IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PAVAN KUMAR DWIVEDI

ON THE 19th OF JANUARY, 2026

MISC. APPEAL No. 1044 of 2018

THE NEW INDIA ASSURANCE CO. LTD.

Versus

PRAKASH SHIVHARE AND OTHERS

Appearance:

Shri Manoj Jain - Advocate for the appellant.

Shri Manish Jain - Advocate for the respondent No.2.

Shri Shahid Shaikh, learned counsel for the respondent No. 3 and 4.

WITH

MISC. APPEAL No. 1045 of 2018

THE NEW INDIA ASSURANCE CO. LTD.

Versus

MANISH JAISWAL AND OTHERS

Appearance:

Shri Manoj Jain - Advocate for the appellant.

Shri Manish Jain - Advocate for the respondent No.1.

MISC. APPEAL No. 1046 of 2018

THE NEW INDIA ASSURANCE CO. LTD.

Versus

RAMESHWARI CHOUKSE AND OTHERS

Appearance:

Shri Manoj Jain - Advocate for the appellant.

Shri Manish Jain - Advocate for the respondent No.1.

Shri Shahid Shaikh, learned counsel for the respondent No. 3 and 4.

MISC. APPEAL No. 1047 of 2018

THE NEW INDIA ASSURANCE CO. LTD.

Versus

PRAKASH SHIVHARE AND OTHERS

Appearance:

Shri Manoj Jain - Advocate for the appellant.

Shri Shahid Shaikh, learned counsel for the respondent No. 3 and 4.

MISC. APPEAL No. 1048 of 2018

THE NEW INDIA ASSURANCE CO.LTD.

Versus

MUKESH AND OTHERS

Appearance:

Shri Manoj Jain - Advocate for the appellant.

Shri Manish Jain - Advocate for the respondent No. 1.

Shri Shahid Shaikh, learned counsel for the respondent No. 2 and 3.

MISC. APPEAL No. 1049 of 2018

THE NEW INDIA ASSURANCE CO. LTD.

Versus

SHOBHARAM SHENDE AND OTHERS

Appearance:

Shri Manoj Jain - Advocate for the appellant.

Shri Manish Jain - Advocate for the respondent No. 1 and 2.

Shri Shahid Shaikh, learned counsel for the respondent No. 3 and 4.

MISC. APPEAL No. 1051 of 2018

THE NEW INDIA ASSURANCE CO. LTD.

Versus

SANTOSH SHIVHARE AND OTHERS

Appearance:

Shri Manoj Jain - Advocate for the appellant.

Shri Manish Jain - Advocate for the respondent No. 1.

Shri Shahid Shaikh, learned counsel for the respondent No. 2 and 3.

MISC. APPEAL No. 1427 of 2018

SHOBHARAM AND OTHERS

Versus

ABHIJEET AND OTHERS

Appearance:

Shri Manish Jain - Advocate for the appellants.

Shri Manoj Jain - Advocate for the respondent No.3.

MISC. APPEAL No. 1429 of 2018

PRAKASH AND OTHERS

Versus

ABHIJEET AND OTHERS

Appearance:

Shri Manish Jain - Advocate for the appellants.

Shri Manoj Jain - Advocate for the respondent No.3.

MISC. APPEAL No. 1431 of 2018

PRAKASH AND OTHERS

Versus

ABHIJEET AND OTHERS

Appearance:

Shri Manish Jain - Advocate for the appellants.

Shri Manoj Jain - Advocate for the respondent No.3.

MISC. APPEAL No. 1435 of 2018

SANTOSH

Versus

ABHIJEET AND OTHERS

Appearance:

Shri Manish Jain - Advocate for the appellant.

Shri Manoj Jain - Advocate for the respondent No.3.

MISC. APPEAL No. 1437 of 2018

MANISH

Versus

ABHIJEET AND OTHERS

Appearance:

Shri Manish Jain - Advocate for the appellant.

Shri Manoj Jain - Advocate for the respondent No.3.

