



2023:DHC:7209



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 22.08.2023

Pronounced on: 06.10.2023

+ MAC.APP. 288/2021 & CM APPLs.39915/2021, 39917/2021

GURMEET SINGH

..... Appellant

Through: Mr.Rachit Mittal, Ms.Megha Tyagi, Mr.Parish Mishra, Mr.Adarsh Srivastava, Advs.

versus

THE NEW INDIA ASSURANCE COMPANY LTD. & ORS.

..... Respondents

Through: Mr.Salil Paul, Mr.Sahil Paul, Mr.Mayank Jain, Advs. for R-1

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This appeal has been filed by the appellant challenging the Award dated 01.03.2018 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, Rohini, Delhi (hereinafter referred to as the 'Tribunal') in MAC Petition No.504961/2016, titled *Smt. Rubi Devi & Ors. v. Megh Singh & Ors..*

2. The limited challenge of the appellant against the Impugned Award is on the liberty granted by the learned Tribunal to the respondent no.1 herein, that is the Insurance Company, to recover the compensation paid by it to the claimants, that is the respondent nos.2 to 5 herein, from the appellant, who is the owner of the offending

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vehicle. The learned Tribunal has granted the recovery right to the respondent no. 1 on the ground that the appellant, as on the date of the accident, did not have a Permit for plying the offending vehicle, that is the Truck bearing registration no.HR-38F-3387, within the State of Delhi.

Submissions of the learned counsel for the Appellant:

3. The learned counsel for the appellant, placing reliance on the judgment of the Supreme Court in *National Insurance Co. Ltd. v. Swaran Singh and Others*, (2004) 3 SCC 297, submits that the respondent no.1 can escape its liability under the Insurance Policy only where it can prove that there is a breach of the condition(s) of the policy as stipulated in Section 149(2)(a)(i) or Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act').

4. He submits that Section 149(2)(a)(i)(c) of the Act states that only where the vehicle is being used for a purpose not allowed by the Permit, that the respondent no.1 can avoid its liability under the Insurance Policy and can seek recovery of the compensation paid from the appellant. He submits that mere plying of the Offending Vehicle at a place beyond the route for which the Permit has been granted is not a fundamental breach of the conditions of policy for which the insured can claim a right to recover the compensation paid to the claimants from the owner/insured. In support, he places reliance on the judgment of this Court in *Delhi Transport Corporation & Ors. v. National Insurance Co. Ltd. & Anr.* 2012 SCC OnLine Del 2285; the judgment of the Full Bench of High Court of Kerela in *Augustine, V.M. v. Ayyapankutty and Ors.*, 2015 SCC OnLine Ker 14898; of the High



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Court of the Punjab & Haryana in *National Insurance Co. Ltd. v. Paramjit Kaur and Others*, 2016 SCC OnLine P&H 11190, and in *ICICI Lombard General Motor Insurance Company Ltd. v. Vijaya Chhabra and Others*, 2016 SCC OnLine P&H 7973; and of the High Court of Karnataka in *Ujwala Prasad v. New India Assurance Company Ltd.*, 2020 SCC OnLine Kar 1915, and judgment dated 27th July, 2021 in MFA No. 5960 of 2015, titled *Smt.Rehanna Begum v. The Branch Manager, New India Assurance Company*.

Submissions of the learned counsel for the respondent no. 1:

5. On the other hand, the learned counsel for the respondent no.1 places reliance on the judgment of the Supreme Court in *Amrit Paul Singh and Another v. Tata AIG General Insurance Company Limited and Others* (2018) 7 SCC 558, to submit that it is no longer *res integra* that where a vehicle is being used at a public place without a Permit, the Insurance Company shall have a right to recover the compensation paid to the claimants from the owner of the vehicle. He submits that in the present case, the vehicle was being admittedly plied in Delhi without a Permit and therefore, the respondent no.1 has rightly been granted a right to recover the compensation paid to the respondent nos.2 to 5 from the appellant herein.

Submissions of Mr. Ankit Virmani, learned Amicus Curiae:

6. While the present judgment was in preparation, another appeal, being MAC Appeal No.21 of 2016, titled *IIFCO Tokio General Insurance Co. Ltd. v. Asha & Ors.*, was listed before this Court. In

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the said appeal, the same issue had been raised and this Court had appointed Mr. Ankit Virmani, learned Advocate, as an Amicus Curiae. This Court, therefore, requested Mr. Virmani to file a brief synopsis of his submissions on the above issue.

