IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO (MV) No. 67 of 2017
Reserved on: 10.08.2026
Date of decision: 02.09.2026
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Oriental Insurance Co. Ltd. .....Appellant

Versus

Jamana & Ors. ……Respondents

Coram
The Hon'ble Mr. Justice Sushil Kukreja, Judge.
[1] *Whether approved for reporting?*

For the appellant:	Mr. Deepak Gupta, Senior Advocate with Ms. Meera Devi, Advocate.
For the respondents:	Mr. Parveen Chauhan, Advocate, for respondents No. 1 & 2.
	Mr. Naveen K. Bhardwaj, Advocate, for respondent No. 3.

Sushil Kukreja, Judge

The instant appeal has been filed by the appellant/Insurance Company, who was respondent No. 1 before the learned Motor Accidents Claims Tribunal-II, Chamba Division Chamba, H.P. (hereinafter referred to as "the learned Tribunal") under Section 173 of the Motor Vehicles Act, 1988 (for short "the Act') against impugned

1 *Whether reporters of Local Papers may be allowed to see the judgment?*

award, dated 21.10.2016, passed by the learned Tribunal, whereby Claim Petition No. 57/2013, filed by the petitioners, under Section 166 of the Act, was allowed with costs and they were held entitled for compensation in the sum of Rs. 8,08,200/- alongwith interest at the rate of 7.5% per annum from the date of filing of the petition till its realization and respondent No. 1, being insurer, was directed to indemnify the award.

2. The brief facts of the case are that on 11.11.2013, Bhupinder (since deceased) was travelling in vehicle bearing registration No. HP-01K-0404 (Tata Sumo), being driven by deceased Raj Kumar. When the aforesaid vehicle reached at place Kowaji Mor near Shour, its driver could not keep control over the same and it went off the road and rolled down into a gorge, as a result of which, Bhupinder died on the spot. According to the petitioners, the accident had taken place due to the rash and negligent driving of the driver of the vehicle. It has been further averred that at the time of accident, the deceased was 24 years old and used to work as agriculturist and labourer and was earning Rs.

12,000/- per month. Hence, they filed the claim petition under Section 166 of MV Act seeking compensation to the tune of Rs. 15,00,000/-.

3. Respondent No. 1/Insurance Company in its reply took preliminary objections qua maintainability, non-joinder of necessary parties, the driver of the offending vehicle was not holding a valid driving licence, offending vehicle was not being driven in accordance with the terms and conditions of the Insurance Policy, the vehicle was being plied without valid registration and fitness certificate and also without any valid route permit. On merits, averments made in the claim petition have been denied and it has been stated that the amount claimed is excessive and without any basis.

4. Respondent No. 2 contested the claim petition by filing reply and took preliminary objection qua maintainability. On merits, though he admitted the ownership of vehicle No. HP-01K-0404, however he denied that the vehicle ever met with any accident. It has been stated that as per FIR and police investigation, it was vehicle No. HP-01C-0404, which met with an accident. He also denied that the deceased was

travelling in the vehicle at the relevant time. It has further been stated that vehicle No. HP-01K-0404 was duly insured with respondent No. 1 at the time of accident and in case the petitioners are held entitled to any compensation, respondent No. 1/Insurance Company would be liable to pay the same.

5. On 28.12.2013, the learned Tribunal below had framed the following issues for consideration and adjudication:

> ***"1. Whether on 11.11.2013 at Kuwaji Mor Shour, Tehsil Pangi, District Chamba deceased Bhupinder died on account of accident of vehicle No. HP 01K-0404 (Tata Sumo) due to rash and negligent driving of the said vehicle by driver Raj Kumar, who also died in the accident, as alleged? OPP***
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> ***2. If issue No. 1 is proved in affirmative, as to what amount of compensation the petitioners are entitled to and from whom? OPP***
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> ***3. Whether the petition is not maintainable? OPR 1 & 2***
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> ***4. Whether the driver of the ill fated vehicle was not having valid and effective driving licence to drive the vehicle on the date of accident, as alleged? OPR-1***
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> ***5. Whether the deceased Bhupinder was travelling in the alleged vehicle as a gratuitous passenger or unauthorized occupant, as alleged? OPR-1***
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> ***6. Whether the offending vehicle was being driven in violation of the terms and conditions of the Insurance Policy and Motor Vehicles Act/Rules, as alleged? OPR-1***
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> ***7. Whether the offending vehicle was not having valid registration certificate, valid route permit and valid fitness certificate, as***

alleged? OPR-1

8. ***Whether the claim petition is bad for non joinder of necessary parties, as alleged? OPR-1***

