

**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 03.02.2020****Pronounced on 27.02.2020****M.A.(C) No.187 of 2013**

National Insurance Company Limited Thru- Its Divisional Manager, Divisional Office, G.E. Road, Raipur, Distt. Raipur C.G., Chhattisgarh

**---- Appellant****Versus**

1. Govind Kumar, S/o Late Sonsai Sahu Aged About 35 Years R/o Village-Fundhar, P.O. Devpuri, P.S. Telibandha, Distt. Raipur C.G., Chhattisgarh
2. Thakur Lal Sahu S/o Bhukhan Lal Sahu R/o Vill. And Post Mura, P.S. Kharora, Distt. Raipur C.G., District : Raipur, Chhattisgarh
3. Gopi Nashine S/o Hem Lal Nashine R/o Mahamaya Para Purani Basati, Kharora, P.S. Kharora, Distt. Raipur C.G., District : Raipur, Chhattisgarh

**---- Respondents****M.A.(C) No.188 of 2013**

National Insurance Company Ltd. Thru- Its Divisional Manager, Divisional Office, G.E. Road, Raipur, Distt. Raipur C.G.

**---- Appellant****Versus**

1. Uderam, S/o Baliya Sahu Aged About 50 Years R/o Vill. And Post Madhi, Distt. Raipur C.G.
2. Thakur Lal Sahu S/o Bhukhan Lal Sahu R/o Vill. And Post Mura, P.S. Kharora, Distt. Raipur C.G.
3. Gopi Nashine S/o Hem Lal Nashine R/o Mahamaya Para Purani Basti, Kharora, P.S. Kharora, Distt. Raipur C.G.

**---- Respondents****M.A.(C) No.189 of 2013**

National Insurance Company Ltd. Thru- Its Divisional Manager, Divisional Office, G.E. Road, Raipur, Distt. Raipur C.G.

**---- Appellant****Versus**

1. Smt.Budhwantin Bai, W/o Late Salikram Sahu Aged About 35 Years R/o Vill. Kurra, P.O. Bangoli, P.S. Kharora, Distt. Raipur C.G.
2. Ku. Usha D/o Late Salikram Sahu Aged About 16 Years Minor, Thru- Mother Smt. Budhwantin Bai, R/o Vill. Kurra, P.O. Bangoli, P.S. Kharora, Distt. Raipur C.G.
3. Roshan Kumar S/o Late Salikram Sahu Aged About 14 Years Minor, Thru-

Mother Smt. Budhwantin Bai, R/o Vill. Kurra, P.O. Bangoli, P.S. Kharora, Distt. Raipur C.G.

4. Devendra Kumar S/o Late Salikram Sahu Aged About 12 Years Minor, Thru-Mother Smt. Budhwantin Bai, R/o Vill. Kurra, P.O. Bangoli, P.S. Kharora, Distt. Raipur C.G.
5. Thakur Lal Sahu S/o Bhukhan Lal Sahu R/o Vill. And Post Mura, P.S. Kharora, Distt. Raipur C.G.
6. Gopi Nashine S/o Hem Lal Nashine R/o Mahamaya Para Purani Basti, Kharora, P.S. Kharora, Distt. Raipur C.G. **---- Respondents**

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Shri Dashrath Gupta, Counsel for the Appellant in all the Appeals.

Shri Amiyakant Tiwari, Counsel for Respondent No.1 in MA(C) Nos.187 and 188 of 2013 and for Respondents No.1 to 4 in MA(C) No.189 of 2013.

None for Respondent No.2 in MA(C) Nos.187 and 188 of 2013 and none for Respondent No.5 in MA(C) No.189 of 2013, though served.

Shri Manoj Paranjpe along with Shri Anurag Singh and Ms. Vaishali Mahilange, counsel for Respondent No.3 in M.A(C) Nos.187 and 188 of 2013 and for Respondent No.6 in M.A(C) No.189 of 2013.

