Sr. No. 1
Regular

IN THE HIGH C0URT 0F JAMMU & KASHMIR AND LADAKH AT SRINAGAR

MA No. 108/2012

Reserved on: - 13.06.2023
Pronounced on: -15.06.2023

National Insurance Company Ltd. thr. Its Divisional Manager and Anr …Petitioner(s)/appellant(s)

Through: Mr. Aatir Javed Kawoosa, Advocate.

Vs.

M/S Rash Builders Civil Contractors and Suppliers thr. its Manager ...Respondent(s)

Through: Mr. Imtiyaz Ahmad Sofi, Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

J U D G M E N T

(N. Kotiswar Singh, CJ)

1. This appeal has been preferred by the Insurance Company being aggrieved by the Award dated 16.05.2012 passed by the J&K State Consumer Disputes Redressal Commission, Srinagar, (for short, **the Commission**) by which the Commission directed the Insurance Company to pay Rs. 1,74,000/- with compensation of Rs. 50,000/- and Rs. 8,000/- as litigation charges.

2. A claim was made by the present respondent before the Insurance Company seeking redemption of losses suffered by the insured on account of damage caused to the vehicle owned by the respondent. According to the claimant/respondent, the vehicle was purchased on 03.01.2007 which met with an accident on 10.01.2007, while the vehicle was being taken to his office/workshop located at Chandimar, Surankote, Jammu.

3. Accordingly, a report about the accident was lodged before Police Station Surankote, and a case being FIR No. 04 of 2007 under Sections 337, 279, 304-A RPC was registered against the driver of the vehicle (tipper).

4. The respondent (owner of the vehicle), accordingly, made a claim for indemnification for the damage suffered by the vehicle before the Appellant Insurance Company on 23.03.2007. Later, the Insurance Company deputed a surveyor for survey and assessment of the damage caused to the vehicle (tipper) in question. The surveyor after conducting a thorough inspection of the damaged tipper allowed the owner to move the vehicle to the workshop for repairs who had to pay Rs. 1 Lac in advance for repairing the same.

5. According to the claimant, he incurred a total cost of Rs. 2,86,000/- for repairing the damaged vehicle (tipper) and towards crane charges for lifting of the vehicle from the spot of the accident to the workshop.

6. As per the claimant, though the claim was made for the aforesaid amount, the Insurance Company did not indemnify but repudiated the claim vide letter dated 07.05.2008 on the ground that the vehicle was plied without registration certificate, route permit and fitness certificate.

7. The initial application of the insured before Insurance Ombudsmen, Chandigarh was not entertained on the ground that the said Ombudsmen lacked jurisdiction, and accordingly, the claimant approached the Commission seeking claim of an amount of Rs. 2,68,610/- towards repair charges, and Rs. 18,200/- towards crane charges and made further additional claim of Rs. 1,00,000/- as business loss and Rs. 50,000/- as compensation for the mental pain and agony which the claimant had to go through. The said complaint which was registered as Complaint No. 42/2008, was contested by the Insurance Company on the ground that the said vehicle was plied without any vehicular document and when the Insurance Company sought for the

documents from the claimant, the claimant could not produce any document and accordingly, his claim was repudiated.

8. It was mentioned in the objection filed by the Insurance Company before the Commission that on the date of alleged incidence, the vehicle was on commercial job and was carrying passengers/employees of the insured firm and the said vehicle was plying without valid documents.

9. The Commission, after hearing the parties and considering the material on record, held that the vehicle was insured and met with an accident is admitted by the Insurance Company. The only area of disagreement was that while the claimant stated that he was within his lawful rights to ply the vehicle, it was contended by the Insurance Company that since the vehicle was plying in violation of the insurance agreement, the claim would not be admissible. The Commission, thereafter, proceeded to observe that it appears the matter can be considered as a sub-standard claim with 75% of the assessed amount payable to the claimant, which works out at Rs. 1,74,000/- that would have been payable to the claimant way back in 2008, and also entitling him to compensation of amount of loss of profit/earning during the intervening period, particularly in view of the submission that after damages caused to the insured vehicle, the claimant had to suffer loss of business for as many as six months. Accordingly, the Commission held that the loss of business to the claimant can be taken as Rs. 50,000/- which raised the liability of the Insurance Company to Rs. 2,24,000/- along with Rs. 8,000/- as litigation charges bringing a total of Rs. 2,32,000/- which was to be paid by the Insurance Company or deposited with the Commission within four weeks vide order dated 16.05.2002 passed by the Commission.