MISC. APPEAL No. 1440 of 2018

RAMESHWAR AND OTHERS

Versus

ABHIJEET AND OTHERS

Appearance:

Shri Manish Jain - Advocate for the appellants.

Shri Manoj Jain - Advocate for the respondent No.3.

Reserved on : 24.11.2025

Pronounced on : 19.01.2026

ORDER

This bunch of appeals under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act of 1988') have been filed against the common award dated 30.11.2017 passed in Claim Case Nos. 13/2017, 14/2017, 15/2017, 16/2017, 17/2017, 18/2017 and 26/2017. This bunch of appeals has two sets, M.A.Nos. 1044/2018, 1045/2018, 1046/2018, 1047/2018, 1048/2018, 1049/2018 and 1051/2018 have been filed by the insurance company and M.A.Nos. 1427/2018, 1429/2018, 1431/2018, 1435/2018, 1437/2018 and 1440/2018 have been filed by the claimants. The insurance company has come challenging the award on the ground that in

absence of a valid fitness certificate, it could not have been saddled with the liability to pay compensation whereas, claimants have come for enhancement of compensation.

Facts of the case in brief are as under :

2. On 10.02.2016 at about 11:30 pm deceased Akash, Hemant, Rajesh, Deepak and injured Mukesh, Manish & Santosh were going in innova care bearing registration No. MP 09 CH 0004 from Ujjain to Maksi. When they reached near Shivshakti Warehouse on Ujjain-Maksi Road, pick up vehicle bearing registration No. MH 10 AQ 1639 came from the front side, the driver of which was driving the same in rash and negligent manner and dashed into the innova car head-on because of which all the above said persons sustained grievous injuries and four persons died due the said injuries. The innova car was being driven by Deepak.

3. The Claims Tribunal after recording evidence concluded that it is a case of composite negligence as the driver of pickup vehicle as well as the driver of the innova car (Deepak) both were negligent. As such, in the claim filed by the legal representatives of Deepak, he was held responsible for 60% contributory negligence and in other cases, the principle of composite negligence was followed. As such, against the insurance company direction was given for payment of compensation.

Submissions of the counsel for the parties

4. Learned counsel appearing for the insurance company submits that the accident occurred on 10.02.2016 whereas, the fitness certificate of the pick-up vehicle was valid only up to 29.01.2016 which was duly

established vide letter dated 05.09.2017 (Exh.D/1), certificate (Exh. D/2) and information regarding fitness certificate (Exh. D/3 & D/4) as well as based on insurance police (Exh.D/5) this will amount to breach of terms of insurance policy. He further submits that on perusal of Exh. D/2, it would come to the fore that pickup vehicle No. MH 10 AQ 1639 was registered in the name of one Abhijeet M.Joshi of which fitness certificate was valid from 21.06.2016 to 21.06.2017. However, the Claims Tribunal while considering this aspect has completely over-looked the same and in terms of para 30 of the impugned award it has been held that the insurance company is liable to pay compensation. Learned counsel submits that this direction of the Claims Tribunal is contrary to the settled position of law as rendered by the Full Bench of High Court of Kerala in the case of ***Pareed Pillai vs. Oriental Insurance Co. Ltd., 2019 ACJ 16 (Kerala)***, Division Bench of High Court of Judicature at Madras in the case of ***Commissioner, Tiruppur Municipality vs. K.Marayammal & Ors., 2025 ACJ 881*** as well as High Court of Judicature at Allahabad in case of ***United India Insurance Co. Ltd. vs. Uma Tripathi & Ors., 2020 ACJ 1675***.

5. Controverting to the arguments of the learned counsel for the insurance company, the learned counsel appearing for the owner argues that in order to establish breach of terms of the insurance policy the insurance company has led evidence of Vivekmadhav Rahalkar (NAW-1) who was working in the insurance company on the post of Assistant Manager. Learned counsel submits that this witness has clearly admitted that there was no condition in the insurance policy regarding fitness and this aspect has

been taken note of by the Claims Tribunal in para 28 of the impugned award. He further submits that it is settled position of law that mere absence of fitness certificate would not absolve the insurance company from its liability to pay compensation. In support of his contentions, learned counsel places reliance on the judgment of this Court rendered in the case of ***National Insurance Co. Ltd. vs. Sunita Markam & Ors., 2022 ACJ 1799*** and judgment passed by the High Court of Karnataka (Division Bench) in the case of ***Oriental Insurance Co. Ltd. vs. Kumara & Ors., MFA No. 7792 of 2015(MV)***.