7. Mr. Virmani has submitted that the High Court of Rajasthan in ***R.K. College v. Ramesh Chand & Ors.***, 2007 SCC OnLine Raj 393; and the Punjab & Haryana High Court in ***Mani Ram Aggarwal (deceased) through his LRs v. United India Insurance Co. Ltd. & Ors.***, 2016 SCC OnLine P&H 7144, have held that plying of a vehicle beyond the route for which the Permit has been granted is not a violation of the purpose for which the Permit has been granted and, therefore, does not constitute a valid defence available to the Insurance Company under Section 149(2)(i)(c) of the Act.

8. He submits that on the other hand, the Supreme Court in ***Rani and Others. v. National Insurance Company Limited and Others.***, (2018) 8 SCC 492; and High Court of Madras in ***Oriental Insurance Co. Ltd. v. Krishnan and Another***, 2023 SCC OnLine Mad 2935, have held that in such circumstances, the Insurance Company would have a right to recover the compensation paid to the claimants from the owner of the offending vehicle.

9. He submits that the High Court of Madhya Pradesh in ***Ram Sujan Tiwari v. Sita Gupta and others***, 2007 SCC OnLine MP 567; and the High Court of Himachal Pradesh in ***M/s. Yash Construction Company v. National Insurance Co. Ltd. & others*** 2018 SCC OnLine HP 598, has held that, in fact, the Insurance Company is absolved of



its liability to pay compensation where the vehicle was being driven on the route for which the permit was not granted.

Analysis and Findings:

10. I have considered the submissions made by the learned counsels for the parties and the learned Amicus Curiae.

11. From the above, it is evident that the issue to be determined by this Court is “whether the Insurance Company is entitled to a right to recover the compensation paid to the claimants arising out of a motor vehicular accident from the owner of the motor vehicle involved in such accident, where the accident occurs at a place which is beyond the route for which the vehicle has been granted a Permit under Section 66 of the Act?”

12. At the outset, it is essential to point out that the Insurance Policy issued by the respondent no. 1 in favour of the appellant, has an explicit clause as under:

“Limitations as to use

The Policy covers use only under a permit within the meaning of the Motor Vehicles Act, 1988 or such a carriage falling under Sub-section 3 of Section 66 of the Motor Vehicles Act, 1988. The Policy does not cover use FOR a) Organised racing b) Pace Making c) Reliability Trials d) Speed Testing.”

13. Therefore, it is a condition of Policy that the vehicle must be used only under a Permit.

14. In answering the above issue, some of the provisions of the Act also would be relevant to be considered. As the accident had occurred



on 26.11.2014, the provisions of the Act, as were then applicable, are being considered hereunder.

15. Section 149 of the Act casts a duty on the Insurance Company to satisfy a judgment and Award against the persons insured in respect to the third-party risks. Section 149 (2) of the Act entitles the Insurance Company to defend the claim *inter-alia* on the ground that there has been a breach of a condition of the policy, inasmuch as the transport vehicle was being used for a purpose not allowed by the Permit under which the vehicle is used. Section 149 of the Act, insofar as it is relevant to the present appeal, is reproduced herein below:

***“149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.—(1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) or under the provisions of section 163A is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.*”**



(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—

(i) a condition excluding the use of the vehicle—

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or



(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

xxxx

(4) Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 147, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

xxxx

(7) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of



any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be.

xxxxx”

16. The above provision, in relation to the cases where the offending vehicle is found to be driven by a person without a driving licence or by a person having a fake and invalid driving licence, was considered by the Supreme Court in **Swaran Singh** (supra), and it was held as under:

“Summary of findings

110. *The summary of our findings to the various issues as raised in these petitions is as follows:*

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured



for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish “breach” on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply “the rule of main purpose” and the concept of “fundamental breach” to allow defences available to the insurer under Section 149(2) of the Act.



(vii) *The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.*

(viii) *If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.*

(ix) *The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.*

(x) *Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has*



been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in sub-section (4) with the proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.”

