beneficiary is mentioned as 'United India Insurance Co. Ltd.'.

20. In the light of above principle laid down by Hon'ble Supreme Court that a claimant for compensation ought not to be burdened with following a trial of successive transfers, which are not registered with registering authority and considering the admission of appellant in this case that offending vehicle was purchased by appellant Niranjan Singh (non-applicant No.5), submission of learned counsel for appellant Niranjan Singh that Claims Tribunal erred in holding non-applicant No.5 instead of non-applicant No.2 liable to make payment of amount of compensation, is of some force. The registered owner (non-applicant No.2 / respondent No.7 in MAC No.108/16) cannot be absolved from liability to pay amount of compensation but at the same time physical owner & subsequent purchaser of i.e. non-applicant No.5/appellant in MAC No.108/16, who is earning fruits of the use of vehicle also cannot be left unaccounted for his acts and deeds who is a bus operator and operating more than one commercial bus as per the document available on record. Thus, in the opinion of this Court, appellant and respondent No.7 in MAC No.108/2016 are held liable for payment of compensation, jointly and severally.

21. Next ground urged by learned counsel for appellant in MAC No.108/2016 is that the Claims Tribunal erred in holding that policy has been cancelled from date of its inspection on account of dishonour of cheque issued towards amount of premium. Perusal of record would show that cheque (Ex.D-16) amounting to Rs.25,506/- was issued on 7.12.2009 and when said cheque was presented for encashment, it was returned dishonoured by Axis Bank vide memo dated 21.12.2009 with the remarks 'funds insufficient'. Vide memo dated 24.12.2009 bank of insurance company intimated about

dishonour of cheque due to insufficient funds. Thereafter only on 31.12.2009 intimation regarding cancellation of policy has been sent to registered owner i.e. non-applicant No.2/respondent No.2 herein. Date of accident is 23.12.2009. Perusal of intimation letter would show that it is computer generated letter in which address of recipient has been corrected manually and this creates suspicion whether this letter was originally issued to non-applicant No.2 or not. Insurance company has not brought any specific evidence on record showing that letter sent to registered owner of offending vehicle was reached and received by him. Even no witness has been examined in order to prove service of intimation on registered owner of offending vehicle. Issue of cancellation of insurance policy after the date of accident on the ground of dishonour of cheque has been considered by Hon'ble Supreme Court in Oriental Insurance Company Ltd. v. Laxmamma & ors reported in (2012) 5 SCC 234 and held as under:-

> “26. In our view, the legal position is this: where the policy of insurance is issued by an authorised insurer on receipt of cheque towards the payment of premium and such a cheque is returned dishonoured, the liability of the authorised insurer to indemnify the third parties in respect of the liability which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of Section 147 (5) and 149 (1) of the MV Act unless the policy of insurance is cancelled by the authorised insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorised insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof."
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> 20. Having regard to the above legal position, insofar as facts of the present case are concerned, the owner of the bus obtained policy of insurance from the insurer for the period April 16, 2004 to April 15, 2005for which premium was paid through cheque on April 14, 2004. The accident occurred on May 11, 2004. It was only thereafter that the insurer cancelled the insurance policy by communication dated May 13, 2004 on the ground of dishonour of cheque which was received by the owner of the vehicle

> on May 21, 2004. The cancellation of policy having been done by the insurer after the accident, the insurer became liable to satisfy award of compensation passed in favour of the claimants.

22. In the case at hand, cheque towards premium was handed over on 7.12.2009 and cover note covering risk of offending vehicle w.e.f. 7.12.2009 to 6.12.2010 was issued. Accident took place on 23.12.2009, whereas intimation regarding cancellation of insurance policy on account of dishonour of cheque was sent from the office of insurance company on 31.12.2009 only. Insurance company did not submit cheque in its account for clearance within reasonable time.

23. In the light of aforementioned law laid down by Hon'ble Supreme Court, as on the date of accident insurance policy issued in favour of insured was very much effective and it was cancelled only after the date of accident, therefore, it will be treated that on the date accident there was a valid insurance policy covering risk of offending vehicle by insurance company. Hence, the finding recorded by Claims Tribunal holding respondent Insurance Company not liable for payment of amount of compensation as there was no effective insurance policy, being erroneous is liable to be and is hereby set aside.

24. Next argument advanced by learned counsel for appellant in MAC No.108/16 is that Claims Tribunal wrongly exonerated insurance company from its liability on the ground of non-availability of valid permit of offending vehicle. Since it was not a substantial breach of conditions of insurance policy, the Claims Tribunal ought not to have exonerated insurance company from its liability to indemnify insured, particularly when a valid policy was in existence on the date of accident.

25. Necessity of permit has been provided under Section 66 of the Act of 1988. Relevant portion of Section 66 reads as under:-

> "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."

