IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PAVAN KUMAR DWIVEDI

MISC. APPEAL No. 13 of 2012

BRANCH MANAGER THE ORIENTAL INSURANCE CO. LTD

Versus

NIRMAL AND 2 ORS AND OTHERS

Appearance:

Shri Pradeep Gupta, learned counsel for the appellant/insurance company with Shri Bhashkar Agrawal and Shri Bharat Yadav, learned counsels.

Shri Satish Jain, learned counsel for the respondents.

Heard on : 28.11.2025

Pronounced on : 03.02.2026

ORDER

The respondent No.2/driver was served through ordinary process and respondent No.3/owner has been served by the appellant/insurance company through paper publication by publishing notice in daily news paper Rajasthan Patrika, Alwar edition on 16.04.2024 where the respondent No.3 resides, in view of the same the service of notice of this appeal was deemed to be effected by this Court vide order dated 17.10.2025. Despite service, neither respondent No.2, nor respondent No.3 have entered their appearance before this Court. The counsel for respondent No.1 is present.

2. This appeal is of the year 2012 as such it is being heard in absence of respondent Nos.2 and 3.

3. The appeal has been filed by the insurance company in terms of Section 173 of the Motor Vehicles Act against the findings recorded by the claims tribunal in para 7 of the impugned award inasmuch as by discarding the defence raised by the insurance company with respect to absence of permit and consequential breach of policy, the liability to pay compensation has been fastened upon the insurance company/appellant.

4. The facts in brief relevant for adjudication of the present dispute are that on 16.02.2008 at around 08:30 in the evening the claimant Nirmal / the respondent No.1 was sitting as a cleaner in truck bearing registration number HR-A-1305. The respondent No.2 was driving the said truck in a rash and negligent manner because of which it got upturned at Jamaalpura Square, Gandhisagar, Raampura Road resulting in grievous injuries to the claimants/respondent No.1. He sustained fracture on his left hand in which rod was implanted. His jaw bone was also broken which was repaired with implant of plate. There was deformity in the hand and face of the respondent No.1.

5. The respondent No.1 filed claim petition under Section 166 of the Motor Vehicles Act claiming compensation for the injuries sustained in the aforesaid accident. The claims tribunal after recording evidence awarded a total compensation to the tune of Rs.1,41,300/- to the respondent No.1, however, the defence of the insurance company that it is not liable to pay compensation for the breach of terms of insurance policy was discarded and the appellant was directed to pay the compensation.

6. Learned counsel for the appellant/insurance company submits that in

the facts of the present case, the spot of accident becomes very significant which is Jamaalpur Square which is situated in the State of M.P. which comes within the territory of district Neemuch covered by jurisdiction of police station-Raampura.

7. Learned counsel for the appellant/insurance company by referring to Ex.D-7, the report of verification of particulars of permit no. 5642/NP/06 of vehicle in question as given by the surveyor, submits that in item No.3 area authorized to drive the vehicle has been provided in which four states are mentioned i.e. Haryana, Delhi, Rajasthan and U.P. only, as such the vehicle could have been plied in these four states and not in the State of M.P. He then refers Ex.P-9 which is 'authorization for tourist or national permit' i.e. the permit to ply the vehicle within the designated area. He points out that in the table provided in said document three states are mentioned i.e. Delhi, U.P. and Rajasthan. The validity of authorization is provided from 05.11.2007 to 04.11.2008 and the accident occurred on 16.02.2008, thus, within this period of authorization, however beyond the authorised area. He submits that the owner has not come with a case that he was having any separate authorization for plying the vehicle in the State of M.P. He further refers to Ex.D-8/the insurance policy and straightway points out at the bottom of the policy which provides that the policy was issued subject to provisions of Chapter 10 and Chapter 11 of the Motor Vehicles Act, 1988. He then would show the statement of DW-1/officer of the insurance company who in para 3 of his statement has stated by referring to Ex.D-7 and Ex.D-8 that the condition of issuance of policy included that the vehicle

