

**IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH**

**FAO No.6049 of 2010 (O&M)  
Date of Decision : 07.02.2019**

Binesh .....Appellant

Versus

Sahid and others .....Respondents

**Coram: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present: Mr. Ashish Gupta, Advocate  
for the appellant.

Respondents No.1 and 2 did not appear  
despite service.

Ms. Vandana Malhotra, Advocate with  
Ms. Monika Jangra, Advocate  
for respondent No.3.

**ARUN KUMAR TYAGI, J.**

1. The appellant-claimant No.3-daughter of deceased Rambhulla has filed the present appeal for enhancement of the compensation awarded by the learned Motor Accidents Claims Tribunal, Gurgaon (for short "the Tribunal") vide award dated 09.03.2010 passed in **MACT Case No.31 of 06.03.2009 titled as Bahadur and others Vs. Sahid and others** on account of death of Rambhulla due to injuries suffered in a motor vehicular accident which took place on 25.01.2009.

2. The claimants-Bahadur and Jaswant sons and Binesh daughter of Rambhulla filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short “the M.V. Act”) on the averments that on 25.01.2009 at about 06:30 P.M., Rambhulla along with one Kale Khan was going from Behrampur Market towards village Khandsa. When they reached near village Naharpur, Indica car bearing registration No.RJ-14-AT-5110, owned by respondent No.2 and insured with respondent No.3, driven by respondent No.1 at a high speed, rashly and negligently came and struck against Rambhulla, who suffered multiple and grievous injuries. He was taken to Ayushman Hospital, Gurgaon where he died subsequently. FIR No.32 dated 25.01.2009 was registered under Sections 279 and 304-A IPC in Police Station Sadar Gurgaon regarding the accident.

3. The claimants further averred in the claim petition that the deceased was aged about 70 years and earning ₹7,000/- per month by working as contractor. They spent amount of ₹30,000/- on hospitalisation, treatment, transportation and last rites of the deceased. The claimants being his legal representatives are entitled to payment of compensation by the respondents jointly and severally with costs and interest.

4. Notice of the petition was given to the respondents. Respondents No.1 and 2 initially appeared but subsequently suffered themselves to be proceeded against ex-parte. Respondent No.3 contested the petition and inter alia pleaded that respondent No.1 was not having valid and effective driving licence and

respondent No.2 violated the terms and conditions of the insurance policy and accordingly denied its liability.

5. Issues were framed and the parties were given opportunity to produce their evidence.

6. On perusal of the evidence produced by the parties and consideration of the submissions made by the learned counsel for the parties, the Tribunal held that Rambhulla died due to injuries suffered in accident caused by rash and negligent driving by respondent No.1 of Indica Car, owned by respondent No.2 insured with respondent No.3. The Tribunal held Rambhulla to be aged 70 years at the time of his death and to be incapable of doing any hard labour to earn any amount and on that basis awarded ₹75,000/- as death compensation, ₹10,000/- towards funeral, transportation charges etc. and ₹8,937/- towards expenses incurred on medical treatment of the deceased totalling ₹93,937/- with costs and interest. The Tribunal held that claimants No. 1 and 2 sons being able bodied and married persons could not be dependent on their deceased father and accordingly held claimant No.3 daughter to be entitled to payment of the compensation amount with costs and interest. The Tribunal further held that respondent No.1 did not have valid and effective driving licence as the same was not endorsed for driving transport vehicle and respondent No.2 did not have any route permit and exonerated respondent No.3-insurance company from its liability to indemnify the insured but directed it to satisfy the award in the first instance and then recover the amount from respondents No.1 and 2.