26. Teejram Verma (NAW3-1), Assistant Grade-III, Regional Transport Office, Raipur was examined by insurance company and this witness has proved permit register from 1.9.2019 to 22.1.2010 maintained in the office in which it has been mentioned at Sr. No.1834/09 that permit of bus bearing No.CG04-E-1063 was valid from 5.11.2009 to 30.11.2009. Letter of Ex.D-2 contains particulars of permit issued in favour of registered owner of offending vehicle and this letter was issued by the office of RTO, Raipur to Investigator Mohd. Ibrahim of Raipur pursuant to his letter dated 2.7.2010 seeking particulars of permit of offending vehicle. As per this letter (Ex.D-2), permit was valid from 5.11.2009 to 30.11.2009. Thus, from the aforesaid two documents it is evident that on the date of accident i.e. 23.12.2009, offending vehicle was being plied on public road without there being any valid permit. Nothing could be brought on record by appellant in MAC No.108/2016 to controvert aforesaid two documents or showing that on the date of accident there was valid permit to ply offending vehicle on public road.

27. In the matter of **Amrit Paul Singh v. Tata AIG General Insurance Co. Ltd.** reported in **(2018) 7 SCC 558** the Supreme Court has considered the issue of no valid permit and held thus:-

> "10. In the case at hand, the findings would show that the appellant No.2 did not have a permit for the vehicle.

There is no dispute that the vehicle initially had a temporary registration and eventually the permanent registration. It is the stand of the appellants that the tribunal and the High Court did not appreciate that the chasis of the vehicle was sent to the body where the body of the truck was fabricated and when the vehicle was driven out of the work shop at which point of time it met with an accident. A contention has been made that the insurance policy was in force at the relevant time and, hence, the insurer is legally obliged to indemnify the insured.

12.A distinction has to be made between “route permit” and “permit” in the context of Section 149 of the Act. Section 149(2) provides the grounds that can be taken as defence by the insurer. It enables the insurer to defend on the ground that there has been breach of a specific condition of the policy, namely, (i) a condition that excludes the use of the vehicle,- (a) for hire or reward, where the vehicle is, on the date of the contract of insurance, a vehicle not covered by a permit to ply for hire or reward, or (b) for organized racing and speed testing, or (c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or (d) without side-car being attached where the vehicle is a motorcycle. That apart, it also entitles the insurer to raise the issue pertaining to a condition that excludes driving by a named person or persons or by any person who is not duly licensed or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification or that excludes liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion A further defence that can be availed of by the insurer is that the policy is void on the ground that it has been obtained by non-disclosure of the material fact or by representation of act which is false in the material particular."

28. For the foregoing discussions, this Court is of the considered view that Claims Tribunal has not committed any illegality or infirmity in holding that on the date of accident there was no valid permit to ply offending vehicle on road and thus there was violation of condition of insurance policy and therefore the insurance company cannot be held liable for payment of amount of compensation.

29. Now coming to the grounds urged by claimants/appellants in MAC No.627/16. Learned counsel for appellants submits that Claims Tribunal though held that deceased was 34 years of age on the date of accident but not awarded any amount towards loss of future prospects. Further, the Claims Tribunal wrongly deducted one-third from the income of deceased towards his personal and living expenses ignoring the fact that deceased was survived by five dependant family members. Lastly, he submits that as on the date of accident there was a valid insurance policy, therefore, even if it is found that there was violation of condition of insurance policy, then also in view of fact that deceased was a third party, the Claims Tribunal ought to have directed insurance company to first pay entire amount of compensation and then to recover the same from registered owner of vehicle.

30. Perusal of impugned award reveals that the Claims Tribunal though assessed income of deceased as Rs.5,000/- (Rs.60,000/- per annum) but failed to add any amount towards future prospects. In the matter of National Insurance Company Ltd. vs. Pranay Sethi reported in (2017) 16 SCC 680 it has been held by Hon'ble Supreme Court that in a case where deceased was below the age of 40 years and not in permanent employment, an addition of 40% of the established income of deceased towards future prospects should be made. In the case at hand, on the date of accident, deceased was about 34 years of age and was not in permanent employment, therefore, the claimants are entitled for an addition of 40% of the assessed income of deceased.

31. In the matter of Sarla Verma (Smt.) vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 1, it has been clearly laid down that deduction towards personal and living expenses of deceased has to be one-fourth in case there are 4 to 6 dependent family members. In the case at hand, since there are five dependants of deceased, while calculating loss of dependency of claimants the Claims Tribunal ought to have deducted one-fourth of the income of deceased towards his personal expenses instead of one-third. The claimants are to be awarded just and proper amount of compensation.

32. For the foregoing discussions, this Court proposes to recalculate amount of compensation payable to claimants/appellants in MAC No.627/16.

