



2026:AHC:27283

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**FIRST APPEAL FROM ORDER No. - 291 of 2015**

The New India Assurance Co. Ltd.

.....Appellant(s)

Versus

Smt. Savita Tiwari And 3 Others

.....Respondent(s)

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Counsel for Appellant(s) : Rahul Sahai

Counsel for Respondent(s) : Anil Kumar Mehrotra, Mohd.Naushad  
Siddiqui, Vidya Kant Shukla

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**A.F.R.**

**Court No. - 38**

**HON'BLE SANDEEP JAIN, J.**

**Order on Appeal:-**

1. The instant appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred by the insurer of the offending Xylo car No.UP-35-H-0005 against the impugned judgment and award dated 29.11.2014 passed by the Motor Accidents Claims Tribunal/Additional District Judge, court no.4, Kanpur Nagar, in Motor Accident Claim Petition No. 159 of 2013 (Smt. Savita Tiwari and others vs. Susheel Kumar Pandey and another), whereby, for the untimely death of Manoj Kumar Tiwari @ Gandhi in an accident that took place on 05.12.2012, the Tribunal has awarded compensation of Rs.4,44,000/- along with interest at the rate of 6% per annum to the claimants(wife, son and mother), which has been ordered to be indemnified by the insurer of the offending Xylo car No.UP-35-H-0005.

2. Shri Aditya Singh Parihar, learned counsel for the appellant-insurance company submitted that the deceased was alleged to be travelling on the date of the accident i.e. 05.12.2012 in the offending Xylo car No.UP-35-H-0005 when the accident occurred in which besides the deceased, three other persons namely Amit Dubey, Pankaj Shukla and Gaurav Mishra also died. He further submitted that from the G.D. entry No.31 dated 05.12.2012 recorded in Police Station Pilua District Etah, it was proved that in the accident there was no negligence of the offending driver. Learned counsel for the appellant further submitted that even the tribunal

did not frame any issue regarding the negligence of the offending driver and also did not conclude that there was any such negligence on the part of the offending driver, as such, without the finding of negligence, compensation under Section 166 of the Motor Vehicles Act, 1988 has been awarded to the claimants, which is illegal. It was further submitted that the offending vehicle was a commercial vehicle and for plying it, a valid certificate of fitness was mandatory but the offending vehicle was not having a valid fitness on the date of the accident, as such, the insurance company was not liable to indemnify the compensation payable to the claimants, but this fact was also not considered by the tribunal. It was further submitted that for awarding compensation under Section 166 of the Act, a finding of negligence is *sine qua non*, but this finding was not recorded by the tribunal, as such, no compensation under Section 166 of the Act could have been awarded to the claimants. It was further submitted that even the eye witness of the alleged accident admits that there was no negligence of the offending driver, as such, the tribunal could not have decided the claim petition under Section 166 of the Act. With these submissions, it was prayed that the appeal preferred by the appellant-insurance company be allowed and the cross objection of the claimants-respondent be dismissed.

3. Per contra, learned counsel for the claimants-respondents submitted that on the date of the accident, the deceased Manoj Kumar Tiwari was travelling in the offending car alongwith Pankaj Shukla, Gaurav Mishra and Amit Dubey, the vehicle was being driven in a rash and negligent manner, which was proved from the testimony of eye witness Vishnu Tiwari PW-2. He further submitted that due to the rash and negligent driving of the offending driver, the vehicle overturned and it was *res ipsa loquitur* proved that there was negligence on the part of the offending driver. It was further submitted that the tribunal has also recorded that there was negligence of the offending driver in the accident, as such, it has rightly allowed the claim petition under Section 166 of the Act. It was further submitted that the offending vehicle was having a valid fitness certificate on the date of the accident and even if it is presumed that the fitness was not valid, even then, it is not the defence available to the insurance company to evade its statutory liability under Section 149(2) of the Act. In support of its contention, learned counsel for the claimants-

respondent has relied upon the judgment of this Court in ***United India Insurance Co. Ltd. Vs. Smt. Uma Tripathi & others 2019 SCC OnLine All 4416***. He further submitted that the deceased was working as a Supervisor in construction company and was getting a salary of Rs.16,600/- per month which was also proved by PW-3 Brijesh, but still the tribunal has assessed the compensation on the notional income of the deceased by presuming that he was only earning Rs.3,000/- per month, which is grossly inadequate. It was further submitted that the tribunal has not awarded any compensation towards the future prospects of the deceased, awarded inadequate amount of compensation under non-pecuniary heads and has also awarded less interest on compensation and for enhancing it, the claimants have filed the cross objection before this Court. It was submitted that the appeal preferred by the insurance company be dismissed and the cross objection filed by the claimants-respondent be allowed.

4. I have heard learned counsel for the parties and perused the impugned judgment and the documents submitted with the appeal.

