NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 716 of 2014

- Branch Manager Sri Ram General Insurance Company Limited Industrial area road Sitapura (Rajasthan)

------Appellant

VERSUS

1. Rakeshwari D/o late Ganesh Satnami aged about 20 near about
2. Domas S/o late Ganesh Satnami, aged about 17 years
3. Ajay S/o late Ganesh Satnami aged about 15 years
4. Ku. Asha D/o late Ganesh Satnami aged about 13 years
5. Satyajit S/o late Ganesh Satnami aged about 11 years
6. Ku. Kiran D/o late Ganesh Satnami aged about 9 years
7. Sant Manavdas D/o late Ganesh Satnami aged about 7 years
8. Gayani S/o late Ganesh Satnami aged about 5 years

All Resident- Gram Sambalpur Thana Nandghat, Distt. Bemetara C.G.

Respondent 2 to 8 minor through their Uncle (Mama) Lalla @ Ramprakash Satnami aged about 36 years Resident-Gram Sambalpur, Tahsil and Dist. Bemetara C.G.

9. Prahlad Singh S/o Mohar Singh aged about 40 years, Resident-Gram Khamkhera, Bairshiya, Daulat Singh Thakur near Munga, Bhopal M.P. Hall Mukal Jhill nagar, Ghuggi No. 41 Thana Piplani, Bhopal M.P.

--------Driver

10. Ganesh Lal resident-Gram Shama Road, Pipera, Distt. Hoshangabad

-----Owner

-------**Respondents**

For Appellant : Mr. Deepak Gupta, Advocate
For Respondent 1 to 8 : Mr. Vaibhav Goverdhan, Advocate.

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

Order on Board

Per Parth Prateem Sahu, J.

23/11/2020

1. Appellant-Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "Act of 1988") challenging the impugned award dated 20.02.2014 passed by learned Additional Motor Accident Claims Tribunal, Bemetara in claim case no. 75/12 whereby learned Claims Tribunal allowed the claim application in part and awarded

Rs. 5,24,000/- as compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal are that on 12.04.2011 Sampatbai alias Santanbai mother of claimants along with her husband Ganesh Satnami and one daughter Muskan went to Hanuman temple, Ratnagiri at about 07:00 p.m. Non-applicant 1/ Respondent 9 while driving truck bearing registration no. MP 05F 3200 (hereinafter referred to as “offending truck”), rashly and negligently dashed Sampat Bai alias Santan Bai and caused accident. At the time of accident, Sampat Bai was standing on side of the road in front of temple. In the said accident, Sampat Bai suffered grievous injuries, she was taken to Hamidia hospital where she was declared dead. Accident was reported to concerned police station based on which crime bearing no. 317/11 was registered against non-applicant 1, after conclusion of investigation charge-sheet was filed before the Court of jurisdictional Magistrate. Children of deceased Sampatbai filed an application under Section 166 of the Act of 1988 seeking compensation of Rs. 15,80,000/- pleading therein that on the date of accident, deceased was aged about 35 years earning Rs. 200/- per day as labourer.

3. Non-applicant 1 and 2 driver and owner of the offending vehicle even after service of notice through paper publication did not appear before the Tribunal and were proceeded *ex parte.*

4. Non-applicant 3-Insurance Company submitted reply to the application filed under Section 166 of the Act of 1988, while denying the pleadings made therein further pleaded that on the date of accident offending truck was being plied in breach of policy conditions, on the date of accident driver of the offending truck was not possessed with valid and effective driving licence, there was no valid permit and fitness, hence, the Insurance Company is not liable to pay any amount of compensation.

5. Learned Claims Tribunal on appreciation of pleadings and evidence brought on record by the respective parties held that late Sampatbai died on account of motor accidental injury suffered by her due to rash and negligent driving of offending truck by non-applicant 1, breach of policy conditions was not found to be proved and awarded Rs. 5,24,000/- as compensation.

6. Mr. Deepak Gupta, learned counsel for the appellant- Insurance Company submits that learned Claims Tribunal failed to decide issue no. 2 with regard to breach of policy conditions in accordance with the law. Tribunal has recorded a finding that the Insurance Company failed to place on record any material to prove that there was breach of policy conditions and further as per the copy of driving licence available on record, non-applicant 1 was possessed with valid and effective driving licence. It is contended that the Tribunal has not taken into consideration the second ground raised by the appellant in reply to claim application with regard to vehicle being plied without any valid permit and fitness. Non-applicant 2 did not appear before the Claims Tribunal and has not placed on record copy of permit and fitness of the offending vehicle. Burden to prove that the vehicle was being plied under valid permit issued by the Competent authority, valid fitness, driver of the offending vehicle was possessed with valid and effective driving licence is upon the owner of the offending truck. Owner of the offending truck has not submitted any document to prove that the vehicle was being plied under valid permit. He submits that the Hon’ble supreme Court in the case of ***National Insurance Co. Ltd. v. Challa Bharathamma and others*** reported in (**2004) 8 SCC 517** and ***Amrit Paul Singh and another v. Tata AIG General Insurance Company*** reported in **(2018) 7 SCC 558** has considered the necessity and requirement for valid permit for commercial and transport vehicles. Supreme Court has held that if the transport vehicle is plied without valid permit then there will be breach of policy conditions. He submits that as

non-applicant 2 failed to discharge his burden that the vehicle was plied strictly in accordance with the terms and conditions of insurance policy by placing copy of permit and fitness on record. In absence of proof of those documents, it will be presumed that on the date of accident vehicle was being plied without any valid permit and fitness, there was breach of policy conditions and in these circumstances, Insurance Company cannot held liable to satisfy the amount of compensation.