10. Before us, Mr. Aatir Javed Kawoosa, learned counsel for the Insurance Company repudiated the claim for the reason that when the

accident occurred there was no registration certificate, no route permit and no fitness certificate.

11. As regards lack of registration certificate, the learned counsel for the appellant has not pressed the same in view of the existence of the temporary registration certificate dated 04.01.2007, issued by the competent authority under which the validity of the said registration certificate was valid up to 03.02.2007 and since the accident occurred on 10.01.2007, the learned counsel has not pressed this ground before us.

12. However, as regards the lack of the two other documents, it has been submitted by the Ld. counsel for the appellant that the claimant had neither the route permit nor the fitness certificate in respect of the vehicle on the date of accident. The fitness certificate according to the Insurance Company which was obtained by the claimant was valid from 22.07.2007 to 21.07.2009. Thus, as the said fitness certificate was obtained after the accident had occurred, it can be safely stated that there was no fitness certificate of the vehicle when the accident occurred.

13. It has been also submitted that as per the insurance policy, the insured claimant was entitled to carry the driver and two passengers (1+2) only, however, it is clearly seen from the record that the vehicle was carrying four passengers in addition to the driver.

14. In this regard, learned counsel for the appellant has referred to the FIR as well as the report of the surveyor. In the report of the surveyor, it has been clearly mentioned that one Mohd Rafiq of Anantnag and a minor girl Miss Fozia Kausir of Chandimarh had died and the driver and two persons namely Sh. Jaffar Khan of Chandimarh and Sh. Mohd Yousuf of Jai Shree District Baramulla had sustained injuries and were hospitalized, which clearly shows that the vehicle though was authorized to carry only two persons, was

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carrying four passengers and out of them, two had died and two sustained injuries and as such, the claimant had violated the terms and conditions of the insurance and accordingly, it has been submitted that the insurance company was justified in repudiating the claim of the claimant.

15. Learned counsel for the Insurance Company submits that lack of route permit is fatal for the claim of insurance as already observed by the Hon'ble Supreme Court in the case titled *"National Insurance Company Ltd Vs. Challa Bharathamma"* reported in *AIR 2004 SC 4882*.

16. Mr. I. Sofi, learned counsel for the claimant/respondent herein has, however, strenuously argued before this Court that it is incorrect to say that the vehicle did not have valid documents when the accident occurred and that the vehicle was used in violation of the terms and conditions of the insurance policy.

17. It has been submitted by the counsel for the claimant/respondent that as far as the registration certificate is concerned, the vehicle was purchased on 03.01.2007 which is not disputed by the Insurance Company and the competent authority issued the temporary certificate of registration on 04.01.2007 which was valid up to 03.02.2007 and as such, it cannot be said that there was no valid registration certificate.

18. Coming to the plea of the route permit, it has been submitted by the counsel for the claimant/respondent that the vehicle was not used for commercial purpose but was taken/driven for safe custody after its purchase from the shop to the site/office of the claimant. It has been submitted that in view of the provisions of Section 66 (3) (j) of the Motor Vehicles Act, 1988, there is no requirement for the route permit in such a situation, as the claimant-owner was taking the vehicle for its safe custody after the purchase of the vehicle.

19. Coming to the allegation that there was no fitness certificate, it has been submitted by the claimant that since it was a new vehicle which was purchased only a week before and a temporary registration certificate was already issued, the question of having fitness certificate at that stage does not arise. Further, it was also not one of the terms and conditions of the insurance policy.

20. Coming to contention of the Ld. Counsel for the Insurance Company that the vehicle was plied in contravention of the policy, it has been submitted that there was no such violation. It has also been submitted that the policy itself permits use of vehicle by one driver alongwith two passengers and it has not been shown by the Insurance Company that the vehicle was carrying more than two passengers when the accident occurred. In fact, the insurance company did not even lead any evidence to prove that the vehicle was carrying more than two passengers.

