THE HIGH COURT OF MADHYA PRADESH
MA No.1054/2015

(United India Insurance Company Ltd. vs. Vinod & Ors.)

Gwalior, Dated : 25.06.2019

Shri B.N. Malhotra, Counsel for the appellant.

Shri N.S. Pal, Counsel for the respondent No.1.

None for other respondents.

This miscellaneous appeal under Section 173 of Motor Vehicles Act has been filed against the award dated 27.8.2015 passed by 14th Motor Accident Claims Tribunal, Gwalior in Claim Case No.298/2014 by which the Insurance Company has been made jointly and severally liable to pay the compensation.

2. Since the factum of accident has not been denied, therefore, suffice it to say that the respondent No.1 Vinod suffered grievous injuries in a vehicular accident which took place on 28.3.2013 caused by Tavera four wheeler bearing registration No.MP37T-0233. The said offending vehicle was registered as taxi and the Claims Tribunal in its paragraph 30 of the award has come to a conclusion that it was not having fitness certificate. However, the contention of the Insurance Company has been rejected on the ground that non-availability of fitness certificate cannot be said to be violation of terms and conditions of the insurance policy as in absence of any such condition, it cannot be said that non-availability of the fitness certificate in any manner violates the terms and conditions of the

insurance policy.

3. Heard the learned counsel for the parties.

4. The co-ordinate bench of this Court in the case of **Oriental Insurance Co. Ltd. Vs. Manoj and others** reported in **2014 ACJ 2380** has held that since, the Counsel for the Insurance Company could not satisfy that the non-availability of the fitness certificate would amount to violation of the terms and conditions of the policy, therefore, it was held that the Insurance Company is liable.

5. Section 39 of the Motor Vehicles Act, 1988 provides for registration of the vehicle and Section 56 of the Motor Vehicles Act, 1988 provides for fitness certificate.

6. Section 39 and 56 of Motor Vehicles Act, 1988 reads as under :

> **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 not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner:
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> Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.
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> **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.

(2) The "authorized testing station" referred to in sub-section (1) means a vehicle service station or public or private garage which the State Government, having regard to the experience, training and ability of the operator of such station or garage and the testing equipment and the testing personnel therein, may specify in accordance with the rules made by the Central Government for regulation and control of such stations or garages.

(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 such prescribed authority holds such technical qualification as may be prescribed or where the prescribed authority does not hold such technical qualification on the basis of the report of an officer having such qualifications.
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> (5) A certificate of fitness issued under this Act shall, while it remains effective, be valid throughout India.

7. Section 192 of Motor Vehicles Act, provides for penalties for using the vehicle without registration, which reads as under :

> **192. Using vehicle without registration**.— (1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of Section 39 shall be punishable for the first offence with a fine which may extend to five thousand rupees but shall not be less than two thousand rupees for a second or subsequent offence with imprisonment which may extend to one year or with fine which may extend to ten thousand rupees but shall not be less than five thousand rupees or with both :
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> Provided that the Court may, for reasons to be recorded, impose a lesser punishment.
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> (2) Nothing in this section shall apply to the use of a motor vehicle in an emergency for the conveyance of persons suffering from sickness or injuries or for the transport of food or materials to relieve distress or of medical supplies for a like purpose :
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> Provided that the person using the vehicle

> reports about the same to the Regional Transport Authority within seven days from the date of such use.

8. Section 145(c) of Motor Vehicles Act, 1988 deals with "Liability", which reads as under :

> "Liability", wherever used in relation to the death of or bodily injury to any person, includes liability in respect thereof under Section 140"

9. Section 140 of Motor Vehicles Act, 1988 reads as under :

> **140. Liability to pay compensation in certain cases on the principle of no fault**.— (1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.
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> (2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty-five thousand rupees.
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> (3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner

> or owners of the vehicle or vehicles concerned or of any other person.
>
> (4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.
>
> (5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:
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> Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under Section 163-A.

10. Thus, it is clear that for use of a vehicle, Insurance Policy is required under Section 147 of Motor Vehicles Act, 1988, and for use of a vehicle, its registration is compulsory and for registration, the fitness certificate of the transport vehicle is necessary under Section 56 of Motor Vehicles Act. Use of vehicle without registration is also punishable under Section 192 of Motor Vehicles Act. Thus, in the considered opinion of this

Court, the requirement of fitness certificate for the liability of the Insurance Company is not dependent upon the terms and conditions of the Insurance Policy, but it is the requirement of law for using the vehicle in accordance with law and none of the term or condition of the Insurance Policy allows the owner of the vehicle to ply the vehicle in contravention of any provision of law. Thus, this Court is of the considered opinion that due to non-availability of the fitness certificate, it can be safely said that the vehicle was being used contrary to the provisions of law, and since, the insurance policy is required under Section 147 of the Motor Vehicles Act, therefore, it cannot be said that Insurance Policy is a private contract of insurance between the driver and the Insurance Company, but in fact it is the statutory requirement.