17. As far as the ‘Permit’ is concerned, Section 2(31) of the Act defines a Permit as under:

“2. Definitions.—In this Act, unless the context otherwise requires,—

xxx

(31) “permit” means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorising the use of a motor vehicle as a transport vehicle;”



18. Section 66 of the Act states that no owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in a public place save in accordance with the permission of a Permit granted by a Regional or State Transport Authority authorising him to use the vehicle “in that place” in the manner in which the vehicle is being used. Sub-Section 3 of the Section 66 gives exemption to certain vehicles for being used without a permit. Section 66(1) of the Act, so far as it is relevant to the present appeal, is reproduced herein below:

“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 authorising him the use of the vehicle in that place in the manner in which the vehicle is being used:

xxxx

Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use of the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

xxxx”

19. Section 69 of the Act states that every application for a Permit shall be made to the Regional Transport Authority of the region in which the vehicle is proposed to be used. The same is reproduced herein below:

“69. General provision as to applications for permits.—(1) Every application for a permit



shall be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle or vehicles:

Provided that if it is proposed to use the vehicle or vehicles in two or more regions lying within the same State, the application shall be made to the Regional Transport Authority of the region in which the major portion of the proposed route or area lies, and in case the portion of the proposed route or area in each of the regions is approximately equal, to the Regional Transport Authority of the region in which it is proposed to keep the vehicle or vehicles:

Provided further that if it is proposed to use the vehicle or vehicles in two or more regions lying in different States, the application shall be made to the Regional Transport Authority of the region in which the applicant resides or has his principal place of business.

(2) Notwithstanding anything contained in sub-section (1), the State Government may, by notification in the Official Gazette, direct that in the case of any vehicle or vehicles proposed to be used in two or more regions lying in different States, the application under that sub-section shall be made to the State Transport Authority of the region in which the applicant resides or has his principal place of business.”

20. Section 77 of the Act prescribes the particulars which must be given on an application for a Permit to use a motor vehicle for carriage of goods. The same *inter-alia* includes “area or the route or routes to which the application relates”.

21. Section 79 of the Act states that a Regional Transport Authority may grant a Goods Carriage Permit to be valid throughout the State or



in accordance with the application, and attach to the Permit a condition that the vehicle shall be used only in a specified area or on a specified route or routes. Section 79 of the Act, so far as is relevant to the present appeal, is reproduced herein below:

“79. Grant of goods carriage permit.—(1) A Regional Transport Authority may, on an application made to it under section 77, grant a goods carriage permit to be valid throughout the State or in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit:

Provided that no such permit shall be granted in respect of any area or route not specified in the application.

(2) The Regional Transport Authority, if it decides to grant a goods carriage permit, may grant the permit and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:—

(i) that the vehicle shall be used only in a specified area or on a specified route or routes;

xxxx”

22. Section 80(3) of the Act states that an application to vary the conditions of any Permit by inclusion of new route or routes or a new area shall be treated as an application for grant of a new Permit. The same is reproduced herein below:

“80. Procedure in applying for and granting permits.—

xxx

(3) An application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area or by altering the route or routes or area covered by it, or in the case of a stage



carriage permit by increasing the number of trips above the specified maximum or by the variation, extension or curtailment of the route or routes or the area specified in the permit shall be treated as an application for the grant of a new permit:

Provided that it shall not be necessary so to treat an application made by the holder of stage carriage permit who provides the only service on any route to increase the frequency of the service so provided without any increase in the number of vehicles:

Provided further that,—

(i) in the case of variation, the termini shall not be altered and the distance covered by the variation shall not exceed twenty-four kilometres;
(ii) in the case of extension, the distance covered by extension shall not exceed twenty-four kilometres from the termini, and any such variation or extension within such limits shall be made only after the transport authority is satisfied that such variation will serve the convenience of the public and that it is not expedient to grant a separate permit in respect of the original route as so varied or extended or any part thereof.

xxxx”

23. Section 86 of the Act authorises the Regional Transport Authority which granted the Permit to cancel the Permit or suspend it for the reasons stipulated therein, *inter-alia* including breach of any of the conditions contained in the Permit.