5. GD No. 31, recorded at 18:45 hours on 05.12.2012 at Police Station Pilua, District Etah, discloses that on the information provided by Devendra Tiwari, on 05.12.2012 the informant, along with Gajendra Tiwari, Krishna Kumar, Vishnu Kumar, Amit Dubey, Pankaj Shukla, Manoj Tiwari, Gopalji and Gaurav Mishra, were travelling from Patel Nagar, Kanpur to Harduaganj, Aligarh to attend the engagement ceremony of his niece, Shweta Tiwari, in a Xylo car bearing registration No. UP-35-H-0005, which was being driven by Gaurav Mishra. At about 5:30 p.m., while attempting to save a bicycle rider, the driver lost control of the vehicle and it suddenly overturned, as a result of which the passengers travelling in the car sustained grievous injuries. The injured persons were sent by the police for treatment to the District Hospital, Etah, where Manoj Kumar Tiwari and Pankaj Shukla were declared dead, while Amit Dubey and Gaurav Mishra were referred to Kanpur for better treatment. The treatment of Gajendra Tiwari, Krishna Kumar and Gopalji continued at the District Hospital, Etah. The said GD entry further records that there was no negligence on the part of the driver of the offending vehicle.

6. It is further evident that the FIR relating to the accident was registered on 08.01.2013 at 15:34 hours as Case Crime No. 2 of 2013 at Police Station Pilua, District Etah, under Sections 279,338,337,304A IPC, on the basis of the report lodged by Satish Chandra Dwivedi. The FIR discloses that on 05.12.2012, the first informant, Amit Dubey, along with other relatives, were travelling in vehicle No. UP-35-H-0005 to attend the engagement ceremony of Km. Shweta Tiwari, at Harduaganj, Aligarh . It is alleged that the driver of the said vehicle was driving rashly and negligently and, despite being cautioned several times to drive carefully, he continued to drive at a high speed. At about 5:30 p.m., while attempting to save a bicycle rider, the driver lost control of the vehicle due to its high speed, as a result of which the vehicle overturned. In the said accident, Manoj Kumar Tiwari and Pankaj Shukla died on the spot, whereas Amit Dubey and Gaurav Mishra were taken in grievous condition to Agra for treatment; however, Amit Dubey succumbed to his injuries on 05.12.2012 while being taken for treatment, and Gaurav Mishra died during treatment after about two hours. It is further disclosed that the initial information furnished by Devendra Tiwari, which was recorded in GD No. 31, indicated that the accident occurred coincidentally which was not correct. The subsequent FIR alleges that the accident was caused due to rash and negligent driving on the part of the driver of the vehicle.

7. Before the tribunal the claimants examined the wife of the deceased Smt. Savita Tiwari as PW-1, Vishnu Tiwari as PW-2 and Brijesh as PW-3. Whereas, the Insurance Company examined its investigator Kailash Upadhyay as DW-1 and owner of vehicle Sushil Kumar Pandey, as DW-2.

8. Smt. Savita Tiwari PW-1 very fairly accepted that she was not an eye witness of the accident. PW-3 Brijesh is also not an eye witness, who has proved the salary of the deceased.

9. PW-2 Vishnu Tiwari deposed that the accident occurred on 05.12.2012 when he was going to the engagement ceremony of Km. Shweta Tiwari at Harduaganj, Aligarh alongwith his relatives in vehicle No. UP-35-H-0005, then within the jurisdiction of police station Pilua, District Etah,

the Xylo Car No. UP-35-H-0005 overturned because it was being driven rashly and negligently by its driver, due to which Amit Dubey, Pankaj Shukla, Gaurav Mishra and Manoj Kumar Tiwari @ Gandhi died. He further deposed that the GD entry regarding the accident was made at police station Pilua on 05.12.2012 on the basis of information provided by Devendra Tiwari and subsequently, an FIR was registered by Satish Chandra Dwivedi. He specifically deposed that the accident occurred due to rash and negligent driving of the Xylo car driver.

10. In his cross-examination, PW-2 deposed that at the time of the accident he was travelling in the offending vehicle and had also sustained injuries in the said accident. He further deposed that prior to the accident, the driver had been cautioned to drive the vehicle in a controlled manner, but the driver remained unrelenting. He also deposed that the car was being driven by Gaurav Mishra.

11. The insurance company has examined Kailash Upadhyay as DW-1 and owner of vehicle, Sushil Kumar Pandey as DW-2, in order to prove that the offending Xylo car was being driven in violation of the terms and conditions of the policy, in the absence of valid fitness certificate on the date of the accident. It is undisputed that both the above witness are not the eye-witness of the accident, as such, on the basis of their evidence, the negligence of the offending driver and the factum of the accident cannot be determined.

12. From the evidence of eye-witness PW-2 it was proved that he was travelling in the offending car at the time of the accident, which was driven in rash and negligent manner, by its driver and even prior to accident, the driver was cautioned to drive the vehicle slowly, according to rules and regulations of the traffic, but the driver remained unrelenting and he continued to drive the vehicle rashly and negligently and when a bicycle rider suddenly appeared on the road, due to the high speed of the vehicle, the driver in order to save the bicycle rider, lost control and the car overturned causing grievous injuries to the passengers travelling in the offending vehicle. It is further apparent that the tribunal has considered the testimony of the eye witness PW-2 and has recorded that accident occurred due to rash and negligent driving of the offending

driver, and even from the facts and circumstance of the accident, it was *res ipsa loquitur* proved that the accident was caused due to rash and negligent driving of the Xylo car driver because no other vehicle was involved in the accident. It is further apparent that the owner of the offending vehicle has not led any evidence to prove that there was no rashness and negligence of the offending driver in the accident. It is also evident that the offending driver Gaurav Mishra has also died in the accident. In view of the above evidence on record, there is no perversity in the conclusion of the tribunal that the accident occurred due to the rash and negligent driving of the driver of the Xylo car, warranting any interference by this court in exercise of its appellate jurisdiction.