7. Feeling aggrieved, the appellant-claimant No.3 Binesh daughter of deceased Rambhulla has filed the present appeal.

8. I have heard the learned counsel for the parties and gone through the record.

9. Mr. Ashish Gupta, Learned counsel for the appellant-claimant No.3 has argued that Rambhulla deceased was earning an amount of ₹7,000/- per month by working as a contractor and merely because of his old age of 70 years, he could not be said to be unable to work. The learned Tribunal awarded a lumpsum amount of ₹75,000/- as total compensation without assessing his income and applying the multiplier of 5. The learned Tribunal awarded a meagre amount of ₹10,000/- towards transportation, funeral expenses, etc. In view of the observations of Hon'ble Apex Court in its judgment in **National Insurance Company Limited vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009** and **Magma General Insurance Co. Ltd. versus Nanu Ram alias Chuhru Ram and others 2018 (4) Recent Civil Reports 333**, claimant No.3 is entitled to award of amount of ₹15,000/- towards funeral expenses, ₹40,000/- towards loss of parental consortium and ₹15,000/- towards loss of estate. The driving licence of respondent No.1 authorising him to drive LMV was valid and effective for driving of the Indica Car in question which fell in that category. Respondent No.3 has failed to discharge the onus of proving that respondent No.2. committed breach of the terms and conditions of the insurance policy and respondents No.1 to 3 are jointly and severally liable to pay the compensation amount.

10. On the other hand, learned counsel for respondent No.3- insurance company, has argued that the Tribunal has awarded just and adequate compensation to claimant No.3. Claimants No.1 and 2 sons, not being dependent on the deceased, were not entitled to payment of any compensation. If the Tribunal be held to have faulted by not adopting multiplier method to assessed income even then, such calculation could be made only on the basis of minimum wages payable, as there is no cogent and reliable evidence as to income of the deceased at the time of his death. Respondent No.2 committed breach of the terms and conditions of the insurance policy as driving licence of respondent No.1 for LMV did not have requisite endorsement for driving of transport vehicle and respondent No.2 did not have route permit. Respondent No.3 was, therefore, rightly exonerated of its liability to indemnify the insured and was rightly given the right to recover the compensation amount paid by it from the owner and the driver. In support of his arguments Learned Counsel for respondent No.3 has placed reliance on observations in **National Insurance Co. Ltd. Vs. Chella Bharathamma, 2004(4) RCR (Civil) 399; Amrit Paul Singh and another Vs. TATA AIG General Insurance Co. Ltd. and others, Civil Appeal No.2253 of 2018 arising out of SLP (Civil) No.7692 of 2017 decided on 17.05.2018 and Rani and others Vs. National Insurance Company Ltd. and others 2018(3) RCR (Civil) 979.** Learned Counsel for the respondent No. 3 has accordingly prayed for dismissal of the appeal.

11. It deserves to be mentioned at the very outset that in the present case, respondent No.3 has not challenged the findings of the Tribunal as to death of Rambhulla due to injuries suffered by him in the accident caused on 25.01.2009 at about 06:30 P.M. by rash and negligent driving by respondent No.1 of Indica car bearing registration No.RJ-14-AT-5110, owned by respondent No.2 and insured with respondent No.3 by filing any appeal or cross-objections. These findings of the Tribunal, which are based on proper appreciation of the cogent and reliable evidence on record, cannot be faulted and are accordingly liable to be affirmed.

12. It may also be observed here that claimants No.1 and 2 have also not challenged the findings of the Tribunal that claimants No.1 and 2 being able bodied and married persons could not be said to be dependent on the deceased and were not entitled for payment of compensation for his death, by filing any appeal. Even though PW-3 Bahadur had testified in his affidavit Ex.PW-3/A as to the claimants being dependent on the income of the deceased but in view of the fact that claimants No.1 and 2, sons, namely Bahadur and Jaswant were aged about 30 years and 27 years, able bodied, married and having independent source of income, they could not be said to be dependent on the deceased. Therefore, the Tribunal has rightly rejected their claim for compensation. So far as claimant No.3 is concerned, PW-3 Bahadur had stated that claimant No.3 was unmarried and dependent on the income of the deceased. Therefore, claimant No.3 has been rightly held by the Tribunal to be legal representative of the deceased and to be entitled for payment

of compensation on account of his death due to injuries suffered by him in a motor vehicular accident.

