



\$~13

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 12.07.2023

+

MAC.APP. 106/2022 & CM APPL. 16468/2022 & 1803/2023

NATIONAL INSURANCE COMPANY LIMITED

..... Appellant

Through: Mr.Zorawar Singh & Mr.Jayant
Rastogi, Advs.

versus

MAHIPAL & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed by the appellant challenging the Award dated 24.12.2021 (herein after referred to as the 'Impugned Award') passed by the learned Motor Accident Claims Tribunal-01 (North), Rohini Court, Delhi (herein after referred to as the 'Tribunal') in MAC Petition No. 125/2015 titled *Smt. Shakuntala & Ors. v. Sh. Mahipal & Anr.*

2. The limited challenge to the Impugned Award is on the ground that the learned Tribunal has failed to appreciate that the Offending Vehicle, which is a tractor bearing Registration No. HR-38V-0680, was being driven without a valid Fitness Certificate and, therefore, a right to recover the compensation



from the owner, that is, the respondent no.1 herein, should have been reserved with the appellant.

3. The learned counsel for the appellant has placed reliance on the cross-examination of the respondent no.1, who had appeared as R1W1 before the learned Tribunal. In the course of his cross examination recorded on 09.07.2019, on the issue of the Fitness Certificate, the respondent no.1 had stated as under:-

"I am 7th class pass. I do not understand English language. I am aware about the contents of my affidavit. It is wrong to suggest that I have not placed on record fitness certificate of the offending vehicle. I am filing the same today.

Court observation: Respondent No.1 has already exhibited it but had not placed on the Court file. Accordingly is given Ex. R1W1/R2X1. It is correct that I have no fitness certificate as on the date of accident. Vol. I had deposited the amount but I was not able to get it from the concerned Authority. I do not have any receipt with me today for getting the fitness certificate prior to the date of accident for that reason I do not have any receipt for depositing the amount for getting the fitness certificate. It is correct that on the date of accident I was authorized only to drive non-transport vehicle and tractor. Vol. As per my licence I was authorized to drive the tractor. It is wrong to suggest that on the date of accident I was not authorized to drive the offending vehicle. It is wrong to suggest that in view of terms and conditions of insurance policy, insurance company is not liable to pay any compensation."

(Emphasis supplied)

4. He submits that the Fitness Certificate that was exhibited as Ex.R1W1/R2X1, was of the period subsequent to the date of

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 15.07.2023

19:37:46

MAC.APP. 106/2022



the accident. The witness has also admitted that he had not obtained the Fitness Certificate for the vehicle as on the date of the accident.

5. The learned counsel for the appellant, placing reliance on the Full Bench Judgment of the High Court of Kerala in ***Ramankutty v. Pareed Pillai***, 2018 SCC OnLine Ker 3542, and the judgment of this Court in ***Kaushalpati Pandey v. New India Ass. Co. Ltd. And Others***, 2020 SCC OnLine Del 2660, submits that the learned Tribunal has erred in not reserving a right of recovery in the appellant.

6. In spite of the respondent no.1 having been served through publication, none has appeared for the respondent no.1. The respondent no.1 is accordingly proceeded *ex parte*.

7. It is found from the reading of the Impugned Award that the learned Tribunal has laid emphasis only on the nature of the Driving License which was held by the respondent no.1 and not on the issue whether the Offending Vehicle had a valid and subsisting Fitness Certificate as on the date of the accident.