21. It has been submitted that under these circumstances, there was no violation of the terms and conditions of the insurance policy and that the Insurance Company cannot repudiate the claim of the insured claimant and as such, it has been submitted that this appeal may be dismissed as devoid of merit.

22. From the record, it is seen that the Insurance Company repudiated the claim of the claimant-respondent vide their letter dated 07.05.2008, in which it was clearly mentioned that the claim has been repudiated by the competent authority on the ground that at the time of the accident, the vehicle was plying without registration certificate, route permit and the fitness certificate.

23. Thus, from the above letter dated 07.05.2008 it is clear that the Insurance Company repudiated the claim of the claimant on three grounds i.e.,

i) lack of registration certificate,

ii) lack of route permit and

iii) lack of fitness certificate.

In the said repudiation letter, the company did not mention that the vehicle was carrying more than two passengers and was in violation of the terms and conditions of the insurance policy.

25. Be that as it may be, we would examine all these grounds taken by the Insurance Company to deny the claim.

26. As regards lack of registration certificate which is also mentioned in the letter dated 07.05.2008, Ld. counsel for the appellant has rightly not pressed the same in view of the temporary registration certificate dated 04.01.2007. Accordingly, we hold that the said ground taken by the Insurance Company to deny the claim was not permissible.

27. Secondly, coming to the route permit, we have also examined the provisions of Section 66 (3) (j) of Motor Vehicles Act, 1988 which reads as follows: -

> *"**66. Necessity for permits**.-(1) 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 is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used:*
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> ………………………………
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> ……………………………..
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> *(3) The provisions of sub-section (1) shall not apply-*
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> ………………………
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> ………………………..
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> *(j) subject to such conditions as the Central Government may, by notification in the Official Gazette, specify, to any transport vehicle purchased in one State and proceeding to a place, situated in that State or in any other State, without carrying any passenger or goods;"*

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28. A reading of the aforesaid provision of Section 66 (3) (j) of the Motor Vehicles Act, 1988 would indicate that if the vehicle was not used for the purpose for which it was intended to be used i.e., to carry passenger or goods on a particular route, the route permit is not required. Thus, if the vehicle was used without carrying passengers or goods for which it was meant to be used, but merely was being shifted from one place to another place as mentioned under Section 66 (3) (j), requirement of permit as contemplated under Section 66 (i) does not apply.

29. We have taken note of the submission advanced by the learned counsel for the claimant that on the date when the accident occurred, the vehicle was not carrying any passenger or goods for any commercial or business purpose which it was meant to be, but it was being shifted to office/workshop located at Chandimar, Surankote, Jammu for its safe custody and as such, no route permit was required for shifting the vehicle to his office.

30. We are also satisfied that in view of the provisions of Section 66 (3) (j) of the Motor Vehicles Act, 1988, route permit will not be necessary as the vehicle was not engaged in any commercial or official use and was not carrying any passengers or goods, but was merely being shifted to the office of the claimant for safe custody after the vehicle was purchased.

31. We have noted that the vehicle was purchased on 03.01.2007 and temporary registration was obtained on 04.01.2007 and the vehicle met with an accident on 10.01.2007 i.e., within a week of the purchase of the vehicle.

32. We also have noted the report submitted by the surveyor appointed by the Insurance Company wherein it has been mentioned that at the time of the accident the vehicle was empty. We also have noted the finding by the surveyor as narrated to him by the insured representatives that the vehicle in question was coming from Chandimarh and going to Surankote and near the

site of accident the Kacha road gave away because of which the insured vehicle lost its balance and rolled into a gorge, resulting in damages.

33. Thus, our view indicates that the driver was not really responsible for the accident. We also noted that the surveyor has also mentioned in the report that the damage suffered is in conformity with the cause and nature of the accident.

34. We also have noted that nothing has been mentioned in the surveyor's report which would come in the way of the claimant.

