NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 890 of 2013

- The Oriental Insurance Company Limited, through Branch Manager, Branch Office, Hotel Laxman Avenue, Medical College Road, Jagdalpur, District Bastar C.G.

------Appellant/ Non-applicant 2

VERSUS

1. Vimla Kashyap Wd/o Peelu Ram Kashyap, aged about 42 years, caste-Gond R/o Village Chhapar, Bhanpura, P.S. Badaji, Tahsil Lohandaguda, District Bastar C.G. **------Claimant**

2. Smt. Shashikala Sundi, W/o Shri Sarajan Sundi, R/o Behind Naya Bus Stand, Jagdalpur, District Bastar C.G. **--------Non-applicant 1**

-------Respondents

For Appellant	:	Mr. Pankaj Agrawal, Advocate.
For Respondent No. 1	:	Mr. Praveen Dhurandar, Advocate
For Respondent No. 2	:	None.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge
Judgment on Board

Per Parth Prateem Sahu, J.

03/07/2020

1. Appellant-Insurance Company has challenged the impugned award dated 26-07-2013 passed by the Commissioner, Workman Compensation Act cum Labour Court, Jagdalpur, Bastar Chhattisgarh (hereinafter referred to as the Commissioner) in Case No. 48/WC Act/2011 (F), challenging fastening of liability upon it.

2. Facts relevant for disposal of this appeal are that, Deepak was working as Driver of four wheeler vehicle Jeep owned by 2nd Respondent/ Non-applicant 1, bearing Registration No. CG 17C 0434. On 15-11-2009, when Deepak was carrying passengers and going to Lohandiguda, on the way, he met with an accident and the vehicle dashed with a tree standing on the road side. In the aforementioned accident, Deepak, who was son of 1st Respondent, died. The accident was reported to concerned Police Station based on which Crime bearing No. 85/2009 was registered. Respondent 1/ claimant filed an application for compensation

before the Commissioner, mentioning therein that on the date of accident, deceased Deepak was aged about 21 years and earning salary of Rs. 4,000/- per month, the vehicle was insured with Appellant/ Non-applicant 2 and the 2nd Respondent/ Non-applicant 1 has not paid any amount of compensation.

3. Respondent 2 -Owner of the vehicle did not appear even after service of notice as recorded by the Commissioner and she was proceeded against *ex parte*.

4. Non-applicant 2/ Appellant submitted reply to the application and pleaded that death of Deepak was not during the course of his employment, he was not aged of 21 years, other motor vehicle was also involved in the accident which was not arrayed as party (Respondent), there was violation of conditions of insurance policy and prayed for dismissal of the application.

5. The Commissioner, on appreciation of pleadings and evidence placed on record by the respective parties held that, death of Deepak was on account of accident arising out of and during the course of his employment, Applicant/ Respondent 1 was dependent upon the deceased, assessing income as Rs. 3,367/- per month and 21 years of age, awarded a total sum of Rs. 3,74,932/- as compensation and further the default interest @ 12% p.a. from the date of filing of application.

6. This appeal was admitted on the following substantial question of law:

> "Whether in absence of fitness certificate and valid permit, the Tribunal was justified in holding the Insurance Company liable to pay compensation?"

7. Learned counsel for the appellant submits that Owner of the vehicle did not appear before the Commissioner, and she was proceeded ex parte. The appellant, however, sent a letter on the address which was provided at the time of taking insurance policy *vide* Ext. D3 which was returned with a note as "Not Known" by the postal department. He also submitted that *vide* Ext. D4, the 2nd Respondent-owner of the vehicle was asked to submit copies of the Registration Certificate, permit, fitness, Driving licence, copy of F.I.R., in view of the case registered before the Commissioner, but the aforesaid documents were not

supplied. Learned counsel submitted that on the date of accident, vehicle was not having the valid permit and fitness certificate and it was being plied on public road, which is in breach of conditions of insurance policy. Mr. Pankaj Agrawal, learned counsel also points out that the Commissioner, erred in not considering the specific defence taken by the Insurance Company in its reply that on the date of accident, there was no valid permit and fitness certificate as also valid driving licence, fastened the liability upon the Appellant-Insurance Company for payment of amount of compensation. He submits that as the owner of the offending vehicle has not produced any documents to prove valid permit and fitness certificate on the date of accident, the appellant-Insurance Company will not be held liable to indemnify the insured as there was breach of conditions of insurance policy. He also submits that the Insurance Company has discharged the burden by examining witness namely R.L. Yadav (NAW-1), who is clerk of RTO and one Vikram Pal Singh (NAW-2), who is Assistant in Appellant-Insurance Company to proof that there was breach of conditions of insurance policy. Referring to the policy placed on record it is argued that the policy issued for the vehicle specifically mentions under the column Limitations as to use that the policy covers use only under a permit and the owner of the offending vehicle failed to placed on record copy of the permit, the Insurance Company is liable to be exonerated from payment of the amount of compensation.

8. Learned counsel for Respondent 1/ applicant submits that the copy of permit has not been placed on record and adding to it he further submitted that the deceased was a poor person and sole bread earner of the family on which the applicant was dependent, therefore, the interest of the applicant/ claimant to be protected. He submits that if the Court finds that the learned Claims Tribunal erred in fastening liability upon the Insurance Company then in the facts of the case, where the appellant admitted issuance of policy for the vehicle (Jeep) and the accident took place within the prescribed period of policy, a direction of pay and recover be issued against the appellant.