6. As regards the submissions of learned counsel for the claimants, he submits that in view of the settled position of law as has been held by this Court, the liability is of the insurance company to pay compensation. He further submits in any case, if this Court finds that there is infraction of condition of insurance policy then also the claimants being third party have no concern with the same and for the dispute between the owner and insurer, claimants should not be made to suffer. Thus, in any case pay and recover should be directed if it is found that the insurance company is not liable to pay compensation.

7. As regards the question of enhancement of compensation, learned counsel for the claimants submits that contributory negligence for Deepak is based only on spot map which is not permissible under the law. He points out that there is no cross-examination of the driver or the owner of the pickup vehicle. He further submits that no amount of compensation for loss of consortium has been awarded in the case of Deepak.

8. As regards claim of LRs of Akash, learned counsel submits that income tax returns of Akash were on record, however the same has not been considered. In this case also, the claimants raised the question of compensation for loss of consortium.

9. Controverting to the submissions of learned counsel for the claimants, learned counsel for the insurance company submits that the income tax return (Exh. P/13) was not proved.

10. In case of LRs of Rajesh, learned counsel for the claimants submits that incorrect multiplier has been applied. The claimants should have been paid compensation based on salary certificate (Exh. P/19). In this case also, compensation for loss of consortium has not been paid.

11. However, controverting to the same, learned counsel for the insurance company submits that to prove Exh.P/19, no one from the employer came and there are no signatures or seal on the said document. Thus, the same cannot be relied up on as the same was never proved.

12. In the case of LRs of Mukesh, learned counsel for the claimants submits that he should have been treated as skilled labour considering the fact that he was a student of Engineering and in this case also no amount of compensation for loss of consortium has been awarded.

13. In the case of injured Santosh (M.A.No.1435/2018), meager amount has been awarded which mostly is for expenditure incurred for the treatment. Similar is the case of Manish in M.A.No. 1437/2018. He thus prays for enhancement of amount of compensation.

Heard learned counsel for the parties. Perused the record.

14. The appeals by the insurance company are based on a singular ground that the accident occurred on 10.02.2016 whereas the fitness certificate was valid only up to 29.01.2016 and thereafter it was renewed for the period from 21.06.2016 to 21.06.2017 which was duly established by the insurance company by leading evidence. However, there is a clear admission of the witness of the insurance company Vivekmadhav Rahalkar (NAW-1) to the effect that there was complete absence of any condition regarding fitness certificate in the insurance policy. The issue with respect to liability of the insurance company to pay compensation even if there is absence of valid fitness certificate is no more *res integra* as this Court in the case of ***Oriental Insurance Co. Ltd. vs. Manoj and Ors., 2014 ACJ 2389*** in para 9 has held as under :

> *"9. After hearing Mr. Manoj Jain, in the considered opinion of this court, as per the defence taken by the insurance company, the violation of the terms and conditions of the policy has been pleaded due to non-availability of fitness certificate. As per the company, it is clear that no such condition has been specified in the policy, however, merely non-production of the fitness certificate would not prevent (sic) the finding recorded by the Tribunal. In addition to the aforesaid, it may safely be observed that until and unless violation of the conditions stipulated under section 149 has been specified and established before the Tribunal, the finding of joint and several liability so recorded does not suffer from any illegality, warranting interference in this appeal. In view of the foregoing discussion, in the considered opinion of this court, the appeal filed by the appellate is devoid of any substance, hence dismissed in limine."*

15. Considering the case of ***Manoj (supra)***, the position of law was reiterated by this Court in the case of ***Sunita (supra)*** in para 8 of the judgment which is reproduced below :