35. Further, the complainant also examined himself as a witness before the Commission in which he had specifically deposed that on 10.01.2007 when the claimant was taking the said vehicle (tipper) to its office/workshop located at Surankote, Jammu for safe custody, it met with an accident on his way in connection with which a report was also lodged before the Police Surankote registered as FIR No. 04 of 2007 under Sections 337, 279, 304-A RPC against the driver of the Vehicle (Tipper).

The said evidence of the claimant was neither challenged by the Insurance Company, nor it led any evidence to substantiate its grounds for repudiating the claim.

36. From the above, we can hold that the accident of the vehicle occurred while it was being taken to the office of the claimant for its safe custody and as it was not carrying any passengers or goods, and hence it is covered by the exemption clause under Section 66 (3) (j) of the Motor Vehicles Act, 1988 as regards requirement of having route permit for plying.

Accordingly, we also hold that in the present case, as route permit is not necessary, it cannot be a ground for repudiation of a claim.

37. Coming to the third plea raised that there was no fitness certificate, it may be observed that the fitness certificate is closely linked with the

registration certificate. It has been provided under Section 56 of the Motor Vehicles Act, 1988 that subject to the provisions of Section 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.

38. Thus, it is clear that before the vehicle is registered, the fitness certificate must be obtained by the vehicle owner. As a corollary, if the vehicle is registered it will be presumed that it also has a fitness certificate otherwise the certificate of registration of vehicle would not have been issued.

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39. In the present case, it is to be noted that the vehicle was a newly purchased one, which was purchased on 03.01.2007. Since it was a newly purchased vehicle, the owner was granted a temporary registration certificate which was issued on 04.01.2007, genuineness of which has not been challenged by the Insurance Company. The issuance of the temporary registration certificate in respect of newly purchased vehicle would clearly show that the vehicle was fit.

40. In similar facts and circumstances, a Division Bench of the Karnataka High Court, in case titled ***"United India Insurance Company Limited vs Vishakantegowda and Others"*** (2020 SCC OnLine Kar 2960), has held that in case of a brand-new temporarily registered vehicle, a claim for insurance cannot be repudiated on the ground that the said vehicle did not possess a fitness certificate. Although this case pertained to third-party claim, the underlying principle that the non-possession of a fitness certificate in case of

a brand new temporarily registered vehicle would not result in denial of compensation stands reiterated. The relevant paragraphs are reproduced as herein-under:

> *13. Re. Point No. 1:* ***The main argument of the learned counsel for the appellant is based on the temporary registration of the vehicle and the policy issued thereon for the temporary period vis-a-vis the offending vehicle having no fitness certificate and permit****. In this regard it is relevant to refer to the provisions of Sections 39, 43 and 66 (3)(k) of the Act which reads as under*
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> *18. Even assuming that the occupants are gratuitous passengers, in view of the premium collected to cover the risk of such passengers/occupants in a comprehensive policy****, the liability of the insurer cannot be exonerated to indemnify the registered owner for the risk covered therein merely for the reason that the offending vehicle had a temporary registration and the vehicle was used in contravention of the provisions of the Act.***
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> *20. It is well settled that for any violation of the provisions of the Act, the procedure contemplated under the Act has to be initiated by taking appropriate steps. But the same would not result in denial of compensation for the negligent action of the driver of the offending vehicle in respect of the third parties/occupants.*
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> *24. It is not in dispute that temporary Registration Certificate was issued by the authorities as per Ex.R1 dated 10.02.2017 and the policy was issued on the same day. Ex.R2 is the sale certificate****. The accident has occurred on the very next day of taking the delivery of the vehicle. RW-2 has admitted in the cross examination that no permit will be issued by the RTO when the vehicle was temporarily registered. If so, no infraction of law can be found. Insurance Company cannot repudiate the claim on flimsy grounds.***
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> *25. In the light of the aforesaid judgments vis-a-vis the evidence on record, we are of the considered view that* ***the liability fastened on the Insurance Company to satisfy the award cannot be faulted with.***

[Emphasis Supplied]