9. ***Whether the petitioners have not approached this Tribunal with clean hands and suppressed the true and material facts? OPR-1***

10. ***Relief."***

6. After the parties led evidence and after hearing the learned counsel for the parties, the petition was allowed with costs and the petitioners were held entitled for compensation in the sum of Rs. 8,08,200/- alongwith interest at the rate of 7.5% per annum from the date of filing of the petition till its realization and respondent No. 1, being insurer, was directed to indemnify the award.

7. Feeling aggrieved and dissatisfied, the appellant/Insurance Company preferred the instant appeal against the impugned award dated 21.10.2016.

8. I have heard the learned Senior counsel for the appellant, learned counsel for the respondents and carefully examined the entire record.

9. The learned Senior Counsel appearing on behalf of the appellant contended that the offending vehicle was

being plied in violation of the terms and conditions of Insurance Policy, inasmuch as at the time of accident, the offending vehicle was not having a valid fitness certificate and route permit, therefore the learned Tribunal below has erroneously fastened the liability on the appellant/Insurance company.

10. Conversely, the learned counsel for the respondents supported the impugned award and prayed for dismissal of the instant appeal.

11. Admittedly, the vehicle in question was a transport vehicle. Therefore, the first question which arises for consideration before this Court is as to whether the owner could have plied the vehicle in question, which was registered as a transport vehicle in a public place without permit.

12. Any motor vehicle, as defined under Section 2 (28) of the Act, requires to be registered in terms of Section 39 for putting the same on road, subject to the riders mentioned therein and the exception carved out in the proviso in the case of a dealer. If such vehicle is to be used

as a 'transport vehicle' as defined under Section 2 (47) , it is mandatory that it should have a valid 'Permit' as defined under Section 2 (31) of the Act, in view of the mandate under Section 66 (stipulating the necessity for permit), subject to the exception under sub section 3.

13. Necessity to have a 'Permit' for plying the vehicle as a 'transport vehicle' is stipulated under Section 66 of the Act, which mentions in unequivocal terms, that no owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place, whether or not such vehicle actually carries any passengers or goods, save in accordance with the conditions of Permit granted or countersigned by a Regional or State Transport Authority or any such other authority authorising the use of vehicle in that place in the manner in which the vehicle is being used, subject to exemption carved out under sub-section (3) of Section 66 of the Act.

14. The issue as to the absence of a valid Permit to a transport vehicle was the subject matter of consideration before the Apex Court in ***National Insurance Company Ltd. Vs.***

Challa Bharathamma & Ors., (2004) 8 SCC 517, held that plying of a vehicle without a permit is an infraction. The relevant portion of the judgement is reproduced 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.*
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> *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. 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."

15. 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 in ***Amrit Paul Singh and Another*** Vs. ***TATA AIG General Insurance Company Limited and Others***, ***(2018) 7 SCC 558*** wherein it has been held that use of such vehicle in a public place without a permit is a fundamental statutory infraction. Relevant portion of **Amrit Paul Singh's** case (supra) reads as under:-

"24. 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."

16. In the instant case, in support of this plea, the respondent/Insurance Company has examined Ashok Kumar, Data Operator from the Office of RTO Kullu, as RW-1, who deposed that vehicle No. HP-01K-0404 has been registered as commercial maxi cab, the fitness whereof was valid till 06.07.2005 and its contract carriage permit was valid w.e.f. 08.08.2003 to 07.08.2008. Admittedly the date of accident was 11.11.2013. Since the vehicle in question was a transport vehicle and was being plied without permit at the time of the accident and the owner had neither pleaded nor proved the exceptions as have been carved out under Section 66 of the Act, it can safely be held that on the date of

accident, the vehicle in question was being plied in violation of the terms and conditions of the Insurance Policy, as plying of a transport vehicle in a public place without permit is fundamental statutory infraction.

