NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 122 of 2015

- Radhakant Keshri S/o Madhav Shyam Keshri wrongly written Madhav Ram Keshri, aged About 37 Years, Dayalband, P.S. City Kotwali, Bilaspur, Civil and Revenue Distt. Bilaspur, Chhattisgarh (Owner of vehicle Tata 1109 No. CG 10C-1612)

---- Appellant/NA2

Versus

1. Smt Vimla Bai, wife of Ramu Sahu, aged about 40 years
2. Ramu Sahu, son of Dukalha Ram Sahu, aged about 43 years

   Both r/o Rameshwarnagar, Near Mahamaya Mandir, Bhanpuri, Raipur, Tahsil and District Raipur, Chhattisgarh (Applicants/claimants)
3. Ravi Kumar Nirmalkar S/o Banshilal Nirmalkar, Aged About 29 Years, son of Banshilal Nirmalkar, R/o Devri Khurd, P.S. Torwa, District : Bilaspur, Chhattisgarh (Driver of vehicle Tata 1109-CG 10 C 1612)
4. The New India Insu.Co.Ltd. thru- Divisional Office, Madira Building, Jail Road, Raipur, District : Raipur, Chhattisgarh (Insurance Company of vehicle Tata 1109 No.CG 10 C- 1612) Policy No.4520003/110100001854, Policy Expiry Date 21.06.11 to 20.06.12

----Respondents

For Appellant	:	Shri CJK Rao, Advocate
For Respondents- 1 and 2	:	Shri JA Lohani, Advocate
For Respondent- 3	:	None appears
Fro Respondent-4	:	Shri Raj Awasthi, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
01.02.2021

1. Appellant/Owner of offending vehicle or NA2 has filed this appeal under Section 173 of the Motor Vehicle Act, 1988 challenging impugned award dated 26.11.2014 passed by the Chief Motor Accident Claims Tribunal, Raipur (for short, Claims Tribunal) in Claim Case- 92 of 2012 whereby learned Claims Tribunal allowed the application for grant of compensation in part and awarded Rs.46,00,000/- as total compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal are that deceased Manish Kumar Sahu was travelling on Motorcycle bearing No.CG 04DE-6668 as pillion rider along with Manoj Kumar Sahu and Bedram Sahu. When they reached near village Bemta, one Truck bearing No.CG 10C-1612 (hereafter, referred to as 'offending vehicle') driven by NA1 dashed the Motorcycle and caused accident. In the said accident, Manish Kumar Sahu suffered grievous injuries over his person. He was admitted to the Government Hospital, Simga and thereafter, Medical College Raipur for treatment, but he succumbed to the injuries during the course of treatment on 29.01.2012.

3. Respondents-1 and 2/claimants, parents of deceased Manish Kumar Sahu filed an application under Section 166 of the Act of 1988 pleading therein that on the date of accident deceased was an able bodied person aged about 22 years. He was working at Celeb Homes Private Limited, Raipur (for short, 'Company') and earning Rs.15,750/- per month. Respondents- 1 and 2/claimants were dependant upon the deceased, claimed total sum of Rs.46,00,000/- as compensation.

4. NA2/ appellant, Owner of offending vehicle submitted reply to claim application. While denying the pleadings made therein, he further pleaded that accident was result of negligence of Manoj Kumar Sahu, driver, of Motorcycle the amount of compensation claimed is highly exaggerated. On the date of accident, NA1, driver of offending vehicle was possessed with valid and effective driving license. Offending vehicle was insured with NA3/insurance Company hence the liability to pay amount of compensation would be upon the Insurance Company.

5. NA3/Insurance Company submitted reply to claim application, denying the pleadings made therein the claim application. It was further pleaded that offending vehicle was being used without valid permit and fitness certificate. Police while registering crime against NA1, driver of offending vehicle, also registered case under Section 56 of the Act of 1988, as such, there was breach of policy conditions. At the time of accident, three persons were travelling on Motorcycle, which is indicative of the fact that there was contributory negligence on the part of driver of Motorcycle, and pleaded for its exoneration from the liability.