> *"8. In the present case, admittedly, till the accident took place, permit was not cancelled and even otherwise permit is not mandatory for a fire brigade as is apparent from clause (c) of sub-section (3) of section 66 of the Motor Vehicles Act, 1988 and once it is held that permit is not mandatory, then the issue of fitness, on which permit depends, becomes secondary. Even there is no condition in the insurance policy laying down that absence of fitness certificate will be a ground to repudiate the policy. Therefore, when these facts are cumulatively taken into consideration, then appeals are, admittedly, devoid of merit in as much as there is an*

exception in clause (c) of sub-section (3) of section 66 of Motor Vehicles Act and so also in the light of the judgment of the Indore Bench of this court in the case of Oriental Insurance Co. Ltd. vs. Manoj (supra)."

16. Although, in the case of ***Sunita (supra)*** there were some facts which was distinguishable from the facts of the present case, however, it is clearly available in evidence on record that in the insurance policy there was no condition with respect to the fitness certificate, as such the case is squarely covered with the ratio in the case of ***Manoj (supra)***. Apart from this, the Division Bench of High Court of Karnataka while considering this aspect of absence of fitness certificate has considered the provisions of Section 56, 84 and 86 of Act of 1988 and concluded that Section 86(1) of the Act provides that if any condition of permit specified in Section 84 of the Act is breached, then also the competent authority is required to given an opportunity of hearing to the holder of the permit before cancellation of registration. It is thus, clear that absence of fitness certificate will not result in automatic cancellation of registration as the aspect of fitness certificate is also covered under the above mentioned provisions. As such, it would not absolve the insurance company from its liability to pay compensation, particularly when there was complete absence of any condition regarding fitness certificate in the insurance policy.

17. Although reliance has been placed by the learned counsel for the insurance company on the judgment of jurisdictional High Courts, however in view of the two decisions as aforementioned passed by the Coordinate Benches of this Court, **it is hereby held that the insurance company is liable to pay compensation and the conclusions drawn by the Claims Tribunal in this regard are not required to be interfered with.**

18. As regards the question of enhancement of compensation, the same is dealt with in the following paragraphs :

M.A.No. 1427 of 2018

19. The Claims Tribunal while considering the claim of Deepak - driver of the innova vehicle has concluded from para 20 to 25 that deceased Deepak was responsible for 60% contributory negligence. The learned counsel for the claimants has argued that there was complete absence of any material to establish contributory negligence of Deepak and the conclusions have been drawn by Tribunal only on the basis of spot map which is not permissible under the law. In support of his submissions he has placed reliance on the judgment of the Hon'ble Apex Court given in the case of ***Mangla Ram vs. Oriental Insurance Co. & Ors., 2018 ACJ SC 1300.***

20. The Hon'ble Apex Court in the case of ***Mangla Ram (supra)*** has held that merely spot map cannot be a basis for proving contributory negligence. The Hon'ble Apex Court in para 23 of the judgment has held as under:

> *"23. Be that as it may, the next question is whether the Tribunal was justified in concluding that the appellant was also negligent and had contributed equally, which finding rests only on the site map (Exh. 2) indicating the spot where the motorcycle was lying after the accident? We find substance in the criticism of the appellant that the spot where the motor vehicle was found lying after the accident cannot be the basis to assume that it was driven in or around that spot at the relevant time. It can be safely inferred that after the accident of this nature in which the appellant suffered severe injuries necessitating amputation of his right leg above the knee level, the motorcycle would be pushed forward after the collision and being hit by a high speeding jeep. Neither the Tribunal nor the High Court has found that the spot noted in the site map, one foot wrong side on the middle of the road was the spot where the accident actually occurred. However, the finding is that as per the site map, the motorcycle was found lying at that spot. That cannot be the basis to assume that the appellant was driving the motorcycle on the wrong side of the road at the relevant time. Further, the respondents did not produce any contra evidence to indicate that the motorcycle was being driven on the wrong side of the road at the time when the offending vehicle dashed it. In this view of the matter, the finding of the Tribunal that the appellant contributed to the occurrence of the accident by driving the*

motorcycle on the wrong side of the road, is manifestly wrong and cannot be sustained. The High Court has not expressed any opinion on this issue, having already answered the issue about the non-involvement of the offending vehicle in favour of respondent Nos.2 & 3."

