GAHC030002852023

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MACApp./2/2023

National Insurance Co. Ltd.
Aizawl

VERSUS

Smt Deepa Pal and 6 Ors.
W/o Samir Paul (L), Tlangnuam Block Veng, Aizawl

2:Smt Vanlalringi

3:Sh Sumeona

4:Smt Grace Lalawmpuii

5:Sh R.Lalchungnunga (struck off)

6:Sh Manilal Hazam

7:Sh Lalmuanawma Ngente

8:Sh Santi Bikas

Advocate for the Petitioner : Mr. Johny L Tochhawng

Advocate for the Respondent : Mr Lalchhanliana Khiangte for R1-4

BEFORE
HONOURABLE MR. JUSTICE NCHUMBEMO MOZHUI

Advocate for the appellant : Mr. Johny L. Tochhawng

Advocate for the respondents **:** Mr. Lalchhanliana

Date on which judgment is reserved **: 27.10.2026**

Date of pronouncement of judgment **: 03.11.2026**

Whether the pronouncement is of the operative part of the judgment : N/A

Whether the full judgment has been pronounced : Yes

JUDGEMENT & ORDER (CAV)

Date : 03-11-2026

Heard Mr. Johny L. Tochhawng, learned counsel for the Appellant/Insurance Company and Mr. Lalchhanliana Khiangte, learned counsel for the respondent No. 1 to 4. None appeared for the respondent No. 5 &8 and this Court vide Order dated 03.03.2025 for substitute notice and had deemed to be served.

2. The Appellant/National Insurance Co. Limitedbeing aggrieved and dissatisfied with the impugned Judgment and Award dated 07.12.2022 filed the present appeal. The appellant was directed to pay Rs. 15,39,500/- along with interest @ 9% PA from the date of filing of the claim petition within a period of

30 days as compensation. The present MAC Appeal No. 2/2023 was filed amongst others inter alia contentiously-

(i) The deceased driver Samir Paul does not possessed driving license at the time of accident;

(ii) The offending vehicle Alto Car bearing Registration No. MZ-01-A-5877 possessing Cover Note No. G0009928039/2016/ISA dated 03.05.2016 is not genuine. Hence, the appellant has no liability in the present case.

3. The fact leading to the case is that, the respondent No. 1 to 4 in the present appeal have filed the MACT Case No. 7/2017 before the Motor Accident Claims Tribunal (Tribunal), Aizawl seeking compensation against the appellant and respondent No. 5, 6 & 8 U/S 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as M.V Act of 1988), as both the vehicles was insured by the appellant on account of death of deceased Samir Paul in the motor accident dated 20.05.2016 at about 5 PM which took place at Maufiangkawn, about 3 kms from Sialsuk Village while the 2(two) vehicles Maruti Van bearing Registration No. MZ-01-E-1827 and Alto Car bearing Registration No. MZ-01-A-5877 collided each other.

4. The vehicle Maruti Van bearing Registration No. MZ-01-E-1827 was owned by Shri. Manilal Hazam driven by the deceased Samir Paul was proceeding towards Aizawl from Samlukhai. The Alto Car bearing Registration No. MZ-01-A-5877 was owned by respondent No. 5, Shri. R. Lalchungnunga driven by its driver respondent No. 8, Shri. Santi Bikash was proceeding towards Lunglei from Aizawl. The hit on collision was due to rash and negligent driving on the part of

respondent No. 8.

4.1. Notably the MACT Case No. 7/2017 was dismissed by theTribunal vide Judgment & Order dated18.09.2018 on the ground that the deceased driver Samir Paul was not in possession of Driving License to drive the Maruti Van bearing Registration No. MZ-01-E-1827 owned by Shri. Manilal Hazam at the time of accident.

