IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO No. 86 of 2017.

Reserved on : 22nd November, 2018.

Decided on : 30th November, 2018.

Future General India Insurance Company Ltd.
…..Appellant.

Versus

Ms. Bharti and others ….**Respondents.**

Coram:

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting?[1] Yes.

For the Appellant: Mr. Chandan Goel, Advocate.
For Respondent No.1/Cross-objector: Mr. P.S. Goverdhan, Advocate.
For Respondent No.2: Mr. Anirudh Sharma, Advocate.

Respondent No.3 to 5 already ex-parte.

Sureshwar Thakur, Judge.

The instant appeal stands directed by the aggrieved insurer/appellant herein, against the award pronounced by the Motor Accidents Claims Tribunal-I, Solan, H.P, upon, Claim Petition No. 17-S/2 of 2011, (i)

[1] Whether reporters of the local papers may be allowed to see the judgment?

whereunder, vis-a-vis, the compensation amount, as stood determined qua the claimant/respondent No.1 herein, the, apt indemnificatory liability thereof, hence stood fastened, upon, it.

2. The liability, for, liquidating the compensation amount, as, assessed under the impugned award, stands fastened, upon, the insurer of the offending vehicle. The learned counsel appearing for the insurer/appellant herein has contended with much vigour, before, this Court, that, (i) the affirmative findings recorded by the learned Tribunal, upon, the issue appertaining to the relevant mishap, being a sequel of rash and negligent manner of driving of the offending truck, by respondent No.3, rather suffering from, a, gross infirmity, (ii) given the learned tribunal concerned, mis-appraising hence the apposite evidence, as, adduced, in respect thereof. However, the afore submission, cannot be accepted, as in consonance with the pleadings appertaining to the afore

issue, and, in pleading whereof, a graphic and pointed averment is reared, vis-a-vis, (a) the injured along with his mother going to a shop located at Chambaghat, for taking medicine, (b) given, the prescription slip being left at home, hence, hers making, a, telephonic call to her sister, one Sheetal, wherethrough, she requested her to come along, with, the prescription slip, and, meet them, on the main road, (c) and, thereafter Sheetal proceeding on motorcycle bearing No. HP14A-4320 towards, Chambaghat, whereat the two roads i.e. road from Police line, and, National Highway, hence, conjoin, at, a Katcha road, (d) and, also upon the afore motorcycle being stopped, on the katcha portion of the road, whereat the injured/claimant, Bharati, sister of Sheetal was standing, and, awaiting, the, handingover, to, her of a medical prescription slip, (e) and, thereat, the, offending truck bearing No. HP-68-1116, rather coming from the front side, and, striking against the motor cycle, driven by one

Rakesh Thakur. Since, the claimant during the course of her examination-in-chief, has, tendered her affidavit, borne in Ex. PW3/A, affidavit whereof, carries averments, bearing, consonance, with, the afore averments, cast in the apposite petition, (f) and, during the course her cross-examination, hers remaining unscathed, (g) besides when, the, other ocular witnesses to the occurrence, PW-4, PW-5, and, PW-6 also supporting the testification rendered qua the ill fated occurrence, by PW-3, (h) significantly also when during the course of their respective cross-examination(s), their testimonies comprised in their respective examination(s)-in-chief, rather remained unshattered, (i) thereupon, with, evident inter se corroboration rather erupting inter se, the, testifications rendered by PW-3, and, by PW4 to PW-5, and PW-6, thereupon, it is to be concluded, that, the ill-fated mishap, was a sequel, of rash and negligent manner of driving, of, the offending vehicle by its driver,

(j) conspicuously, when, the, FIR lodged qua the occurrence, and, borne in Ex.PW2/A, firmly echoes therein qua an incriminatory role, being fastened upon the driver of the offending truck, hence, the affirmative findings hence recorded by the learned tribunal, vis-a-vis, the afore factum, do not suffer, from any infirmity.

3. Be that as it may, the learned counsel appearing for the insurer has proceed to contend with much vigour before this Court (i) that with, the, permit issued, vis-a-vis the offending truck, and, embodied in Ex.RW1/A, and, it remaining alive w.e.f. 25.8.2008 to 24.08.2009, hence, apparently, though, the ill-fated mishap, occurred prior thereto, and, though hence the afore permit was alive, in contemporaneity therewith, (ii) yet the mere factum of its being in vogue, in contemporaneity, vis-a-vis, the ill-fated occurrence, rather not befittingly rendering it, to also, engender a further inference qua the offending truck, in

contemporaneity, vis-a-vis, the ill fated mishap also carrying, the relevant fitness certificate, (iii) whereupon, alone it was rendered both, roadworthy, and, also fit to ply on the road. He submits that hence there was a dire necessity cast, upon, the owner of the offending truck, to, place on record, the apt fitness certificate. He submits that the necessity, of, the offending truck, throughout and all times hence possessing a valid fitness certificate, to, hence render fully efficacious both the apposite permit, and, the registration certificate, is, a sequel, of, the mandatory statutory provisions, borne in Section 56, of, the Motor Vehicles Act, provisions whereof stand extracted hereinafter:-

> "**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.

