$~53

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 20th April 2026***

\+ **MAC.APP. 918/2013**

IFFCO TOKIO GENERAL INSURANCE CO. LTD.....Appellant

Through: Mr. Pankaj Seth, Ms. Shruti Jain, Advocates

versus

VINEET SHARMA & ORS .....Respondents

Through: Mr. Sunil Dahiya, Advocate for Respondent nos. 2 & 3

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J (ORAL)

1. This appeal has been filed by the Insurance Company challenging the impugned award passed by Motor Accidents Claims Tribunal [‘***MACT***’], Saket Courts, New Delhi in Claim Petition No. 67/2011 on 12th September 2013, awarding compensation to the tune of Rs.3,55,200/- in favour of respondent no.1/claimant, along with interest at the rate of 9% per annum from the date of filing of petition till realization.

2. The accident occurred on 23rd June 2010 at about 5:45 pm at Mehrauli Gurgaon Road Metro Station near Arjun Garh, New Delhi, when respondent no.1/claimant was travelling to his office in Gurgaon from Okhla Phase-II on his motorcycle was hit by a dumper (hereinafter, ‘***offending vehicle***’) from behind. FIR No. 123/10 was registered and claim

petition was filed by respondent no.1/claimant which resulted in the passing of impugned award.

3. Appellant/Insurance Company raised a defence that the offending vehicle had a permit for plying in the State of Haryana, while the accident took place in Delhi, however, the MACT categorically held the appellant/Insurance Company liable to satisfy the compensation amount awarded.

4. *Ms. Shruti Jain*, counsel for Insurance Company, contends that even though there was a valid permit, for which there was no dispute, conditions of contract *i.e.* the insurance policy were violated, therefore, right to recovery should have, at least, been granted.

5. In this regard, MACT relied the upon decision of Punjab & Haryana High Court in ***National Insurance Company Ltd. v. Rajender Giri***, 2011 SCC OnLine P&H 14036, which held that driving in another state without a valid permit will not amount to violation of conditions of insurance policy and would not give the insurer a defence under Section 149(2) of Motor Vehicles Act, 1988. Therefore, no right to pay and recover have been granted to appellant/Insurance Company.

6. It is noted that the decision in ***Rajender Giri*** *(supra)* was rendered on 12th October 2011 and relevant paragraph is extracted hereunder:

> *"**15.** It would be said that the vehicle had a valid route permit for being plied in the State of Rajasthan but not in Haryana State. The Transport Authority of Rajasthan State had found the vehicle fit for being plied as goods carriage. Therefore, it cannot be said that the vehicle was being plied without a route permit. The violation of bringing the vehicle to the area of State of Haryana without a valid route permit for plying the same in the said State would not amount to violation of the conditions of the insurance policy and would not give the insurer a defence under section 149(2) of*

the Act. The case before me is not a case where there is no route permit at all. Therefore, the ratio of the decision in National Insurance Co. Ltd.'s case (supra) would not stand attracted to the facts of this case."

(emphasis added)

7. The issue, as per counsel for appellant/Insurance Company, now stands resolved by decision of the Supreme Court in ***K. Nagendra v. The New India Insurance Co. Ltd. & Ors.*** (2025) INSC 1270, where the Supreme Court was dealing with a case where permit was issued for a different State, while the accident took place in Channapatna City. The Supreme Court in this context stated as under:

"8. Now, let us consider the instant case. The record reveals that the offending vehicle did not have the permit to enter Channapatna City, where the accident took place. This position is not in dispute. Unquestionably, therefore, the terms of the permit have been deviated.
9. The purpose of an insurance policy in the present context is to shield the owner/operator from direct liability when such an unforeseen/unfortunate incident takes place. To deny the victim/dependents of the victim compensation simply because the accident took place outside the bounds of the permit and, therefore, is outside the purview of the insurance policy, would be offensive to the sense of justice, for the accident itself is for no fault of his. Then, the Insurance Company most certainly ought to pay.
10. At the same time though, when an Insurance Company takes on a policy and accepts payments of premium in pursuance thereto, it agrees to do so within certain bounds. The contract lays down the four corners within which such an insurance policy would operate. If that is the case, to expect the insurer to pay compensation to a third party, which is clearly outside the bounds of the said agreement would be unfair. Balancing the need for payment of compensation to the victim vis-à-vis the interests of the insurer, the order of the High Court applying the pay and

recover principle, in our considered view, is entirely justified and requires no interference.”

(emphasis added)

8. Supreme Court while upholding decision of the High Court, relied upon another judgment of Supreme Court in ***Amrit Paul v. TATA AIG General Insurance Company*** (2018) 7 SCC 558 where no documentary evidence to support a valid permit had been brought on record. Therefore, the right to pay and recover was granted to the Insurance Company.

9. Yet another reference can be made to a decision of the ***Supreme Court in National Insurance Co. Ltd. Vs. Challa Upendra Rao*** 2004 (8) SCC 517 where the insurer was granted recovery rights after satisfying the award in first instance. Relevant finding of the Supreme Court is 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. <u>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</u>."

(emphasis added)

10. Accordingly, in view of clear enunciation by the Supreme Court, the impugned award is modified to the extent that pay and recovery rights are granted to appellant/Insurance Company against respondent no.3/owner of the offending vehicle.

11. *Mr. Sunil Dahiya*, counsel for respondent no 2/driver and respondent no.3/owner, states that *loss of income* awarded by the MACT was without proof. However, the Court is not inclined to agree with his contention, considering the reasons provided by MACT in *paragraph 20* of the impugned award, where the MACT relied upon certificate issued by *Resil Chemicals Pvt. Ltd*., where respondent no.1/claimant was employed in a Sales and Marketing role, which showed that respondent no.1/claimant was on leave for 3 months. Further reliance was also placed on salary slips, exhibited as ***PW-1/2-A*** filed by respondent no.1/claimant ('***PW-1***').

12. *Mr. Sunil Dahiya*, counsel for respondent no. 2/driver and respondent no. 3/owner, has also raised a challenge to the compensation awarded towards medical expenses, as the same were not supported by proof. In respect of this, testimony of ***PW-1*** was taken into account wherein he stated that he had sustained head injuries and his left shoulder was broken. He remained in ICU for 10 days in Artemis hospital and further, six days in the hospital from 24th June 2010 to 09th July 2010. Medical bill of Rs.3,00,000/- was raised by the hospital, out of which Rs.1,00,000/- was paid by Mediclaim, while the balance amount was paid by him. After 8 months, he had a follow up for his treatment, but continued to face hearing problems from his right ear. On 24th April, 2012 he got the rod removed from his shoulder and another surgery of his ear was performed. It is alleged that Rs.71,000/- were paid, out of which Rs. 45,000/- was paid by Mediclaim.

13. In the cross examination conducted on behalf of respondent no. 2/driver and respondent no.3/owner and appellant/Insurance Company, he stated that he had filed duplicate receipts of the medical bills, since original bills had been submitted for the purpose of Mediclaim. He admitted that no prescriptions in support of the bills had been filed. It is noted that the documents relating to medical receipts given by the hospital have been placed on record as ***Ex. PW-1/4*** to ***Ex. PW-1/34***.

14. In light of the detailed testimony given by respondent no.1/claimant himself, this Court does not find any reason to displace the conclusion arrived at by the MACT in this regard.

15. By order dated, 11th October 2013, this Court had directed a stay on the execution of impugned award, subject to deposit of entire compensation amount by appellant/Insurance Company with the Registrar General of this

Court. On deposit, 80% amount was directed to be released as per the terms and conditions fixed by the MACT and the balance amount was kept in FDRs. Thereafter, *vide* order dated 29th August 2016, this Court had directed the release of entire awarded amount in favour of respondent no.1/claimant.

16. Therefore, in view of the above observations, appeal is allowed in favour of appellant/Insurance Company and recovery rights are granted against respondent no.2/driver and respondent no.3/owner.

17. Appeal is accordingly disposed of in above terms.

18. Pending applications, if any, are rendered infructuous.

19. Statutory deposit, if any, be refunded to appellant/Insurance Company, only if the order of deposit has been complied with.

20. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

APRIL 20, 2026/sm/*sp*