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**Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**  
**C A V Award**

1. All these Appeals have been preferred by the Appellant/National Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988'), which arise out of an accident occurred on 27.02.2011 and are being disposed of by this common order. The parties to these Appeals shall be referred hereinafter as per their description in the trial Court.

2. Briefly stated, the facts of the case are that on 27.02.2011 at about 10.00 p.m, deceased Salikram, while driving the tractor, was returning along with others from village Tilda and was hit vehemently when he reached near the village Chicholi from its opposite side by the offending vehicle 'truck', which was owned by Non-Applicant No.2, Gopi Nashine and was insured with Non-Applicant No.3, National Insurance Company Limited (the Appellant herein). At the relevant time, the alleged offending vehicle was being driven rashly and negligently by its driver namely Thakur Lal Sahu, Non-Applicant No.1, as a

result of which, said Salikram died on the spot, while others got injured badly.

3. On account of the aforesaid accident, the Claimants, being the legal representatives of the deceased Salikram, instituted a claim Petition under Section 166 of the Act of 1988 claiming compensation to the tune of Rs.10,80,000/- under various heads by alleging *inter alia* that the deceased Salikram was a driver by profession and used to earn Rs.7,000/- per month. The said claim was registered as Claim Case No.77/2011, while the claim instituted by injured Udayram and Govindram were registered as Claim Case Nos. 78/2011 and 79/2011 respectively, wherein, they have claimed an amount of compensation to the tune of Rs.4,30,000/- and Rs.2,60,000/- respectively.

4. Non-Applicant No.1, Thakur Lal Sahu, the driver of the offending vehicle was proceeded *ex parte*, while Non-Applicant No.2, Gopi Nashine, the owner of the offending vehicle has contested the claim on the ground that the deceased Salikram was himself responsible for the alleged accident and pleaded further that since the vehicle in question was insured with Non-Applicant No.3, the National Insurance Company Limited, therefore, in case of any liability being fastened, the same could be indemnified by the said Company.

5. Non-Applicant No.3, the insurer of the offending vehicle, while questioning the issuance of the cover note dated 25.02.2011, contested the claim by submitting *inter alia* that neither the alleged cover note was issued from its Company nor any premium was collected therefrom. Alternatively, it is contended further that the driver of the alleged vehicle was not having the valid and effective driving license nor the vehicle in question was being used with a permit or the fitness certificate, therefore, no liability could be fastened upon the Company.

6. After considering the evidence led by the parties, it has been held by the Tribunal that the alleged accident occurred on 27.02.2011 due to the rash and negligent driving by the driver of the offending vehicle, resulting in the sad demise of said Salikram, while Udayram and Govindram sustained simple injuries. It held further that the alleged cover note was issued by the Insurance Company while covering the risk of the insured Gopi Nashine and held further that the driver of it was holding the valid and effective driving license and the Claim Petitions have thus been allowed in part while fastening the liability upon the Insurance Company.

7. Being aggrieved, the Appellant/Insurance Company has preferred these Appeals. Shri Dashrath Gupta, learned Counsel appearing for the Appellant/Insurance Company submits that the offending vehicle 'truck' was not insured with the Appellant/Insurance Company as neither the alleged cover note was issued nor any premium was collected by its Company. According to him, the alleged cover note was a forged and fictitious document and has been prepared in order to get an undue advantage of it. It is contented further that the vehicle in question was a transport vehicle, however, it was being used without any permit and fitness certificate in violation of the statutory provision of Section 66 of the Act of 1988, therefore, the Insurance Company cannot be held liable to indemnify the insured. In support, he placed his reliance upon the principles laid down in the matter of Amrit Paul Singh and Another vs. Tata AIG General Insurance Company Limited and Others, reported in (2018) 7 Supreme Court Cases 558.