13. It is further apparent that the owner DW-2 claimed that the offending vehicle was being driven with all the valid document on the date of the accident but the fitness certificate of the offending vehicle was not produced before the Tribunal. Learned counsel of the insurance company has also submitted that the offending vehicle was not having a valid permit on the date of the accident but this fact is not corroborated by the evidence on record. It is apparent that the vehicle was having a valid UP permit on the date of the accident which was valid from 20.09.2010 to 19.09.2015, whereas the accident occurred on 05.12.2012 as such, the tribunal has not erred in concluding that the permit of the offending vehicle was valid on the date of the accident.

14. Section 149 of the Motor Vehicles Act, 1988, which was in force at the relevant time, while specifying the limited grounds of defence available to an insurer, on which it can avoid its statutory liability to indemnify the insured, reads as under:-

**149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.—(1)\*\*\***

*(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment 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 judgment 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 thereto 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 licence 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.*

*(3)\*\*\*\*\**

*(4)\*\*\*\*\**

*(5)\*\*\*\*\**

*(6)\*\*\*\*\**

*(7) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the*

*corresponding law of the reciprocating country, as the case may be.*

15. The Division Bench of the Apex Court in the case of ***Rekha Jain and another vs National Insurance Co. Ltd.***(2013) 12 SCC 202 while interpreting S149(2) of the Motor Vehicles Act,1988, held as under:-

*"17. This principle has been laid down by a three-Judge Bench decision of this Court in National Insurance Co. Ltd. v. Nicolletta Rohtagi [(2002) 7 SCC 456 : 2002 SCC (Cri) 1788] . The relevant paragraphs of the judgment read as under: (SCC p. 468, paras 15-16)*

*"15. It is relevant to note that Parliament, while enacting sub-section (2) of Section 149 only specified some of the defences which are based on conditions of the policy and, therefore, any other breach of conditions of the policy by the insured which does not find place in sub-section (2) of Section 149 cannot be taken as a defence by the insurer. If Parliament had intended to include the breach of other conditions of the policy as a defence, it could have easily provided any breach of conditions of insurance policy in sub-section (2) of Section 149. If we permit the insurer to take any other defence other than those specified in sub-section (2) of Section 149, it would mean we are adding more defences to the insurer in the statute which is neither found in the Act nor was intended to be included.*

*16. For the aforesaid reasons, we are of the view that the statutory defences which are available to the insurer to contest a claim are confined to what are provided in sub-section (2) of Section 149 of the 1988 Act and not more and for that reason if an insurer is to file an appeal, the challenge in the appeal would confine to only those grounds."*

#### **Precedents of this Court**

16. This Court in the case of ***Smt. Uma Tripathi*** (supra) where the offending truck was possessing a valid permit, but lacked fitness certificate, which expired a week before the date of the accident, held as under:-

*"20. Before coming to the contention of learned counsel for the insurance company with respect to the fitness certificate, it is worth noticing the few*

*relevant sections namely, 56(1), 66(1), and 84(a) of the Act, 1988 touching the aspect of the fitness certificate, which are extracted herein below:—*

*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.*

*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 carriage 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.*

*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;*

*21. According to Section 56(1) of the Act, 1988, for registration of transport vehicles under Section 39, a valid fitness certificate is required and in absence of such fitness certificate, transport vehicle shall not be deemed to have valid registration.*

*22. Section 66(1) provides necessity for permit for the use of a vehicle as a transport vehicle in a public place. According to Section 66(1), a transport vehicle shall be used or permitted to be used by owner of vehicle in any public place in accordance with the condition of permit.*

*23. Section 84(a) provides the general condition which are attached to all the permits. One of the condition as contemplated under Section 84(a) of the Act, 1988 is that 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 the Act, 1988 and the rules made thereunder.*

*24. From the aforesaid provisions, it can be safely culled out that for the purposes of registration of transport vehicle, a fitness certificate as contemplated under Section 56 of the Act, 1988 is mandatory and plying of a transport vehicle without a valid fitness certificate amounts to violation of condition of permit.*

*25. At this juncture, it is useful to notice Section 86(1)(a) which provides that the transport authority which has granted permit may cancel the permit or suspend it for the period as it thinks fit on the breach of any condition specified in Section 84 or of any condition contained in the permit. The proviso to Section 86 (1) of the Act, 1988 provides that no permit shall be suspended or cancelled unless an opportunity of hearing has been given to the holder of permit to furnish his explanation. Section*

*86(1) of the Act, 1988 is reproduced herein 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-*

*(a) on the breach of any condition specified in section 84 or of any condition contained in the permit, or*

*(b) if the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorised by the permit, or*

*(c) if the holder of the permit ceases to own the vehicle covered by the permit, or*

*(d) if the holder of the permit has obtained the permit by fraud or misrepresentation, or*

