2025 INSC 1270

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**
**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NOS. OF 2025**
(Arising out of SLP (C) Nos. 7139-7140 of 2023)

**K. NAGENDRA … APPELLANT(S)**

**Versus**

**THE NEW INDIA INSURANCE CO. LTD. & ORS. … RESPONDENT(S)**

# J U D G M E N T

**SANJAY KAROL, J.**

Leave granted.

**1.** These appeals are directed against the common final judgment and order dated 25th September 2019 in Miscellaneous First Appeal No. 2947 of 2017 with Miscellaneous First Appeal No. 1024 of 2018, passed by

the High Court of Karnataka at Bengaluru, which in turn were preferred against the judgment and order dated 14th December 2016 passed in Claim Petition No. 566/2014 by the Senior Civil Judge and JMFC and Addl. MACT, Channapatna.

**2.** The brief facts giving rise to these appeals are that on 7th October 2014, the deceased, namely Srinivasa *alias* Murthy who was riding on his motorcycle and was hit by the offending vehicle, bearing registration number KA-52-9099, in a rash and negligent manner, resulting in his death on the spot.

**3.** The Appellant(s) (*dependents of the deceased*) filed a claim petition before the Tribunal seeking compensation to the tune of Rs. 50,00,000/- along with an interest @ 18%, submitting therein that the deceased was the only earning member of the family, running a business of Shamiyana Centre and a Ration Shop; and earning up to Rs. 15,000/- per month.

**4.** The Tribunal, by its order dated 14th December 2016 awarded the Appellant(s) an amount of Rs. 18,86,000/- along with interest @ 6% p.a, taking the notional income of the deceased as Rs. 8,000/- per month.

Being aggrieved with the amount of compensation awarded, the Claimant-Appellant(s) filed an appeal before the High Court on the ground that the compensation was not correctly calculated by the Tribunal. The Insurance Company also challenged the Tribunal's order on the ground of violation by the insurer of the conditions enumerated in the policy; both the appeals were heard and disposed of *vide* the common impugned judgment and order.

**5.** The High Court, *vide* the common impugned judgement and order dated 25th September,2019 partly allowed both the appeals.

5.1 Accepting the contentions of Claimant-Appellant(s) by reassessing the monthly income of the deceased at Rs. 15,750/- per month and by giving 40% towards future prospects, and since in the present case there were 4 dependents of the deceased 1/4th of the income was deducted towards personal expenses and after applying the multiplier of 16 the compensation payable to the Appellant(s) under the head '*loss of dependency'* was assessed at Rs. 30,24,000/- and Rs. 40,000/- was awarded to the widow towards '*loss of spousal consortium*' and

Rs. 30,000/- to the deceased's son towards '*loss of parental consortium*' and Rs. 30,000/- each to the parents of the deceased towards '*loss of filial consortium*'. In addition to this, the Appellant(s) were awarded Rs. 15,000/- each towards loss of estate and for funeral expenses totaling to Rs. 31,84,000/-.

5.2 As regards the Appeal filed by the Insurance Company, it was contended by the counsel for the Insurance Company that the route which was undertaken by the bus driver was not covered by the permit issued and that the driver of the bus was not authorized to enter Channapatna City and that the permit only covered the route from Bengaluru to Mysore, which is admitted by both the parties, goes on to show that there was a deviation in route and that it was in violation of the permit. The High Court relied on the ratio of the judgment of this Court in ***Amrit Paul and Anr. v. TATA AIG General Insurance Company & Ors.***[1] wherein this Court held that:-

> **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

[1] (2018) 7 SCC 558

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.

5.3 The High Court directed the Insurance Company to satisfy the award as passed by the Tribunal and granted the right to recover the amount from the owner of the bus, i.e, the Appellant herein.

**6.** The question that comes up for consideration before this Court in these appeals is whether any deviation from the prescribed route as per the permit granted by the state transportation authority, would impact on the liability of the Insurance Company for any accident which may take place while the vehicle is on such a deviated route. An answer to this question would by itself justify the correctness or lack thereof, of the order of the High Court which employs the '*pay and recover*' principle.