6. Shri CJK Rao, learned counsel for the appellant/NA1 Owner of offending vehicle submits that learned Claims Tribunal erred in exonerating the Insurance Company and fastening liability upon Owner and Driver of offending vehicle. He submits that issuance of policy and its existence on the date of accident is not in dispute. Deceased is a 3rd party, there was valid permit, NA1 driver of offending vehicle was possessing valid and effective driving license on the date of accident. Learned Claims Tribunal upon considering the fact that on the date of accident there was no valid fitness certificate of offending vehicle, held that there was breach of policy conditions. He pointed out that necessity of valid fitness certificate is not part of terms and conditions of Insurance Policy, hence, mere absence of valid fitness certificate will not be sufficient to hold that there was breach of policy conditions.

7. Shri Raj Awasthi, learned counsel for respondent-4/Insurance Company submits that learned Claims Tribunal taking into consideration provisions under the Act of 1988, has rightly arrived at a finding that there was breach of policy conditions. He contended that unless and until a valid fitness certificate is issued

by the competent authority, the vehicle/transport vehicle could not be registered with the Regional Transport Office/Transport Department. No vehicle can be plied without there being proper registration. He pointed out that fitness certificate of offending vehicle expired on 03.12.2011 and thereafter, new fitness certificate has been issued only on 21.03.2012 for a period of one year. The accident took place on 22.01.2012, on that date the offending vehicle was not having valid fitness certificate on the date of accident.

8. Shri JA Lohani, learned counsel for respondents-1 and 2/claimants submits that the Claims Tribunal has awarded just amount of compensation. The impugned award does not call for interference.

9. We have heard learned counsel for the respective parties and perused the record of claim case.

10. So far as the 1st submission made by learned counsel for the appellant/owner of offending vehicle with regard to exoneration of Insurance Company from its liability is concerned, perusal of record would show that during the investigation, Police seized offending vehicle vide Ex.P5. Seizure of documents was done vide Ex.P6. In Ex.P6, Police seized RC Book, permit for a period from 14.09.2009 to 13.09.2012 and copy of the Insurance Policy, effective from 21.06.2011 to 20.06.2012. Fitness certificate with validity period from 04.12.2010 to 03.12.2011. Along with Memo of appeal, appellant submitted copy of permit of offending vehicle as Annexure A3, copy of registration certificate as Annexure A4, driving license as Annexure A5, fitness certificate as A6 and A7. Annexure A6 is the fitness certificate having its validity from 04.12.2010 to 03.12.2011. Another fitness certificate is filed as Annexure A7, effective from

21.03.2012 to 20.03.2013. Upon perusal of A6 and 7, it would clearly reveal that after expiry of fitness certificate on 03.12.2011, there was no fitness certificate in continuation, but, new fitness certificate was issued only on 21.03.2012, after about more than three months of date of expiry of the certificate.

11. From the aforementioned facts and documentary evidence available on record, it is apparent that on the date of accident offending vehicle was not having valid fitness certificate issued by competent authority. Necessity of fitness certificate issued by the competent authority is envisaged under Section 56 of the Act of 1988. Section 56 of the Act of 1988 is reproduced below for ready reference :

> **Section 56 : Certificate of fitness of transport vehicles Description:** (1) Subject to the provisions of sections 59 and 60, a transport vehicle shall not be deemed to be validly registered for the purposes of section 39, unless it carries a certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority, or by an authorized testing station mentioned in sub-section (2), to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder: Provided that where the prescribed authority or the authorized testing station refuses is issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal. (2) The "authorized testing station" referred to in sub-section (1) means a vehicle service station or public or private garage which the State Government, having regard to the experience, training and ability of the operator of such station or garage and the testing equipment and the testing personnel therein, may (5) A certificate of fitness issued under this Act shall, while it remains effective, be valid throughout India. specify in accordance with the rules made by the Central Government for regulation and control of such stations or garages. (3) Subject to the provisions of sub-section (4), a certificate of fitness shall remain effective for such period as may be prescribed by the Central Government having regard to the objects of this Act. (4) The prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and

