



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

953 FIRST APPEAL NO. 350 OF 2013

The New India Assurance Company Ltd.
a Subsidiary of the General Insurance
Corporation of India and a Company
Incorporated under the Companies Act
having one of its Divisional Office at
Adalat Road, Aurangabad
Through its authorized signatory

.. APPELLANT

VERSUS

1] Bhausahab s/o. Pundlik Somware,
aged 30 years, Occupation : Labour
R/o. Karna, Post : Chandola,
Tq. Mukhed, District Nanded,
at present Gandhi Nagar,
Tq. & District Nanded.

2] Maruti s/o Nivrattirao Dasture,
Aged major, Occupation : Business &
Owner of Jeep bearing No. MH26B8281
R/o Hangarga (Bk),
Post : Hangarga, Tq. Mukhed,
District Nanded.

.. RESPONDENTS

...
Mr.A.B.Kadethankar, Advocate for the appellant.
Mr.G.N.Chincholkar, Advocate for respondent no.1.

...
CORAM : ARUN R. PEDNEKER, J.

DATE : 24.01.2024

P.C. :

1] Heard the learned counsel for the parties.

2] The learned counsel for the appellant fairly points out the judgment in the case of ***Amrit Paul Singh and another Vs. Tata AIG General Insurance Company Limited and others*** reported in ***[2018] 7 SCC 558*** and submits that the Hon'ble Supreme Court at para no.24 has held 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.

3] The Hon'ble Supreme Court in the case of ***Amrit Paul Singh and another Vs. Tata AIG General Insurance Company Limited and others [supra]*** at para no.24 has held 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 and Lakhmi Chand 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 and other cases pertaining to pay and recover principle.

4] In view of the above judgment, present First Appeal is dismissed. The impugned order passed by the Motor Accident claims Tribunal is maintained and in terms of clause (3) of the order of the MACT, the appellant would be entitled to recover the amount of compensation, paid to the claimant from respondent no.1 therein.

5] The claimants are permitted to withdraw the amount in terms of the direction of the Tribunal along with accrued interest thereon.

6] In view of dismissal of First Appeal, all pending Civil Applications do not survive and the same stand disposed of accordingly.

**[ARUN R. PEDNEKER]
JUDGE**