17. Now the next question which arises for consideration before this Court is as to whether the vehicle in question, which admittedly was a transport vehicle, could have been plied without a valid fitness certificate. Learned counsel for the insurance company submitted that non-availability of the fitness certificate is like non-registration of the vehicle, which disentitles the owner to permit the use of any such vehicle. As discussed above, RW-1 has deposed that the fitness certificate of the offending vehicle was valid till 06.07.2005. The date of accident was 11.11.2013, meaning thereby that the offending vehicle was being plied without fitness certificate.

18. At this stage, it would be relevant to reproduce Sections 39 & 56 of the Motor Vehicles Act, 1988 and the same are reproduced hereunder, for ready reference:-

> ***"39. Necessity for registration.***
> *No person shall drive any motor vehicle and no owner of a*

motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has (8 of 16) not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner.

Provided that nothing in this section shall apply to motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.

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.

Provided further that no certificate of fitness shall be granted to a vehicle, after such date as may be notified by the Central Government, unless such vehicle has been tested at an automated testing station.

(2) The "authorized testing station" referred to in sub-section (1) means any facility, including automated testing facilities, authorized by the State Government, where fitness testing may be conducted in accordance with the rules made by the Central Government for recognition, regulation and control of such stations.

(3) Subject to the provisions of sub-section (4), a certificate of fitness shall remain effective for such period as may be prescribed by the Central Government having regard to the objects of this Act.

(4) The prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and the rules made thereunder; and on such cancellation the certificate of registration of the vehicle

and any permit granted in respect of the vehicle under Chapter V shall be deemed to be suspended until a new certificate of fitness has been obtained.

Provided that no such cancellation shall be made by the prescribed authority unless -

(a) such prescribed authority holds such technical qualification as may be prescribed by the Central Government and where the prescribed authority does not hold the technical qualification, such cancellation is made on the basis of the report of an officer having such qualification;

(b) the reasons recorded in writing cancelling a certificate of fitness are confirmed by an authorized testing station chosen by the owner of the vehicle whose certificate of fitness is sought to be cancelled:

Provided further that if the cancellation is confirmed by the authorized testing station, the cost of undertaking the test shall be borne by the owner of the vehicle being tested and in the alternative by the prescribed authority.

(5) A certificate of fitness issued under this Act shall, while it remains effective, be valid throughout India.

(6) All transport vehicles with a valid certificate of fitness issued under this section shall carry, on their bodies, in a clear and visible manner such distinguishing mark as may be prescribed by the Central Government

(7) Subject to such conditions as the Central Government may prescribe, the provisions of this section may be extended to non-transport vehicles."

19. Thus a conjoint reading of the aforesaid provisions as contained in the Motor Vehicles Act, 1988 makes it amply clear that in case of a transport vehicle, unless it carries a valid certificate of fitness in accordance with law, no person is entitled to drive a transport vehicle and the owner of the transport vehicle is not entitled to cause or

permit the vehicle to be driven in any public place or any other place. Therefore, a transport vehicle which is registered under Section 39 can be driven or plied on road only if it possesses a valid fitness certificate; if it is not having a valid fitness certificate, it shall be deemed to be an unregistered motor vehicle. Thus, a transport vehicle which is duly registered under Section 39 of the Act is of no use, unless it carries a certificate of fitness, and as provided in sub-section (1) of Section 56, it becomes an unregistered motor vehicle.