24. Section 88 of the Act prescribes the necessity and the procedure for validation of a Permit for use of the vehicle in region other than the one for which it was granted. Section 88 of the Act is reproduced herein below:

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“88. Validation of permits for use outside region in which granted.—(1) Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned:

Provided that a goods carriage permit, granted by the Regional Transport Authority of any one region, for any area in any other region or regions within the same State shall be valid in that area without the counter-signature of the Regional Transport Authority of the other region or of each of the other regions concerned:

Provided further that where both the starting point and the terminal point of a route are situate within the same State, but part of such route lies in any other State and the length of such part does not exceed sixteen kilometres, the permit shall be valid in the other State in respect of that part of the route which is in that other State notwithstanding that such permit has not been countersigned by the State Transport authority or the Regional Transport Authority of that other State:

xxxx

(2) Notwithstanding anything contained in sub-section (1), a permit granted or countersigned by a State Transport Authority shall be valid in the whole State or in such regions within the State as may be specified in the permit.

(3) A Regional Transport Authority when countersigning the permit may attach to the permit any condition which it might have imposed if it had granted the permit and may



likewise vary any condition attached to the permit by the authority by which the permit was granted.

(4) The provisions of this Chapter relating to the grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of countersignatures of permits:

Provided that it shall not be necessary to follow the procedure laid down in section 80 for the grant of countersignatures of permits, where the permits granted in any one State are required to be countersigned by the State Transport Authority of another State or by the Regional Transport Authority concerned as a result of any agreement arrived at between the States after complying with the requirements of sub-section (5).

xxxx

(7) Notwithstanding anything contained in sub-section (1), a Regional Transport Authority of one region may issue a temporary permit under section 87 to be valid in another region or State with the concurrence, given generally or for the particular occasion, of the Regional Transport Authority of that other region or of the State Transport Authority of that other State, as the case may be.

xxxx

Explanation.—In this section,—

xxxx

(c) “national permit” means a permit granted by the appropriate authority to goods carriages to operate throughout the territory of India or in such contiguous States, not being less than four in number, including the State in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application.”

(Emphasis Supplied)



25. A reading of the above provisions would show that a Permit is granted in relation to a particular route/area/region. The route/area/region is, therefore, a prime consideration and an essential condition of a Permit. The same is sacrosanct, functional, and fundamental, with various provisions of the Act emphasising on the same. Driving of the offending vehicle in an area or on a route which is not permitted by a Permit would, therefore, amount to driving the motor vehicle without a valid Permit and shall be a fundamental breach of the conditions of an insurance policy.

26. In *National Insurance Co. Ltd. v. Challa Upendra Rao and others*, (2004) 8 SCC 517, the Supreme Court, considering the mandate of Section 66 of the Act, held that where a person is found to be driving a transport vehicle without a Permit, the defence under Section 149(2) of the Act shall be available to the insurer, however, the insurer would have to satisfy the Award and then seek recovery of the compensation amount from the insured/owner of the offending vehicle. I may quote from the judgment as under:

“12. The High Court was of the view that since there was no permit, the question of violation of any condition thereof does not arise. The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed on a better pedestal vis-à-vis one who has a permit, but has violated any condition thereof. Plying of a vehicle without a permit is an infraction. Therefore, in terms of Section 149(2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of the insurer. The High



Court was, therefore, not justified in holding the insurer liable.

13. The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the Regional Transport Authority concerned. The executing court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the executing court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured. In the instant case, considering the quantum involved, we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured.”

(Emphasis supplied)

27. In **Amrit Paul Singh** (supra), the Supreme Court reiterated that where the vehicle is being used in a public space without a Permit, it



is a fundamental statutory infraction and the insured would be liable to reimburse the compensation amount paid to the claimants by the Insurance Company. I may quote from the judgment 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 National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 and Lakhmi Chand v. Reliance General Insurance, (2016) 3 SCC 10 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 the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh (supra) and other cases pertaining to pay and recover principle.”

28. In **Rani & Ors.** (supra), the Supreme Court was considering an appeal against the judgment passed by the High Court of Karnataka against the Award passed by the learned Motor Accidents Claims Tribunal, which had, while awarding compensation in favour of the claimants therein, made the Insurance Company jointly and severely liable to pay the compensation to the claimants. The Award had been challenged by the Insurance Company contending that the liability to pay the compensation could not have been fastened on it as the offending vehicle did not possess a valid Permit to operate in the State of Karnataka and that the Permit was granted for the State of Maharashtra alone. The High Court of Karnataka held that the liability to pay the compensation was only that of the owner of the offending vehicle. The Supreme Court, however, held that the Insurance Company should first pay the compensation amount to the respective claimants and shall have the liberty to recover the same from the owner of the offending vehicle.