21. In the present case, facts are different, in the spot map not only the place where the vehicles are lying but also the exact place where the accident occurred are shown, the spot of accident is on the side where the road is going towards Ujjain from Maksi, whereas it was also recorded that the Innova Car which was being driven by deceased Deepak was going towards Maksi, it is thus clear that the vehicle was going wrong side. And not only this, the counsel of the Insurance Company put many questions to the witnesses which have elaborately been dealt with by the tribunal from para 20 to 25 particularly in para 23 and 24, as such it is not a case where circumstances exists for taking adverse inference against the insurance company or the owner or even the driver of the offending insured vehicle, as such, the case of ***Vimla Devi vs. National Insurance Co. Ltd., 2019 ACJ 454 SC*** will also not come to the rescue of the claimants as the facts of the that case are also distinguishable from the facts of the present case. As such, as regards the question of contributory negligence of the driver of the Innova Car namely deceased 'Deepak', no infirmity is found in the conclusions drawn by the claims tribunal, however, the extent of the same is should have been considered at 50% for the reason that apart from position of the vehicles and their head-on collision no evidence of any sort has come on record which would have shown that Deepak was more negligent than the driver of the other vehicle. Thus, the contributory negligence of Deepak is taken at 50%.

22. As regards the quantum of compensation, the deceased Deepak was 25 years of age. As such, multiplier of 18 would apply. Considering the minimum wages for skilled labour at the relevant time was Rs. 8810/- per month, which is taken as his income, then the compensation for loss of dependency will come to Rs. 6,66,036/- (after deducting 50% for contributory negligence). Considering the fact that the claimants are mother and father of the deceased, as such both of them are hereby awarded Rs. 40,000/- each for loss of consortium, as such total comes to Rs. 7,46,036/-. The Tribunal has already awarded an amount of Rs. 4,56,809/-.Thus, the compensation in respect of claimants of deceased Deepak is enhanced by Rs. 2,89,227/-, which shall be paid to him over and above the amount already awarded by the claims tribunal.

M.A.No. 1429/2018

23. In this case, the Tribunal has considered the income of the deceased Akash from para 39 to 43 and after discarding the income tax return filed as (Exh.P/15) and the computation (Exh.P/14), has treated his income at Rs. 1,13,260/- per annum. The learned counsel for the claimants submitted that there was no occasion for the Claims Tribunal to discard the clear income tax return which were not only based on record but duly approved. He submits that it has wrongly been recorded in para 41 that there was no business of the appellant mentioned in the returns, whereas the same was duly written. It has also been pointed out that the income tax return was filed before the death of Akash in the accident, as such the amount as has been shown as income of the deceased should be taken as his income on the

date of accident and consequently, compensation should be enhanced.

24. Considering the fact that the return was filed before the death of deceased Akash wherein his income is shown as Rs. 2,93,260/- per annum which is bifurcated as an amount of Rs. 1,80,000/- as salary and Rs. 1,13,260/- as travelling commission. As such, the same is taken as income of the deceased Akash. It is hereby held that the Akash was earning Rs. 2,93,000/- per annum as per the return Exh.P/15. Apart from this, an amount of Rs. 40,000/- each is awarded to the mother and father of the deceased who are the claimants in the present as compensation for loss of consortium. As such, the appellants are entitled for payment of enhanced amount of compensation of Rs. 23,44,724/- over and above the amount already awarded by the claims tribunal.

