AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1255 of 2012

- The Oriental Insurance Company Ltd., through Division Manager, Division Office-1, The Oriental Insurance Company Ltd., Branch Office-1, Kachhari Chouk, Jail Road, Raipur, P.S. Civil Line, District Raipur (CG)

---- Appellant

Versus

1. Smt. Parwati Sharma, W/o Mahesh Sharma Aged About 34 Years.
2. Divyanshu Sharma S/o Mahesh Sharma Aged About 8 Years
3. Priyanshy @ Jitesh Sharma S/o Mahesh Sharma Aged About 5 Years

   No.2 & 3 are Minors, through - Mother Parwari Sharma
4. Medni Shankar S/o Sadhuram Sharma Aged About 64 Years.
5. Kalyani Sharma W/o Medni Sharma Aged About 61 Years

   No.1 to 5 are resident of Behind School, Sundar Nagar, Raipur In House Of Gopal Tiwari, P.S. D.D. Nagar, Raipur, Distt. Raipur C.G.

6. Sukkhu Yadav S/o Sammal Yadav Agrawal Road Lines, Unit No.1-B, Wing Seeta State Near R.C.P. Police Station, P.S. R.C.P.. P.S. Chamber Mumbai 74, Maharashtra

7. Dinesh Kumar Garg S/o Dhanraj G. Garg Agrawal Road Lines, Unit No.1-B, Wing Seeta State Near R.C.P. Police Station, P.S. R.C.P.. Police Station- Chember Mumbai 74, District : Mumbai, Maharashtra

---- Respondents

For Appellant	:	Mr. Vaibhav Maheshwari, Adv. under authority of Mr. Abhishek Sinha, Advocate
For Respondent No.1 to 5	:	Mr. Amiyakant Tiwari, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per Parth Prateem Sahu, J

9/6/2020

1. Appellant Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act

of 1988') challenging award dated 20.9.2012 passed by the learned 4th Additional Motor Accident Claims Tribunal, Raipur (for short 'the Claims Tribunal') in Claim Case No.126/11 whereby learned Claims Tribunal allowed claim application in part, awarded an amount of Rs.12,18,660/- as compensation along with interest @ 6% and fastened liability upon appellant insurance company to pay compensation.

2. Facts of the case, in brief, are that on 20.2.2010 at about 1.15 p.m. in the afternoon, non-applicant No.1, driver of tractor-tanker bearing registration mark GJ-6Y-9518 (for short 'the offending vehicle') drove it in a rash & negligent manner and dashed rear side of motorcycle bearing registration mark CG09-D-1901 near a Gurudwara situated within Police Station Supela, District Bhilai, resultantly, Mahesh Sharma, driver of motorcycle, fell down and sustained grievous injuries on various parts of the body including head and succumbed to the injuries while undergoing treatment. Report of accident was lodged in Police Station Supela, District Durg based on which crime bearing No.112/10 was registered against driver of offending vehicle for commission of offence punishable under Section 304A of IPC.

3. Claimants/respondents No.1 to 5, who are wife, son & age old parents of deceased respectively, filed a claim application before the Claims Tribunal seeking total compensation of Rs.22,02,000/- on account of death of said Mahesh Sharma in a road accident. It was pleaded in the claim application that on the date of accident, deceased was aged about 39 years; he was posted as a Teacher in New Government Higher Secondary School, Kawardha and getting monthly salary of Rs.8,332/-.

4. Non-applicant No.1 & 2 did not appear before the Claims Tribunal to contest the case, therefore, they were proceeded ex-parte.

5. Non-applicant No.3/appellant herein appeared before the Claims Tribunal and filed its written statement mentioning that accident was outcome of negligence on the part of motorcycle driver. In alternate, plea of contributory negligence was raised by non-applicant No.3. It was also pleaded that non-applicant No.1-driver was not having special endorsement on his driving license permitting him to drive offending vehicle, which was a goods carriage for carrying dangerous & hazardous substance, and as such, there was breach of condition of insurance policy, therefore, the insurer is not liable to indemnify the insured.

6. Upon appreciation of pleadings and evidence brought on record by respective parties, the Claims Tribunal arrived at a conclusion that there was no element of contributory negligence on the part of driver of motorcycle i.e. deceased, and it is non-applicant No.1/respondent No.6 herein alone who, by driving offending vehicle in a rash & negligent manner, had caused the accident, which has resulted in death of Mahesh Sharma. Consequently, the Claims Tribunal awarded a total sum of Rs.12,18,660/- as compensation and saddled appellant insurance company with the liability to satisfy the award on the ground that there was no breach of any of the conditions of insurance policy.