4.2. The claimants aggrieved by the Judgment &Award dated18.09.2018 filed the MAC Appeal No. 28/2018 impleading the original opposite parties No. 1 to 4 before the Tribunal in the case as respondents. In the appeal, the Court after hearing the appeal vide Judgment &Order 19.03.2019 remanded the case for fresh adjudication and thereby set aside and quashed Judgment &Award dated18.09.2018.

4.3. The Tribunal on being received of the Judgment &Award 19.03.2019 from the High Court re-adjudicated the case afresh and thereafter passed the Judgment &Award dated 07.12.2022 directing the opposite party; the Appellant herein to pay Rs. 15,39,500/- along with interest @ 9% PA from the date of filing of the claim petition within a period of 30 days as compensation.

5. The appellant submits that the learned Tribunal erred in law as well as in facts while passing the impugned Judgment & Award dated 07.12.2022, which is liable to be set aside and quashed. The conclusion made by the learned Tribunal was merely a presumption and was not supported by any evidence on record. It is true that the M.V Act of 1988 is beneficial legislation aimed at providing monetary compensation to the victim or legal representatives; however, to fasten the liability to the insurance company, there must be a valid insurance policy at the time of the accident. Due to the lack of a valid insurance policy at

the time of the accident, the insurance company is not liable to pay any compensation to the claimants/respondents.

6. The learned counsel also submits that regarding the Cover Note for MZ-02A-5877 (Maruti Alto 800), it was contented that it was not issued by the Appellant. To prove the invalid/fake Cover Note bearing No. G.0009928039/2016/ISA/ Dated 03.05.2016, the Appellant presented three witnesses, besides respondent No. 7 (Lalmuanawma Ngente, Sub-dealer of TVS motor) who deposed before the Tribunal and proved beyond doubt that the alleged Cover Note was fake and fabricated. However, the learned Tribunal failed to appreciate the evidence presented by the witnesses. In fact, the learned Tribunal concluded based on presumption which is highly illegal, bad in law, and cannot be sustained in the eyes of the law.

7. Further, the appellant placed a Sample Cover Note (Form 52) and exhibited as Ext P-2 before the learned Tribunal without any objection from the claimant/respondents to demonstrate that the Cover Note (Ext. C-21) filed by the claimants is fake or invalid. The Appellant/Insurance Company uses only one and uniform format for insurance cover notes which is widely used throughout the country. Moreover, the alleged insurance Cover Note was never seen by any one of the employee of the National Insurance Company. The Appellant/Insurance company vehemently try to trace the said alleged Cover Note dt.03.05.2016 from their system through online and offline but all are in vain.

8. Meanwhile, the learned Tribunal erred in law and in facts by not considering the evidence presented by Sh. Lalawmpuia, In-charge of Lunglei Business Centre, National Insurance Co. Ltd. who clearly stated in his deposition that the Cover Note Ext. 21 was not issued by him and that he never issued an insurance

policy until he received the insurance amount from the customer. The said witness mentioned that the insurance premium for MZ-01A-5877 (Maruti Alto 800) was received on 13/06/2016, subsequently issued a valid insurance policy bearing Policy No. 206054311610000019 effective from 13/06/2016 to 12/06/2017. As such, at the time of the accident no valid insurance policy was in existence for the said vehicle.

9. The appellant contended that the learned Tribunal erred in law and facts by not considering the evidence presented by respondent No. 7 who was the sub-dealer of TVS Motor at Lunglei Town, Mizoram, who clearly stated that neither he nor any employee issued the said Cover Note to Respondent No. 5. There is no question of issuing Cover Note within his knowledge. Hence, mere production and marking of a document as exhibited before the Tribunal do not themselves dispense with the proof of its contents. It is the duty of the claimants to adduce admissible evidence to prove the same. In this case, the claimants failed to produce any evidence to prove the genuineness of the impugned Cover Note dated 03.05.2016. In fact, the Claimants before the Tribunal did not fulfill their duty to prove that the said Cover Note was validly issued by the Appellant. Furthermore, respondent No. 5, who is the owner of the vehicle B/R No. MZ-02-A-5877 (Maruti Alto 800) was not produced by the claimants before the Tribunal to explain how he obtained the said Cover Note.