29. Recently and more explicitly, the Supreme Court in **Gohar Mohammed. v. Uttar Pradesh State Road Transport Corporation and Others**, (2023) 4 SCC 381 has held that even assuming that there was a valid and effective Permit to ply the offending vehicle, the same was not valid for the place where the accident took place, therefore,



the liability to pay the compensation is to be that of the owner of the offending vehicle. I may quote from the judgment as under:

“8. Having heard the learned counsel for the parties and on perusal of the material available on record, it clearly reveals that on the date of accident, the appellant did not have a valid and effective permit to ply the offending vehicle on the route where accident took place. Having extensively gone through the fact-finding exercise, it is categorically recorded by MACT that the appellant was neither able to produce/prove the original permit nor was able to prove the information received under the RTI Act. Even if RTI information is considered by which it is not clear as to when the disputed permit was issued and by whom. The alleged permit was issued on 28-7-2012 i.e. on Saturday and no explanation is on record as to why deposit of fee was asked on the next day i.e. Sunday. Moreover, assuming that permit was valid as per letter of the Transport Authority, but it is not of any help to the appellant since the vehicle was being plied on a route different than specified in permit. The appellant has failed to give any explanation to refute the observations made by MACT to ply the vehicle on Roorkee bypass to Haridwar via Meerut which did not fall within the route of permit issued by the Transport Authority. The said findings of fact have been affirmed by the High Court by the impugned order.”

(Emphasis supplied)

30. From the above judgments, it would be apparent that where a person is found driving a vehicle beyond the route or area or region for which the Permit has been granted, it would be a case of driving the offending vehicle without a valid Permit.



31. I must herein, however, also take note of the judgment of the Supreme Court in ***M.S. Middle High School v. HDFC Ergo General Insurance Co. Ltd. & Ors.***, 2017 SCC OnLine SC 1845, by which it dismissed an appeal challenging the order passed by the High Court of Punjab & Haryana, while observing as under:

“3. The High court rightly held that once there is breach of condition of policy, the liability cannot be fastened on the insurer. The High Court had relied upon decisions of this Court in National Insurance Company Limited v. Challa Bharathamma, (2004) 8 SCC 517, New India Assurance Company Limited v. Asha Rani, (2003) 2 SCC 223 and National Insurance Company Limited v. Nicolletta Rohtagi, (2002) 7 SCC 456.

4. The contrary view in Augustine, V.M. v. Ayyappankutty, 2015 (1) TN MAC 740 (FB) (Ker.) cannot thus be held to be valid and is disapproved to the extent holding that insurer was liable even if there was breach of conditions of policy.”

(Emphasis Supplied)

32. In the judgment of the Punjab & Haryana High Court in ***M.S. Middle High School & Anr. v. Usha and Ors.***, 2017 SCC OnLine P&H 6077, the High Court was considering a case where the vehicle was being driven without a Permit as its earlier Permit had expired. The High Court upheld the decision of the learned Motor Accident Claims Tribunal therein which had granted a right to the Insurance Company to recover the compensation to the claimants therein from the owner of the offending vehicle. While upholding the same, however, the High Court had also observed as under:

“13. Reliance upon Single Bench judgments in



M/s Yadwindra Public School and Green Wood Public Senior Secondary School's case (supra) is also misplaced as these judgments pertain to route permit and not a permit. A school bus (transport vehicle) may not require a route permit but it requires a permit in compliance with the provisions of Section 66 of the Act. There is no dispute that nonpossessing of a route permit or deviation from a route permit may not constitute a valid defence in favour of the insurance company under Section 149 (2) of the Act, therefore, any judgment dealing with route permit would not come to rescue of the appellants to find fault with findings of the Tribunal that the insured did not possess a permit to ply the bus in question at public place, constituting a valid defence in favour of the insurance company, thus, entitling the insurance company to claim exoneration from its liability even though it has been fastened with liability to satisfy the third party claim.