7. Mr. Maheshwari, learned counsel representing appellant Insurance Company submits that the Claims Tribunal erred in holding appellant insurance company liable to indemnify the insured, ignoring the fact that on the date of accident non-applicant No.1-driver was not duly licensed to drive offending vehicle, which was a goods carriage for transportation of dangerous & hazardous substance. He submits that as per Rule 9 (3) of the Central Motor Vehicles Rules, 1989, a special endorsement / authorization is required to drive a vehicle which carries dangerous & hazardous nature of goods and for the purpose of getting such authorization, the driver is required to undergo a training programme from a recognized training

institute and then only endorsement to that effect can be made on driving license of driver. He submits that the offending vehicle was being used for transporting bitumen/LPG/LSHS, which comes within the category of dangerous & hazardous substance, but there was no endorsement on the license of non-applicant No.1/ respondent No.6 permitting him to drive the vehicle carrying dangerous or hazardous goods. He also submits that there is nothing on record showing that non-applicant No.1 had undertaken training from any recognized institution to get an endorsement to drive a vehicle containing goods of dangerous or hazardous nature. He points out that validity of license to drive goods carriage carrying goods of dangerous & hazardous nature is of one year, whereas of transport vehicle is of three years. He points out that insurance company has placed on record certain documents like insurance policy (Ex.D-1), accident information letter (Ex.D-2), license (Ex.D-3), verification report (Ex.D-4) submitted by the Surveyor and certificate issuing permit (Ex.D-5) and these documents remain unrebutted. In these circumstances, the impugned award so far as it relates to fastening of liability upon the insurance company to satisfy the impugned award is erroneous and is liable to be set aside.

8. Office note shows that notice of this appeal was duly served on respondent No.7 himself, who is owner of offending vehicle, but when the matter is called for hearing, there is no representation on his behalf.

9. Mr. Amiyakant Tiwari, learned counsel for claimants/ respondents No.1 to 5 submits that the offending vehicle comes within the category of 'heavy goods vehicle/transport vehicle' and on the date of accident, respondent No.6-driver was having valid & effective driving license to drive transport vehicle, medium/heavy goods vehicle, as mentioned in the license of Ex.D-3 filed by appellant itself. The Claims Tribunal has rightly saddled the liability of making payment of

compensation upon appellant insurance company and the same does not call for any interference.

He further submits that claimants/respondents No.1 to 5 have also filed cross-objection under Order 41 Rule 22 of the Code of Civil Procedure, 1908 seeking enhancement in the compensation awarded to them by the Claims Tribunal. He submits that no amount has been awarded by the Claims Tribunal towards future prospects, ignoring the law laid down in the matter of **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680** wherein it was held by Hon'ble Supreme Court that in case deceased, victim of motor accident, was below 40 years of age and in permanent employment, an addition of 50% of established salary of deceased towards future prospects should be made. He further submits that as per decision of Hon'ble Supreme Court in the case of **Sarla Verma & ors Vs. Delhi Transport Corporation & another** reported in **(2009) 6 SCC 121,** the deduction towards personal & living expenses of the deceased should be one-fourth, where number of dependent family members is in between 4 to 6. As the claimants in this case are five in numbers, the Claims Tribunal ought to have deducted one-fourth instead of one-fifth from the income of deceased towards his personal and living expenses. Lastly, he submits that the amount under other conventional heads is also on lower side. On the basis of aforesaid grounds, he submits that the amount awarded by the Claims Tribunal is grossly inadequate and deserves to be suitably enhanced.

10. We have heard learned counsel for the parties and perused the record.

11. Since appellant-Insurance Company has denied its liability to indemnify the insured solely on the ground that respondent No.6-driver was not having a valid & effective driving licence to drive the type of vehicle involved in the accident, it would be beneficial to have a look at the provisions contained in the Act

of 1988 & the Rules of 1989 pertaining to licensing of drivers of motor vehicles.

12. Section 3 of the Act of 1988 deals with necessity for driving license, which reads as under:-

> "**3.Necessity for driving licence**.—(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than 1[a motor cab or motor cycle] hired for his own use or rented under any scheme made under sub-section (2) of section 75] unless his driving licence specifically entitles him so to do.—(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than 1[a motor cab or motor cycle] hired for his own use or rented under any scheme made under sub-section (2) of section 75] unless his driving licence specifically entitles him so to do.
>
> (2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government."

