2026:PHHC:057012

135 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

FAO-1423-2021 (O&M) with
XOBJC-13-2026
Date of decision : 16.04.2026

Dev Raj & anr. ...... Appellants

Versus

Sandeep & ors. ..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

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Present :- Mr. S.S.Duhan, Advocate
for the appellants.

Mr. Sumit Sangwan, Advocate
for the applicant-cross objectors/LRs
of respondent No.2.

Mr. Vinod Gupta, Advocate
for the respondents.

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PANKAJ JAIN, J. (ORAL)

CM-1722-CII-2026

This is an application seeking condonation of delay of 32 days in filing the cross objections.

For the reasons recorded in the application, this Court is satisfied that the cross objectors/LRs of respondent No.2 have shown sufficient cause to condone the delay in filing the cross objections.

Application is allowed. Delay of 32 days in filing the cross objections is condoned.

<u>CM-9842-CII-2021</u>

This is an application seeking condonation of delay of 127 days in filing the present appeal.

For the reasons recorded in the application, this Court is satisfied that the applicants-appellants have shown sufficient cause to condone the delay in filing the appeal.

Application is allowed. Delay of 127 days in filing the appeal is condoned.

<u>CM-1723-CII-2026</u>

This is an application for bringing on record the legal heirs of respondent No.2.

Notice of the application.

Counsel appearing on behalf of the non-applicant-appellants pleads no objection.

For the reasons recorded, the application is allowed subject to all just exceptions. Persons mentioned in para No.2 of the application is impleaded as LRs of the deceased-respondent No.2.

<u>CM-1724-CII-2026</u>

Application is allowed, as prayed for.

<u>CM-1725-CII-2026</u>

For the reasons recorded in the application, the same is allowed.

Amended memo of parties is taken on record.

<u>CM-6806-CII-2026</u>

Application is allowed, as prayed for.

CM-6807-CII-2026

In view of the fact that the main case already stands decided, the application seeking preponement of the case has been rendered infructuous.

Accordingly, the application stands disposed off as such.

FAO-1423-2021

1 Claimants are in appeal seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Hisar in a petition filed under Section 166 of Motor Vehicles Act, 1988 (for short, 'the 1988 Act') seeking compensation on account of death of Sumitra who lost her life at the age of 62 years in a motor vehicular accident dated 12.08.2018.

2 Tribunal awarded compensation of Rs.5,23,600/- along with interest at the rate of 7% per annum. Insurance company was directed to pay the amount to the claimants and thereafter recover the same from the owner of the offending vehicle, as the owner and driver failed to produce route permit and fitness certificate of the offending vehicle.

3 Owner has filed cross-objections assailing findings recorded by the Tribunal on issues No.2 & 3 asserting that the Tribunal erred in granting recovery rights to the insurer.

4 The Tribunal tabulated the compensation as under :-

1.	*Monthly income of deceased*	*Rs.8000/-*
2.	*Deduction for personal and living expenses. (one third as there are two members of family)*	*Rs.2600/-*
3.	*Net income*	*Rs.5400/-*
4.	*Yearly income*	*Rs.5400 x 12 = 64800/-*
5.	*Multiplier (Age 62, multiplier of 7 as per Sarla Verma's case)*	*Rs.64800 x 7 = Rs.4,53,000/-*
6.	*Loss of estate*	*Rs.15000/-*
7.	*Consortium*	*Rs.40000/-*

8.	*Funeral expenses*	*Rs.15000/-*
	Total	*Rs.5,23,600/-*

5 Counsel for the claimants submit that the deceased ought to have been assessed as a homemaker. Her monthly income should have been assessed @Rs.15,000/- per month. He further submits that only one of the claimants has been awarded compensation under the head of loss of consortium. In terms of ***Magma General Insurance Company Ltd., Vs. Nanu Ram @ Chuhru Ram & ors., 2018(4) RCR (Civil) 333,*** the same should have been awarded to both the claimants. From the records of the case, it is evident that the Tribunal relied upon minimum wages notified by State of Haryana and assessed the income of the deceased accordingly. She was 62 years of age; no future prospect is admissible. However, counsel for the claimants is right in contending that loss of consortium ought to have been awarded to both the claimants. Accordingly, the award is modified to the extent that each of the claimants shall be entitled to Rs.48,400/- on account of loss of consortium.

6 Mr. Sumit Sangwan, Advocate, has drawn attention of this Court to the written statement filed by insurance company to submit that in the preliminary objections, no plea was raised with respect to absence of a fitness certificate or a route permit. He relies upon ***National Insurance Company Limited Vs. Kamlesh Kaur & ors., passed in FAO No.1379 of 2006 decided on 23.03.2006*** to submit that the absence of route permit cannot be taken to be violation of breach of policy. Further, reliance is being placed upon ***Oriental Insurance Co. Ltd. Vs. Sangeeta & ors., 2024 NCPHHC 17327*** and ***Sandeep Singh Vs. Amrik Singh & ors., 2025 NCPHHC 23818*** to submit

that the absence of fitness certificate cannot be taken as ground to attribute contributory negligence. Relying upon the aforesaid judgments, counsel asserts that absence of fitness certificate cannot be treated as breach of insurance policy and to grant recovery rights against insured.

7 I have heard learned counsel for the parties and have gone through the records of the case.

8 As per provision of the 1988 Act permit is required to ply a transport vehicle.

9 Reference can be made to ***National Insurance Co. Ltd. Vs. Chella Bharathamma, (2004) 4 RCR (Civil) 399*** wherein Supreme Court held as under :-

> *"8. 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 at a better pedestal vis-`-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 insurer. High Court was, therefore, not justified in holding the insurer liable."*
>
> *9. 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 concerned Executing Court 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 concerned Regional Transport Authority. 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 realization 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."

10 Further Supreme Court in the case of ***Amrit Paul Singh & anr. Vs. TATA AIG General Insurance Co. Ltd., & ors., (2018) AIR Supreme Court 2662*** observed as under :-

"23. 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 (supra) and Lakhmi Chand (supra) 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 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."

11 In view thereof, this Court finds that permit was necessarily required to ply the vehicle. The Insurance company, in order to discharge the burden of proving breach of policies of the insurance policy, filed an application seeking directions to the owner and driver of the vehicle to produce route permit and the fitness certificate. Despite there being notice, the driver as well as the owner failed to produce the same. Even before this Court, while filing cross-objections, none of the documents has been placed on record.

12 In view thereof, this Court finds no reason to interfere in well-reasoned findings recorded by the Tribunal granting recovery rights to the insurance company.

13 Finding no merits in the cross-objections, the same are ordered to be dismissed.

14 The statutory amount of Rs.25,000/- deposited as a pre-condition for entertaining cross-objections is ordered to be sent back to the MACT, Hisar to be adjusted at the time of disbursal in the execution proceedings.

15 Appeal stands disposed off.

(PANKAJ JAIN)
JUDGE

16.04.2026
Pooja Sharma-I

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No