10. The appellant further submits that the learned Tribunal made an incorrect presumption and judgment that the Insurance Cover Note dated 03/05/2016 (Ext. C-21) was issued by the appellant despite of the fact that 3(three) witnesses examined.

11. The claim was filed under Section 166 of the MV Act, 1988, but not under Sections 163A or 164 of the MV Act of 1988. Section 166 of the MV Act, 1988 is

mandatory to establish negligence before the Tribunal, however, such negligence was not evident during the trial, including in the Police Report. Hence, the appellant is not liable to pay compensation even when applying the principle of pay and recover.

12. The learned counsel for the appellant has placed its reliance to the judgment;

(a). "The concept of partial or equitable relief in cases tainted by fraud. Courts and adjudicatory fora cannot grant compensation merely because some loss is shown to have occurred, when the claim itself is vitiated by fraudulent conduct. An insurance contract cannot be used as an instrument of unjust enrichment. The view "that the claim itself is founded on fraud, the entire edifice of the claim collapses and no relief can be granted" as reported in the case of*United India Insurance Co. Ltd* -vrs- *Sayona Colors Pvt. Ltd.,* reported in *2026* SCC Online 486, Para- 21, 22, 23.

(b). Further, the learned counsel also relies in the case of *Narbada Devi GuptaVs.Birendra Kumar Jaiswal &Anr*,reported in *(2003) 8 SCC 745*, wherein the Hon'ble Apex Court has held that mere marking of exhibits is not proof, but admitted signatures on rent receipts shifted onus to the plaintiff to disprove tenancy, especially absent fraud pleadings.

(c) Theratio applied in the case of *L.I.C. of India &Anr Vs. Ram Pal Singh Bisen*, reported in(2010) 4 SCC 491,cannot be applicable in the instant case.

(d) The claim petition was filed under section 166 of the M.V Act of 1988, not under section 164 of the M.V Act of 1988 and therefore, it is mandatory to establish negligence on the part of the deceased Samir Paul. However, no rash and negligent driving was established before the Tribunal including the Police report. As such, the appellant is not liable to pay compensation even when applying the principle of pay and recovery as reported in the case of *Surender Kumar Arora & AnotherVs. Manoj Bisla & Others*, reported in *(2012) 4 SCC 552*.The learned counsel further relies on the decision of the Co-ordinate Bench of this Hon'ble Court decided in the case of *Smt. Parmawii& 3 OrsVs. C. Lalthangmuana&Anr*. decided on 30.10.2024.

13. Mr. Lalchhanliana Khiangte, learned counsel for the respondent No. 1 to 4 submits that the facts of the case is that the deceased died in a vehicular accident on 20.05.2016 @ 5:00 PM involving two vehicles bearing Regn. No. MZ-02 A 5977 belonging to the respondent No. 5 and the other vehicle bearing Registration No. MZ-01-E-1827 owned by respondent No. 6. The rash and negligent driving of the respondent No. 8 is well established. The claimants evidence, CW No. 2 Police enquiry/investigating officer clearly stated that no negligence on the part of deceased Samir Paul but on the part of the respondent No. 8 who is the driver of the offending vehicle bearing Regn. No. MZ-02 A 5977.

14. It is also further submitted by the learned counsel that the insurance cover was satisfied by the Cover Note and had subsequently issued the Insurance Certificate No. 206054311610000019 by the appellant in respect of the vehicles bearing Regn. No. MZ-02 A 5977 belonging to the respondent No. 5 genuine. The Maruti Van bearing Regn. No. MZ 01E 1827 was insured with National

Insurance Co. Ltd and thus the claimants/respondents were held entitled to compensation for the death of Samir Paul in the vehicular accident. Accordingly, the Tribunal awarded Rs.15,39,500/- as compensation to the claimants/respondents No. 1 to 4 and the appellant was directed to pay the awarded amount, within one month, along with interest @ 9% p.a. from the date of filing i.e., 17.02.2017 till the date of payment.

