

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 130 of 2016

- Smt Lita Patel W/o Shri Hiradhar Patel, Aged About 47 Years Occupation Tailring Work, R/o A-4, Phase-1, Kanchanganga, Dindayal Upadhyay Nagar, Dangniya, Raipur Chhattisgarh.....Claimant

---- Appellant

Versus

1. Chandrasen Guru, S/o Late Lakhan Lal Guru, Aged About 37 Years R/o Village Ravanguda, Police Station Arjuni, District Dhamtari Chhattisgarh.....Driver Of Alleged Vehicle Bearing Registered No. C G 05 D 0142
2. The United India Insurance Limited Company, First Floor Krishna Complex, Kachhari Chowk, Kachhari Chowk Raipur Chhattisgarh, District : Raipur, Chhattisgarh

---- Respondents

For Appellant	: Shri AD Kuldeep, Advocate
For Respondent- 1	: Shri Goutam Khetrapal, and Ms Astha Sharma, Advocates
For Respondent-2	: Shri Pankaj Agrawal, Advocate

AND

MAC No. 679 of 2017

- Chandrasen Guru S/o Late Lakhan Lal Guru, Aged About 37 Years R/o Village Rawanguda Police Station Arjuni, District Dhamtari, Chhattisgarh, Occupation Driver Register Owner Of Vehicle Bearing Registration No. C.G.05 D 0142, Chhattisgarh

---- Appellant

Versus

1. Smt. Lita Patel S/o W/o Hiradhar Patel, Aged About 47 Years Occupation Silai, R/o A-4, Face-1, Kanchanganga, Deendayal Upadhyay Nagar Daganiya Raipur, ChhattisgarhClaimant
2. The United Insurance Company Limited, Through The Branch Manager, Krishna Complex, Kutchrey Chowk, Kutchrey Chowk Raipur, Chhattisgarh Through Branch Manager Not Mentioned In The Impugned AwardInsurer Of The Vehicle, District : Raipur, Chhattisgarh

---- Respondents/Non-Applicants

For Appellant	: Shri Goutam Khetrapal, and Ms Astha Sharma, Advocates
For Respondent- 1	: Shri AD Kuldeep, Advocate
For Respondent-2	: Shri Pankaj Agrawal, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

17.09.2021

- 1) As both the appeals are arising out of the same claim case- 125 of 2012 decided on 17.07.2015, passed by the 1st Additional Motor Accident Claims Tribunal, Raipur, both these appeals are being disposed off by this common order.
- 2) **MAC-130 of 2016** is filed by claimant seeking enhancement of amount of compensation and **MAC-679 of 2017** is filed by Owner/Driver of offending vehicle challenging the findings recorded by Claims Tribunal of breach of policy conditions.
- 3) Facts relevant for disposal of both appeals are that on 28.03.2011 at about 8 pm, injured Smt Lita Patel was travelling on Motorcycle bearing No.CG04 DP-8973 as Pillion rider along with her son Rupal Patel. When she reached near Raipur over bridge, NA1 while driving his four wheeler bearing No.CG 05 D-0142 (hereafter, referred to as 'offending vehicle') rashly and negligently, dashed Motorcycle on which claimant was riding, and caused accident. In the accident, claimant suffered grievous injuries over her both legs, apart from other injuries. She suffered fracture injury over her right leg, she was immediately admitted to Lifeworth Hospital, Raipur, took treatment as inpatient from 28.03.2011 till 30.03.2011, and thereafter, shifted to Visharad Hospital, Moti Bagh, Raipur, where she took treatment till 04.04.2011.

4) Appellant filed claim application under Section 166 of 1988, seeking total compensation of Rs.6,15,000/- pleading therein that in accident, she suffered grievous injuries on her person, including fracture of her right leg. On account of motor accidental injuries, she suffered permanent disability, due to which she is unable to do any work. Prior to date of accident, claimant was earning Rs.4,500/- per month from the work of tailoring.

5) NA1, Owner and Driver of offending vehicle submitted reply to claim application denying the fact of accident. It was further pleaded that accident occurred due to rash and negligent driving of Motorcycle on which appellant was travelling as pillion rider and its Owner and Insurer were not impleaded as party non-applicants to claim application. Amount of compensation claimed by the appellant is highly exaggerated and NA1 was possessed with valid and effective driving license on the date of accident. Offending vehicle was insured with NA2/Insurance Company. Hence, liability to satisfy amount of compensation, if any, is upon NA2.