41. No doubt, upon a bare perusal of Section 56 read with Section 39 of the Act, it is clear that the requirement for a vehicle to possess a fitness certificate is certainly an important element for it to be validly registered, for a vehicle which is not fit, cannot be allowed to ply on roads which will compromise the lives, limbs and properties of passengers or general public. The object underlying the requirement of fitness certificate is regard for the safety of passengers and general public. Therefore, the fitness of a vehicle is *sine qua non* for a valid registration due to considerations of safety. A five-judge bench of the Kerala High Court in case titled "*Ramankutty vs Pareed Pillai"* **(2018 SCC OnLine Ker 3542)** has emphasised upon the underlying object for the requirement of a fitness certificate. The relevant paragraphs are reproduced as hereinunder:

> *"18. 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 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 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."*

[Emphasis Supplied]

42. However, the peculiar question which has emerged before us in the present case pertains to the requirement of a fitness certificate for a brand-new vehicle which has been temporarily registered. In our view, taking into consideration the object behind the requirement of a fitness certificate under Section 56 of the Act and sheer common sense, we cannot contemplate the sale of any brand-new vehicle, which is not otherwise fit. The sale of a brand-new vehicle itself implies that it is fit. It is only after the due course of time, and use of the vehicle, the requirement of fitness becomes relevant. Therefore, the issuance of temporary registration for a brand-new vehicle implies that for the said period of registration, the vehicle is fit. Hence, there will not be any requirement for a fitness certificate for a brand new vehicle till the validity of the temporary registration certificate which is usually for a month after the purchase of the vehicle. Any other view, would not only be illogical and incongruent, but will also tantamount to stretching the provisions of law relating to fitness of vehicles beyond reasonable limits.

43. We also fail to understand how a newly purchased vehicle which has not even completed a month, would require to be issued fitness certificate. Any view insisting fitness certificate for a newly purchased vehicle would be incongruous for there cannot be any vehicle which is brand new yet not fit. Therefore, we hold that in respect of newly purchased vehicle from the manufacturer through its retailer or agency and once temporary certificate of registration has been issued, it would be deemed that it also contains the certificate of fitness in respect of the same vehicle. Taking any contrary view would be illogical, unreasonable and absurd.

44. Accordingly, we hold that since the temporary registration was issued for the said vehicle which was valid up to 03.01.2007, it would naturally be deemed that the fitness certificate has also been issued till the expiry of the said temporary registration certificate. Fitness certificate would be implicit in the temporary registration certificate issued to a brand new vehicle. Accordingly, we hold that the rejection of the repudiation of the claim on the ground that the vehicle did not have fitness certificate was illegal.

45. Coming to the other plea raised by the learned counsel for the appellant before us that the vehicle was used in contravention of the policy, since it was not a ground of repudiation as conveyed by the Insurance company to the claimant vide letter dated 07.05.2008, we are not inclined to accept the said ground which is being raised before us. Such a plea was not specifically taken before the Commission.

46. Be that as it may be, we have also noted from the record that two persons had died and two were injured, on which basis the learned counsel for the Insurance Company has drawn an inference and presumption that the vehicle was carrying four passengers, which cannot be accepted. The accident had occurred, as such, it was quite possible that because of accident persons

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who were near the vehicle could have died or sustained injuries and it was not necessary that those injured or dead persons were travelling in the said vehicle (tipper). If the insurance company wanted to contend that the vehicle was carrying four passengers, beyond the permissible limit, nothing prevented them from alleging so specifically in their repudiation claim as well as in the written objection filed before the Commission, since the surveyor's report was very much within their knowledge. Yet the insurance company did not make any specific claim that the two deceased and two injured persons were travelling in the said vehicle. Unless any such specific averment is made, merely because two persons had died and two persons had received injuries, neither inference can be drawn, nor does it necessarily mean that the injured and deceased were travelling in the said vehicle as passengers.

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47. Since the Motor Vehicle Act, 1988 is a beneficial statue, when two views are possible, one which is favourable to the insured must be preferred against the view in favour of the insurer.

48. Accordingly, for the reasons discussed above, we are of the view that there is no merit in the appeal and same is dismissed.

(MOKSHA KHAJURIA KAZMI) **(N. KOTISWAR SINGH)**
JUDGE **CHIEF JUSTICE**

SRINAGAR
15.06.2023
Junaid

Whether approved for reporting? Yes/No