11. Further, for holding a valid permit, the fitness certificate is must. Section 84(1)(a) of Motor Vehicles Act, 1988 reads as under :

> **84. General conditions attaching to all permits**.—The following shall be conditions of every permit—
> (*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;

12. The Supreme Court in the case of **National Insurance Company Limited Vs. Challa Upendra Rao** reported in **(2004) 8 SCC 517** has held 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 Supreme Court in the case of **Amrit Paul Singh Vs. TATA AIG General Insurance Co. Ltd.** reported in **(2018)7 SCC 558** has held that in case, if the transport vehicle was being plied without permit, then the Insurance Company would not be liable.

14. Section 146 of Motor Vehicles Act, 1988 provides that no person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless

there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter. Thus, for use of a vehicle, an insurance policy is necessary and for use of a transport vehicle, not only it is required to be registered, but it should have fitness certificate apart from permit. Thus, fitness certificate cannot be read in isolation from other provisions of Motor Vehicles Act, 1988.

15. Thus, in absence of fitness certificate, the Insurance Company would not be liable to indemnify the insured.

16. The 5 Judges Bench of High Court of Kerala in the case of **Pareed Pillai VS. Oriental Insurance Co. Limited** by **order dated 9-10-2018** passed in **MACA No. 2030 of 2015** has held as under :

> 7. The requirements of policies and limits of liabilities are stipulated under Section 147 of the M.V. Act, 1988. The defences available to the insurer are specified under Section 149 (2) of the Act; while Section 170 deals with wider defence under special circumstances. Section 149 (2) reads as follows : [specific reference to 149 2 (a) (i)) (c)].
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> "149. Duty of insurer to satisfy judgements and awards against persons insured in respect of third party risks-

(1) xxxxxxx (2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgement or award unless, before the commencement of the proceedings in which the judgement or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgement or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party there to and to defend the action on any of the following grounds, namely--

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely--

(i) a condition excluding the use of the vehicle--

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving license during the period of disqualification; or

(iii) a condition excluding liability for injury

caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular. "

8. The scope of the above provision was considered and explained by the Apex Court, with reference to Section 170 and it was held in Shila Datta's case [cited supra], that the limitation to the insurer is only when it is issued a notice by the Tribunal under Section 149 (2) and in all other cases, where the insurance company is already made a party to the proceedings, it can challenge the award on all grounds including the quantum. The Apex Court also held that a joint appeal by the insurer and the insured is maintainable; overruling the decision rendered in Chinnamma George vs. N.K. Raju [(2000) 4 SCC 130)].

9. 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. Section 66 stipulates that no owner of a vehicle shall use or permit to use the vehicle in a public place, whether or not such vehicle is actually carrying any passenger or goods, save in accordance with the conditions of a Permit granted or counter signed by a Regional or State Transport Authority or any such other

Authority authorizing the use of the vehicle at that place and in the manner as sanctioned.

10. Section 66 of the Act 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.

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage.

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods either when carrying passengers or not.

Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2) The holder of a goods carriage permit may use the vehicle, for the drawing of any trailer or semi-trailer not owned by him, subject to such conditions as may be prescribed.

1[Provided that the holder of a permit of any articulated vehicle may use the prime mover of that vehicle for any other semi-trailer.] (3) The provisions of sub-section (1) shall not apply-

(a) to any transport vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise;

(b) to any transport vehicle owned by a local authority or by a person acting under contract with a local authority and used solely for road cleaning, road watering or conservancy purpose.

(c) to any transport vehicle used solely for police, fire brigade or ambulance purpose;

(d) to any transport vehicle used solely for the conveyance of corpses and the mourners accompanying the corpses;

(e) to any transport vehicle used for towing a disabled vehicle or for removing goods from a disabled vehicle to a place safety;

(f) to any transport vehicle used for any other public purpose as may be prescribed by the State Government in this behalf;

(g) to any transport vehicle used by a person who manufacturers or deals in motor vehicles or builds bodies for attachment to chassis, solely for such purposes and in accordance with such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf;

[xxxx]

(i) to any goods vehicle, the gross vehicle weight of which does not exceed 3,000 kilograms;

(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;

(k) to any transport vehicle which has been temporarily registered under section 43 while proceeding empty to any place for the purpose of registration of the vehicle;

[xxxx]

(m) to any transport vehicle which, owing to flood, earthquake or any other natural calamity, obstruction on road, or unforeseen circumstances is required to be diverted through any other route, whether within or outside the State, with a view to enabling it to reach its destination;

(n) to any transport vehicle used for such purposes as the Central or State Government may, by order, specify;

(o) to any transport vehicle which is subject to a hire-purchase, lease or hypothecation agreement and which owing to the default of the owner has been taken possession of by or on behalf of the person with whom the owner has entered into such agreement, to enable such motor vehicle to reach it destination; or

(p) to any transport vehicle while proceeding empty to any place for purpose of repair.