13. Section 9 of the Act of 1988 deals with grant of license. Section 10 prescribes the form and contents of license to drive. Sub-section (2) of the Act of 1988 envisages as under:-

> "(2) A learner's license or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:-
> (a) motorcycle without gear;
> (b) motorcycle with gear;
> (c) invalid carriage;
> (d) light motor vehicle;
> (e) transport vehicle;
> (i) road-roller;
> (j) motor vehicle of a specified description."

14. Section 14 of the Act of 1988 is with regard to the currency of licenses to drive motor vehicles. Sub-section (2) prescribes different periods of validity with respect to different class of vehicles. Sub-section (2) (a) is relevant for disposal of present

case, therefore, the same is reproduced below for ready reference:-

> "**14.Currency of licences to drive motor vehicles**:-
>
> (1) xxxxxx.
>
> (2) A driving licence issued or renewed under this Act shall,-
>
> (a) In the case of a licence to drive a transport vehicle, be effective for a period of three years:
>
> Provided that in the case of licence to drive a transport vehicle, carrying goods of dangerous or hazardous nature, be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus."

15. Rule 9 of the Central Motor Vehicle Rules, 1989 (for short 'the Rules of 1989') provides as follows:-

> "**9**.**Educational qualifications for drivers of goods carriages carrying dangerous or hazardous goods**: (1) One year from the date of commencement of Central Motor Vehicle (Amendment) Rules, 1993, any person driving a goods carriage carrying goods of dangerous or hazardous nature to human life shall, in addition to being the holder of a driving licence to drive a transport vehicle, also has the ability to read and write at least one Indian language out of those specified in the VII Schedule of the Constitution and English and also possess a certificate of having successful passed a course consisting of following syllabus and periodicity connected with the transport of such goods:......."

16. From reading of the above quoted provisions of the Act of 1988 and the Rules of 1989, it is clear that no person shall drive a motor vehicle in any public place unless he holds an effective driving license, which shall be issued by competent authority specifically entitling him to do so; a license to drive a transport vehicle shall be effective for a period of three years, whereas, license to drive a transport vehicle carrying goods of dangerous or hazardous nature shall be effective for a period of one year; a person driving transport vehicle, carrying goods of dangerous & hazardous nature, is required to have an endorsement on his license for the same and the licence can be effective for a period of one year only and that such driver should have the

ability to read and write at least one language specified in 7th Schedule of the Constitution and English and also possess a certificate, having successfully passed the course, consisting of syllabus as described under the rules. Likewise, Rule 9 of the Rules of 1989 talks about the required qualification with driver of transport vehicle for becoming entitle to get the license endorsed authorising him to drive heavy goods vehicle carrying dangerous and hazardous goods. Rule 132 of the Rules of 1989 deals with responsibility of the transporter or owner of goods carriage and sub-section (5) cast a duty upon the owner to ensure that the driver of the goods carriage carrying dangerous or hazardous goods holds a driving license as per provisions of rule 9 of the Rules of 1989.

17. Coming back to the facts of present case. From the contents of FIR (Ex.P-1) and seizure memo of offending vehicle, it is clear that offending vehicle was left behind by its driver at the place of accident and was seized by the police from the spot itself. Intimation letter Ex.D-2 written by insured to insurance company also reflects that on 20.2.2010 the offending vehicle met with accident in Raipur. This letter further indicates that the insured/owner of offending vehicle is a transport contractor and engaged in the transportation work of bitumen/LPG/LSHS etc.. Thus, it is clear that accident in question was caused by the offending vehicle.

18. Appellant- Insurance Company had brought on record the insurance policy (Ex.D-1) and according to which, it is a 'miscellaneous class 'D' vehicles package policy'; make of vehicle is 'Ashok Leyland-25000', type of body is **'fix side tank'**, gross weight of vehicle is 25000 and cubic capacity is mentioned as 9600. This insurance policy further envisages that no claim is admissible if driving license is found fake or is not valid or not in the knowledge of insured. In Para-6 of reply to claim application, appellant Insurance Company has categorically pleaded that the driving license possessed by the

driver was not valid & effective to drive the questioned vehicle, which is a commercial vehicle for carrying goods of dangerous & hazardous nature. Respondents No.6 & 7 did not appear before the Claims Tribunal to controvert the assertion made by the claimants as also non-applicant No.3/appellant Insurance Company. In absence of any denial on the part of non-applicant No.2 & 3 that the offending vehicle was not a goods carriage for carrying dangerous & hazardous substance and in light of the fact that 'type of body' of offending vehicle in the insurance policy is mentioned as 'fix side tank', it is clearly established that the offending vehicle is a goods carriage for transportation of dangerous or hazardous substance.