> the rules made thereunder; and on such cancellation the certificate of registration of the vehicle and any permit granted in respect of the vehicle under Chapter V shall be deemed to be suspended until a new certificate of fitness has been obtained: 1[Provided that no such cancellation shall be made by the prescribed authority unless such prescribed authority holds such technical qualification as may be prescribed or where the prescribed authority does not hold such technical qualification on the basis of the report of an officer having such qualifications.] (5) A certificate of fitness issued under this Act shall, while it remains effective, be valid throughout India. 1. Ins. by Act 54 of 1994, s. 16 (w.e.f. 14-11-1994).

12. Perusal of above provision Section would show that fitness certificate is necessary for registration of Transport vehicle. Transport vehicle not to be registered unless the owner of Transport vehicle carries certificate of fitness. Section 39 of the Act of 1988 deals with necessity for registration. Section 39 is reproduced below for ready reference:

> Section 39 **: Necessity for registration:** No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner: Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.

13. This Court in **MAC 1289 of 2014**, **Adesh Kumar and another Vs Smt Satarupa Bai Yadav and others and connected cases** decided on 19.11.2020, has considered the issue with regard to breach of policy conditions for not having valid fitness certificate, taking note of ruling of five Judges' Bench of Kerala High Court in case of **Pareed Pillai Vs Oriental Insurance Company Ltd., AIR 2019 Kerala 9**, and held that absence of fitness certificate for a Transport vehicle to be a fundamental breach of policy conditions.

14. In view of aforementioned facts and circumstances of the case and the Order passed by this court in MAC-1289 of 2014 and connected cases, we do not find any force in the submission made by learned counsel for the appellant/owner of offending vehicle that learned Tribunal erred in exonerating Insurance Company from its liability on account of breach of policy conditions. The said submission of learned counsel for the appellant is hereby repelled.

15. So far as the 2nd submission of learned counsel for the appellant with regard to amount of compensation awarded by Tribunal to be on higher side is concerned, we have perused the record of claim case.

16. Respondents-1 and 2, claimants have placed on record Ex.P44, copy of salary certificate issued on 13.02.2012 by the Accounts Manager of the Company, wherein income of the deceased has been shown to be Rs.15,750/- per month. This certificate is duly supported by the ledger account of the Company for a period from 1st April, 2011 to 6th March, 2012. Similar certificate Ex.P45 is issued by the Accounts Manager on 02.05.2011 showing monthly income of the deceased as Rs.15,000/- for the financial year 2010-11, which was also supported by Ex.P46, ledger account of the Company for a period from 01.04.2010 to 31.03.2011. Ex.P47 is ledger account placed on record for a period of 01.04.2011 to 26.03.2012. AW2, Chandra Prakash Verma, Accountant of the Company has proved documents Ex.P44 to Ex.P48.

17. Tribunal has assessed income of deceased Manish Kumar Sahu as Rs.15,750/- per month only. He has been shown to be working in the Company. Tribunal has not awarded any amount towards future prospects, hence, we do not find that income of deceased reckoned by the Tribunal on 22.01.2012 to be on

higher side. Tribunal has awarded only Rs.40,000/- on other heads and applied multiplier of 14 only considering age of parents instead of 18.

18. For the foregoing reasons, we do not find any force in the submission made by learned counsel of the appellant/Owner that the amount of compensation awarded by the Tribunal is on higher side. Said submission is also repelled.

19. In the result, appeal filed by owner of offending vehicle being *sans* merit, is dismissed.

Sd/-	Sd/-
(PR Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	**Judge**

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