13. The Tribunal held Rambhulla to be incapable of doing any hard labour work and earn any amount due to being 70 years of age. However, Rambhulla cannot be said to be unable to work and to earn any amount due to his old age only and the finding of the Tribunal is not based on any evidence as to his physical inability to work and is on the other hand contrary to evidence as to working by him as contractor. It is now common experience that persons with old age continue to work due to improved medical facilities, longevity of life and working conditions. However, in the absence of any corroborative documentary evidence, the self-serving testimony of PW-3 Bahadur as to deceased earning ₹7,000/- per month could not be relied upon so as to warrant acceptance of the claim as to his income. Consequently, the deceased must be held to be having income of amount equal to ₹3,840/- notified as minimum wages payable to unskilled labourer during the relevant period. In view of the observations of Hon'ble Supreme Court in para No. 61(iv) of its judgment in **Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009** and age of deceased being 70 years, no addition is required to be made towards future prospects. Since the deceased was aged about 70 years and having only one dependent, deduction of 1/2 is required to be made towards his personal expenses and multiplier of 5 would be applicable as per the observations of Hon'ble Supreme Court in its judgment in **Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) R.C.R. (Civil) 77.**

14. In **Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009** in para No.61 (viii) of its judgment, Hon'ble Supreme Court observed that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be ₹15,000/-, ₹40,000/- and ₹15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years. In **Magma General Insurance Co. Ltd. versus Nanu Ram alias Chuhru Ram and others 2018 (4) Recent Civil Reports 333**, a Two Judge Bench of the Hon'ble Supreme Court clarified that in legal parlance 'consortium' is compendious term which encompasses 'spousal consortium', 'parental consortium' and 'filial consortium' and awarded compensation of ₹40,000/- each for loss of filial consortium to father and sister of the deceased. However, the Bench observed in para No.8.7 of its judgment that the amount of compensation to be awarded for loss of consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in **Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009**. In view of the principles of awarding compensation under 'Loss of Consortium' as laid down in para No.61 (viii) **Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009** referred to above, the claimant No.3 will be entitled to award of compensation of ₹40,000/- only towards loss of **parental** consortium.

15. In the present case the Tribunal merely awarded ₹10,000/- towards funeral expenses and did not award any amount under the head loss of estate. In view of observations made by

Hon'ble Supreme Court in para No. 61 (viii) of its judgment in **Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009**, the claimant No. 3 is entitled to award of ₹15,000/- towards funeral expenses and ₹15,000/- towards loss of estate.

16. The Tribunal awarded amount of ₹8,937/- towards expenses on medical treatment of the deceased which is not challenged and does not call for any enhancement.

17. Accordingly, compensation payable to claimant No.3 on account of death of Rambhulla is re-worked out as under:-

| Sr. No.            | Head                                           | Compensation                   |
|--------------------|------------------------------------------------|--------------------------------|
| 1.                 | Monthly income of the deceased                 | ₹3,840/- per month             |
| 2.                 | Deduction of ½ on account of personal expenses | ₹1,920/- per month             |
| 3.                 | Annual dependency                              | ₹1920 x 12<br>=₹23,040/-       |
| 4.                 | Loss of dependency                             | ₹23,040/- x 5 =<br>₹1,15,200/- |
| 5.                 | Funeral expenses                               | ₹15,000/-                      |
| 6.                 | Loss of parental consortium                    | ₹40,000/-                      |
| 7.                 | Loss of estate                                 | ₹15,000/-                      |
| 8.                 | Medical expenses                               | ₹8,937/-                       |
| Total Compensation |                                                | ₹1,94,137/-                    |

18. In the present case, the Tribunal observed that respondent No.3-Insurance Company had examined Vikrant Criminal Ahlmad in the Court of ACJM, Gurgaon as RW-1, who had stated that no route permit was attached by the Police while submitting challan in the Court. As per driving license exhibit P3 respondent No.1 was licensed to drive LMV and there was no endorsement regarding transport vehicle. Resultantly, the Tribunal held that respondents No.1 and 2 had violated the terms and conditions of the insurance policy and accordingly exonerated

respondent No.3 from its liability to indemnify the insured-respondent No.2 but directed respondent No.3 to satisfy the award in the first instance and to recover the amount paid from the respondents No.1 and 2.