has to be operated within the bounds of the provisions of the Motor Vehicles Act. He then refers to para 4 and submits that RTO, Rewadi has issued the permit Ex.D-9 to the owner of the vehicle for plying the same in which there is no permission for operating the vehicle within the bounds of the state of M.P. He further refers to the statement of PW-1 particularly para 9 of his cross-examination and submits that there is a clear admission of the said witness who is the claimant, who was working as clear in the insured vehicle that there was no permit for plying the vehicle within the purview of State of M.P. In view of the above submissions, he submits that it is a clear case of infraction of the provisions of Motor Vehicles Act particularly Section 66 of the Motor Vehicles Act and consequently, breach of the terms of the insurance policy, in view of the endorsement appended at the bottom of the policy itself. For this proposition, he places reliance on the judgment of the Hon'ble Apex Court rendered in the case of **Gohar Mohammed Vs. Uttar Pradesh State Road Transport Corporation and others 2023 (4) SCC 381**. He submits that the Hon'ble Apex Court while considering various aspects of the liability of the insurance company in different circumstances has also considered the situation where vehicle goes beyond the permitted route, the Court after considering that the vehicle was being used on a route which was not permitted by the RTO, exonerated the insurance company from its liability to pay compensation.

8. The learned Counsel of the appellant further placed reliance on the recent judgment of the Hon'ble Apex Court rendered in the case of **K. Nagendra Vs. New India Insurance Co. Ltd. and Others, 2025 SCC OnLine**

SC 2297 and repeats the same submissions. He thus prays that the claims tribunal has incorrectly saddled the insurance company with the liability to pay compensation.

9. Per contra, learned counsel for the claimants submits that Ex.D-9 is the photocopy, thus, the same cannot be relied upon. He also submits that it was a burden on the insurance company to call the officer of the concerned RTO office to prove that the permit did not cover the route on which the accident occurred. In absence of the same, the defence of the insurance company with respect to breach of terms of insurance policy has rightly been discarded by the claims tribunal. He further submits that in any case the claimant is third party hence even if it is found that the vehicle was being plied in breach of terms of the insurance policy still pay and recover should be directed.

10. In rejoinder submission, learned counsel for appellant/insurance company submits that in fact the application under Section 26 Rule 4 was filed by the insurance company before the claims tribunal for calling the concerned officer from the RTO department, however, the same was rejected by the claims tribunal, thus, the its burden was discharged by the insurance company.

11. Heard the learned counsel for the parties and perused the record.

12. At the outset it has to be recorded that the owner and driver of the vehicle have remained exparte before the claims tribunal also. The appellant/insurance company has taken specific defence before the claims tribunal that the vehicle was not having permit to ply the same in the State of M.P. and despite this the same was being plied in the State of M.P. which

constitutes a clear violation of the terms of insurance policy. Ex.D-7 and Ex.D-9 would show that the permit was only with respect to Delhi, U.P., Rajasthan and Haryana. In fact, in Ex.D-9 Haryana is also not there.

13. The witness of the insurance company has clearly deposed that in investigation it was found that the vehicle was not having permit to ply in the State of M.P. Not only this, even the claimant who was employed as cleaner on the insured vehicle admitted that the vehicle was not having permit to ply in the State of M.P. Thus, in the considered view of this Court, there was complete absence of permit to ply the vehicle in the State of M.P. Once this defence was raised by the insurance company and its burden was discharged by cross examination of cleaner and deposition of its officer as also by exhibiting relevant documents as Ex.D-7 and Ex.D-9, the onus had shifted on the owner of the vehicle to establish that it was having permit to ply the same in the State of M.P. However, the owner remained ex-parte.

14. A perusal of the Ex. D-7 would show that it provides for area of authorised to drive as "Haryana, Delhi, Rajasthan & U.P. Only". Again in Ex. D-9 only three States i.e. Delhi, U.P., Rajasthan are mentioned and in facts words "three states" are also written. These documents are proved by the Insurance Company by examining its Officer. Now, If we see the 'Insurance Policy' Ex. D-8 then it will come to the fore that the said policy provides at the bottom as under:

"*I/We hereby certify that the Policy to which this Certificate relates as well as this Certificate of Insurance is issued in accordance with the provisions of Chapter X and Chapter XI of M.V. Act, 1988.*"

Now section 158 of chapter XI provides for production of permit, amongst other things, on being so required from a person driving a motor vehicle in public place. And if the same is not available at the time of demand, in case of an accident, then same shall have to be produced at the police station. The requirement of permit is provided in Section 66 of the Motor Vehicle Act, 1988, which mandates that no owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted by the competent authority. It is thus clear that the requirement of section 158 is not an empty requirement of carrying permit but it enjoins on a conjoint reading of section 66 and 158 that the vehicle must abide by the conditions of permit, thus the requirement of carrying permit is imposed upon the owner so that it may be insured if need be arise that the vehicle being plied in accordance with the conditions of permit.

