

GAHC020004072021

2025:GAU-NL:387



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
KOHIMA BENCH

Case No. : MACApp./9/2021

ORIENTAL INSURANCE COMPANY LTD.
DIMAPUR, DIVISIONAL OFFICE, CHURCH ROAD, DIMAPUR - 797112,
NAGALAND

VERSUS

SHRI. ACHUNBEMO MOZHUI AND 4 ORS
AGED 25 YEARS AT THE TIME OF INCIDENT, S/O - H. WOBENTHUNG
MOZHUI, R/O MOUZA LERIE, BELOW POLICE BAPTIST CHURCH,
SOUTH P.S. DISTRICT - KOHIMA, NAGALAND.(CLAIMANT)

2:SMTI. MUNI DEVI
W/O SHRI. RAMNIWAS SHARMA
NOTUN BOSTI
DIMAPUR
NAGALAND(OWNER OF TRUCK NO.NL.07/A-0370)

3:SHRI. L.KALASINGHA
S/O KULACHANDRA SINGHA
R/O VILLAGE - MALOGRAM
SILCHAR(ASSAM)
DRIVER OF TRUCK NO.NL.07/A-0370)

4:SHRI. TEMJEN AO
S/O - AO
R/O - NAGA BAZAR COLONY
KOHIMA
NAGALAND.(OWNER OF MARUTI ECCO BEARING REGISTRATION
NO.NL.01/T-8212)

5:SHRI. GOJAR DAIMARI

S/O NILESHWAR DAIMARI(DRIVER OF TAXI NO.NL-01/T-8

Advocate for the Petitioner : ANJANA MODI, Z. KULNU

Advocate for the Respondent : N MICH, PFOSEKHO PFOTTE

Linked Case : MACApp./10/2021

THE ORIENTAL INSURANCE COMPANY LTD.
DIMAPUR DIVISIONAL OFFICE
CHURCH ROAD
DIMAPUR - 797112
NAGALAND

VERSUS

SHRI. HOVISUTO KHIEYA AND 4 ORS
S/O SHRI. HOLITO KHIEYA
R/O JAKHAMA VILLAGE
KOHIMA
NAGALAND(CLAIMANT)

2:SMRI. MUNI DEVI
W/O SHRI. RAMNIWAS SHARMA
NOTUN BOSTI
DIMAPUR
NAGALAND(OWNER OF TRUCK NO.NL.07/A-0370)

3:SHRI.L . KALASINGHA
S/O KULACHANDRA SINGHA
R/O VILLAGE - MALOGRAM
SILCHAR(ASSAM)
DRIVER OF TRUCK NO.07/A-0370

4:SHRI. TEMJEN AO
S/O N. AO
R/O NAGA BAZAAR COLONY
KOHIMA
NAGALAND(OWNER OF MARUTI ECCO BEARING REGISTRATION
NO.NL.01/T-8212)

5:SHRI. GOJAR DAIMARI
S/O NILESHWAR DAIMARI.(DRIVER OF TAXI NO.NL-01/T-82)

Advocate for : ANJANA MODI, MR Z. KULNU

Advocate for : N MICH appearing for SHRI. HOVISUTO KHIEYA AND 4
ORS

Date of hearing : **19.08.2025**

BEFORE
HON'BLE MR. JUSTICE RAJESH MAZUMDAR

JUDGMENT & ORDER(CAV)

Date : 22-08-2025

Heard Mr. Z. Kulnu, learned counsel for the appellant and also heard Mr. N. Mich, learned counsel for the opposite party/respondent No.1 and Mr. N.K. Luikham, learned counsel for the opposite party/respondent No. 2 & 3.

2. These two appeals arises out of the common judgment and award dated 04/02/2021 in MAC Case No. 84/2015 and MAC Case No. 85/2015 passed by the learned MACT, Dimapur, Nagaland. The appeals have been preferred by the Insurer namely, the Oriental Insurance Company Limited, Dimapur. By the said award, the learned Tribunal had granted the compensation to the claimant in the MAC case in the following manner;

“MAC 84/2015:

Loss of future earning on account of permanent disability : **Rs. 9,72,000/-**

{i.e. 45% of Rs.10,000 X 12 X 18 (multiplier)}

Pain, shock, suffering etc : **Rs. 1,00,000/-**

Loss of amenities in future/future medical expenses : **Rs. 3,00,000/-**

Medical expenses (cash memos): Rs.1,31,003/-rounded off to: **Rs. 1,32,000/-**

Expenses on special diet, food, nursing, etc : **Rs.50,000/-**

Total = : **Rs. 15,54,000/-**

The interim award of Rs.25,000/- is deducted from the total compensation amount.