*(e) if the holder of the goods carriage permit, fails without reasonable cause, to use the vehicle for the purposes for which the permit was granted, or*

*(f) if the holder of the permit acquires the citizenship of any foreign country:*

*Provided that no permit shall be suspended or cancelled unless an opportunity has been given to the holder of the permit to furnish his explanation.”*

*26. The proviso to Section 86 (1) clearly contemplates an opportunity of hearing to the holder of permit before cancellation or suspension of the permit on the ground specified in Section 86(1)(a) to (f). Thus, it is evident that the Act does not contemplate that if there is violation of any condition of the permit, the permit shall automatically be deemed to have been cancelled. In fact competent authority has to pass an order before cancelling or suspending the permit after affording opportunity of hearing to the holder of permit.*

**27. In the instant case, it is not in dispute that fitness certificate of the truck was valid upto 16.07.2010. The fitness certificate expired about a**

week before the date of accident i.e. 24.07.2010. It is also not disputed by the insurance company that the truck was having a valid permit on the date of accident. There is no order passed by the competent authority on record cancelling the permit of the truck after given an opportunity of hearing to the owner of the truck on the ground that condition of permit has been violated by the owner as the truck was plied without valid fitness certificate. Thus, in such situation, it cannot be said that the truck was not having a valid permit. It is further useful to notice that Section 149(2)(a)(i)(c) talks about the breach of condition of policy where vehicle is used for the purpose not allowed by the permit.

28. In the case in hand, it is not the case of the insurance company that there was no permit of the truck or truck was being used for the purpose not allowed by the permit, therefore, the contention of learned counsel for the insurance company that since fitness certificate has expired on 16.07.2010 before the date of accident, therefore, insurance company is not liable to pay compensation is devoid of merit and is rejected."

(emphasis supplied)

17. A Coordinate Bench of this Court in the case of ***Oriental Insurance Co. Ltd. vs Roop Rani and another*** 2019 SCC OnLine All 8154, while dealing with the issue where the owner was not possessing a valid fitness certificate on the date of the accident and after appreciating the relevant provisions of the Motor Vehicles Act, held as under:-

"12. As per Section 39 of the Act a motor vehicle as defined under section 2(28) of the Act has to be compulsorily registered in accordance with the provisions of the Act before it is plied in a public place. Section 39 of the Act reads as under:

Section 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:

*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.*

**13. Section 56 of the Act lays down that without a valid fitness certificate, a transport vehicle shall be deemed to be without registration**. Relevant portion of section 56 reads as under:

*Section 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 authorised 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:*

**14. In Narinder Singh v New India Assurance Co. Ltd., (2014) 9 SCC 324 the Apex Court has held that the use of a motor vehicle in a public place without any registration is a fundamental breach of the terms and conditions of a policy contract.** Paragraph 12 of the said report is extracted below:

*“12. Indisputably, a temporary registration was granted in respect of the vehicle in question, which had expired on 11-1-2006 and the alleged accident took place on 2-2-2006 when the vehicle was without any registration. Nothing has been brought on record by the appellant to show that before or after 11-1-2006, when the period of temporary registration expired, the appellant, owner of the vehicle, either applied for permanent registration as contemplated under Section 39 of the Act or made any application for extension of period as temporary registration on the ground of some special reasons. In our view, therefore, using a vehicle on the public road without any registration is not only an offence punishable under Section 192 of the Motor Vehicles Act but also a fundamental breach of the terms and conditions of policy contract.”*

15. As per section 66 of the Act a vehicle defined under Section 2(28) of the Act can only be used as a “transport vehicle” as defined under Section 2(47) of the Act, only if it has a “permit” as defined under Section 2(31) of the Act. Sub-section (3) of Section 66 of the Act carves out certain exceptions to sub-section (1). Relevant portion of Section 66 of the Act reads as under:

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.

**16. Section 84 of the Act lays down the general conditions attaching to all permits. As per Sub-section (a) of Section 84 of the Act every vehicle having a permit should have a valid certificate of fitness at all times.**  
Relevant portion of section 84 reads as under:

Section 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,

17. In *National Insurance Co. Ltd. v. Challa Upendra Rao*, (2004) 8 SCC 517, the Apex Court observed 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-a-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.”*

*18. In Amrit Paul Singh v. TATA AIG General Insurance Co. Ltd., (2018) 7 SCC 558 the Apex Court following Challa Upendra Rao (supra) has held that plying of a transport vehicle in a public place without a permit is a fundamental breach. Paragraph 12 of the said report being relevant is extracted below:*

*“24. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh and Lakhmi Chand in that regard would not be applicable to the case at hand. **That apart, the insurer had taken the plea that the vehicle in question had no permit.** It does not require the wisdom of the “Tripitaka”, that the existence of a permit of any nature is a matter of documentary evidence. **Nothing has been brought on record by the insured to prove that he had a permit of the vehicle.** In such a situation, the onus cannot be cast on the insurer. Therefore, the Tribunal as well as the High Court had directed that the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh and other cases pertaining to pay and recover principle.”*

19. In *Ramankutty and another v. Pareed Pillai and another*, 2018 SCC Online Ker 3542, a 5 Judge Bench of the Kerala High Court **considered the question as to whether the absence of ‘Permit’ or ‘Fitness Certificate’ relating to a transport vehicle is only a ‘technical breach’ or a ‘fundamental breach’**. The Bench relying upon the dictum of the Apex Court in the case of *Challa Upendra Rao* held it to be a **‘fundamental breach’**. Paragraphs 16, 17 and 18 of the said report is extracted below:

“16. 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'.*

*17. 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.*

*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.

