IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO. 97 OF 2024

APPELLANT : (Org. Resp No.1 on RA)	Traffic Engineer / The Transport Manager, Nagpur Municipal Corporation, Civil Lines, Nagpur.
	V E R S U S
RESPONDENTS : On RA (Org. Pet.No.1)	1. Ragina wd/o Jagdish Shende, Aged about 40 yrs, Occu : Household.
(Org.Pet.No.2)	2. Sakshi D/o Jagdish Shende, Aged 17 Yrs, Now Major, Occu : Student.
(Org.Pet.No.3)	3. Samiksha D/o Jagdish Shende, Aged 11 yrs, Occupation : Student, Through Natural Guardian Pet.No.1. All R/o Awasthi Nagar, Katol Road, Nagpur.
(Org.Resp.No.2)	4. Divisional Manager, New National Insurance Co.Ltd., Paul Commercial Complex, Ajni Chowk, Wardha Road, Nagpur.

Shri R.R. Chhabra, Advocate for appellant.
Shri Asgar Hussain, Advocate for respondent Nos.1 to 3.
Shri B. P. Bhatt, Advocate for respondent No.4.

CORAM: ANIL L. PANSARE, J.
DATED : 17/04/2024.

ORAL JUDGMENT :

1. Heard finally with the consent of learned counsel appearing for the parties.

2. The appellant – Nagpur Municipal Corporation has filed appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the Judgment and award dated 10/10/2019 passed by the Motor Accident Claims Tribunal, Nagpur.

3. The main contention of the appellant is that the Tribunal ought not to have exonerated the Insurance Company, but ought to have directed the Insurance Company to pay amount of compensation and recover the same from the appellant in terms of law laid down by the Hon'ble Supreme Court in the cases of **National Insurance Co. Ltd. Vrs. Swaran Singh and others,** reported in (**2004) (3) SCC 297** and **Lakhmi Chand Vrs. Reliance General Insurance**, reported in **(2016) 3 SCC 100.**

4. The Tribunal has held that the vehicle owned by the appellant was being driven without valid permit. The accident had occurred on 22/04/2016. The permit that was placed on record by the appellant before the Tribunal was valid for the period from 16/02/2009 to 15/02/2014. Admittedly on the date of accident, offending vehicle had no valid permit.

5. The counsel for Insurance Company had invited my attention to Para No.23 of the impugned Judgment which reads thus :-

> "**23.** Learned counsel for petitioners submitted that it is the statutory right of third party to recover the amount of compensation so awarded from the Insurer. It is for the Insurer to proceed against insured for recovery of the amount in the event there has been violation of any condition of Insurance policy. Petitioners relied upon the case of **Amrit Paul Singh and another Vrs. TATA AIG General Insurance Co. Ltd. and others, 2018 (3) T.A.C. 1 (S.C.)** wherein Hon'ble Apex Court held,
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> "In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of 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 emphasis, are to be pleaded and proved. The exceptions can not 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 the exceptions cared out in Section 66. The said situations can not 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 (supra) and Lakhmi Chand (supra)** in that regard would not be applicable to the case at hand."

6. The Hon'ble Supreme Court in clear terms has held that the use of vehicle in a public place without permit is a fundamental statutory infraction. The Court further held that 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. The Court accordingly held that the principles laid down in the cases of **Swaran Singh (supra) and Lakhmi Chand (supra)** in that regard, would not be applicable.

7. Similar is the case here. The Tribunal has exonerated the Insurance Company on the ground that the offending vehicle had no valid permit and thus, the breach of Insurance Policy was fundamental breach.

8. In view of above, I do not find any reason to interfere with the award passed by the learned Tribunal. There is no merit in the appeal. The appeal is accordingly dismissed.

9. The amount deposited by the appellant be disbursed to the respondent Nos.1 to 3 – claimants in terms of the Award passed by the Tribunal.

10. Needless to say that the accrued interest is payable to the respondent Nos.1 to 3 – claimants.

[ANIL L. PANSARE, J.]

Choulwar