Accordingly, Rs. 15,54,000/-minus Rs.25,000/ =Rs.15,29,000/-(Rupees Fifteen lakhs

Twenty Nine thousand) only.

“MAC 85/2015:

Loss of future earning on account of permanent disability :Rs. 8,64,000/-

{i.e. 40% of Rs.10,000 X 12 X 18 (multiplier)}

Pain, shock, suffering etc : Rs. 1,00,000/-

Loss of amenities in future/future medical expenses : Rs. 3,00,000/-

Medical expenses (cash memos): Rs.1,10,211/-rounded off to :Rs.1,10,300/-

Expenses on special diet, food, nursing, etc) :Rs. 50,000/-

Total = :Rs.14,24,300/-

The Interim award of Rs.25,000/- is deducted from the total compensation amount.

Accordingly, Rs.14,24,300/- minus Rs.25,000/- = Rs.13,99,300/-(Rupees Thirteen lakhs ninety Nine thousand three hundred) only.

The awarded amount shall be paid to the claimants with interest thereon at the rate of 9% per annum from the date of filing the claim petition till full satisfaction of the award. The O.P no.3/ Oriental Insurance Company Limited is directed to pay the award within one month from the date of this order. Interest shall not accrue on the future medical expenses.

Given under my hand & seal of this Court on this the 04th day of February 2021.”

3. The brief facts leading to the filing of this appeal is that on the fateful day on 01/07/2014, the claimants herein were driving in a Maruti Ecco bearing Registration No. NL-01/T-8212 from Dimapur towards Kohima and while reaching Phirema area the said vehicle was hit by a truck bearing Registration No. NL-07/A-0370 (Truck) coming from the opposite direction towards Dimapur side. The claimant in MAC Case No. 84/2015 sustained grievous multiple injuries and was admitted to the hospital on the day of the accident with fracture of the

left femur and was discharged on 11/07/2014. The claimant in MAC Case No. 85/2015 suffered grievous injuries on his body including his right eye, fractured tooth and multiple facial bone fracture which ultimately rendered him a physically disabled person who cannot do hard work, was unable to open his jaw properly or laugh or speak clearly and developed blurred vision on his right eye.

On receipt of the notice issued by the learned Tribunal, the owner of the driver of the offending vehicle (truck) filed their written statement as opposite party No. 1 and opposite party No.2. The Opposite party No. 3 i.e. the Oriental Insurance Company Limited, who is also the appellant in these two appeals had filed their written statement.

The O.P 1 and 2 i.e. the owner and the driver of the offending vehicle filed written statement in both the claim petitions contending that the age of the claimants are not supported by documentary proof. And that the claimants cannot claim exorbitant future contingent income. O.P 1 and 2 also stated that the accident occurred due to the rash and negligent driving of O.P 5, driver of the Maruti Ecco which was coming at a very high speed on the wrong side and thus collided with the truck of the O.P No.1. And therefore the O.P 1 and 2 are not liable to pay any compensation. The O.P 1 and 2 also stated that in the event the Tribunal decides to award compensation, the liability should be saddled with the insurer as the Truck bearing registration No.NL 07/A-0370 was duly insured with the Oriental Insurance Company.

The Oriental Insurance Company filed its written statement and contended that the compensation claimed is without basis, exorbitant and unjustified. It is also stated that the accident occurred involving two vehicles, hence liability, if any, ought to be apportioned between the owners of the two vehicles. The insurer also stated that its liability, if any, will be limited to the

extent of the policy terms and conditions read with Section 147 of the MV Act 1988. Insurer also sought protection U/S 170 MV Act and permission to contest the case on all grounds available to the owner if the circumstances so warrants.

The owner of Maruti Ecco bearing registration No.-01/T-8212 filed written statement stating that the factum of accident is not denied but that the accident occurred solely due to the rash and negligent driving of the truck bearing registration No.NL 07/A-0370 driven by its driver, the O.P 2. As such liability if any has to be borne by the O.P 1 and 2.

The claimant in MAC Case No. 84/2015 adduced his evidence as PW-1 and the claimant in MAC Case No. 85/2015 adduce evidence in their respective claims.