19. Even though respondents No.1 and 2, who suffered themselves to be proceeded against ex-parte before the Tribunal and did not appear on notice of the present appeal, have not challenged the award exonerating respondent No.3 of its liability to indemnify respondent No.2-the insured by filing any appeal or cross-objections but in view of Order 41 Rule 33 of the Code of Civil Procedure, 1908 the question of liability of respondents No.1 and 2 and respondent No.3 respectively regarding payment of compensation amount to claimant No.3 can be adjudicated upon on the present appeal in the absence of any appeal or cross-objections by respondents No.1 and 2.

20. In the present case, respondent No.1 is proved to be having driving licence authorising him to drive LMV without any endorsement for authorizing him to drive transport vehicle and question arises as to whether the same was valid and effective for driving of the offending vehicle Indica Car registered as light passenger vehicle falling in the category of light motor vehicle at the time of the accident or not.

21. Prior to reference to larger Bench of Hon,ble Supreme Court In **Mukund Dewangan V/s Oriental Insurance Co. Ltd., 2017 (4) RCR (Civil) 111**, there was a conflict in the plethora of decisions of Hon,ble Supreme Court on the question whether a

driver who is having a licence to drive 'light motor vehicle' and is driving 'transport vehicle' of that class is required additionally to obtain an endorsement to drive a transport vehicle. In **Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd. 2000(1) R.C.R.(Civil) 437 : (1999) 6 SCC 620, S. Iyyapan v. United India Insurance Co. Ltd. and Anr. 2013(3) R.C.R.(Civil) 654 : 2013(4) Recent Apex Judgments (R.A.J.) 303 : (2013) 7 SCC 62, Nagashetty v. United India Insurance Co. Ltd. & Ors. 2001(4) R.C.R.(Civil) 597 : (2001) 8 SCC 56**, the view taken by Hon'ble Supreme Court was that when a driver is holding a licence to drive 'light motor vehicle', he is competent to drive a 'transport vehicle' of that category without specific endorsement to drive the transport vehicle; whereas in **New India Assurance Co. Ltd. v. Prabhu Lal, 2008(1) R.C.R.(Civil) 198 : (2008) 1 SCC 696**, a view had been taken that before 2001 also, it was necessary for a driver possessing driving licence to drive light motor vehicle to obtain an endorsement to drive transport vehicle of that class; whereas in **National Insurance Co. Ltd. v. Annappa Irappa Nesaria alias Nesargi & Ors. 2008(1) R.C.R.(Civil) 848 : 2008(1) Recent Apex Judgments (R.A.J.) 413 : (2008) 3 SCC 464**, a distinction was made in the legal position which existed before 28.3.2001 i.e. the date of amendment of the form and subsequent thereto. It was opined that before 28.3.2001 there was no necessity for the holder of a licence to drive light motor vehicle to obtain an endorsement to drive transport vehicle of that class. He could drive transport vehicle of Light Motor Vehicle category on the basis of holding a licence to

drive light motor vehicle. In **New India Assurance Co. Ltd. v. Roshanben Rahemansha Fakir & Anr. 2008(3) R.C.R.(Civil) 267 : (2008) 8 SCC 253** and **Oriental Insurance Co. Ltd. v. Angad Kol & Ors. 2009(2) R.C.R.(Civil) 419 : (2009) 11 SCC 356**, the view had been taken that a driver holding licence to drive light motor vehicle in order to drive 'transport vehicle' of that class has to obtain a specific endorsement on licence authorizing him to drive a transport vehicle.