6) NA2/Insurance Company submitted separate reply to claim application denying the facts pleaded in claim application. It was further pleaded that accident was not a result of rash and negligent driving of NA1, but it was due to rash and negligent driving of Motorcycle by Rupal Patel, son of appellant. Amount of compensation claimed is highly exaggerated. NA1 driver of offending vehicle was not possessed with valid and effective driving license on the date of accident, and there was no valid permit and fitness of offending vehicle. There was breach of policy conditions, hence, Insurance Company has no liability to indemnify the insured.

7) Learned Claims Tribunal on appreciation of pleadings and evidence brought on record by respective parties, held that claimant- Smt Lita Patel suffered motor accidental injuries due to rash and negligent driving of offending vehicle by NA1. There was breach of policy conditions, awarded total compensation of Rs.1,16,000/- including medical expenses of Rs.95,300/- with interest @ 7% from the date of application, fastened liability upon non-applicant-1 to satisfy the amount of compensation.

8) Shri AD Kuldeep, learned counsel for appellant would submit that learned Claims Tribunal erred in awarding meagre sum of compensation, in the facts and circumstances of the case. It is pointed that Tribunal has not awarded any amount of compensation towards grievous injuries, loss of amenities and joy in life and further, awarded only Rs.5,000/- towards pains and suffering, overlooking nature of injuries mentioned in Ex.P68, wherein it is mentioned that **“H/O- RTA on 28.03.2011. *Interlocking tibia Right was done on 31.03.2011”**. He submits that amount of compensation be suitably enhanced considering the entire facts and evidence available on record.

9) Shri Goutam Khetrapal, learned counsel for respondent- 1 /NA1, Owner and Driver in MAC-130 of 2016 would submit that amount of compensation awarded by Tribunal in the facts and circumstances of the case is just and proper, which does not call for any interference. He submits that NA1 has filed separate reply in MAC-679 of 2017 challenging the finding of learned Claims Tribunal of breach of policy conditions. He submits that breach of policy conditions is to be considered within the provision of Section 149(2) of the Act of 1988. He submits that not having

valid fitness certificate (of offending vehicle) will not lead to breach of policy conditions. Under the Policy also, it is not mentioned as one of essential conditions. He submits that finding of Tribunal regarding breach of policy conditions be set aside.

10) Shri Pankaj Agrawal, learned counsel for respondent-2 /Insurance Company would submit that award passed by learned Claims Tribunal is just and proper, which does not call for any interference. He submits that for registration of Transport vehicle, fitness certificate is essential and must. This Court in case of **The New India Assurance Company Limited Vs Jatindra Nath Mali and others** in MAC-1206 of 2013 relying upon the judgment passed by 5 hon'ble judges of Kerala High Court in **Pareed Pillai Vs Oriental Insurance Company Ltd.**, reported in 2019 ACJ 16 considered the issue of necessity of fitness certificate and its absence, was held to be breach of policy conditions. He submits that in view of above, findings recorded by Claims Tribunal, does not call for any interference.

11) I have heard learned counsel for the parties and also perused record of claim case.

12) So far as the submissions of learned counsel for the appellant with respect to enhancement of compensation is concerned, learned Tribunal has awarded total sum of Rs.95,300/- towards medical expenses. Learned counsel for the appellant has not made any submission that Tribunal has failed to consider any of the proved medical bills, hence,

award of compensation towards medical expenses of Rs.95,300/- is affirmed.

13) Learned Claims Tribunal awarded Rs.5,000/- towards future treatment, Rs.8,000/- for loss of income during the period of treatment and Rs.2,700/- for special diet. In opinion of this Court, it is also just and proper and award of compensation on above heads is also affirmed.

14) After accident, appellant/claimant took treatment at Government hospital and has placed on record MLC report as Ex.P5, wherein it is mentioned as segmental fracture of Tibia and Fibula of right leg, lacerated injury over left knee and injuries suffered by appellant on right leg has been shown to be grievous in nature. Claimant took treatment as inpatient from 28.03.2011 to 30.03.2011 at Lifeworth Hospital, Raipur. She was admitted in ICCU Room. Considering nature of injuries to be grievous in nature and treatment taken by appellant, I find it appropriate to award Rs.10,000/- towards grievous injuries. Loss of amenities & joy in life during the period of treatment and also during further treatment, I find it appropriate to award Rs.5,000/- on the above heads. Tribunal overlooking the evidence available on record, has awarded sum of Rs.5,000/- only towards pains and suffering, which is enhanced to Rs.10,000/-, considering bone segmental fracture injury of right leg of appellant, who was aged about 47 years at the time of accident.