15. It is further the contention of the learned counsel for the respondentsthat the Maruti Van bearing Regn. No. MZ-01 E 1827 belonging to respondent No. 6, was also insured with the appellant, National Insurance Co. Ltd under Packaged Insurance (Private Car) Policy No. 200500/31/15/6100007586 w.e.f.,08.03.2016 to 07.03.2017 which covers the date of the accident i.e. 20.05.2016. The witnesses of the claimants during the trial, had proved in evidence that the accident happened due to rash and negligent driving of Alto Car vehicle bearing Regn. No. MZ-02 A 5977.

16. The counsel for the claimants/respondents No. 1 to 4 had also argued about other aspects and facts in the case. However, this Court viewed that whatever aspects which are not in contention, as such, the submissions and arguments are not taken note, also no grounds were set out in the Memo of Appeal. The respondent No. 1 to 4 has placed its reliance in decision rendered by Apex Court in the case *of National Insurance Company Ltd. Vs.Swaran Singh,* reported in *(2004) 3 SCC 297*.

17. Having heard the respective counsels at length and on thorough scrutiny of the records, it is found that the Tribunal initially framed 3(three) issues based on the pleadings of the parties:

(i). Whether the claim petition is maintainable in its

present form and style?

(ii). Whether there was fault/negligent on the part of the accident vehicle?

(iii). Whether the claimants are entitled to get compensation, if so, who is liable to pay and to what extent?

After the case was remanded back to the Tribunal by the High Court in the earlier proceeding, to proceed afresh, no further issues were framed but proceed with the case by allowing the parties to file additional documents and witnesses.

18. Considering the contentious issues involved in the case, for disposal of the present MAC Appeal No. 2/2023 and the MACT Case No. 7/2016 of the Tribunal in a proper legal perspective for disposal, the following additional issues are required to be framed based on the pleadings of the parties:

(a). Whether the deceased driver Samir Paul was in possessing of driver license at the time of accident?

(b). Whether the vehicle bearing No. MZ-01-A-5877 was possessing valid Cover Note and Insurance Certificate at the time of accident?

19. Upon scrutiny and perusal of the case record, the Issue (i) & (ii) duly propounded by the Tribunal into which this Court is not required to venture into which is already settled. Before delving to the Issue No. (iii) of the Tribunal, Issue (a) and (b) as noted above is deem appropriate for the consideration of the Appeal and the MAC case.

19.1. Issue No. (a). ***Whether the deceased driver Samir Paul was in possessing of driver license at the time of accident?***

Appreciating the evidence, this Court has perused the claim petition and its annexures, the materials documents available in the case record, the statement of the witness and the findings made in Judgment &Award dated 07.12.2022, the claimants have not filed the driving license of the deceased. The claimant namely Deepa Pal (CW-1) states in her deposition that her deceased husband does not have driving license. Further, CW-2 (I.O of the case) has deposed that the deceased Samir Paul did not possess driving license. The respondent No. 6 i.e., the owner of Maruti Van bearing Registration No. MZ-01-E-1827, in its written statement did not narrated about the driving license nor stated any facts about its driver namely, Samir Paul but shifted its liability based on the Contract of Insurance existing during the time of accident based on the Certificate of Insurance bearing No. 203500/31/15/6100007585, which was valid at the material time of the vehicle with its commencement of Risk from 08.03.2016 to 07.03.2017.

From the facts it appears that the deceased driver Samir Paul, was not in possession of the driving license at the time of accident dated 20.05.2016.