22. In **Mukund Dewangan V/s Oriental Insurance Co. Ltd., 2017 (4) RCR (Civil) 111**, following questions were referred for decision to the larger Bench :

- “1. What is the meaning to be given to the definition of "light motor vehicle" as defined in Section 2(21) of the MV Act? Whether transport vehicles are excluded from it?*
- 2. Whether '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 licence to drive the class of "light motor vehicle" as provided in Section 10(2)(d) would be competent to drive a transport vehicle or omnibus, the "gross vehicle weight" of which does not exceed 7500 kgs. or a motor car or tractor or road roller,*

*the "unladen weight" of which does not exceed 7500 kgs.?*

3. *What is 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", "medium passenger motor vehicle", "heavy goods vehicle" and "heavy passenger motor vehicle" by "transport vehicle"? Whether insertion of expression 'transport vehicle' Under Section 10(2)(e) is related to said substituted classes only or it also excluded transport vehicle of light motor vehicle class from the purview of Sections 10(2)(d) and 2(41) of the Act?*

4. *What is the effect of Amendment of Form 4 as to the operation of the provisions contained in Section 10 as amended in the year 1994 and whether the procedure to obtain the driving licence for transport vehicle of the class of "Light Motor Vehicle" has been changed?"*

23. In **Mukund Dewangan V/s Oriental Insurance Co. Ltd., 2017 (4) RCR (Civil) 111**, the questions were answered in Para 46 of the judgment which is reproduced as under:-

*"46. 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 28.3.2001. 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 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. Thus we answer the questions which are referred to us thus:*

*(i) '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 section 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.54/1994.*

*(ii) 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 28.3.2001 in the form.*

*(iii) The effect of the amendment made by virtue of Act No.54/1994 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.*

*(iv) 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."*

24. In view of the above quoted observations in above referred judicial precedent that driving licence for LMV would be valid for driving transport vehicles falling within the category of LMV, respondent No.1, having driving license authorizing him to drive LMV, was entitled to drive the offending vehicle-Indica Car registered as LPV having unladen weight of 1000 kgs. being transport vehicle falling within the category of LMV without requirement of any endorsement for driving of transport vehicle. Therefore, respondent No.1 must be held to be having valid and effective driving licence for driving of the offending Indica Car at the

time of accident and the findings of the Tribunal in this regard are liable to be and accordingly reversed.

25. In the present case, there is no dispute with the proposition of law laid down in **National Insurance Co. Ltd. Vs. Chella Bharathamma, 2004(4) RCR (Civil) 399; Amrit Paul Singh and another Vs. TATA AIG General Insurance Co. Ltd. and others, Civil Appeal No.2253 of 2018 arising out of SLP (Civil) No.7692 of 2017 decided on 17.05.2018 and Rani and others Vs. National Insurance Company Ltd. and others 2018(3) RCR (Civil) 979** relied upon by learned Counsel for respondent No.3 that use of transport vehicle in public place without permit is fundamental statutory infraction which absolves the insurance company from its liability to indemnify the insured.

26. However, the question which arises is as to whether it is proved in the present case that respondent No.2 did not have route permit and thereby committed breach of the terms and conditions of the insurance policy. It may be observed here that respondents No.1 and 2 suffered themselves to be proceeded against ex-parte and merely on the basis thereof no adverse inference can be drawn against respondent No.2 as to absence of route permit. Claimant No.3 could not be said to be under any legal obligation to prove that respondent No.2 was having requisite route permit. Admittedly, in the present case the offending vehicle Indica Car registered as LPV was comprehensively insured by the respondent No.3 under **Passenger Carrying Package Policy** giving rising to the presumption of compliance with the requisite terms and conditions of

such insurance as to respondent No.2 having the requisite route permit at the time of issuance of the insurance policy. Therefore, the onus of proving breach of the terms and conditions of the insurance policy due to absence of route permit at the time of the accident was on the respondent No.3 insurance company. This view of mine is supported by the observations made by Hon'ble Supreme Court in para No.4 of its judgment in case titled ***Kamala Mangala Vayani & others v. M/s. United India Insurance Co. Ltd. & others, reported in AIR 2010 SCW 6604***, which is reproduced as under:-