(2) The "authorized testing station" referred to in sub-section (1) means a vehicle service station or public or private garage which the State Government, having regard to the experience, training and ability of the operator of such station or garage and the testing equipment and the testing personnel therein, may specify in accordance with the rules made by the Central Government for regulation and control of such stations or garages.

(3) Subject to the provisions of sub-section (4), 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:

> 1[Provided that no such cancellation shall be made by the prescribed authority unless such prescribed authority holds such technical qualification as may be prescribed or where the prescribed authority does not hold such technical qualification on the basis of the report of an officer having such qualifications.]
> (5) A certificate of fitness issued under this Act shall, while it remains effective be valid throughout India."

The afore submission addressed before this Court, has vigour, and, is supported by a judgement rendered, by the Full Bench of Kerala High Court, in ***MACA No.2030 of 2015, and, other connected cases***, the relevant paragraphs Nos. 16 and 17, whereof stand extracted hereinafter:-

> "16. 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 MACA No. 2030 of 2015 and connected cases of the Act has carried out the test specified in the table given therein.

17. 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 MACA No. 2030 of 2015 and connected cases 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."

(I) and, when the afore purported want of fitness certificate, vis-a-vis, the offending vehicle, imperatively in contemporaneity, to, the accident, dehors its possessing, a, valid route permit or, a, valid registration certificate, rather stands pronounced therein, hence, to constitute, a, fundamental breach of the insurance policy, (ii)

thereupon, the counsel, for the the insurer espouses that, on afore anvil, he is facilitated to rear a valid and, tangible exculpatory plea.

4. Even though, the afore submission has immense vigour. However, despite, the owner not placing on record, the apt fitness certificate, vis-a-vis, the offending vehicle, (i) conspicuously, the, one issued in contemporaneity, vis-a-vis, the issuance of the afore permit, (ii) yet the counsel appearing for the insurance before the tribunal, who intended to therefrom, hence, derive, the apt exculpatory benefit, was rather enjoined, to, seek adduction from the records, of, the RLA concerned, the apt fitness certificate, issued in contemporaneity, vis-a-vis, the issuance, of the afore permit, qua the offending vehicle. However, the learned counsel appearing for the insurer, before the learned tribunal, omitted to make the aforesaid endeavour, hence, for wants thereof, an adverse inference, is

drawable against the insurer, (iii) whereupon, the insurer is estopped to rear the aforesaid contention before this Court, nor the insurer can escape, from, the apt indemnificatory liability, as, stands hence fastened, upon, it.

5. The driving licence of the driver of the offending vehicle, is, borne in Ex.R1, and, upon its perusal, it is evident qua its being valid, from 14.08.2007 to 10.05.2010, hence, the validity of the driving licence also visibly covered the period, whereat, the relevant mishap occurred. The learned counsel appearing fo the insurer has contended (i) that with RW-2, the clerk concerned of the RLA concerned, wherefrom the afore driving licence stood hence issued, rather during, the course of his cross-examination hence making an admission, that, the endorsement made thereon, vis-a-vis, the holder thereof, being authorised to drive HTV, hence not existing in the apt register maintained, in, the

RLA concerned, (ii) thereupon, the afore endorsement occurring in Ex. R-1, being belied, (iii) and, thereupon, the driver concerned was not authorised, to, drive the offending vehicle. However, the afore submission cannot be accepted, (iv) as no further evidence stands adduced qua Ex.R-1, not carrying, the authentic seal(s), and, signatures of the RLA concerned, nor evidence stand adduced qua it not standing issued from the RLA concerned, (v) rather with RW-2 making a clear testification qua Ex.R-1 standing issued, from, their office. In aftermath, for want of adduction, of, the aforesaid evidence, thereupon, merely upon, the apposite endorsement, made in EX.R-1, whereunder, its holder stood hence authorised to drive a HTV, hence not occurring, in the register maintained with the RLA concerned, (vi) yet, cannot render the aforesaid endorsement hence being construable to be false. (vii) Contrarily, the afore want of, any, compatible entry

therewith being borne in the apt register, can be construable to be merely a ministerial omission, wherefrom, no capital hence can be derived by the insurer.

6. For the foregoing reasons, there is no merit, in the instant appeal, and, it is dismissed accordingly. In sequel, the impugned award, is, maintained and affirmed. All pending applications also stand disposed of. Records be sent back forthwith.

(Sureshwar Thakur)
Judge.

30th November, 2018.
(jai)