The common witnesses examined were; N. Aris Jami, O.C of City Control Station, Dimapur as P.W-2, Constable Lima was examined as P.W-3 and one of the co-occupants of the Maruti Ecco, Shri. Swedeshul Khieya was examined as PW-4. The opposite party No. 2, Shri. Kala Singh (driver of the Truck) was examined as D.W-1. But the Insurer of the Truck and owner and driver of the Maruti Ecco did not examine any witnesses nor produced any documentary evidence in rebuttal to the claimant's pleadings. Documents in support of the claims were exhibited in each of the cases

The following issued were framed for decision:

- (a) Whether the accident took place on 01.07.14 involving vehicle Truck bearing registration No. NL 07/A-0370 and Maruti Ecco (Taxi) bearing registration No. NL 01/T-8212?
- (b) Whether the claimants were travelling by the vehicle bearing registration No. NL-01/T-8212 (Maruti Ecco)?
- (c) Whether the accident happened due to rash and

negligent driving of Maruti Ecco bearing registration No. NL-01/T-8212 or the Truck bearing registration No. NL-07/A-0370?

(d) Whether the Claimant was 22 years old in MAC 84/15 and a student and whether the claimant in MAC 85/15 was 25 years old and a student having bright future at the time of accident?

(e) Whether the Claimants namely Hovisuto Khieya and Achanbemo Mozhui (Ango) were travelling as passengers in the said vehicle No. NL-01/T-8212 and sustained grievous injuries rendering them permanently disabled due to the accident?

(f) Whether the claimants are entitled to compensation? If so, to what extent and payable by whom?"

By the judgment & award dated 04/02/2021, the learned Tribunal decided the Issue No.(a) & (b) in the affirmative. With regard to Issue No. (c) it was held that the accident occurred due to the rash and negligent driving of Truck bearing registration No. NL-07/A-0370. Issue No. (d) was decided in favour of the claimant holding that the claimants were both students, 22 years and 25 years old respectively and both of them had promising future. With regard to Issue No. (f), the learned Tribunal took into an account notional monthly income of the claimants to be Rs. 10,000/- p.m. Keeping in view of the extent of permanent disability according to the disability certificate issued by the Medical Board as 45% and 40% respectively, the same was retained for the purposes of estimating the loss of income. Accordingly, a compensation of Rs, 15,54,000/- was awarded in favour of the claimant in MAC Case No. 84/2015 and an amount of Rs. 14,24,300/- as compensation was awarded in respect of

the claimant in MAC Case No. 85/2015.

The learned Tribunal further awarded interest @ 9% p.a from the date of filing the claim petition till full satisfaction of the award. It was also decided that interest would not accrue on the future medical expenses. Being aggrieved, these two appeals have been filed against the common judgment & award dated 04/02/2021 passed in two MAC claiming out of same accident.

4. Mr. Z. Kulnu, learned counsel for the appellant has submitted that the appellant is a Government of India undertaking and is a subsidiary of the General Insurance Corporation of India carrying on the business of general Insurance, amongst other states, also within the State of Nagaland. It is submitted that the appellant had insured the Truck No. NL-01A/0370 by issuing a liability policy only for the period of one year from 28/03/2014 to 27/03/2015. It was further submitted that it had come to the notice of the appellant that the rout permit of the offending vehicle truck had been issued on 16/10/2014, (the accident had occurred on 01/07/2014).

The learned counsel for the appellant therefore submitted that at the time of the accident with the truck was running without a valid road tax or rout permit in violation of policy terms, for which the insurer would be absolved of liability under the policy. The learned counsel further submitted that in the absence of proof of loss of earning capacity of the claimant, the assessment made by the learned Tribunal while awarding the compensation was without any basis and as such, liable to be set aside.

The learned counsel for the appellant further submitted that the award of interest of future income was not tenable in law and the learned counsel also assailed the amount of compensation awarded by the learned Tribunal in each of the claims.

5. The learned counsel for the appellant has argued that the learned Tribunal

had failed to discharge its duties when it did not make any attempt to estimate the extent of the loss of earning capacity arising due to disability allegedly incurred by the claimants. He further submitted that the learned Tribunal had awarded an excessive amount in each of the claim petitions and therefore, each of the awards were in contradiction of the law laid down by the Hon'ble Supreme Court in the case of **Reshma Kumari & Others -versus- Madan Mohan & Another**, reported in **(2013) 9 SCC 65**.

6. Appearing for the claimant in both the appeals, Mr. N. Mich has raised a preliminary objection of these appeals by referring to the settled position of law that an insurer cannot file an appeal against the judgment & award passed by the learned MACT unless and until leave was prayed for and granted by the Tribunal to the insurer to contest the claim petition in the proceeding before the learned Tribunal.

