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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE HIRDESH
ON THE 6th OF MARCH, 2024**

MISC. APPEAL No. 4218 of 2022

BETWEEN:-

**THE NEW INDIA ASSURANCE LTD THROUGH TP HUB
DIVISIONAL OFFICE 30 BHARATPURI
ADMINISTRATIVE OFFICE UJJAIN AND 221 SAKET
NAGAR, INDORE (MADHYA PRADESH)**

.....APPELLANT

(SHRI SUDHIR DANDWATE, LEARNED COUNSEL FOR THE APPELLANT).

AND

- 1. BHAGWANLAL S/O LALUJI, AGED ABOUT 50
YEARS, OCCUPATION: AGRICULTURE R/O GRAM
TANODIYA THANA AGAR DISTRICT AGAR
(MADHYA PRADESH)**
- 2. TARABAI W/O BHAGWANLAL CHOUDHARY, AGED
ABOUT 40 YEARS, OCCUPATION: AGRICULTURE
R/O GRAM TANODIYA THANA AGAR DISTRICT
AGAR (MADHYA PRADESH)**
- 3. EJAJ MOHAMMAD S/O SALIM PATEL, AGED
ABOUT 33 YEARS, OCCUPATION: DRIVER R/O
GRAM NAJARPUR TEHSIL GHATIYA DISTRICT
UJJAIN (MADHYA PRADESH)**
- 4. SHAHAZAD KHAN S/O MUNSHI KHAN
OCCUPATION: VEHICLE OWNER R/O
CHANDRANAGAR NAKA NO. 5 AGAR ROAD,
UJJAIN (MADHYA PRADESH)**

.....RESPONDENTS

***(SHRI ROMIL MALPANI, LEARNED COUNSEL FOR THE RESPONDENTS
NO.1 & 2)***

***SHRI NIKHIL KOCHER, LEARNED COUNSEL FOR THE RESPONDENTS
NO.3 & 4).***

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This appeal coming on for orders this day, the court passed the

following:

ORDER

This appeal by the insurance company under section 173(1) of the Motor Vehicles Act is arising out of the award dated 16.06.2022 passed by Ist Member, MACT, Agar in Claim Case No.14/2017 mainly on the following two grounds:

Firstly, the Tribunal has committed error of law in fastening the liability of payment of compensation on the insurance company for the reason that the vehicle was used for commercial purpose on a permit without having a fitness certificate issued by the transport authority.

Secondly, the Tribunal has made the assessment of compensation on the higher side for the death of a person who was just 16 years of age.

2. Per contra, learned counsel for the respondents have supported the impugned award and pray for dismissal of the appeal.

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

4. So far as first contention is concerned, the Tribunal referring the order of this Court in the case of **Oriental Insurance Company Ltd. vs. Manoj and others** reported in **2014 ACJ 2389** has held that since the counsel for the insurance company could not satisfy that non-availability of the fitness certificate would amount to violation of the terms and conditions of the insurance policy, therefore, it was held that insurance company cannot be exonerated from the liability to pay the compensation.

5. Undisputedly, in the present case, at the time of accident the offending vehicle did not have fitness certificate but was being used for commercial purpose.

6. In the case of **United India Insurance Co. Ltd. vs. Rahul - MA**

No.1849/2019 decided on 31.10.2019, the co-ordinate Bench of this Court has held as under:

"As regards the second contention that offending vehicle did not have fitness certificate, but was used for commercial purposes, though in the judgment of the jurisdictional High Court (supra) cited by learned counsel for respondent claimant has ruled that non-availability of fitness certificate shall not tantamount to breach of insurance policy but the Five Judges Bench of Kerala High Court in the case of Pareed Pillai vs. Oriental Insurance Company Ltd. (MACD 2019 (2) (Ker) 529) has ruled that want of fitness of the vehicle used for commercial purpose as a transport vehicle shall render the vehicle to be not validly registered and fit for plying. Under such circumstances, the policy shall not cover the risk involved in running the vehicle on road. The detailed reasons and justifications for such a conclusion as reflected from the judgment in the case of Pareed Pillai (supra) (para-17-21) is found to be based on sound reasoning and this Court sees no reasons to disagree with the same."

7. In the case of **United India Insurance Company Ltd. vs. Vinod and others** reported in **2020 (1) MPLJ 142**, another co-ordinate Bench of this Court has 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.

8. In view of the above, in the considered opinion of this Court, in the present case also since at the time of accident, the offending vehicle was not having fitness certificate, therefore, the insurance company is not jointly and severally liable to make payment of compensation. However, in the light of the judgment passed by the Apex Court in the case of **Amrit Paul Singh vs. TATA AIG General Insurance Co. Ltd.** reported in **2019 (2) MPLJ (SC) 8** it is held that the insurance company shall be liable to make payment of the compensation with liberty to recover the same from the owner.

9. As regards the second contention raised by the counsel for the appellant that the compensation awarded by the Tribunal is on the higher side, after perusal of the award especially in para-21, 22 & 23, in the considered opinion of this Court, the same is just and proper which does not call for any interference by this Court in this appeal.

10. In the result, the appeal is partly allowed to the extent that the insurance company shall pay the compensation to the claimants but the insurance company shall be at liberty to recover the same from the owner and driver of the offending vehicle.

11. The appeal is partly allowed to the extent indicated herein above.

hk/



**(HIRDESH)
JUDGE**