19.2.Issue No. (b). ***Whether the vehicle bearing No. MZ-01-A-5877 was possessing valid Cover Note and Insurance Certificate at the time of accident ?***

This Court after remanding the case by Judgment &order 19.03.2019, in the earlier proceedings, the Tribunal while re-

adjudicating the case had allowed for filing additional documents and witness to the parties, The claimants have also filed i.e., the Cover Note and the Certificate of Insurance which was allowed to be exhibited as Exbt. C-21 and C-22 respectively. While re-appreciating evidence and also on meticulous scrutiny of the document i.e., Insurance Cover Note and the Certificate of Insurance bearing No. 206054311610000019 pertaining to the vehicle bearing No. MZ-01-A-5877, it is found that the Cover Note No. AG0009928039/2016/ISA, dated 03.05.2016, was in existence issued by the Appellant company on received of the Premium of Rs. 2525 (Exbt.- C-21). The Exbt.- C-22 exhibited by the claimant i.e. the Certificate of Insurance bearing No. 206054311610000019 (Private Car Liability Only) was issued by the Appellant Company with the Commencement of Risk from 12:09 O'clock 13.06.2016 to Midnight 12.06.2017 upon received of Insurance Premium for an amount of Rs. 2,105/-.

19.3. The Appellant's denial is that, the Insurance Cover Note for the Vehicle No. MZ-02-A 5877 was not issued by Appellant, on the other hand, the Certificate of Insurance pertaining to the Vehicle No. MZ-02-A 5877 owned by the respondent No. 5, the commencement of risk begins from 12:09 O'clock 13.06.2016 to Midnight 12.06.2017 and that the accident occurred on 20.05.2016, hence not within the coverage.

19.4. The Appellant/Insurance Company to substantiate the fact of the Cover Note, the appellant have examined 3(Three) DWs before the Tribunal. The DW-1 who is a TVS sub-dealer at Lunglei Town during 2015-2017 was examined, who testified that the Insurance Cover Note dated 03.05.2016 was neither

issued by him nor by his staff on behalf of the National Insurance Company to the respondent No. 5 and no such Insurance Premium was also received. The appellant also examined its Branch Manager to prove the veracity and genuineness of the Insurance Cover Note who affirmed that no such Insurance Cover Note was issued by the company. The Agent of the National Insurance Company Ltd, Lunglei, Mizoram In-Charge namely, Shri. Lalawmpuia was also examined who deposed that no such Insurance Cover Note dated 03.05.2016 issued by him, however, stated that Exbt- C-22 i.e. the Certificate of Insurance bearing No. 206054311610000019 (Private Car Liability Only) was issued by him.

19.5. Henceforth, on scrutiny of the oral evidence and perusal of the documentary evidence available before this Court, the accident took place on 20.05.2016 and that the Certificate of Insurance bearing No. 206054311610000019 (Private Car Liability Only) pertaining to the vehicle bearing No. MZ-01-A-5877 was issued by the Appellant Company with the Commencement of Risk from 12:09 O'clock 13.06.2016 to Midnight 12.06.2017, on receipt of Insurance Premium of Rs. 2,105/-. Meanwhile the Cover Note No. AG0009928039/2016/ISA dated 03.05.2016 was in possession of respondent No. 5 at the time of accident.

19.6. The Insurance Cover Note are Temporary Insurance or arrangement issued under Form- 52, which is permissible under the Insurance Regulatory Development Authority of India (IRDA), where the insurance company can issue such Cover Notes for a period of 60 days in conjunction to the Statutory Mandate under Rule 142 of the Central Motor Vehicles Rules, 1989 and governed by the M. V Act of1988. After the issuance of Cover Note, the insurer must replace with regular Insurance Certificate within such period.

19.7. On comparative examination, the Insurance Cover Note bearing No. AG0009928039/2016/ ISA dated 03.05.2016, with the Certificate of Insurance bearing No. 206054311610000019 (Private Car Liability Only) pertaining to the vehicle bearing No. MZ-01-A-5877 with commenced the Risk from 03.05.2016, the respondent No. 5 has obtained the Regular Certificate of Insurance from the Appellant company.