8. On the other hand, learned Counsel for the Respondents/Claimants has supported the award impugned and the learned Counsel for the insured, while supporting the award impugned, submits that the Appellant/Insurer, in order to

avoid its liability, ought to have established its defence by way of cogent and reliable evidence. Having failed to do so, the Tribunal has not committed any illegality in fastening the liability upon the Company. In support, reliance has been placed upon the decision rendered in the matter of Lakhmi Chand vs. Reliance General Insurance reported in (2016) 3 SCC 100 and Kamala Mangalal Vayani and Others vs. United India Insurance Company Limited & Ors reported in (2010) 12 SCC 488 respectively.

9. I have heard learned Counsel for the parties and perused the entire record carefully.

10. The award impugned has been questioned mainly on two grounds, firstly, the vehicle in question was neither insured nor any cover note by collecting the premium amount was issued and, secondly, the vehicle in question was being used without any permit and fitness certificate in violation of the statutory provision prescribed under Section 66 of the Act of 1988 and as such, no liability could be fastened upon the Appellant/Insurance Company.

11. Firstly, the genuineness of the alleged cover note (Ex.D-2), which is required to be examined, is alleged to have been issued on 25.02.2011 by the Appellant/Insurance Company. Perusal of it would show that it was issued by the Company on its printed form having its seal by its authorized agent namely A.L Kapoor from the Office of Pitampura, New Delhi. According to the Appellant/Insurance Company, it was a forged and fictitious document as neither the cover note as such was ever issued nor any amount of premium was received by its Company. In order to establish the said fact, the insurer has examined the Assistant Manager of its Company namely SS. Jammu, (NAW-1). According to him, it was issued by one A.L Kapoor, who was neither the employee of the Company nor any premium amount was received by the

Company. However, no plea as such was taken by the Appellant/Insurance Company in the written statement, therefore, in absence thereof, the evidence of this witness cannot be relied upon. That apart, it is reflected from his testimony that certain correspondences were made with the main office of the Company in order to ascertain the genuineness of the alleged cover note (Ex.D-2). However, for the reasons best known to the Company, no particulars as such, were placed on record. It appears further from his cross-examination that the genuineness of the alleged cover note has been doubted by this witness only on the basis of an oral fact. No reliance as such, therefore, could be placed upon his testimony in order to hold that the alleged cover note is a forged document. Pertinently to be noted here further that despite knowing the issuance of the alleged cover note by the said agent, neither any report was lodged by the Appellant/Insurance Company nor any action was taken against him. In such an eventuality, it cannot be inferred that the alleged cover note (Ex.D-2) is a forged one and the Tribunal has, therefore, rightly negated the contention of the Appellant/Insurance Company by upholding the genuineness of the alleged cover note (Ex.D-2).

12. Further contention of Shri Dashrath Gupta, learned Counsel for Appellant/Insurance Company, while referring to the mandatory provision prescribed under Section 66 of the Act of 1988 is that since the vehicle in question was a transport vehicle, therefore, it cannot be used without any valid permit and fitness certificate. It is contended further that despite specific defence being taken in this regard, it was neither controverted by the insured nor any materials showing that the vehicle in question was being used with any kind of permit and fitness certificate was placed on record by him. The vehicle in question, a transport vehicle, was thus being used without any

permit and fitness certificate though, required mandatorily under Section 66 of the Act of 1988. The said provision, relevant for the purpose, is reproduced herein as under:-

**66. Necessity for permits.**\_\_\_ (1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorizing him the use of the vehicle in that place in the manner in which the vehicle is being used:

xxxx    xxxxx    xxxx    xxxxxxxx

13. From a bare perusal of the aforesaid provision, it appears that no owner of a motor vehicle is entitled to use or permit the use of his 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 authorizing him the use of the vehicle in that place in the manner in which the vehicle is being used. Here in the instant case, as observed hereinabove, the vehicle in question was found to be used in absence of permit and fitness certificate in violation of the aforesaid provision and therefore, no liability could be fastened upon the Company. It is, however, contended at this juncture by learned Counsel for the insured that in order to avoid its liability, the Appellant/Insurance Company ought to have proved the alleged breach of the terms and conditions of the policy and has placed reliance upon the principles laid down in the matter of “Lakhmi Chand vs. Reliance General Insurance” (supra) in support thereof.