20. The facts of the present case have to be examined in the light of the above-settled proposition of law. The conclusion recorded by the Tribunal clearly shows that the accident occurred on 8.3.2011 and the respondent no. 2 failed to establish that on the date of accident the offending vehicle had a valid fitness certificate. It is not the case of the insured that the offending vehicle was covered by any of the exceptions mentioned in sub-section (3) of Section 66 of the Act. In the circumstances, **in view of the settled legal position that absence of a fitness certificate amounts to the absence of a valid permit, the offending vehicle, in the present case, would be deemed to be without registration and without a valid permit, and as such, the liability cannot be imposed upon the insurer.** The impugned award directing the appellant to pay the compensation is set aside."

(emphasis supplied)

### **Precedents of other High Courts**

18. The High Court of Madhya Pradesh in the case of *United India Insurance Co. Ltd. vs Vinod and others* 2019 SCC OnLine MP 6107, where the owner of the offending vehicle lacked valid and effective fitness certificate on the date of the accident, held as under:-

"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(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 v. 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-a-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 v. TATA AIG General Insurance Co. Ltd.*, reported in 2019 (2) M.P.L.J. (S.C.) 8 : (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."

(emphasis supplied)

19. Again, the High Court of Madhya Pradesh in the case of ***Ramdeen and another vs Vikas and another Misc. Appeal No. 4336 of 2018*** decided on 24.02.2025, wherein the owner of the offending vehicle lacked fitness certificate on the date of accident and there was no condition prescribed in the insurance policy which mandated obtaining a fitness

certificate, held as under:-

**"9. The conjoint reading of Sections 39 & 56 of the Motor Vehicles Act makes it clear that a vehicle without fitness certificate would be treated to be a vehicle without valid registration.**

10. This Court in the case of Smt. Kvita Balethiya and others Vs. Santosh Kumar and another passed in MA No.691/2016 on 26.06.2019 has considered the interpretation of various provisions of Motor Vehicles Act including provisions of Sections 39 & 56 Motor Vehicles Act and in para-18 as held as under;

18. 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. Thus, as per the law laid down by this Court in the case of Smt. Kvita Balethiya (supra), **the requirement of having fitness certificate is the requirement of law for using the vehicle in accordance with the provisions of Motor Vehicles Act and merely because the policy of insurance does not specifically provides for having the fitness certificate would be inconsequential. In other words, the absence of specific condition for possessing fitness certificate in the Insurance Policy would not allow the owner of the vehicle to ply the vehicle in contravention of the provisions of the Act. Thus, plying the vehicle**

**without fitness certificate amounts to violation of provisions of law."**

*(emphasis supplied)*

20. A Division Bench of the High Court of Madras in the case of ***The Commissioner, Tiruppur Municipality, Tirupur vs K. Marayammal and others in CMA No.781 of 2024 and CMP No.7285 of 2024*** decided on 27.03.2024, where the offending vehicle did not had a fitness certificate on the date of the accident, held as under:-

*"16. On the second point regarding liability of the Insurance Company, we find that the fact that the vehicle did not have a fitness certificate on the date of the accident is admitted. If we are to look at the consequence of the absence of the fitness certificate, Section 56 provides the consequence and it reads as follows:-*

*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 subsection (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.[Provided further that no certificate of fitness shall be granted to a vehicle, after such date as may be notified by the Central Government, unless such vehicle has been tested at an automated testing station.]*

*(2) The "authorised testing station"; referred to in subsection (1) means any facility, including automated testing facilities, authorised by the State Government, where fitness testing may be conducted in accordance with the rules made by the Central Government for recognition, regulation and control of such stations.*

*(3) Subject to the provisions of subsection (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,*

*(a)such prescribed authority holds such technical qualification as may be prescribed by the Central Government and where the prescribed authority does not hold the technical qualification, such cancellation is made on the basis of the report of an officer having such qualification; and*

*(b)the reasons recorded in writing cancelling a certificate of fitness are confirmed by an authorised testing station chosen by the owner of the vehicle whose certificate of fitness is sought to be cancelled:Provided further that if the cancellation is confirmed by the authorised testing station, the cost of undertaking the test shall be borne by the owner of the vehicle being tested and in the alternative by the prescribed authority.]*

*(5)A certificate of fitness issued under this Act shall, while it remains effective, be valid throughout India.*

*(6) All transport vehicles with a valid certificate of fitness issued under this section shall carry, on their bodies, in a clear and visible manner such distinguishing mark as may be prescribed by the Central Government.*

*(7)Subject to such conditions as the Central Government may prescribe, the provisions of this section may be extended to non-transport vehicles.*

*17. Section 39 of the Motor Vehicles Act, which provides for registration of the motor vehicles reads as follows:-*