33. Accordingly, income of deceased is taken as Rs.5000/- per month, as assessed by Claims Tribunal, and since at the time of accident deceased was below the age of 40 years old i.e.34 years, and was not in permanent employment, therefore, in view of law laid down in the matter of **Pranay Sethi's case** (supra), the income of deceased is required to be increased by 40% towards future prospects, which comes to Rs.7,000/-(5000+2000). Thus, annual income of deceased for purpose of calculating compensation comes to Rs.84,000/- (7000x12). After deducting one-fourth from annual income of deceased towards his personal and living expenses, annual loss of dependency comes to Rs.63,000/- (84000-21000). By applying multiplier of 17, as applied by Claims Tribunal, to annual loss of dependency, total loss of dependency would come to Rs.10,71,000/- (63000x17). The amount as awarded by the Claims Tribunal under the head of conventional heads in the facts and circumstances of the case is on higher side and in view of decision of Hon'ble Supreme Court in the matter of National Insurance Company Limited Vs. Pranay Sethi reported in **(2017) 16 SCC 680**, compensation under the conventional heads has to be Rs.70,000/- and not Rs.3,25,000/- (as awarded by the Claims Tribunal). Accordingly, the claimants are entitled to Rs.70,000/- under the conventional heads. Thus, claimants/appellants in MAC No.627/16 are now entitled to a total

compensation of Rs.11,41,000/- (10,71,000+70,000) instead of Rs.10,05,000/- as awarded by Claims Tribunal. This amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Rest of conditions mentioned in the impugned award shall remain intact.

34. Coming to the submission of learned counsel for claimants/appellants in MAC No.627/16 that there is violation of insurance policy only to the extent that offending vehicle was not having valid permit on the date of accident, therefore, the Insurance Company may be directed to first pay amount of award to claimants and then recover the same from owner of offending vehicle. Admittedly, the accident is of the year 2009, claimants belong to poor family and till date they have not received the entire amount of compensation, as awarded by learned Claims Tribunal. Offending vehicle was insured with respondent No.3-Insurance Company. The doctrine of pay & recover has been considered by the Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. v. Challa Bharathamma and others** reported in **(2004) 8 SCC 517** . 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 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."

35. The Hon'ble Supreme Court in the matter of **Manura Khatun & ors v. Rajesh Kumar Singh & ors** reported in **(2017) 4 SCC 796** has considered the issue of pay and recover and held thus:-

> "14.The aforesaid question, in our opinion, remains no more res integra. As we notice, it was subject matter of several decisions of this Court rendered by three Judge Bench and two Judge Bench in past, viz., National Insurance Co. Ltd. vs. Baljit Kaur & ors, (2004) 2 SCC 1, National Insurance Co. Ltd. vs. Challa Upendra Rao & Ors., (2004) 8 SCC 517, Natinal Insurance Co. Ltd. vs. Kaushalaya Devi & ors, (2008) 8 SCC 246, National Insurance Col Ltd. vs. Roshan Lal, (Order dated 19.1.2007 in SLP © No. 5699 of 2006], and National Insurance Co. Ltd. vs. Parvathneni & anr, (2009) 8 SCC 785.
>
> 15. This question also fell for consideration recently in Manager, National Insurance Company Limited vs. Saju P. Paul & Anr., (supra) wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of Section 147 of the Act. While allowing the appeal filed by the Insurance Company by reversing the judgment of the High Court, it was held on facts that since the victim was travelling in offending vehicle as "gratuitous passenger" and hence, the Insurance Company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of "pay and recover".
>
> 21.In view of the foregoing discussion, we are of the view that the direction to United India Insurance Company (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 Company-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."

36. Recently, in the matter of **Amrit Paul Singh and another v. Tata AIG General Insurance Company Limited and others** reported in **(2018) 7 SCC 558** Hon'ble Supreme Court while dealing with similar issue has held thus:-

> "24..........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."

37. Considering the ratio laid down in above decisions of Hon'ble Supreme Court as also considering beneficial object of the Act of 1988 as well, this Court is of the view that it will be in larger interest of justice to direct the insurer to first pay amount of compensation to claimants and then to recover it from non-applicant Nos.2 & 5 / respondent Nos.2 & 5, though in law it has no liability to pay amount of compensation.

38. In the result;

- MAC No.108/2016 filed by non-applicant No.5/appellant, who is subsequent purchaser of offending vehicle, is allowed in part and non-applicant No.2/respondent No.7 herein is also held liable for payment of amount of compensation along with non-applicant No.5/appellant herein, jointly and severally.
- MAC No.627/16 filed by claimants/appellants is allowed in part and the impugned award is modified in following terms;
    - Claimants/appellants will now be entitled for a total sum of Rs.11,41,000/- along with interest @ 6% p.a. from the date of application till its realization.
    - Insurance Company though having no liability under the law to pay compensation to claimants, but keeping in mind the beneficial object of the Act of 1988 as also dictum of Hon'ble Supreme Court in above referred cases, this Court directs insurer of offending vehicle viz, respondent No.3 in MAC No.627/16, to first pay the amount of compensation to claimants and thereafter to recover the said sum from respondent Nos.2 & 5 in MAC No.627/16 in the manner as provided in the matter of **Oriental Insurance Company Limited v. Nanjappan** reported in **AIR 2004 SC 1631**.
- Other conditions imposed by the Claims Tribunal will remain intact.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-