20. In the present case in hand, it is explicitly revealed and transpired from the argument, oral and documentary evidences:

Firstly, Insurance Cover Note bearing No. AG0009928039/2016/ ISA, dated 03.05.2016, for the vehicle bearing No. MZ-01-A-5877 was in possession at the time of accident dated 20.05.2016, though opposed by the appellant. No doubt the said vehicle was validly insured by issuing a Certificate of Insurance by the Appellant bearing No. 206054311610000019 (Private Car Liability Only) with the Commencement of Risk from 12:09 O'clock 13.06.2016 to Midnight 12.06.2017, on receipt of Premium for an amount of Rs. 2,105/- through agent and same Business Centre-Lunglei, Mizoram.

Secondly, the deceased driver namely, Samir Paul was driving the vehicle bearing Registration No. MZ-01-E-1827, without driving license, whereas, the vehicle was under a valid Certificate of Insurance bearing No. 203500/31/15/ 6100007585, commencing the Risk from 08.03.2016 to 07.03.2017 at the time of accident.

Thirdly, reiterating again by this Court, considering mandate of Insurance Regulatory Development Authority of India (IRDA), where the insurance company can issue such Cover Notes for a period of 60 days in

conjunction to the Statutory Mandate under Rule 142 of the Central Motor Vehicles Rules, 1989 and governed by the M.V Act of 1988, after the issuance of Cover Note, the insurer must replace with regular Insurance Certificate within such 60 days. Presumably the respondent No. 5, in view of this, the Cover Note bearing No. AG0009928039/2016/ ISA dated 03.05.2016 and the Certificate of Insurance bearing No. 206054311610000019 (Private Car Liability Only), commencement of Risk from 12:09 O'clock 13.06.2016 to Midnight 12.06.2017 was issued and obtained well within a period of 60 days for the vehicle bearing No. MZ-01-A-5877.

21. Consequently, based on the analysis and discussion made above at Para -19 by this court, the Issue No. (iii) of the Tribunal i.e., "Whether the claimants are entitled to get compensation, if so, who is liable to pay and to what extent?" stand affirmative.

22. On perusal of the Memo of Appeal, technically and legally the Appellant herein while preferring the present appeal ought to have set out a ground under Section 149(2) (ii), however, no ground of appeal has been taken, despite of the fact that there was breach of policy condition in the instant case. Hence, this Court is constraint to delve into to evolve any analyses or discussion.

23. Circumventing judiciously and legally to the finding made by the Tribunal in the 60 days dated 07.12.2022 under challenged; various aspects of the facts were considered based on the evidences adduced before it. It is also observed the death of the driver of vehicle No. MZ-01-E-1827 was caused due to the rash and negligent driving of the other vehicle bearing No. MZ-01-A-5877 which is corroborated by material witnesses and the principle of "***Res ipsa loquitor***" is fulfilled. Despite of the denial by the Appellant insurer that no material witness

or witnesses were produced to refute the fact of rash and negligent of the respondent No. 8. The factum of the accident, the cause of dead and the involvement of the vehicles are in dispute.

24. The Tribunal ventures to the Insurance Cover Note bearing No. AG0009928039/2016/ ISA dated 03.05.2016, the Certificate of Insurance bearing No. 206054311610000019 (Private Car Liability Only), in respect of vehicle bearing No. MZ-01-A-5877 and the Certificate of Insurance of the vehicle bearing Registration No. MZ-01-E-1827 covered by Certificate of Insurance bearing No. 203500/31/15/6100007585, commencement of Risk from 08.03.2016 to 07.03.2017 at the time of accident is well affirmed.