(4) Subject to the provisions of sub-section (3), sub- section (1) shall, if the State Government by rule made under section 96 so prescribes, apply to any motor vehicle adapted to carry more than nine persons excluding the driver. From the above, it is clear that the mandatory requirement under Section 66 (1) of the Act, to possess a valid 'Permit' by a

Transport vehicle can not be avoided, unless it comes under the specified circumstances mentioned in sub-section (3), which is a matter to be pleaded and proved by the party who claims the exemption i.e. the insured/owner. Obviously, no such case of exemption is mooted by the insured/owner in the instant case, who did not even contest the matter before the Tribunal.

11. 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 Chapter IV of the Act and the Certificate of Registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner, which provision however shall not apply to a motor cycle in possession of a dealer, subject to such conditions as may be prescribed by the Central Government. This is the mandate of Section 39 of the Motor Vehicles Act 1988. The registration envisaged therein could be suspended in terms of Section 53 of the Act which authorizes the registering authority or the prescribed authority to have it done, if he has reason to believe that the motor vehicle within his jurisdiction would constitute a danger to the public or that it fails to comply with the requirements of the Acts/Rules or is being used for hire or reward without a valid Permit for being used as such. Registration suspended under Section 53 could be cancelled by the Registering Authority in terms of Section 54 of the Act i.e., if the suspension of registration is continued without interruption for a period not less than six months.

12. 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 the exemption carved out under the sub-section (3) of Section 66 of the Act [extracted already].

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;

14. It is pertinent to note, that power is conferred upon the Transport Authority who has granted the 'Permit' to cancel the Permit

or suspend the same on the grounds specified under Section 86; among which Clause (a) is in respect of the breach involving any conditions specified in Section 84 or any condition contained in the Permit. Section 86 (1) (a) and (c), to the extent, it is relevant here, is extracted below :

> 86. Cancellation and suspension of permits- (1)The Transport Authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit-
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> (a) on the breach of any condition specified in section 84 or of any condition contained in the permit, or
>
> (b) xxxxx
>
> (c) if the holder of the permit ceases to own the vehicle covered by the permit, or

15. As mentioned above, fitness of a vehicle, to be used as a transport vehicle, is of paramount importance. The necessity to have 'Fitness Certificate' is prescribed under Section 56 of the Act. Sub- section (1) of Section 56 clearly stipulates that, a transport vehicle [subject to the provisions of Section 59 (power to fix the age limit of motor vehicle) and Section 60 (registration of the vehicles belonging to the Central Government)] shall not be deemed to be validly registered for the purpose of Section 39, unless it carries a 'Certificate of Fitness' as prescribed. By virtue of Section 84 (a), as mentioned already, it is a mandatory requirement of every Permit, that the vehicle to which the Permit relates, shall carry valid 'Certificate of Fitness' issued under Section 56 at all time, absence of which will

automatically lead to a situation that the vehicle will not be deemed as having a Permit [if it is not having a 'Fitness Certificate' on a given date]. Using a motor vehicle in an unsafe condition in any public place itself is an offence under Section 190 of the Act. Separate penalty is prescribed under Section 192 for driving or using the motor vehicle in contravention of Section 39 of the Act [i.e. without registration]; which at the first instance by fine upto Rs.5000/- [not less than Rs. 2000/-] and for the second or subsequent offences, it may be with imprisonment, which may extend to one year or fine upto Rs.10,000/- [not less than Rs.5000/-] or with both; of course, conferring power upon the Court to impose a lesser punishment, for reasons to be recorded. Similarly, separate punishment is provided for using vehicles without 'Permit' as provided under Section 192A [first offence with fine upto Rs.5000/- which shall not be less than Rs.2000/- and for any subsequent offence with imprisonment upto one year [which shall not be less than 3 months or with fine upto Rs.10.000/- which shall not be less than Rs.5000/-] or with both; here again conferring power on the Court to impose lesser punishment, for reasons to be recorded. Reference is made to the above provisions only to illustrate the utmost requirement to have a valid 'Registration, Permit and Fitness Certificate'.

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 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 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.

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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.

17. Accordingly, it is held that since the offending vehicle was not having the fitness certificate on the date of the accident, therefore, the terms and conditions of the insurance policy were violated and thus the Insurance Company is not jointly and severally liable to make 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 be liable to make payment of the compensation amount with liberty to recover the same from the owner.

18. No other arguments are advanced by any of the parties.

19. Accordingly, the award dated 27.8.2015 passed by 14th Motor Accident Claims Tribunal, Gwalior in Claim Case No.298/2014 is hereby affirmed with aforesaid modification.

20. With aforesaid modification, the appeal is **partially allowed**.

(G.S. Ahluwalia)
Judge

(alok)