19. Appellant Insurance Company had also filed the extract of driving license of respondent No.6 as Ex.D-3 which indicates that respondent No.6 had license to drive light motor vehicle (non-transport car) and there is an endorsement authorizing him to drive transport vehicle M/HMV rigid chassis goods w.e.f. 06.3.1998. Validity for non-transport vehicles was upto 23.1.2017, whereas for transport vehicle was upto 25.2.2013. Thus, it is clear that the driver of offending vehicle was holding a license which was valid for light motor vehicles (non-transport) & transport vehicle (M/HMV regid chassis goods, but there was no special endorsement on the driving license of respondent No.6 permitting him to drive a vehicle loaded with dangerous & hazardous nature of goods, as provided under Rule 9 (3) of the Rules of 1989. Since driving license of non-applicant No.3/respondent No.6 herein does not bear special endorsement permitting him to drive a goods carriage loaded with dangerous & hazardous substance and the insurance policy itself puts a specific restriction that no claim is admissible if driving license is found fake or is not valid or not in the knowledge of insured, we are of the view that respondent No.6 herein breached essential conditions of insurance policy as respondent No.6 was not duly authorized to drive offending vehicle at the time of accident, which comes within the category

of a goods carriage for carrying dangerous or hazardous substance. This being the position, the Claims Tribunal gravely erred in fastening liability for payment of compensation upon the insurance company. Said finding of the Claims Tribunal is not sustainable and is hereby set aside. Appellant Insurance Company is exonerated from its liability to satisfy the impugned award and instead, respondent Nos.5 & 6, owner & driver of offending vehicle, are jointly & severally held liable to pay compensation to the claimants/respondents No.1 to 5.

20. Coming to cross-objection filed by claimants/respondents No.1 to 5 for enhancement of compensation.

21. As per pleadings in claim application, the deceased was working as Shiksha Karmi Grade-II, a government servant, and posted in the New Government Higher Secondary School, Kawardha and at the time of accident, he was drawing salary of Rs.8500/- per month. To prove the income and employment of deceased, the claimants have examined Rampal Singh, Block Education Officer, Kawardha as AW-3, who is also author of salary certificate of deceased. According to this witness, the deceased was posted as Shiksha Karma Grade-II in Government New Higher Secondary School, Kawardha and he was getting salary of Rs.8,332/- per month. This witness has also placed on record salary slips of deceased for the month of December, 2009 & January, 2010, which were marked as Ex.P-7 & P-8 respectively, he was cross-examined on behalf of non-applicant No.3/appellant herein, but nothing useful was elicited to discredit his testimony with respect to monthly income of deceased. Thus, from the evidence so produced, it is evident that the claimants were able to establish on record that the deceased was earning Rs.8,322/- per month and the Claims Tribunal has also accordingly assessed monthly income of deceased. However, perusal of the impugned award reveals that the Claims Tribunal has not awarded any amount towards future prospects. With regard to future prospects, the Apex Court in the case of National Insurance Co. Ltd. Vs. Pranay

Sethi & ors reported in (2017) 16 SCC 680, held as under:

> "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."

Thus, as per the above judgment of the Apex Court, the claimants / respondents No.1 to 5 are entitled to be awarded 50% of the actual salary of deceased, towards 'future prospects'.

22. Now coming to deduction towards personal & living expenses. Hon'ble Supreme Court in the matter of **Sarla Verma & ors Vs. Delhi Transport Corporation & another** reported in **(2009) 6 SCC 121** has held that deduction towards personal and living expenses of the deceased should be at the rate of 1/4th, where the number of dependant family members are 4 to 6. In the present case, though the number of dependent family members is 5, but the Claims Tribunal has deducted one-fifth towards personal expenditure of the deceased in place of one-fourth.

23. In view of above, this Court proposes to recalculate amount of compensation payable to claimants/respondents No.1 to 5.