*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:*

*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.*

**18. Section 56 provides that a transport vehicle shall not be deemed to be validly registered for the purpose 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. The consequence of absence of fitness certificate is very serious, which goes to the extent of nullifying the registration of the vehicle, since the vehicle without fitness certificate is deemed to have been not registered at all.**

**19. If we are to look at Section 39 which speaks about the necessity of registration, we find that there is a clear bar on persons using vehicles without registration on public roads. Therefore, as pointed out by the Hon'ble Supreme Court in Amrit Paul Singh and othes Vs. Tata AIG General Insurance Co. Ltd. And others referred to supra, violation is a fundamental statutory refraction.**

20. The Hon'ble Supreme Court after referring to the provisions of Section 66 which deal with the permit which after referring to the judgment in National Insurance Co. Ltd., Vs. Swaran Singh and others reported in (2004) 3 SCC 297, concluded that if it is a fundamental statutory infraction then the Insurance Company is absolved of its liability and therefore there cannot be even a direction to the Insurance Company to pay the compensation with liberty to recover it. After discussing other judgments on the issue the Hon'ble Supreme Court observed as follows:-

24. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory

*infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] and Lakhmi Chand [Lakhmi Chand v. Reliance General Insurance, (2016) 3 SCC 100 : (2016) 2 SCC (Civ) 45] in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the Tribunal as well as the High Court had directed that the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] and other cases pertaining to pay and recover principle."*

*(emphasis supplied)*

### **Conclusion of this Court**

21. It is apparent that the judgment of this Court in **Roop Rani** (supra), which runs contrary to the earlier judgment of this Court in **Smt. Uma Tripathi** (supra), was delivered without making any reference to the binding precedent in **Smt. Uma Tripathi** (supra). If the Court was doubting the correctness of the view taken by this Court in **Smt. Uma Tripathi** (supra) then the matter ought to have been referred to a larger Bench for reconsideration, but this course was not adopted. In view of this, the judgment rendered in **Roop Rani** (supra) is *per incuriam*, which is confined to the peculiar facts of that case.

22. It is further apparent that the above contrary or divergent views expressed by other High Courts cannot be relied upon since this Court is bound by the law laid down by this Court in the case of **Smt. Uma**

**Tripathi** (supra). Further, this Court is in agreement with the view taken in **Smt. Uma Tripathi** (supra).

23. It is pertinent to mention here that no binding precedents of the Apex Court is available on the controversy involved in this case. The Apex Court in the case of **Challa Upendra Rao** (supra) and **Amrit Paul Singh** (supra) was only considering the situation where the offending vehicle was not having a valid permit on the date of accident, which is entirely different to the controversy at hand, which only relates to lack of valid fitness certificate on the date of accident as such, the ratio of that cases has got no applicability on the facts of this case.

24. From the above analysis, it is evident that even if, it is presumed that the offending vehicle was not having a valid fitness certificate, even then, it does not entitle the insurance company to avoid its statutory liability under Section 149(2) of the Act as held by the Coordinate Bench of this Court in the case of **Smt. Uma Tripathi** (supra), wherein this Court was specifically dealing with this issue whether, in the absence of a valid fitness certificate, the insurer of the offending vehicle could avoid its statutory liability. This court after examining the relevant provisions came to the conclusion that since the offending vehicle was having a valid permit which was not cancelled for the lapse of fitness, as such, it cannot be held that the offending vehicle was being plied in contravention of the terms and conditions of the policy.

25. It is further apparent from the judgment of the Apex Court in **Rekha Jain** (supra) that the insurer cannot enlarge his defence by taking additional grounds than those specified in Section 149(2) of the Act, insofar as the breach of the conditions of the policy are concerned. It is for this very reason, breaches such as overloading of vehicle with respect to the goods/passengers carried, deviation of route, driving of vehicle in violation of traffic rules and regulations, are not a ground on which the insurer can avoid its statutory liability. Further, the legislature was fully conscious that fitness certificate is required for plying the vehicle in a public place but still, it is not a ground of defence available to insurer under Section 149(2) of the Act. The legislature purposely restricted the ground of defence to breach of the conditions of permit and lack of

effective driving license. The legislature even specified what would amount to breach of the conditions of permit.

26. It is not a case of the insurance company that the offending vehicle was not having a permit to carry passengers for hire or reward. It is also not the case of insurance company that the offending vehicle was a private vehicle, which was carrying passengers for hire or reward. It is proved from record that the vehicle was insured as a commercial passenger carrying vehicle, under a package policy from 18.06.2012 to 17.06.2013, whereas, the accident occurred on 05.12.2012.

27. Further, the insurance policy discloses that requirement of permit was mandatory, but it nowhere mentions that fitness certificate is also mandatory, for plying the vehicle. It is also not a case where the offending vehicle was very old. In this case, the vehicle was only about two years old, having manufactured and registered in the year 2010, whose initial fitness was valid for two years, from the date of registration.

28. Judicial notice can be taken of cases where even after having a valid fitness certificate, the accident occurs because of mechanical failure of the offending vehicle such as failure of brakes, steering, bursting of tyres, failure of propulsion system, loss of engine power while driving uphill, etc.