Elaborating his argument Mr. N. Mich has argued that such leave is granted only if the conditions mentioned in section 170 of the Act of 1988 are found to be satisfied and for that purpose the insurer company has to obtain a reasoned order in writing from the Tribunal that the insurer would be entitled to avail the grounds available to an insured or any other person against whom a claim is made. The insurer cannot be permitted to file an appeal or raise question of quantum of compensation. He further submitted that in the present case, no such leave having been prayed for or taken by the insurer in the proceeding before the Tribunal, it would not be open for the insurer to now approach this Court in an appeal assailing the award to question the quantum of compensation awarded by the Tribunal.

Mr. N. Mich has placed reliance on National Insurance Company limited vs. Nicolletta Rohtagi and others (2002) 7 SCC 456 to buttress his arguments.

7. Mr. N. K Luikam, learned counsel appearing for the respondent No. 2 & 3,

i.e. the owner and the driver respectively of the truck bearing registration NL-01A/0370, has adopted the argument made by Mr. N. Mich, learned counsel on behalf of the claimants. He further submitted that given an opportunity he would be able to demonstrate that the offending vehicle had a valid route permit as on the date of the accident. He further submitted that the owner of the truck of the offending vehicle had filed an Interlocutory Application in these two appeals praying before this Court, for leave to be allowed to bring on record an additional evidence to show that the truck had a valid permit of public carrier as on the day of ill fated accident

8. We have heard the learned counsels for the parties. Pursued the record requisition from the learned Tribunal and we have also gone through the citation pressed into by the learned counsel for the parties.

9. The issue that requires our attention is whether the present appeals are at all maintainable in law in view of the provision of section 170 of the M.V Act 1988 and the law laid down by the Hon'ble Supreme Court. Before we delve into that aspect of the matter, a perusal of the written statement filed by the insurer in the proceeding of the Tribunal is necessary. The written statement on behalf of the insurer was filed on 20/08/2015. The preliminary objection of the written statement is quoted below;

“4. That the claimant has failed to furnish the relevant documents pertaining to the vehicle truck bearing registration No. NL-07/A0370 viz permit, road tax, fitness certificate, pollution certificate etc which is a clear violation of the policy conditions. As such the answering respondent is not liable to indemnify liability, if any.”

10. It would also be relevant to refer to paragraph-12 of the objection on merit in the written statement filed by the insurer;

“12. That the answering respondent being impleaded as party in the present claim petition invoke right to defend the claim

on all grounds, even otherwise the insurer begs to seek permission under section 170 of the M.V Act, 1988 if the circumstances of the case so warrants.”

11. We notice that the insurer did not file any application at any stage of the proceedings before the learned Tribunal to be allowed to resist the claim on all grounds as available to the other opposite party and therefore, no order allowing the insurer such leave to defend was granted.

12. In **National Insurance Co. Ltd. Chandigarh -versus- Nicolledda Rohtagi & Others**, reported in **(2002) 7 SCC 456**, the Hon’ble Supreme Court had held as follows;

“15. It is relevant to note that the Parliament, while enacting sub-section (2) of [Section 149](#) only specified some of the defences which are based on conditions of the policy and, therefore, any other breach of conditions of the policy by the insured which does not find place in sub-section (2) of [Section 149](#) cannot be taken as a defence by the insurer. If the Parliament had intended to include the breach of other conditions of the policy as a defence, it could have easily provided any breach of conditions of insurance policy in sub-section (2) of [Section 149](#). If we permit the insurer to take any other defence other than those specified in sub-section (2) of [Section 149](#), it would mean we are adding more defences to insurer in the statute which is neither found in the Act nor was intended to be included.

16. For the aforesaid reasons, we are of the view that the statutory defences which are available to the insurer to contest a claim are confined to what are provided in sub-section (2) of [Section 149](#) of 1988 Act and not more and for that reason if an insurer is to file an appeal, the challenge in the appeal would confine to only those grounds.