15. In view of the above analysis if we examine the permit of the offending vehicle then it will come to the fore that the permit was not issued for plying the same in the State of M.P., thus for the State of M.P. there was in fact no permit at all. The consequence of plying vehicle in absence of permit has been considered by the Hon'ble Apex Court in the case of **Gohar Mohammed (supra)** in para 8 and 9 as under:-

> "*8. Having heard the learned counsel for the parties and on perusal of the material available on record, it clearly reveals that on the date of the offending vehicle on the route where accident took place. Having extensively gone through the fact- inding exercise, it is categorically recorded by MACT that the appellant was neither able to produce/prove the original permit nor was able*

to prove the information received under the RTI Act. Even if RTI information is considered by which it is not clear as to when the disputed permit was issued and by whom. The alleged permit was issued on 28-7-2012 i.e. on Saturday and no explanation is on record as to why deposit of fee was asked on the next day i.e. Sunday. Moreover, assuming that permit was valid as per letter of the Transport Authority, but it is not of any help to the appellant since the vehicle was being plied on a route different than specified in permit. The appellant has failed to give any explanation to refute the observations made by MACT to ply the vehicle on Roorkee bypass to Haridwar via Meerut which did not fall within the route of permit issued by the Transport Authority. The said findings of fact have been affirmed by the High Court by the impugned order.

9. After going through the record, the concurrent findings of fact do not warrant any interference since they do not outrageously defy the logic as to suffer from the vice of irrationality and neither incur the blame of being perverse. In view of the foregoing discussion, we are of the considered opinion that the arguments raised by the appellant are bereft of any merit, hence this appeal is hereby dismissed."

16. Recently, its effect was reiterated in the case of **K. Nagendra (supra)** in para 8 to 10 which read as under:-

"8. Now, let us consider the instant case. The record reveals that the offending vehicle did not have the permit to enter Channapatna City, where the accident took place. This position is not in dispute. Unquestionably, therefore, the terms of the permit have been deviated.

9. The purpose of an insurance policy in the present context is to shield the owner/operator from direct liability when such an unforeseen/unfortunate incident takes place. To deny the victim/dependents of the victim compensation simply because the

accident took place outside the bounds of the permit and, therefore, is outside the purview of the insurance policy, would be offensive to the sense of justice, for the accident itself is for no fault of his. Then, the Insurance Company most certainly ought to pay.

10. At the same time though, when an Insurance Company takes on a policy and accepts payments of premium in pursuance thereto, it agrees to do so within certain bounds. The contract lays down the four corners within which such an insurance policy would operate. If that is the case, to expect the insurer to pay compensation to a third party, which is clearly outside the bounds of the said agreement would be unfair. Balancing the need for payment of compensation to the victim vis-à-vis the interests of the insurer, the order of the High Court applying the pay and recover principle, in our considered view, is entirely justified and requires no interference.

17. As is clear from the authoritative pronouncement of the Hon'ble Apex Court on the issue, the insurance company cannot be saddled with liability to pay compensation for the breach of terms of the insurance policy. It has to be kept in mind that it is not required that this condition should be mentioned in the policy itself when the policy says that the provisions of Motor Vehicles Act, 1988 have to be complied with and as per Section 66 of the Motor Vehicles Act it was an essential requirement for the owner of the vehicle that it gets a valid permit to ply the vehicle on a particular route / area. As such, it is hereby held that insurance company is not liable to pay compensation as awarded by the claims tribunal, it is the liability of the owner/driver to pay the compensation.

18. However, in the aforequoted judgments, the Hon'ble Apex Court while exonerating insurance company has directed for pay and recover. Thus, in the present case also, it is hereby directed that the insurance company first pay

the compensation as awarded by the claims tribunal to the claimants in full and then recover the same from owner/driver of the vehicle.

19. With the aforesaid, the present appeal stands disposed of.

(PAVAN KUMAR DWIVEDI)
JUDGE

N.R.