(Emphasis supplied)

33. The above observation of the High Court, however, in view of the subsequent judgments of the Supreme Court as referred hereinabove, can no longer be stated to be good law.

34. Similarly, the judgment of the Full Bench of the Kerala High Court in **Augustine** (supra) is no longer a good law, having been expressly disapproved of by the Supreme Court in **M.S. Middle High School** (supra).

35. The judgment of the High Court of Karnataka in **Ujwala Prasad** (supra) and **Smt. Rehanna Begum** (supra) also cannot be considered as good law in view of the subsequent judgment of the Full Bench of the High Court of Karnataka in **New India Assurance Co. Ltd. v. Yallavva & Anr.**, 2020 SCC OnLine Kar 1660, wherein Justice B.V.



Nagarathna in her concurring opinion, has *inter alia* observed as under:

“Nature and Character of Insurance Policies under the Act:

26. Having adverted to the statutory requirements of a policy of insurance, it would be necessary to discuss the nature and characteristics of a contract of insurance. It is well known that the contract of insurance is a contract of indemnity. It is a promise made by an insurer to indemnify the insured subject to certain terms and conditions which may be in the nature of exemptions or exceptions under the policy. Mandatory terms of insurance policy have been delineated under Section 147. They are statutory terms. Section 149(2) of the Act are termed as defences by an insurer, or the exemptions to liability of the insurer to satisfy an award which otherwise an insurer would be liable to satisfy. Thus, the conditions of the policy assume importance in the context of breach of the terms of policy. The conditions of policy could be either express or implied. Implied terms are, *inter alia*, the statutory terms which have to be complied with by the insured under every policy irrespective of whether there is an express inclusion or reference to them in the contract. But, express conditions are those which are expressly set out in the policy on a consensus *ad idem* between the insured and the insurer. The conditions of a policy can again be categorized into two classes: general terms and special terms. General Terms are those which are common to all policies of a particular nature or class. Special Terms are those, which are applicable to a particular policy and by a specific contract between the insurer and the insured. An insurance policy would consist of conditions which can again be categorised into two types : statutory and contractual. Further, the coverage of risks



could also be statutory and contractual in nature or an amalgamation of both types. Under Section 147(1) of the Act, the coverage of risks under an insurance policy are statutory and compulsory in nature. It is always open to an insurer to cover other risks, which are optional or contractual, but under Section 147(1) it is compulsory coverage of the risks of classes of persons enumerated therein.

27. Just as an insurance policy could cover risks which are statutory or contractual in nature, in the same manner, the exemptions or restrictions under a policy could also be statutory or contractual in nature, however, subject to any supervening statutory conditions under the Act. For instance, the grounds of defence which are enumerated in Section 149(2) of the Act are meant for avoidance of liability. However, the said provision is subject to sub-Sections (3), (4) and (7) of Section 149. They are reiterated as under for immediate reference:

(a) there has been a breach of a specified condition of policy, being one of the following, namely-

(i) A condition excluding the use of the vehicle-

(A) for hire or reward, where the vehicle is not covered by a permit to ply for hire or reward on the date of the contract of insurance, or

(B) for organised racing and speed testing, or

(C) for a purpose not allowed by the permit under which the vehicle is used where the vehicle is a transport vehicle, or



(D) without side car being attached where the vehicle is MotorCycle; or

(ii) a condition excluding driving by a named person or persons or/by any person who is not duly licensed or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

28. The defences available under the statute alone can be taken by the insurer and none other as against third parties. Thus under Section 149(2)(a) and (b) specified defences of an insurer who is issued notice of a claim to defend an action are enumerated. If the insurer succeeds in his defence whether the third party victim has to execute the decree against the insured only or the third party victim is protected by the statute is the conundrum in this case.