**7.** Before going to the exact issue involved in this case, it would be appropriate to refer to certain judgments which will set out the instances in which this Court has approved the application of the above-mentioned principle. It is on that benchmark that we will proceed to examine the correctness of the High Court's conclusions.

7.1 In ***National Insurance Co. Ltd. v. Swaran Singh***[2], a bench of 3 learned Judges of this Court

[2] (2004) 3 SCC 297

observed thus:

> "**83.** Sub-section (5) of Section 149 which imposes a liability on the insurer must also be given its full effect. The insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does not mean that it did not have initial liability at all. Thus, if the insurance company is made liable to pay any amount, it can recover the entire amount paid to the third party on behalf of the assured. If this interpretation is not given to the beneficent provisions of the Act having regard to its purport and object, we fail to see a situation where beneficent provisions can be given effect to. Sub-section (7) of Section 149 of the Act, to which pointed attention of the Court has been drawn by the learned counsel for the petitioner, which is in negative language may now be noticed. The said provision must be read with sub-section (1) thereof. The right to avoid liability in terms of sub-section (2) of Section 149 is restricted as has been discussed hereinbefore. It is one thing to say that the insurance companies are entitled to raise a defence but it is another thing to say that despite the fact that its defence has been accepted having regard to the facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner. These two matters stand apart and require contextual reading."
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> [This judgment was followed in ***Shamanna v. Oriental Insurance Co. Ltd.***[3] ]
>
> (*emphasis supplied*)

7.2 K.T Thomas J., in ***New India Assurance***

[3] (2018) 9 SCC 650]

***Co. v. Kamla***[4], stated the position of law succinctly, thus:

> "**25….** The insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence. Learned counsel for the insured contended that it is enough if he establishes that he made all due enquiries and believed bona fide that the driver employed by him had a valid driving licence, in which case there was no breach of the policy condition. As we have not decided on that contention it is open to the insured to raise it before the Claims Tribunal. In the present case, if the Insurance Company succeeds in establishing that there was breach of the policy condition, the Claims Tribunal shall direct the insured to pay that amount to the insurer. In default the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimant third parties) from the insured person.

7.3 In ***Parminder Singh v. New India Assurance Co. Ltd***.[5], this Court approved the application of this principle in cases where the driver of the offending vehicle does not possess a valid driving license.

[4] (2001) 4 SCC 342
[5] (2019) 7 SCC 217

7.4 In ***S. Iyyapan v. United India Insurance Co. Ltd***.[6], it was held that if at the time of accident, there is a discrepancy in the vehicle being dofven by the driver and the endorsement on the driver's license (*i.e., the kind of vehicle said driver is permitted to operate*) then, in such a case, pay and recover shall be permitted.

7.5 In M/s ***Chatha Service Station v. Lalmati Devi & Ors***[7] it was held that when a vehicle involved in an accident is found to be carrying certain goods which it was not authorized to as per law (*in the instant case hazardous goods within the meaning of Rule 9 of Central Motor Vehicles Rules, 1989*) the insurance company while would be required to compensate the victim of the accident, it shall be entitled to recover the amount so paid from the holder of the insurance policy.

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

[6] (2013) 7 SCC 62

[7] 2025 SCC OnLine SC 756

the terms of the permit have been deviated.

**9.** The purpose of an insurance policy in the present context is to shield the owner/operator from direct liability when such an unforeseen/unfortunate incident takes place. To deny the victim/dependents of the victim compensation simply because the accident took place outside the bounds of the permit and, therefore, is outside the purview of the insurance policy, would be offensive to the sense of justice, for the accident itself is for no fault of his. Then, the Insurance Company most certainly ought to pay.

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

**11.** The appeals are dismissed; however, there shall be no order as to costs. Pending application(s), if any, shall stand disposed of.

**……...…J.**
**(SANJAY KAROL)**

**…….…..J.**
**(PRASHANT KUMAR MISHRA)**

**New Delhi;**
**October 29, 2025**