29. Now the question arises if the fitness certificate was valid, then why there was mechanical failure in the vehicle? It shows that grant of fitness certificate is a mere formality, which can never guarantee that mechanical failure will not occur. The legislature was conscious of all these situations, hence, lack of valid fitness certificate was not a ground, which permitted the insurer to avoid its statutory liability under Section 149(2) of the Act.

30. In view of the above legal position even if the offending vehicle was not having a valid fitness certificate even then, the insurance company cannot avoid its statutory liability under Section 149(2) of the Act.

31. In view of the above analysis, the appeal preferred by the insurance company is liable to be dismissed.

**32. According, the appeal preferred by the appellant-insurance company is dismissed.**

33. Office is directed to remit back the statutory deposit made by the insurance company at the time of filing of the appeal, to the concerned tribunal, forthwith.

34. Interim order, if any, stands vacated.

**Order on Cross Objection No.156 of 2022**

1. As per the office report, there is a delay of 2625 days in filing the instant cross-objection; however, since the cross-appeal filed by the Insurance Company is being disposed of, the delay in filing the cross-objection is condoned.

2. The claimants claimed that the deceased was working as a supervisor in Ashish Contract Pvt. Ltd., Sonipat, Haryana and was getting a salary of Rs.16,600/- per month, which was proved by Brijesh PW-3, but still the Tribunal has disbelieved the evidence of PW-3 on the ground that he was not the employer of the deceased and was only working with him. The Tribunal has assessed the compensation by taking the notional income of the deceased at the rate of Rs.3,000/- per month, which is grossly inadequate.

3. The Apex Court in the case of ***Gurpreet Kaur and Others vs. United India Insurance Company Ltd. and Others*** 2022 SCC OnLine SC 1778, held as under:-

*“8. Though, there is no evidence on record regarding the income of deceased Pyara Singh, however, from the testimony of P.W.4 - Amar Kumar, Assistant Manager, Kotak Mahindra Bank Limited, it is clear that the deceased - Pyara Singh was regularly making the payment of Rs. 11,550/- as instalment to discharge his loan liability towards the tractor. At this rate, the entire loan was paid back within a year or so. That clearly establishes the earning capacity of the deceased. It is also the case of the appellants-claimants that the deceased was working as a contractor and was earning Rs. 50,000/- per month. The Tribunal adopted a balanced approach and keeping in view factors like : (i) the payment of*

monthly instalment of Rs. 11,550/- towards loan of the tractor; (ii) Maintaining a family comprising of wife, two minor children and parents; (iii) Affording tractor and motorcycle; (iv) that the deceased was working as a contractor; assessed his income at Rs. 25,000/- per month.

9. In our considered view, the Tribunal's approach is quite justified in law as well as on facts. In the summary proceedings where the approach of the Tribunal's determination must be in conformity with the object of the welfare legislation, it was rightly held that the monthly income of the deceased could not be less than Rs. 25,000/-. The reason assigned by the High Court to reduce the monthly income of the deceased is totally cryptic and has no rationale. **The Notification of Minimum Wages Act can be a guiding factor only in a case where there is no clue available to evaluate monthly income of the deceased.** Where positive evidence has been led, no reliance on the Notification could be placed, particularly when it was nobody's case that the deceased was a labourer as presumed by the High Court. “

(emphasis supplied)

4. The Apex Court in the case of ***Jitendra vs. Sadiya & Others*** 2025 SCC OnLine SC 261, held as under:-

“10. We have heard the learned counsel for the Appellant. We are unable to agree with the view taken by the Tribunal and High Court on the income of the Appellant and the functional disability suffered by him. At the outset, we must refer to the exposition of this Court in *Gurpreet Kaur v. United India Insurance Company Ltd.* 2022 SCC OnLine SC 1778., wherein it was stated the notifications under the Minimum Wages Act can be a guiding factor in cases where there is no evidence available to evaluate monthly income.”

5. It is evident that since the employer of the deceased or his representative were not examined by the claimants in order to prove the salary of the deceased before the Tribunal, as such, the Tribunal has rightly disbelieved the evidence of PW-3 insofar as the quantum of salary of the deceased was concerned, but still the Tribunal was supposed to assess the compensation on the basis of minimum wages paid to an

unskilled labour at the time of the accident in the State of Haryana, which was higher than that prevailing in the State of Uttar Pradesh. In the State of Uttar Pradesh, it was Rs.4,677/-per month.

6. In view of the above, the claimants are entitled to receive compensation on the basis that the deceased was an unskilled labourer having a monthly income of Rs.5,000/-.

7. **Rule 220-A of the UP Motor Vehicle Rules,1998** w.e.f. 26.09.2011, mandates that when the deceased was aged below 40 years on the date of accident, the claimants are also entitled to compensation on future prospects @50% of his income.

8. The Constitution Bench of the Apex Court in the case of **National Insurance Co. Ltd. vs. Pranay Sethi & Ors.(2017) 16 SCC 680** has awarded loss of consortium of Rs.40,000/- and Rs.15,000/- each towards loss of estate and funeral expenses, which is to be enhanced at the rate of 10% after every three years.

9. The Apex Court in the case of **Magma General Insurance Company Ltd. Vs. Nanu Ram @ Chuhru Ram & others, (2018) 18 SCC 130**, has awarded Rs.40,000/- each towards spousal consortium, parental consortium and filial consortium.