25. Before parting with the facts, this court is of the view that a beneficial legislation should be well construed in such a manner so as to bring within its ambit a benefit which was not contemplated by the legislature to be given to the party:

> In the case of"***Deddapappa and Ors-Vrs- Branch Manager, Nation Insurance Co Ltd.,*** *reported in* ***(2008) 2 SCC 595,*** the Supreme Court in exercise of our extra-ordinary jurisdiction under Article 142 of the Constitution of India, direct the respondent No. 1 to pay the amount of claim to the appellants herein and recover the same from the owner of the vehicle viz., respondent No. 2, particularly in view of the fact that no appeal was preferred by him. Therefore, allow the appeal with the aforementioned directions".

26. In the present case, it is clearly demonstrated from the materials brought on record that one vehicle was in possession of valid insurance and the other vehicle was in possession Cover Note at the time of the accident, but issued

regular Certificate of Insurance which this court had held that the policy was issued or obtained by the respondent after a gap of 40 days as apparent from the record.

27. What has been from analyzed and observed from the case in hand, the vehicles are insured with the appellant in one way or other. Even if there has been a violation of the policy conditions, the insurer cannot be totally absolved from its liability to make good the compensation and may recover the same from the owner in light of the "Pay and Recover" principle in the case of *Swaran Singh (supra).*

28. The only question herein is whether the insurer should have absolved totally from its liability to pay the compensation or that the insurer should be directed to pay and recover the same from the vehicle owner or the driver of the offending vehicle jointly and severally. At the outset, other than the insurer, no appeal by the vehicle owner holding him not entitled to the benefit of insurance. In such circumstances, this court have to consider whether the High Court should completely absolved the insurer of its liability or ought to direct the insurer to pay with liberty to recover the same from the respondents; relied in the case of ***Akula Narayana -Vrs- The Oriental Insurance Company Limited &Anr***., reported in ***2025 INSC 1301.***

29. This Court also while taking intoconsideration of the appeal, and relying on the decision rendered in the case of***K. Nagendra Vs. The New India Insurance Co. Ltd. & Ors,***reported in***2025 INSC 1270****, when Insurance Company takes on a policy and accepts payments of premium in pursuance thereto, it agrees to do so within certain bounds. The four corners within which such an insurance policy would operate. 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. The appeals are dismissed.

30. In the present case, it is clearly demonstrated from the materials brought on record that one vehicle was in possession of valid insurance and the other vehicle was in possession Cover Note at the time of the accident, but issued regular Certificate of Insurance which this court had held that the policy was issued or obtained after a gap of 40 days apparent from the record. The mandate of 60 days as prescribed by IRDA Regulation deemed to be fulfilled though denied by the Appellant to the genuineness of the Cover Note.

31. The very fact is also propounded from another perspective. The view and opinion of this Court, though have not contested the case, the respondent No. 5 was conscious enough of Section 147 of the M.V Actof 1988 and its requirement under law, so also, the need of conversion of Cover Note to regular Certificate of Insurance. In this dynamic and fast changing world, even ordinary laymen are frequented with counter measures imposed by the agencies leads to the need of Insurance of vehicle in public places. On the other way round, many Insurance company to further and progress with their business, numbers of Agents are inducted for hoarding insurance business and accordingly public are lured in for easier and convenient process leading to lapses and slips at times. In such an eventualities, the principle of "Vicarious liability" are being attracted. But due to lack of knowledge and law many ordinary public are let in the loser end. The provisions of compulsory insurance coverage of all vehicles Chapter XI of the M.V Act of 1988 with this paramount object and the provisions of the M.V Act of 1988have to be so interpreted as to effectuate the said object. It is Section 146 that makes it obligatory for an insurance to be taken out before a motor vehicle could be used on the road. No doubt, the marginal heading may not be

conclusive but M.V Act of 1988, Section 147 (4) & (5) that sets out the requirement of policies and limit of liability.