8. The importance of a Fitness Certificate has been highlighted by the High Court of Kerala in its judgment in ***Ramankutty*** (supra), observing as under:-

“17. Importance of the fitness/road worthiness of a vehicle, right from the time of registration of the vehicle, is further discernible from Rule 47 of the Central Motor Vehicles Rules 1989 [referred to as Central Rules]. The said Rule deals with application for registration of motor vehicles, which, among other things, stipulates that it shall be accompanied by various documents. Under



sub-rule (1)(g), It is mandatory to produce road worthiness certificate in Form 22 from the manufacturers [Form 22A from the body builders]. On completing the formalities/procedures, 'Certificate of Registration' is to be issued in terms of Rule 48 of the Central Rules in Form 23/23A, as the case may be. The said Rule contains a proviso, insisting that, when Certificate of Registration pertains to a transport vehicle, it shall be handed over to the registered owner only after recording the Certificate of Fitness in Form 38. Validity of the Certificate of Fitness is only to the extent as envisaged under Rule 62 of the Central Rules, which mandates, as per the proviso, that the renewal of a Fitness Certificate shall be made only after the Inspecting Officer or authorised Testing Station as referred to in sub Section 1 of Section 56 of the Act has carried out the test specified in the table given therein.

18. 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

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 15.07.2023

19:37:46

MAC.APP. 106/2022



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 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."

9. Placing reliance on the judgment of the High Court of Kerala in **Ramankutty** (supra), this Court in **Kaushalpati Pandey** (supra) dismissed the appeal of the owner against the Award passed by the learned Tribunal therein, which had granted liberty to the insurer to seek recovery of the compensation amount from the owner of the Offending Vehicle therein on the ground that the Offending Vehicle did not have a

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 15.07.2023

19:37:46

MAC.APP. 106/2022



valid Fitness Certificate as on the date of the accident. The relevant observation of this Court is as under:-

“7. The obvious rationale for a valid fitness certificate is the proof that the vehicle is working properly apropos all vital aspects i.e., its brakes, indicator lights, wipers, seat-belts, etc. are working optimally, so that the vehicle can be manoeuvred on a public street without causing damage, to anybody. If there is default in any of these requisite conditions, then the vehicle itself would be a danger to public safety and would impose a traffic hazard. This has been discussed in para 18 of Ramankutty supra.”

10. Section 56(2) of the Motor Vehicles Act, 1988 states that a certificate of fitness shall remain effective for such period as may be prescribed by the Central Government having regard to the objects of the Act. Rule 62 of the Central Motor Vehicles Rules, 1989 prescribes the period of validity of a Fitness Certificate. It further states that renewal a fitness certificate shall be made only after an Inspecting Officer or authorised testing stations as referred to in sub-section (1) of section 56 of the Act has carried out the tests specified in Rule 62 of the Rules. Therefore, renewal of the Fitness Certificate is not automatic on deposit of the fee for obtaining the same. It is dependent on the result of the tests.

11. In the present case, respondent no.1, in his cross-examination, had admitted that as on the date of accident, he did not have a valid Fitness Certificate for the offending vehicle. Though it was the case of the respondent no.1 that requisite fee for obtaining the Fitness Certificate had been deposited with the



transport authority, no proof in that regard has been placed on record by the respondent no.1 in spite of a notice dated 04.03.2019 (Ex.R2W1/1) issued by the appellant to the respondent no.1 seeking production of the Fitness Certificate. The Fitness Certificate produced by the respondent no.1 and marked as Ex.R1W1/R2X1 shows the inspection date as 09.04.2018 and is, therefore, after the date of the accident, which was 04.12.2017. The same, therefore, would not be relevant to determine the *inter se* liability between the appellant and the respondent no.1 as on the date of the accident.

12. In view of the above it must be held that the respondent no.1 has failed to prove that he was in possession of a valid Fitness Certificate for the Offending Vehicle as on the date of the accident. In terms of the judgment in ***Ramankutty*** (supra) and ***Kaushalpati Pandey*** (supra), therefore, the appellant was entitled to a right to recover the compensation paid to the Claimants from the respondent no.1.

13. The present appeal is accordingly allowed. The appellant is granted liberty to recover the awarded amount from the respondent no.1 in accordance with law. There shall be no order as to costs.

NAVIN CHAWLA, J

JULY 12, 2023/rv/ss