26. For the aforesaid reasons, an insurer if aggrieved against an award, may file an appeal only on those grounds and no other. However, by virtue of [Section 170](#) of the 1988 Act, where in course of an enquiry the Claims Tribunal is satisfied that (a) there is a collusion between the person making a claim and the person against whom the claim has been made or (b) the person against whom the claim has been made has failed to contest the claim, the tribunal may, for reasons to be recorded in writing, implead the insurer and [in that case](#) it is permissible for the insurer to contest the claim also on the grounds which are available to

the insured or to the person against whom the claim has been made. Thus, unless an order is passed by the tribunal permitting the insurer to avail the grounds available to an insured or any other person against whom a claim has been made on being satisfied of the two conditions specified in [Section 170](#) of the Act, it is not permissible to the insurer to contest the claim on the grounds which are available to the insured or to a person against whom a claim has been made. Thus where conditions precedent embodied in [Section 170](#) is satisfied and award is adverse to the interest of the insurer, the insurer has a right to file an appeal challenging the quantum of compensation or negligence or contributory negligence of the offending vehicle even if the insured has not filed any appeal against the quantum of compensation. [Sections 149, 170 and 173](#) are part of one Scheme and if we give any different interpretation to [Section 173](#) of the 1988 Act, the same would go contrary to the scheme and object of the Act.

30. It was then urged that if there is a collusion between the claimants and the insured or the insured does not contest the claim and the tribunal does not implead the insurance company to contest the claim on grounds available to the insured or the persons against whom claim has been made, or in such a situation when the insurer files an application for permission to contest the claim on merit and the same is rejected or where claimant has obtained an award by playing fraud, in such cases the insurer has a right of appeal to contest the award on merits and the appeal would be maintainable.

31. We have already held that unless the conditions precedent specified in [Section 170](#) of 1988 Act is satisfied, an insurance company has no right of appeal to challenge the award on merits. However, in a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim and, further, the tribunal does not implead the insurance company to contest the claim in such cases it is open to an insurer to seek permission of the tribunal to contest the claim on the ground available to the insured or to a person against whom a claim has been made. If permission is granted and the insurer is allowed to contest the claim on merits [in that case](#) it is open to the insurer to file an appeal against an award on merits, if aggrieved. In any case where an application for permission is erroneously rejected the insurer can challenge only that part of the order while filing appeal on grounds specified in sub-sections (2) of [Section 149](#) of 1988 Act. But such application for permission has to be bona fide and filed at the stage when the insured is required to lead his evidence. So far as obtaining compensation by fraud by the claimant is concerned, it is no longer res

integra that fraud vitiates the entire proceeding and in such cases it is open to an insurer to apply to the Tribunal for rectification of award.

32. For the aforesaid reasons, our answer to the question is that even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regards negligence or contributory negligence of the offending vehicle.”

13. In **Bijoy Kumar Duggar -Versus- Bidyadhar Dutta**, reported in **(2006) 3 SCC 242**, the Hon’ble Apex Court held as follows:

“Under Section 173 of the Act, an insurer has a right to file an appeal before the High Court on limited grounds available under Section 149(2). The appeal being a product of the statute it is not open to an insurer to take any plea other than those provided under Section 149(2) of the Act. However, in a situation where there is collusion between the claimant and the insurer or the insured does not contest the claim and further, if the MACT does not implead the Insurance Company to contest the claim, in such a situation it is open to the insurer to seek permission of the MACT to contest the claim on the ground available to the insured or to a person against whom the claim has been made. If permission is granted and the insurer is allowed to contest the claim on merit, in that case it is open to the insurer to file an appeal against the Award of the MACT on merits”.

14. It follows from the above discussion that unless a Tribunal allows, for reasons to be recorded in writing, the insurer cannot contest the claim proceeding on merits or on any grounds other than the statutory defences available to the insurer in terms of sub-section (2) of Section 149. The Apex Court in **Shankarayya and Another -Vs. United India Insurance Co. Ltd. and Another**, reported in **1998 (3) SCC 140** , wherein the Apex Court has observed and held as follows:-

"4. It clearly shows that the Insurance Company when impleaded as a party by the Court can be permitted to contest

the proceedings on merits only if the conditions precedent mentioned in the section are found to be satisfied and for that purpose the Insurance Company has to obtain order in a writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless that procedure is followed, the Insurance Company cannot have a wider defence on merits than what is available to it by way of statutory defence. It is true that the claimants themselves had joined Respondent 1, Insurance Company in the claim petition but that was done with a view to thrust the statutory liability on the Insurance Company on account of the contract of the insurance. That was not an order of the Court itself permitting the Insurance Company which was impleaded to avail of a larger defence on merits on being satisfied on the aforesaid two conditions mentioned in Section 170; Consequently, it must be held that on the facts of the present case, Respondent 1, Insurance Company was not entitled to file an appeal on merits of the claim which was awarded by the Tribunal."