24. Accordingly, income of deceased is taken as Rs.8,332/- per month, as determined by the Claims Tribunal, and since at the time of accident the deceased was below the age of 40 years and was in permanent job, 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 50% towards future prospects, which comes to Rs.12,498/-(8332+4166). Thus, annual income of deceased for the purpose of calculating compensation comes to Rs.1,49,976/-(12498x12). Out of this amount, one-fourth is to be deducted towards personal & living

expenses of the deceased and after deducting one-fourth, annual loss of dependency would come to Rs.1,12,482/-. By applying multiplier of 15, as applied by the Claims Tribunal, to annual loss of dependency, total loss of dependency would come to Rs.16,87,230/- (112482x15). Besides this, respondent No.1 is entitled for a sum of Rs.40,000/- for spousal consortium, respondent Nos.2 & 3, sons of deceased, are entitled for a sum of Rs.40,000/- for parental consortium, and respondent No.4 & 5, parents of deceased, are entitled for a sum of Rs.40,000/- for filial consortium, as held by Hon'ble Supreme Court in the matters of Pranay Sethi (supra) and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & ors** reported in **(2018) 18 SCC 130**. In addition to aforesaid amount, they are also entitled to get a sum of Rs.15,000/- for funeral expenses; Rs.15,000/- for loss of estate and Rs.10,000/- for pains & sufferings though the death was instantaneous. Thus, claimants/respondent No. 1 to 5 are entitled for a total sum of Rs.18,47,230/-, instead of Rs.12,18,660/- awarded by the Claims Tribunal. This amount of compensation shall carry simple interest @ 6% 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. Any amount already paid to claimants/appellants as compensation shall be adjusted from the total amount of compensation as calculated above.

25. At this stage, in view of finding of this Court exonerating appellant Insurance Company from its liability to indemnify the insured, learned counsel for claimants/respondents No.1 to 5 prays for protecting interest of claimants by issuing direction of 'pay & recover' against appellant insurance company, which has been vehemently opposed by learned counsel for appellant insurance company.

26. Admittedly, the accident pertains to year 2010, claimants belong to poor family, who have not received entire amount of

compensation till date and the offending vehicle was insured with appellant-Insurance Company.

27. Hon'ble Supreme Court in catena of cases, keeping in mind beneficial object of the Act of 1988, directed the insurer to first satisfy the award and then recover such amount from the insured. 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."

28. In **Manuara Khatun and others v. Rajesh Kumar Singh and others and Mamoni Saikia Mohanty and others v. Rajesh Kumar Singh and others** reported in **(2017) 4 SCC 796,** the Hon'ble Supreme Court held thus:-

> “19. We find no merit in any of the submissions. Firstly, as mentioned above, we find marked similarity in the facts of this case and the one involved in *National Insurance Co. Ltd. v. Saju P. Paul, (2013) 2 SCC 41*. Secondly, merely because the compensation has not yet been paid to the claimants though the case is quite old (16 years) like the one in *Saju P. Paul’s Case* (supra), it cannot be a ground to deny the claimants the relief claimed in these appeals. Thirdly, this Court has already considered and rejected the argument regarding not granting of the relief of the nature claimed herein due to pendency of the reference to a larger Bench as would be clear from Para 26 of the judgment in *Saju P. Paul’s Case (supra)*. That apart, learned counsel for the appellants stated at the bar that the reference made to the larger Bench has since been disposed of by keeping the issue undecided. It is for this reason also, the argument does not survive any more.
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> 21. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Co. Ltd. (respondent No. 3) - they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Co. Ltd. respondent No.3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo)-respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of *Saju P. Paul’s* case quoted supra.
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> 22. Accordingly, the appeals succeed and are allowed. Impugned order is modified to the extent that respondent No. 3-United India Insurance Company Ltd. is accordingly directed to pay the awarded sum to the appellants (claimants). Thereafter respondent No. 3 - United India Insurance Company Ltd. would be entitled to recover the entire paid awarded sum from the owner (insured) of the offending Vehicle (Tata Sumo)-respondent No.1 in these very proceedings by filing execution application against the insured.”

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:-

> "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."

29. 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 though appellant Insurance Company has no liability, in law, to pay amount of compensation, it will be in larger interest of justice to direct appellant to first pay the entire amount of compensation to claimants / respondents No.1 to 5 herein and then to recover it from insured i.e. respondent No.6-owner of offending vehicle, by filing an execution application before the Claims Tribunal in very same proceedings.

30. In the result;-

- appeal preferred by appellant Insurance Company is allowed and insurance company is exonerated from its liability to indemnify the insured. Respondent No.5 & 6 are held jointly & severally liable to pay the compensation amount as assessed above. However, appellant Insurance Company will first deposit the entire amount of compensation and then recover the amount of compensation so deposited from respondent No.5 & 6-driver & owner of offending vehicle, jointly and severally.

- cross-objection of respondents No.1 to 5 is allowed in part and impugned award of the Claims Tribunal is modified to the extent indicated in Para-24 of this judgment.
- Other conditions imposed by the Claims Tribunal will remain intact.

31. The award impugned stands modified to the extent indicated above.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-