32. Coming back to the context, the argument and submission made by the Appellant that, the Claimants before the Tribunal did not fulfill their duty to prove that the said Cover Note was validly issued by the Appellant. Furthermore, Respondent No. 5, who is the owner of the vehicle B/R No. MZ-02-A-5877 (Maruti Alto 800) was not produced by the Claimants before the Tribunal to explain how he obtained the said Cover Note are not in consonance with the law involved in M.V Act of 1988. The claims before the Tribunal are based and decided on preponderance of probabilities rather than strict proof beyond reasonable doubt, the court must made an holistic view "***Anita Sharma & Ors-Vrs-The New India Assurance Co. Ltd., (Supreme Court)*** *decided on 08.12.2020.* Similar principle and view has been passed in catenae of case by the Apex Court as well as by the High Court time and again which hold the water.

33. In the present case, a question poses on whose fault the accident occurred and on whose negligence. Appreciating the facts it transpired that, though the deceased driver was not in possession of the driving license, it transpired that the driver of the other vehicle in question was at fault. The owner would vicariously liable and that the insurance company was bound to indemnify the owner and consequently, satisfy the award made. The insurance company may take recourse against the insured and other parties jointly and severally. The primary essence under M.V Act of 1988 is this vicarious liability for payment of compensation under the contract of insurance.

34. The present claim was filed against the employer, the owner of the other motor vehicle, offending driver and against the insurance company jointly and

severally. In as much as, the legal heirs of the victim of Road Traffic Accident are concern, just compensation is to be awarded. Ordinarily, a contract of insurance is a contract of indemnity. It may be noted that the M.V Act of 1988, insofar as it relates to claims for compensation arising out of accidents, is a beneficent piece of legislation. When a car belonging to an owner is insured with the insurance company and it is being driven by a driver employed by the insured, either with driving license or without driving license, the liability could be fastened against the insured and that liabilities through the contract of indemnification can be shifted to the insurer. Henceforth, "Pay and Recover" squarely come into play.

35. The Insurance company to avoid liability, must not only establish the available defense raised in the concerned proceeding but must also establish breach on the part of the owner of the vehicle for which the burden of proof would rest with the insurance company. Whether such a burden had been discharged, would depend upon the facts and circumstances of each case. Even when the insurer, is able to prove breach on the part of the insured concerning with the policy condition, the insurer would not be allowed to avoid its liability towards the insured unless the said breach of condition is so fundamental as to be found to have contributed to the cause of the accident.

36. In***New India Assurance Co. Ltd. Vs. Rula & Ors.***reported in ***(2000) 3 S.C.C. 195***, this Court postulated that the contract of insurance in respect of motor vehicles has to be construed in the light of Sections 146(1),147(5) and 149(1) of the M.VAct of 1988. The manifest object of Section 146(1), which contains a prohibition on the use of motor vehicles without an insurance policy having been taken in accordance with Chapter XI of the Act is to ensure that the third party, who suffers injuries due to the use of the motor vehicle, may be

able to get damages from the owner of the vehicle and recoverability of the damages may not depend on the financial condition or solvency of the driver of the vehicle who had caused the injuries.

37. Reiterating to the finding of the court, in a recent decision rendered by the Apex Court judgment in ***Rama Bai v. Amit Minerals***, the principle "Pay and Recover" was applied while allowing the appeal of the claimant directed that the insurance company shall satisfy the award and may recover from the insured. Following the aforesaid decisions, this court deem it appropriate to allow the appeal by directing that the insurer shall satisfy the award, though, however, it can recover the amount so paid from the insured i.e., owner of the vehicle.

38. From the above reasoning and finding, since both the vehicles involved in the accident dated 20.05.2016 are under insurance by the National Insurance Co. Ltd., the Appellant herein, the claim of compensation and the award passed by the Tribunal to the tune of Rs. 15,39,500/- is not required to be interfered and hence,upheld.

39. Accordingly, the appeal is dismissed.

40. No order as to costs.

41. However, the scope of "Pay and Recover" is left open to the Appellant with the liberty to proceed under law if deem fit and proper.

42. Send back the LCR forthwith.

JUDGE

Comparing Assistant