14. The principles laid down in the aforesaid decision are, however, noted

to be distinguishable from the facts involved in the present case. In the said matter, the Insurance Company was required to establish the fact that the insured had permitted more passengers to travel in the vehicle beyond its capacity in order to get its exoneration on account of the violation of the terms and conditions of the policy. The burden of proof of the alleged breach was upon the Insurance Company, however, the Company had failed to lead any evidence to prove the same that the accident had occurred because of overloading of passengers in the goods carrying vehicle. The facts of the said case were therefore, entirely different from the facts involved in the instant case as the insured has neither taken the plea that it had any kind of permit nor had produced the same despite the specific defence taken by the Appellant/Insurance Company with regard to the statutory violation of Section 66 of the Act of 1988.

15. The further reliance of learned Counsel for the insured upon the principles laid down in the matter of “Kamala Mangalal Vayani and Others vs. United India Insurance Company Limited & Ors” (supra) is also noted to be distinguishable. That is a case where the owner-cum-driver was proceeded *ex parte* and under such circumstances, it was observed that the Claimants cannot be expected to establish the fact that the vehicle had a valid permit nor was required to prove that the owner of the vehicle did not commit breach of the terms and conditions of the policy. However, in the instant matter, as found hereinabove, the insured, who appeared in the matter, has failed even to produce the permit and fitness certificate on record.

16. What is, therefore, reflected from the record that despite the specific defence taken by the Appellant/Insurance Company that the alleged transport vehicle “Truck” was being used without any permit and fitness certificate, yet, it

was neither controverted by the insured nor had placed the same on record. In absence of such a plea and materials placed on record by the insured showing that he had a permit of the vehicle, onus of proof that it has no permit, cannot be shifted upon the insurer as held by the Supreme Court, in the matter of “Amrit Paul Singh and Another vs. Tata AIG General Insurance Company Limited and Others” (supra), where at paragraph-24, in similar circumstances when the insured has failed to produce any document in this regard, it was observed as under:

“24. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the 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 : 2004 SCC (Cri) 733] and Lakhmi Chand [2016) 3 SCC 100 : (2016) 2 SCC (Civ) 45] 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.....”

17. By applying the aforesaid principles to the case in hand, it cannot be held as contended by learned Counsel for the insured that the onus to prove

the fact that the vehicle in question was being used without permit and fitness certificate was upon the insurer. It is, thus, evident that the vehicle in question was being used in violation of the statutory provision of Section 66 of the Act of 1988.

18. Consequently, the finding of the Tribunal fastening the liability upon the Insurance Company is therefore liable to be and is hereby set aside. It accordingly held that at the relevant point of time, the vehicle in question was being used in violation of the policy and the Appellant-Insurance Company is therefore, entitled to be and is hereby exonerated from its liability. Since the vehicle in question was admittedly insured with the Appellant/Insurance Company, therefore, by applying the principles of 'pay and recover' as held in the matter of National Insurance Co. Ltd vs. Swaran Singh and Others reported in (2004) 3 SCC 297, it would be just and proper to issue a direction to the Appellant/Insurance Company to first pay the awarded sum to the Claimant/Claimants and then to recover the said awarded sum from the owner and driver of the offending vehicle, i.e. Non-Applicant No.2, Gopi Nashine and Non-Applicant No.1, Thakur Lal Sahu in execution proceedings arising in this very case.

19. In view of foregoing discussions, the Appeals are accordingly allowed with the aforesaid observations. Rest of the observations as made by the Tribunal shall remain in tact. No order as to costs.

Sd/-  
(Sanjay S. Agrawal)  
Judge