20. In a judgment rendered by the full Bench of Kerala High Court in ***Pareed Pillai*** Vs. ***Oriental Insurance Co. Ltd., AIR 2019 Kerala 9,*** it has been held that when a transport vehicle is not having Permit or Fitness Certificate, nobody can drive such vehicle and no owner can permit the use of any such vehicle compromising with the lives, limbs and properties of the passengers. Relevant portion of this judgement reads as under:-

> *"13. Fitness of the vehicle to be plied on the road as a 'transport vehicle' is very important, especially in relation to the lives and limbs of the persons travelling in the vehicle, the pedestrians, other vehicles and properties of persons who are also using the road. It is with this intent, that a specific*

provision has been incorporated under the Statute as Section 84, prescribing the general conditions attached to all permits. Clause (a) of Section 84 reads as follows :

> *84. General conditions attaching to all permits-*
>
> *The following shall be conditions of every permit-*
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> *(a) that the vehicle to which the permit relates carries valid certificate of fitness issued under Section 56 and is at all times so maintained as to comply with the requirements of this Act and the rules made thereunder;*
>
> *xxx xxx xxx*

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.

17. The stipulations under the above provisions clearly substantiate the importance and necessity to have a valid Fitness Certificate to the transport vehicle at all times. The above prescription converges on the point that Certificate of Registration, existence of valid Permit and availability of Fitness Certificate, all throughout, are closely interlinked in the case of a transport vehicle and one requirement cannot be segregated from the other. The transport vehicle should be completely fit and road worthy, to be plied on the road, which otherwise may cause threat to the lives and limbs of passengers and the general public, apart from damage to *property. Only if the transport vehicle is having valid Fitness Certificate, would the necessary Permit be issued in terms of Section 66 of the Act and by virtue of the mandate under Section 56 of the Act, no transport vehicle without Fitness Certificate will be deemed as a validly registered vehicle for the purpose of Section 39 of the Act, which stipulates that nobody shall drive or cause the motor vehicle to be driven without valid registration in public place or such other place, as the case may be. These requirements are quite 'fundamental' in MACA No. 2030 of 2015 and connected cases nature; unlike a case where a transport vehicle carrying more passengers than the permitted capacity or a goods carriage carrying excess quantity of goods than the permitted extent or a case where a transport vehicle was plying through a deviated route than the one shown in the route permit which instances could rather (15 of 16) be branded as 'technical violations'. In other words, when a transport vehicle is not having a Fitness Certificate, it will be deemed as having no Certificate of Registration and when such vehicle is not having Permit or Fitness Certificate, nobody can drive such vehicle and no owner can permit the use of any such vehicle compromising with the lives, limbs, properties of the passengers/general public. Obviously, since the safety of passengers and general public was of serious concern and consideration for the law makers, appropriate and adequate measures were taken by incorporating relevant provisions in the Statute, also pointing out the circumstances which would constitute offence; providing adequate penalty. This being the position, such lapse, if any, can only be regarded as a fundamental breach and not a technical breach and any interpretation to the contrary, will only negate the intention of the law makers."*

21. In the instant case also the offending vehicle was being plied without permit as well as fitness certificate. Accordingly, it is held that since the offending vehicle was not having permit and fitness certificate on the date of the accident, therefore, the terms and conditions of the insurance policy were violated. Therefore, the tribunal below has erroneously fastened the liability on the

appellant/Insurance Company, whereas the owner of the offending vehicle should have been made liable to make the payment of compensation. However, in the light of the judgments passed by the Supreme Court in the cases of ***Amrit Paul Singh*** Vs. ***TATA AIG General Insurance Co. Ltd.,*** reported ***in (2018) 7 SCC 558*** and ***Shamanna and another*** Vs. ***Divisional Manager, the Oriental Insurance Co. Ltd. and others***, reported in ***(2018) 9 SCC 650,*** it is held that the Insurance Company shall pay the compensation amount to the petitioners with liberty to recover the same from the owner.

22. Consequently, in view of detailed discussion made here-in-above and the law laid down by the Hon'ble Apex Court, the present appeal is partly allowed and the impugned award dated 21.10.2016, passed by the learned Tribunal below, is modified to the extent that the owner shall be liable to make payment of compensation to the petitioners. However, the amount of compensation shall be first paid to the petitioners by the appellant/Insurance Company, who shall be entitled to recover the same from respondent No. 2/owner of the offending vehicle bearing

registration No. HP-01K-0404, in accordance with law. The remaining part and terms of the impugned award, including the interest component, shall remain the same.

23. The appeal stands disposed of in the above terms, so also the pending application(s), if any.

(Sushil Kukreja)
Judge

September 02, 2026
(raman)