7. Per contra, Mr. Vaibhav Goverdhan, learned counsel for Respondents-claimants while supporting the award submits that the Insurance Company, to avoid its liability of satisfying the amount of compensation under the policy was having burden upon it to prove that there was breach of policy conditions, more so when, issuance of insurance policy of the offending truck is not in dispute. He further contended that if this Court comes to a conclusion that there was breach of policy conditions and the Insurance Company is not having the liability to satisfy the amount of compensation then a direction to pay and recover be issued so that the interest of the poor claimants can be protected and they may get the amount of compensation at the earliest. In support of this submission he places his reliance in the case of **Amrit Paul (supra)** and submits that the hon'ble Supreme Court in the aforementioned case upheld the direction issued by the High Court to the Insurance Company to satisfy the amount of compensation at first and thereafter to recover the same.

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

9. The only question raised in this appeal for consideration of this Court is whether the Claims Tribunal was justified in fastening the liability to satisfy the amount of compensation upon the appellant-Insurance Company by recording a finding that the appellant-Insurance Company failed to prove breach of policy conditions. To appreciate the submission made by the

learned counsel for the appellant, we have perused the record of claim case. Perusal of the record would show that non-applicant 1 and 2 did not appear before the Claims Tribunal even after service of notice through paper publication. From perusal of the property seizer memo Ext. P-3 would show that the truck was seized from spot. In the seizer memo there is no mention that the police seized any other document like licence, permit, fitness and insurance policy or registration. In these facts of the case where neither the owner and driver of the offending vehicle has produced the relevant documents of the offending vehicle nor it was seized during the course of investigation by the police then the initial burden to prove that the offending vehicle was being plied by valid licence holder with valid permit and fitness is upon the owner and driver of the offending vehicle. They have not discharged their burden by placing on record copy of permit, fitness etc. Once the copy of permit, licence or fitness is somehow placed on record before the Claims Tribunal or appearing from any document that those documents were seized by police, then only, burden will shift upon the Insurance Company to prove that the said documents are not valid and effective documents to support pleading of breach of policy condition.

10. In the case at hand as discussed in preceding paragraphs that non-applicant 1 and 2 driver and owner of the offending vehicle did not appear before the Claims Tribunal and there was no material available on record to ascertain that on the date of accident, offending vehicle was being plied under valid permit but for copy of driving licence is available on record at page 11 which was placed on record by the learned counsel for the claimants. In absence of copy of permit placed on record by the owner and driver of the offending vehicle, Claims Tribunal could not have arrived at a finding that the appellant-Insurance Company failed to prove that the offending vehicle was being plied in breach of policy conditions. Claims Tribunal has not discussed the issue with regard to permit though the said

ground was specifically taken by appellant-Insurance Company in their reply.

11. The necessity and requirement of permit has been considered by the Supreme Court in **Challa Bhartamma (supra)** and **Amrit Paul (supra).** In case of **Amrit Paul (supra)** the Hon'ble Supreme Court 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 (2004) 3 SCC 297* and *Lakhmi Chand (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. 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* and other cases pertaining to pay and recover principle."

12. In the facts and circumstances of case and ruling of Supreme Court, we are of the considered view that non-applicant 1 & 2 failed to discharge their burden to prove that on the date of accident, offending vehicle was plied in accordance with terms and conditions of insurance policy. Unless and until,

initial burden is discharged by owner of the offending vehicle by placing on record copy of relevant document or appearing from any document available on record that such document is in custody of any public authority or part of any other Courts' record, burden will not shift upon the Insurance Company. We hold that, the Claims Tribunal erred in arriving at a finding that the appellant-Insurance Company failed to prove the breach of policy conditions. The said finding is not sustainable in the eyes of law and it is hereby set aside. We hold that there was breach of policy conditions as non-applicant 2 owner of the offending truck failed to place on record the copy of permit proving that on the date of accident vehicle was being plied under the valid permit.

13. In the aforementioned judgment, hon'ble Supreme Court while holding that absence of permit is a fundamental statutory infraction, has held the direction issued by the High Court to the Insurance Company to first pay and to recover to be in consonance with the judgment passed by the Supreme Court in case of ***National Insurance Company v. Swarn Singh*** reported in **(2004) 3 SCC 297**. Taking support of the judgment passed by Hon'ble Supreme Court in case of **Amrit Paul (supra)** we direct the appellant-Insurance Company to first deposit the entire amount of compensation along with interest and thereafter to recover the amount so deposited by it from non-applicant 1 and 2 driver and owner of the offending vehicle.

14. In view of the aforementioned discussion, appeal is allowed. Insurance Company is exonerated from the liability to satisfy the amount of compensation. Now the liability to satisfy the amount of compensation will be upon non-applicant 1 and 2 driver and owner of the offending vehicle. But looking to the facts of the case that, insurance of the vehicle is not denied and the risk of the deceased is covered under the insurance policy, it is directed that Insurance Company shall first deposit the entire amount

of compensation and thereafter to recover the same from the driver and owner of the offending vehicle, in accordance with law. Other part of the award with respect to calculation of the amount of compensation and entitlement of the amount of compensation as held by the Claims Tribunal shall remain intact.

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

Pawan