15. Keeping in mind that an appeal is nothing, but an extension of suit, when an insurer has not been permitted by the Tribunal to contest the claim on merit in terms of Section 170, the limitations imposed on the insurer continue even when it prefers an appeal under Section 173 and merely on the ground that the award, rendered by the Tribunal, has not been contested by the person against whom the claim was made or that there is collusion between the claimant and the person against whom the claim is made, the insurer cannot prefer an appeal on merit or challenge the quantum of compensation. When the insurer had not sought permission under [Section 170](#) or had not been granted permission to contest the claim on merit, the insurer cannot be allowed to prefer an appeal against the award and challenge the same on merit i.e., on grounds other than those, which were available to the insurer under sub-section (2) of [Section 149](#). (***New India Assurance Co. Ltd.-Versus- Phelishsa Bakai***, reported in **2006 (1) GLT 282**).

16. Though the insurer is not entitled to prefer this appeal on the grounds it

has sought to take, nevertheless, during the course of the proceedings, this Court had to peruse the award made by the Tribunal. The perusal of the records of the learned Tribunal would go ahead to show that the disability certificates reveals that the claimants suffer from 45% and 40% permanent physical impairment/disability and while the certificate in respect of claimant in MAC 84/2021 has been issued by 3 doctors of the District Hospital, Dimapur, the certificate in respect of the claimant in MAC Case No. 85/2021 has been issued by a specialist. It is further seen that the learned Tribunal, in the impugned Order, has discussed not only the contents of the certificate of disability which was given after assessment but the fact that the claimants were young students with bright future has also been taken into account.

17. The disability suffered by the claimants are shortening of the left leg and stiffness of left hip for the claimant in MAC Case No. 84/2021 and limited movement of jaw and depression of facial bone over right temporal and zygomatic region in the case of the claimant. The claimants are without doubt, students with bright future and in the considered opinion of this Court, their future, rather their capacity to earn to their full potential in the future, would indeed be marred by the nature of disability which the unfortunate accident has saddled them with. This Court, therefore, does not find that the Tribunal has committed any mistake in accepting the percentage of permanent disability to be the percentage of loss of earning capacity in the case of the claimants.

18. With regard to the reliance of the learned counsel for the appellants placed on *Raj Kumar Versus Ajay Kumar and Another (Supra)* this Court is of the opinion that the requirement laid down by the said judgment has been substantially complied with by the learned Tribunal.

19. With regard to the contention of the appellant/insurer that the offending vehicle did not possess a valid route permit at the time of the accident, suffice it

to say that no such grounds were raised during the proceedings before the Tribunal. Additionally, the owner of the vehicle has filed interlocutory applications, bearing IA(C) 198/2024 and 199/2024 in both these appeals respectively, praying to be allowed to bring additional evidence on record to show that they indeed had a valid route permit at the time of the accident.

The accident occurred on 01-07-2014 and it resulted in permanent disability to two bright students who were then in their prime, aged 22 years and 25 years. They are yet to receive the compensation awarded. We therefore do not deem it fit at this stage to enter into the issue as to whether the owner of the vehicle had a valid route permit or not and whether the insurer would be entitled to recover any of the awarded amount of compensation from any of the parties by reason of breach of policy conditions of the insurance provided. Since the issue would require production of evidence etc. it will be more appropriate to allow an opportunity to the insurer to raise appropriate defence for recovery of the compensation awarded from the owner/driver of the vehicle on the issue of violation of policy conditions and we also grant liberty to the owner/driver to take up such lawful defence as may be available to it in case such claims as raised.

20. In the result, the appeal is allowed partially and only to the extent of allowing the appellant to file appropriate application within 30 days from today before the Learned Tribunal regarding its defence relating to the allegation that the vehicle involved in the accident did not have a valid route permit at the relevant time. It is for this limited extent that the matter is remanded to the Learned Tribunal, who shall decide the issue between the insurer and the insured in accordance with law. Since in the case of third party risks, as per the decision in National Insurance Company Ltd. v. Swaran Singh and others (2004) 3 SCC 297, the insurer has to indemnify the

compensation amount payable to the third party and the Insurance Company may recover the same from the insured, the appellant/insurer is directed to pay the compensation to the claimants as awarded by the learned Tribunal within a period of thirty days from today, adjusting any amount that has already been paid.

21. The original records be returned to the concerned Tribunal along with a copy of this order forthwith.

JUDGE

Comparing Assistant