10. Further, the Apex Court in the case of **Rahul Ganpatrao Sable vs Laxman Maruti Jadhav (Dead) through LRS and Others (2023) 13 SCC 334**, held as under:-

*"32. In the present case, MACT had granted a meagre amount of Rs 5000 towards loss of consortium. However, the High Court granted a total amount of Rs 70,000 as consolidated amount under all conventional heads, which included loss of consortium, loss of estate and funeral expenses. In **Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205]**, the Constitution Bench of this Court had provided that all dependents should be separately awarded towards loss of consortium and had actually awarded Rs 40,000 to each of the dependents. Considering the same, an amount of Rs 40,000 each is awarded to each of the four dependents towards loss of consortium."*

(emphasis supplied)

11. As per **Rule 220-A of the U.P. Motor Vehicle Rules, 1998**, the claimants are entitled to get compensation on the future prospects of the deceased at the rate of 50% of his income, since the deceased was aged about 40 years at the time of the accident.
12. Further, a multiplier of 15 was to be applied for assessing compensation in this case, but the Tribunal has applied a multiplier of 16, which requires reduction, keeping in view the judgment of the Apex Court in the case of **Pranay Sethi** (supra).
13. It is further apparent that the Tribunal has awarded inadequate amount of compensation under non-pecuniary heads, which requires substantial enhancement, keeping in view, the judgment of the Apex Court in the case of **Pranay Sethi** (supra), **Magma General Insurance Company Ltd.** (supra) and **Rahul Ganpatrao Sable** (supra).
14. Further, as per **Rule 220-A of the U.P. Motor Vehicle Rules, 1998**, the claimants were entitled to get interest at the rate of 7% per annum on the compensation awarded; however, the Tribunal has awarded it at the rate of 6% per annum, which requires enhancement.
15. In view of the above statutory law and precedents of the Apex Court, the compensation payable to the claimants is redetermined as under:-

| S.No. | Compensation Heads                                                   | Amount Awarded (in Rs.) | In Accordance with.                                    |
|-------|----------------------------------------------------------------------|-------------------------|--------------------------------------------------------|
| 1.    | Monthly income of deceased as per minimum wages of unskilled workman | 5,000/-                 | <b>Gurpreet Kaur</b> (supra) & <b>Jitendra</b> (supra) |
| 2.    | Annual Income of deceased                                            | 5,000X12=60,000/-       | <b>Gurpreet Kaur</b> (supra) & <b>Jitendra</b> (supra) |
| 3.    | Less 1/3rd deduction towards self expenses of                        | 20,000/-                | <b>Pranay Sethi</b>                                    |

|     |                                                                                         |                      |                                                                                       |
|-----|-----------------------------------------------------------------------------------------|----------------------|---------------------------------------------------------------------------------------|
|     | the deceased (3 dependents)                                                             |                      | (supra)                                                                               |
| 4.  | Net annual income on which claimants were dependent                                     | 40,000/-             | <b>Pranay Sethi</b><br>(supra)                                                        |
| 5.  | Add future prospects @50% since deceased was aged about 40 years                        | 20,000/-             | <b>Rule 220-A of UP Motor Vehicle Rules, 1998</b>                                     |
| 6.  | Total annual dependency of claimants on deceased                                        | 60,000/-             | <b>Rule 220-A of UP Motor Vehicle Rules, 1998</b>                                     |
| 7.  | Multiplier applied since age of deceased was about 40 years at the time of the accident | 15                   | <b>Pranay Sethi</b><br>(supra)                                                        |
| 8.  | Total loss of dependency to the claimants                                               | 60,000X15=9,00,000/- | <b>Pranay Sethi</b><br>(supra)                                                        |
| 9.  | Loss of consortium @Rs.40,000/-each, increased by 10% after every 3 years (3 claimants) | 48,400X3=1,45,200/-  | <b>Pranay Sethi</b><br>(supra) and <b>Magma General Insurance Co. Ltd.</b><br>(supra) |
| 10. | Loss of estate @ Rs.15,000/- increased by 10% after every 3 years.                      | 18,150/-             | <b>Pranay Sethi</b><br>(supra)                                                        |
| 11. | Funeral Expenses@ Rs.15,000/- increased by 10% after every 3 years.                     | 18,150/-             | <b>Pranay Sethi</b><br>(supra)                                                        |
| 12. | Total compensation                                                                      | 10,81,500/-          |                                                                                       |

16. In this way, the claimants are entitled to total compensation of Rs.10,81,500/- alongwith interest @ 7% per annum from the date of filing of the claim petition till it's actual payment, which is to be indemnified by the insurer of the offending Xylo car No.UP-35-H-0005.

**17. Accordingly, the cross-objection preferred by the claimants for enhancement of compensation is allowed. The impugned judgment and award of the tribunal dated 29.11.2014 is modified to the above extent.**

18. If any amount has been paid by the insurance company previously, then the insurance company is entitled to adjust it accordingly. The insurance company is directed to deposit the enhanced amount of compensation before the concerned tribunal within two months. The tribunal will be at liberty to proportionally award the enhanced amount of compensation to the claimants, keeping in view their age and dependency.

**(Sandeep Jain,J.)**

**February 6, 2026**

Himanshu