xxxx

30. Thus, between the insured and the insurer, all restrictions by virtue of the terms, exceptions and conditions in the policy are valid and enforceable because they are parties to the contract. But as against a third party, only those defences incorporated in the Act which comes within Section 149(2)(a) could be raised as regards coverage of compulsory risks. This is as per Section 149(4). That



means a third party's rights against the insurer cannot be defeated by any defence other than those coming within Section 149(2)(a). The insurer must in such a case satisfy the decree in favour of the third party, but can recover it from the insured by virtue of the proviso to Section 149(4). Further, Section 149(5) also empowers the insurer to recover from the insured any amount paid to the third party, in respect of a compulsory risk, which is in excess of the amount insured was liable to pay under the policy. Thus, Section 149(4) clearly enunciates the rule of pay and recover under two circumstances. Proviso to sub-Section (4) of Section 149 categorically states that any sum paid by the insurer towards the discharge of any liability of any person which is covered by the policy shall be recoverable by that person. Thus, reference is to Section 149(2)(a) of the Act. But, as regards Clause (b) of sub-Section (2) of Section 149, would the principle of pay and recover apply on a plain reading of the sub-section? Thus, whether liability covered by the terms of the policy could be avoided by the specific defence which is enumerated under Section 149(2)(b) of the Act?

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37. Thus, what follows is that, in regard to third party rights, the insurer can defeat such rights under Section 149(2)(a) by proving a breach of the condition of the policy and further, proving that the same is a fundamental breach. In such an event, the insurer can only mitigate its liability and the insured would be liable to satisfy the judgment vis-a-vis the insurer who would have satisfied the claim of the third party in the first instance. Therefore, the insurer cannot defeat a third party claim by any exclusion in the policy having regard to the four corners of Section 149(2)(a). It can only mitigate its liability by seeking recovery from the insured on proof of the exclusion



clause as per the twin tests enumerated by the Hon'ble Supreme Court. This is the object of Section 149 (4) and the proviso thereto which contemplates pay and recovery order to be made against the insurer who has been notified in a claim proceeding instituted by a third party under Section 149(1) of the Act.

38. To this, another nuance may be added. What would be the position when the insurer is able to prove a breach of the policy, but the said breach is not a fundamental breach or the breach did not contribute to the cause of the accident but what could be termed as an innocent breach and not an intentional one. In such a case also, the Insurance Company must pay to the third party and recover from the insured. This could be illustrated with reference to the vehicle not being covered by a permit to ply for hire or reward. The Hon'ble Supreme Court in the case of **AMRIT PAUL SINGH vs. TATA AIG GENERAL INSURANCE CO. LTD**, held that the vehicle not having a permit at all and being used for hire or reward is a case of fundamental breach and hence, the insurer though absolved of its liability had to pay the compensation and recovery order was made in the said case permitting recovery from the insured. Also, when a vehicle had a permit to ply within a particular area or on a route deviated from the said area or route and was plying in another area or route and an accident occurred, then it is not a case of fundamental breach, although, there is a violation of the terms of the policy. In such an event also, the pay and recovery order has been made in the case of **RANI & ORS vs. NATIONAL INSURANCE COMPANY LTD.**, by the Hon'ble Supreme Court."

(Emphasis Supplied)



36. In view of the above, I need not discuss the other judgments of the High Courts, including of this Court, that have been cited by the learned counsel for the appellant in challenge to the Impugned Award and by the learned Amicus Curiae.

37. It is, therefore, held that non-possession of a valid and effective Permit shall entitle the Insurance Company to seek a right to recover the compensation paid to the claimants from the owner of the offending vehicle. Such a right will also be available to the Insurance Company where the offending vehicle is being operated at the time of the accident at a place for which it does not have a valid Permit.

38. In the present case, the offending vehicle had a valid Permit for plying only in the State of Uttar Pradesh. There was no Permit for the offending vehicle to be driven in Delhi, where the accident took place. This would, therefore, be a case of the offending vehicle being driven without a valid Permit at the time of the accident. The learned Tribunal has, therefore, rightly granted a right to the respondent no.3 herein to recover the compensation amount paid to the claimants, that is, respondent nos.2 to 5, from the appellant.

39. In view of the above, I find no infirmity in the Impugned Award.

40. The appeal is, accordingly, dismissed along with the pending applications. There shall be no order as to costs.

41. The statutory amount deposited by the appellant shall be returned to the respondent no.1 along with interest accrued thereon in partial discharge of liability of the appellant under the Impugned Award.



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42. This Court expresses its gratitude to the learned Amicus Curiae for his assistance.

NAVIN CHAWLA, J.

OCTOBER 06, 2023/Arya/RP/AS

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 07.10.2023

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