M.A.No. 1431/2018

25. It is argued in the present case that the deceased-Rajesh was a bachelor and was working as reception manager and earning Rs. 8,000/- per month in support of which salary certificate (Exh.P/18) was placed on record. However, the certificate was issued after his death i.e. 05.07.2016 whereas the accident occurred in the month of February, 2016. However, it has to be considered that the deceased was working as reception manager. Thus, he can be considered as an unskilled labour and his income should be taken at Rs. 6,575/- per month. Consequently, the compensation for loss of dependency would now come to Rs. 9,38,910/- and after awarding Rs. 40,000/- each to the claimants i.e. mother and father of the deceased for loss of consortium, the total enhanced amount of compensation for which the

appellants are entitled is Rs. 10,48,910/-, however the claims tribunal in para 88 of the impugned award has held that as the claimant kiranbai has also been awarded compensation for loss of dependency in the case no. 13/2017 thus it would be appropriate to award only 50% of the awarded amount, while observing thus the claims tribunal referred to para 15 of the judgment in the case of **Sarla Verma Vs. Delhi Transport (2009) 6 SCC 121** , however the reliance as placed by the tribunal is misplaced in as much as in the said case Hon'ble Apex Court in para 32 held that even if deceased is survived by parents and siblings only the mother would be considered to be dependent and 50% will be deducted for personal expenses of the bachelor. In the present case while calculating loss of dependency 50% have already been deducted thus now again 50% deduction on account of the fact that in relation to same accident same claimant is being paid compensation for death of another family member, is totally unacceptable and irrelevant as such the claimant Kiranbai is entitled for the entire amount calculated by this court. As such, after deducting the amount of Rs. 4,79,100/- awarded by the claims tribunal, the appellant Kiranbai is entitled for payment of Rs. 5,69,810/- over and above the amount already awarded by the claims tribunal.

M.A.No. 1435/2018

26. In this case, the injured appellant-Santosh suffered injuries for which a total compensation of Rs. 52,130/- was awarded out of which an amount of Rs. 40,000/- was for medical expenses. The documents regarding his fracture are placed on record as Exh. P/76. However, a perusal of the document would show that there was complete absence of any document to

establish that he received any grievous injury. In the considered view of this Court there is no perversity in the findings recorded by the Tribunal in para 91 to 94 with respect to injured Santosh. As such, in this case, no enhancement is warranted.

M.A.No. 1437/2018

27. In this case, in respect of injured appellant-Manish, the Tribunal has recorded its findings from para 58 to 63. In the considered view of this Court, there is no perversity in the findings recorded by the Claims Tribunal, hence no interference is warranted.

M.A.No. 1440/2014.

28. In this case, the Tribunal has considered the fact that deceased-Hemant was a student of Civil Engineering in Chouksey Government Polytechnique College, Rajgarh, thus he was having a bright future. Thus, his income was considered Rs. 8,000/- per month and consequently, compensation was awarded. Thus, considering him a semi-skilled labour, his income was treated at Rs. 7,057/- per month. The learned counsel for the appellant has pointed out that he should have been considered at least a skilled person for which the minimum wages at the relevant time was Rs. 8,810/- per month. However, it is seen from the evidence which is placed on record that the claimants themselves have claimed the income of the deceased Hemant at Rs. 8,000/- per month which is taken as his income. Considering the fact that the claimants are mother and father, Rs. 40,000/- each is awarded for loss of consortium to both of them. Thus, the enhanced amount of compensation in this case would be Rs. 13,19,600/- and after

deducting already awarded amount of Rs. 10,97,022/-, the appellants are entitled for payment of Rs. 2,22,578/- over and above the amount already awarded by the claims tribunal.

29. In all the appeals where amount of compensation has been enhanced, the amount of enhanced compensation shall carry interest at the rate of 6% per annum from the date of filing claim petition before the tribunal till the date of its payment. As already held above, the Insurance company shall be liable to pay the entire amount of compensation.

30. In view of the above analysis of evidence and findings, appeals M.A.No. 1044/2018, 1045/2018, 1046/2018, 1047/2018, 1048/2018, 1049/2018, 1051/2018, 1435/2018 and 1437/2018 are hereby dismissed. Appeals No. 1427/2018, 1429/2018, 1431/2018 and 1440/2018 are partly allowed in above terms.

Let a copy of this order be placed in all the connected appeals.

Record of the Claims Tribunal be sent back.

(PAVAN KUMAR DWIVEDI)
JUDGE

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