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

10. Respondent 2/ owner of the vehicle Jeep did not appear before the Commissioner, during the whole proceedings. Though, the copy of Registration Certificate book and also the insurance policy were seized by the police during the course of investigation from one Subhash in the seizure memo Annexure P-5 but the copy of fitness certificate and copy of permit was not seized by police during the course of investigation of criminal case (accident). The aforementioned document of seizure memo is placed on record along with other documents of criminal case by the applicant/ claimant herself in support of her case. The submission made by the learned counsel for the appellant that the vehicle Jeep was being plied on public road without there being any valid permit and fitness certificate appears to be correct, particularly, when during the course of investigation of the accident, person Subhash has not produced any other document except the copy of insurance policy, copy of RC book of the vehicle.

11. Section 66 of the Motor Vehicles Act envisages necessity of permit. Relevant portion of provision is reproduced below herein for ready reference.

> "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 th 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."

12. Witness NAW 2 examined by the Insurance Company before the Commissioner,

in support of their pleadings has proved the copy of insurance policy as Ext. D2 in which under the head of "Limitations as to use", it is specifically mentioned that the policy will cover a risk only under permit within the meaning of Motor Vehicles Act. The Insurance Company has also placed on record the letter sent to the owner of the Jeep on the address given by her in the policy, asking her to submit copies of registration certificate, permit, fitness certificate, driving licence, copy of F.I.R. and one another but the said letter was returned unserved with a note as "Not Known".

13. The Hon'ble Supreme Court while considering the necessity of valid permit under Section 66 of the Motor Vehicle Act in the case of *Amrit Paul Singh and another v. Tata AIG General Insurance Company* reported in **(2018) 7 SCC 558** has held thus:

> "24. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. 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, National Insurance Co. Ltd. v. Swarn Singh (2004) 3 SCC 297* and *Lakhmi Chand, Laxmi Chand v. Reliance General Insurance (2016 3 SCC 100)* 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. ..."

14. From the aforementioned facts of case and the evidence available on record, it is evident that the policy condition prescribes for use of the vehicle insured with

permit. Permit of the vehicle has not been placed on record, therefore, there cannot be any other presumption but to presume that on the date of accident, the vehicle was plied on public road without there being any valid permit which is breach of conditions of insurance policy. In view of the aforementioned facts and circumstances of the case, the Appellant-Insurance Company cannot be held liable to indemnify the insured to pay the amount of compensation. The part of the impugned award of the Commissioner, fastening liability upon the Insurance Company to pay the amount of compensation is hereby set aside and the liability to pay the amount of compensation shall be upon Respondent 2/ Non-applicant 1-Owner of the vehicle Jeep. The question of law framed is ordered accordingly.

15. Submission of learned counsel for Respondent 1/ applicant that in case if it is found that there was breach of conditions of insurance policy, a direction be issued to the Appellant-Insurance Company first to pay the amount of compensation and thereafter to recover it from the owner of the vehicle is concerned. The law in this regard has now been well settled by the Hon'ble Supreme Court in its judgment and held that when the policy is not disputed, the deceased or injured is covered under the policy and the Insurance Company is exonerated on the ground of breach of condition of insurance policy, to protect the interest of the claimant/ injured and the larger public interest, a direction of pay and recover can be issued.

16. The Hon'ble Supreme Court in ***Amrit Paul Singh*** (supra) has further held thus:

> "...Therefore, the Tribunal as well as the High Court had directed that 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 that 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."

17. In the light of law laid down by the Supreme Court and if the facts of the present case are concerned, the policy Ext. D2 was issued by the appellant-Insurance Company for a period from 25-02-2009 to 24-02-2010 and the accident took

place on 15-11-2009 i.e. within the period of existence of insurance policy. The policy is issued for the vehicle Jeep having the seating capacity of 6+1 and the Insurance Company has accepted the premium for basic third party cover, paid driver and claim in this case is for the driver. The Insurance Company is exonerated only on the ground that the owner of the vehicle Jeep failed to prove that on the date of accident, vehicle Jeep was being plied on public road with valid permit.

18. In the facts and circumstances of the case, the case is squarely covered by the law laid down by the Hon'ble Supreme Court in the case of *Amrit Paul Singh* (supra) and the prayer made by the learned counsel for Respondent 1 is liable to be allowed. It is directed that the Insurance Company will first deposit the entire amount of compensation before the Commissioner, thereafter, to recover the amount so deposited by it from the owner of the vehicle who is 2nd Respondent here. The amount of compensation as awarded by the Commissioner, has already been deposited by the Appellant-Insurance Company as per the submission made by the learned Counsel for the appellant that they have also filed copy of application dated 13-09-2013 to prove the deposit. The amount so deposited by the Insurance Company shall be disbursed forthwith to the claimant if not disbursed till date and the Appellant-Insurance Company will be at liberty to recover the amount of compensation so deposited by it, from Respondent 2/ owner of the vehicle Jeep.

19. The appeal is allowed in part and and impugned award is modified to the extent as indicated hereinabove.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	Judge

Pawan