*“4. As noticed above, the owner-cum-driver had remained ex parte. Once it was established that the vehicle was comprehensively insured with the insurer to cover the passenger risk, the burden to prove that it was not liable in spite of such a policy, shifted to the insurer. The claimants are not expected to prove that the vehicle had a valid permit, nor prove that the owner of the vehicle did not commit breach of any of the terms of the policy. It is for the insurer who denies its liability under the policy, to establish that in spite of the comprehensive insurance policy issued by it, it is not liable on account of the requirements of the policy not being fulfilled. In this case, the insurer produced a certified copy of the proceedings of the Registering Authority and Assistant Regional Transport Authority, Bangalore, dated 7.7.1990 to show that the application for registration of the vehicle*

*filed by the third respondent, was rejected with an observation that it was open to the applicant to apply for registration in the appropriate class. But that only proved that on 7.7.1990, the vehicle did not have a permit. But that does not prove that the vehicle did not have a permit on 27.7.1990, when the accident occurred. It was open to the insurer to apply to the concerned transport authority for a certificate to show the date on which the permit was granted and that as on the date of the accident, the vehicle did not have a permit, and produce the same as evidence. It failed to do so. The High Court committed an error in expecting the claimants to prove that the vehicle possessed a valid permit. We are of the view that there was no justification for the High Court to interfere with the judgment and awards of the Tribunal in the absence of relevant evidence.....”*

27. To discharge the onus of proof lying on it, the respondent No.3 merely examined RW-1 Vikrant additional Ahlmad in the Court of ACJM, Gurgoan who merely stated that the police did not attach copy of route permit with the challan. The mere fact that copy of route permit was not attached with the challan does not by itself prove that respondent No.2 did not have requisite route permit at the time of accident particularly in the absence of evidence as to prosecution of respondents No.1 and 2 for plying of LPV/Transport Vehicle without permit. Respondent No.3 was required to summon and examine concerned official from the office of Regional Transport

Authority to prove that no route permit had been issued to respondent No.2 regarding the offending vehicle in question for the relevant period during which the accident occurred but respondent No.3 did not summon the concerned official to prove this fact. Respondent No.3 did not even give any notice to respondent No.2 for production of route permit and did not summon and examine him as witness to produce the same before the Tribunal. In these facts and circumstances of the case, respondent No.3 must be held to have miserably failed to discharge the onus of proof lying on it. Since, respondent No.3 has failed to prove breach of terms and conditions of the insurance policy by respondent no.2 due to absence of route permit at the time of the accident, the observations in **National Insurance Co. Ltd. Vs. Chella Bharathamma, 2004(4) RCR (Civil) 399; Amrit Paul Singh and another Vs. TATA AIG General Insurance Co. Ltd. and others, Civil Appeal No.2253 of 2018 arising out of SLP (Civil) No.7692 of 2017 decided on 17.05.2018 and Rani and others Vs. National Insurance Company Ltd. and others 2018(3) RCR (Civil) 979**, relied upon by learned Counsel for respondent No.3 are not applicable to the facts of present case. Consequently, respondent No.3 is not absolved of its liability to indemnify respondent No.2-insured and the findings of the Tribunal in this regard are liable to be and are accordingly reversed.

28. It follows from the above discussion that claimant No.3 is entitled to payment of ₹1,94,137/- as compensation on account of death of her father Rambhulla and respondents No.1 and 2-driver

and owner and respondent No.3-insurance company are jointly and severally liable for payment of the abovesaid amount to claimant No.3 with costs and interest at the rate of 9% per annum. The amount of compensation of ₹93,937/- already awarded to the appellant-claimant No.3 shall be liable to be deducted from the amount calculated above. The directions of the Tribunal as to manner of disbursement of compensation amount to claimant No.3 shall also apply to disbursement of enhanced compensation.

29. The appeal is allowed with costs and the award dated 09.03.2010 is modified as mentioned above.

**(ARUN KUMAR TYAGI)**  
**JUDGE**

**07.02.2019**  
Vinay

|                           |        |
|---------------------------|--------|
| Whether Speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |