
(2019) 03 UK CK 0036

In the Uttarakhand High Court

Case No : Appeal From Order No. 73 Of 2017

National Insurance Company Ltd

APPELLANT

Vs

Anandi Devi & Others

RESPONDENT

Date of Decision : 07-03-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(28), 2(31), 2(47), 56, 56(1), 66, 66(3), 149, 166

Central Motor Vehicles Rules, 1989 — Rule 47, 62, 62(1), 65(1)(ii)

Citation : (2019) 03 UK CK 0036

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Prabhat Pande, Ghanshyam Joshi

Final Decision : Allowed

Judgement

Sharad Kumar Sharma, J

1. The appellant-Insurance Company, who was respondent no. 3, in the proceedings before the Motor Accident Claim Tribunal, Almora, in MACT Case No. 8 of 2016 'Smt. Anandi Devi & Another vs. Shri Yogesh Chandra Sharma & Others', had been fastened upon the liability to pay the compensation to the tune of ` 4,45,500/- to the widow of the deceased- being claimant no. 1, out of which ` 3,50,000/- was directed to be deposited in a fixed deposit and only remaining ` 95,500/- was directed to be paid to the claimant no. 1.

2. Having heard the learned counsel for the parties, only a small issue which has been argued by the learned counsel for the appellant is that he does not raise any dispute pertaining to the controversy regards to the quantum of compensation, which has been awarded by the Motor Accident Claim Tribunal by the impugned award. What he submits is that in accordance with the mandate as provided under Section 56 of the Motor Vehicle Act, that at the time of the accident, i.e. 24.06.2014, the vehicle was bound to carry all the documents and its validity pertaining to its fitness, permit, insurance etc., which has to be of the

prime consideration for the purposes of harnessing the liability to meet the compensation to be awarded by the Motor Accident Claim Tribunal. Section 56(1) of the Motor Vehicle Act is quoted hereunder:

"56. Certificate of fitness of transport vehicles.-

(1) Subject to the provisions of sections 59 and 60, a transport vehicle shall not be deemed to be validly registered for the purposes of section 39, unless it carries a certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority, or by an authorized testing station mentioned in sub-section (2), to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder: Provided that where the prescribed authority or the "authorized testing station" refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal."

3. Before the Court below paper no. 27 ga was the permit, which was produced and placed on record, which shows that it was a permit, which was granted in favour of the respondent-vehicle owner as a contract carried under Rule 65(1)(ii) of the Rules framed under the Motor Vehicle Act.

4. The argument which has been extended by the learned counsel for the appellant is to the effect that the liability of the payment of compensation has to shift upon the owner of the vehicle for the reason being that on the date of the accident i.e 24.06.2014 he was not carrying the valid fitness certificate as required under Rule 62(1) of the Motor Vehicle Rules. His submission is that the fitness of the offending vehicle stood expired on 07.05.2014, meaning thereby, on the date prior to the accident and when the accident was caused, i.e. 24.06.2014, the vehicle was not having a valid fitness certificate and rather the document which has been filed in support thereto i.e. Paper No. 27ga before the Court below goes to show that the vehicle was carrying a fitness certificate it was rather a fitness certificate, which was issued only on 09.09.2014, which is the date subsequent to the date of accident. Hence, this document cannot be read as to be a fitness certificate which could be read in relation to the accident which has occurred on 24.06.2014.

5. In support of his contention the learned counsel for the appellant has placed reliance on a judgment rendered by the Constitution Bench of Kerala High Court in the case of Pareed Pillai vs. Oriental Insurance Company Ltd. reported in 2019 ACJ 16. Paragraph 16 and 21 of which are quoted hereunder:

"16. Importance of the fitness/road worthiness of a vehicle, right from the time of registration of the vehicle, is further discernible from Rule 47 of the Central Motor Vehicles Rules 1989 [referred to as Central Rules]. The said Rule deals with application for registration of motor vehicles, which, among other things, stipulates that it shall be accompanied by various documents. Under sub-rule (1) (g), it is mandatory to produce road worthiness certificate in Form 22 from the

manufacturers [Form 22A from the body builders]. On completing the formalities/procedures, 'Certificate of Registration' is to be issued in terms of Rule 48 of the Central Rules in Form 23/23A, as the case may be. The said Rule contains a proviso, insisting that, when Certificate of Registration pertains to a transport vehicle, it shall be handed over to the registered owner only after recording the Certificate of Fitness in Form 38. Validity of the Certificate of Fitness is only to the extent as envisaged under Rule 62 of the Central Rules, which mandates, as per the proviso, that the renewal of a Fitness Certificate shall be made only after the Inspecting Officer or MACA No. 2030 of 2015 and connected cases authorised Testing Station as referred to in sub Section 1 of Section 56 of the Act has carried out the test specified in the table given therein.