15) Now appellant/claimant shall be entitled for total sum of **Rs.1,36,000/-** (95300 + 5000 + 8000 + 2700 + 10000 + 5000 + 10000) instead of Rs.1,16,000/- as awarded by the Tribunal.

16) Aforementioned amount of compensation shall carry interest @ 7% from the date of filing of the claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

17) Now, I will consider the submission made by learned counsel for the appellant/owner of offending vehicle challenging the finding of breach of policy conditions.

18) In case of **Pareed Pillai** (supra), five judges Bench of Kerala High Court has considered non-availability of fitness certificate , and held thus:

17. The stipulations under the above provisions clearly substantiate the importance and necessity to have a valid Fitness Certificate to the transport vehicle at all times. The above prescription converges on the point that Certificate of Registration, existence of valid Permit and availability of Fitness Certificate, all throughout, are closely interlinked in the case of a transport vehicle and one requirement cannot be segregated from the other. The transport vehicle should be completely fit and road worthy, to be plied on the road, which otherwise may cause threat to the lives and limbs of passengers and the general public, apart from damage to property. Only if the transport vehicle is having valid Fitness Certificate, would the necessary Permit be issued in terms of [Section 66](#) of the Act and by virtue of the mandate under [Section 56](#) of the Act, no transport vehicle without Fitness Certificate will be deemed as a validly registered vehicle for the purpose of [Section 39](#) of the Act, which stipulates that nobody shall drive or cause the motor vehicle to be driven without valid registration in public place or such other place, as the case may be. These requirements are quite 'fundamental' in MACA No. 2030 of 2015 and connected cases nature; unlike a case where a transport vehicle carrying more passengers than the permitted capacity or a goods carriage carrying excess quantity of goods than the permitted extent or a case where a transport vehicle was plying through a deviated route than the one shown in the route permit which instances could rather be branded as 'technical violations'. In other words, when a

transport vehicle is not having a Fitness Certificate, it will be deemed as having no Certificate of Registration and when such vehicle is not having Permit or Fitness Certificate, nobody can drive such vehicle and no owner can permit the use of any such vehicle compromising with the lives, limbs, properties of the passengers/general public. Obviously, since the safety of passengers and general public was of serious concern and consideration for the law makers, appropriate and adequate measures were taken by incorporating relevant provisions in the Statute, also pointing out the circumstances which would constitute offence; providing adequate penalty. This being the position, such lapse, if any, can only be regarded as a fundamental breach and not a technical breach and any interpretation to the contrary, will only negate the intention of the law makers.

19) Coming back to facts of this case, admittedly on the date of accident, offending vehicle was not having valid fitness certificate. Fitness certificate issued was expired prior to the date of accident ie before 3-4 months.

20) Considering facts of the case in light of ruling of Hon'ble Supreme Court in case of **Pareed Pillai** (supra), I am of the view that learned Tribunal has not committed any error in recording finding that there was breach of policy conditions.

21) The ground raised by learned counsel for Owner of offending vehicle with respect to finding recorded by Claims Tribunal of breach of policy conditions to be erroneous is not sustainable and it is hereby repelled.

22) MAC-679 of 2017, appeal filed by Owner of offending vehicle fails and accordingly, it is dismissed.

23) At this stage, learned counsel for the appellant/claimant submits that to protect the interest of claimant, a direction be issued to respondent/Insurance Company to first satisfy amount of compensation and thereafter to recover the same from respondent/Owner/Driver of offending vehicle. He placed reliance in case of **Amrit Paul Singh and another Vs TATA AIG General Insurance Company Limited and others** reported in (2018) 7 SCC, in support of his contention..

24) Considering the prayer made by learned counsel for the appellant/claimant and the above ruling of Hon'ble Apex Court in case of **Amrit Paul** (supra), I find it appropriate to direct respondent/Insurance Company to first deposit entire amount of compensation and thereafter, to recover the amount so deposited by it from NA1, driver & owner of offending vehicle.

25) For the foregoing reasons, MAC-130 of 2016, appeal filed by claimant is allowed in part and impugned award is modified to the extent as indicated above.

26) MAC-679 of 2017, appeal filed by Owner and Driver of offending vehicle stands dismissed.

Sd/-
(Parth Prateem Sahu)
JUDGE