21. 21. The question whether absence of valid Permit to a transport vehicle at the time of accident is a 'fundamental breach' or a 'technical breach' had come up for consideration again before the Apex Court MACA No. 2030 of 2015 and connected cases recently in *Amrit Paul Singh and Another Vs. TATA AIG General Insurance Co. Ltd and Others* [2018 (3) KHC 197]. The factual matrix in the said case is that, the rider of the motor cycle was knocked down to death by the offending truck on 19.02.2013, which led to the claim petition preferred by the legal heirs. The claim was resisted by the insurer, mainly contending that there was violation of policy conditions in so far as the offending truck was not having a valid Permit and the driver was not having a valid driving licence. Based on the materials on record and placing reliance on the verdict passed by the Apex Court in *Challa Upendra Rao's case* [cited supra], the Tribunal, after fixing the quantum of compensation, directed the insurer to satisfy the same, with liberty to have it recovered from the insured. The said finding and reasoning came to be affirmed by the High Court, in turn leading to the proceedings before the Apex Court. After exhaustive discussion on the relevant provisions of law including Section 2 (28), 2 (31), 2 (47), 66, 149 and 166 of the M.V. Act 1988 and the various judgments rendered by the Apex Court at different points of time, including in *National Insurance Co. Ltd. Vs. Swaran Singh and others* [(2004) 3 SCC 297] and *Challa Upendra Rao's case* [cited supra], the Apex Court held that the offending truck was not having a valid Permit on the date MACA No. 2030 of 2015 and connected cases of accident; which was not a technical breach to attract the dictum in *Swaran Singhs' case* [cited supra] [where also right of recovery was held as conferred on the insurer, once the breach was established by the insurer]. It was also observed that, it was not a case where any of the exceptions under sub-section (3) of Section 66 was attracted and further that, existence of a Permit of any nature was matter of documentary evidence. The Bench held that the exceptions carved out under Section 66 (3) of the Act are to be pleaded and proved by the insured/owner and this burden cannot be shifted to the shoulders of the insurer. It has accordingly been declared that, the use of a transport vehicle in a public place without Permit is a fundamental/statutory infraction and the principles laid down in *Swaran Singh's case* [cited supra] and *Lakshmi Chand Vs. Reliance General Insurance* [(2016) 3 SCC 100] cannot be

applicable in this regard. The Apex Court held, in such circumstances, that the verdict passed by the High Court affirming the stand of the Tribunal directing the insurer to satisfy the liability and to have it recovered from the owner/insured was in consonance with the principles stated in Swaran Singh's case [cited supra] and other cases pertaining to 'pay and recover principle'. From the above, it is quite evident that the law stands settled by the Apex Court as per the MACA No. 2030 of 2015 and connected cases decision Challa Upendra Rao' case [cited supra] and the latest ruling in Amrit paul's case [cited supra]. This being the position, the dictum laid down by the Full Bench of this Court in Augustine V.M. Vs. Ayyappankutty @ Mani and others [cited supra] holding that the absence of valid Permit or Fitness Certificate is not a fundamental breach, but a technical breach and that no right of recovery can be given to the insurer is not at all correct. It accordingly stands overruled. Consequently, the dictum in Thara's case [cited supra] is restored and the contrary view expressed in Sethunath's case [cited supra] stands declared as incorrect."

6. In its paragraph 16 and 21 the Court has held that the requirement of having a valid registration, valid permit and valid fitness certificate are inter-linked documents, which are to be taken into consideration by the Motor Accident Claim Tribunal while fixing the liability to meet the compensation to be awarded to the claimant. The constitution Bench of the Kerala High Court has held that the aforesaid essentiality is mandated by Section 56 of the Motor Vehicle Act read with Rule 47 of the Rules framed under Motor Vehicle Act.

7. Consequently, this Appeal succeeds and is allowed with a slight modification to the impugned award dated 26.08.2016 to the effect that the Insurance Company, i.e. the appellant herein, would pay the amount awarded to the claimant forthwith. However, it would be open for the Insurance Company to recover the same from the owner of the offending vehicle, i.e. respondent no. 4 herein the present appeal, for the aforesaid non-compliance of Section 56 of the Act.

8. Subject to above condition, the Appeal stands allowed.