



NC: 2023:KHC-D:7411-DB  
MFA No. 103200 of 2016  
C/W MFA No. 103199 of 2016,  
MFA No. 100436 of 2017,  
MFA No. 100437 of 2017

**IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH**

**DATED THIS THE 18<sup>TH</sup> DAY OF JULY, 2023**

**PRESENT**

**THE HON'BLE MR JUSTICE S G PANDIT**

**AND**

**THE HON'BLE MR JUSTICE VIJAYKUMAR A.PATIL**

**MISCELLANEOUS FIRST APPEAL NO. 103200 OF 2016 (MV-D)**

**C/W**

**MISCELLANEOUS FIRST APPEAL NO. 103199 OF 2016**

**MISCELLANEOUS FIRST APPEAL NO. 100436 OF 2017**

**MISCELLANEOUS FIRST APPEAL NO. 100437 OF 2017**

**IN MFA NO. 103200 OF 2016**

**BETWEEN:**

NATIONAL INSURANCE CO. LTD.,  
THE DIVISIONAL MANAGER,  
RAMDEV GALLI, BELAGAVI,  
REPRESENTED BY  
NATIONAL INSURANCE CO. LTD.,  
REGIONAL OFFICE, KUSUGAL ROAD,  
KESHWAPUR, HUBBALLI,  
DISTRICT: DHARWAD-580023,  
REPRESENTED BY ITS MANAGER.

...APPELLANT

(BY SMT. PREETI SHASHANK, ADVOCATE)

**AND:**

1. SMT.KAJAL W/O. SHAMARAO PATIL,  
AGED ABOUT 21 YEARS,  
OCC: HOUSEHOLD WORK,



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- R/O: YALLUR, TQ AND DIST: BELAGAVI.
2. MUKIND @ MUKINDA SONU PATIL,  
AGED ABOUT 52 YEARS,  
OCC: COOLIE,  
R/O: YALLUR, TQ AND DIST: BELAGAVI.
3. SMT. RANJANA  
W/O. MKNIND @ MUKINDA PATIL,  
AGED ABOUT 47 YEARS,  
OCC: HOUSEHOLD WORK,  
R/O: YALLUR, TQ AND DIST: BELAGAVI.
4. SRI. PINTU S/O. BIRA ANUSE,  
AGE: MAJOR, OCC: TRANSPORT BUSINESS,  
R/O: A/NILUCHA MAL, BELANKI,  
TQ: JATH, DIST: SANGLI,  
STATE: MAHARASHTRA.

...RESPONDENTS

(BY SRI. Y. LAKSHMIKANTH REDDY, ADVOCATE)

THIS MISCELLANEOUS FIRST APPEAL FILED UNDER SECTION 173(1) OF MOTOR VEHICLE ACT, 1988, AGAINST THE JUDGMENT AND AWARD DATED 01.07.2016 PASSED IN MVC NO.202/2014 ON THE FILE OF THE V-ADDITIONAL DISTRICT AND SESSIONS JUDGE AND MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL-VI, BELAGAVI, AWARDING COMPENSATION OF RS.16,21,000/- WITH INTEREST AT 9% P.A. FROM THE DATE OF PETITION TILL ITS REALISATION.

**IN MFA NO. 103199 OF 2016 (MV-D),**

**BETWEEN:**

NATIONAL INSURANCE CO. LTD.,  
THE DIVISIONAL MANAGER,  
RAMDEV GALLI, BELAGAVI,  
REPRESENTED BY  
NATIONAL INSURANCE CO. LTD.,  
REGIONAL OFFICE, KUSUGAL ROAD,  
KESHWAPUR, HUBBALLI,  
DISTRICT: DHARWAD-5800023,  
REPRESENTED BY ITS MANAGER.

...APPELLANT

(BY SMT. PREETI SHASHANK.,ADVOCATE)



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**AND:**

1. SRI.DAMAJI @ DAMU  
S/O. SAKHARAM PATIL @ HATKAR,  
AGED ABOUT 48 YEARS,  
OCC. VEGETABLE VENDOR,  
R/O. YALLUR, TQ AND DIST. BELAGAVI.
2. SMT.BHAMABAI  
W/O. DAMAJI @ DAMU PATIL @ HUTKAR,  
AGED ABOUT 42 YEARS,  
OCC: HOUSEHOLD WORK,  
R/O: YALLUR, TQ AND DIST: BELAGAVI.
3. KUMAR SUNIL  
S/O. DAMAJI @ DAMU PATIL @ HUTKAR,  
AGED ABOUT 21 YEARS, OCC: STUDENT,  
R/O: YALLUR, TQ AND DIST: BELAGAVI.
4. SRI.PINTU S/O BIRA ANUSE,  
AGE: MAJOR, OCC: TRANSPORT BUSINESS,  
R/O: A/NILUCHA MAL, BELANKI,  
TQ: JATH, DIST: SANGLI,  
STATE: MAHARASHTRA.

...RESPONDENTS

(BY SRI. Y. LAKSHMIKANT REDDY, ADVOCATE FOR R2 AND R3;  
R2 AND R3 ARE LEGAL REPRESENTATIVE OF DECEASED R1;  
R4 SERVED)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT, 1988, AGAINST THE JUDGMENT & AWARD DATED:01.07.2016, PASSED IN MVC.NO.137/2014 ON THE FILE OF THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE AND MEMBER MOTOR ACCIDENT CLAIMS TRIBUNAL, VI, BELAGAVI, AWARDING THE COMPENSATION OF RS.11,97,000/- WITH INTEREST AT THE RATE OF 9% P.A. FROM THE DATE OF PETITION TILL THE DATE OF REALIZATION.

**IN MFA NO. 100436 OF 2017 (MV-D)**

**BETWEEN:**

1. SMT.BHAMABAI  
W/O. DAMAJI @ DAMU PATIL @ KATKAR,  
AGED ABOUT 42 YEARS,



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- OCC: HOUSEHOLD WORK,  
R/O: YALLUR, TALUK AND DISTRICT: BELAGAVI.
2. KUMAR SUNIL  
S/O. DAMAJI @ DAMU PATIL @ KATKAR,  
AGED ABOUT 21 YEARS, OCC: STUDENT,  
R/O: YALLUR, TALUK AND DISTRICT: BELAGAVI.

...APPELLANTS

(BY SRI. UMESH C. AINAPUR, ADVOCATE)

**AND:**

1. PINTU S/O. BIRA ANUSE,  
AGE: MAJOR, OCC: TRANSPORT BUSINESS,  
R/O: A/P NILUCHA MAL, BELANKI,  
TALUK JATH, DISTRICT: SANGLI,  
STATE: MAHARASHTRA,  
(OWNER OF TRUCK NO. MH-16/Q-1209)
2. THE DIVISIONAL MANAGER,  
NATIONAL INSURANCE COMPANY LIMITED,  
RAMADEV GALLI, BELAGAVI,  
(INSURER OF TRUCK NO. MH-16/Q-1209,  
POLICY NO. 27080230036365000090  
VALID FROM 28/05/2013 TO 27/05/2014).

...RESPONDENTS

(BY SMT. PREETI SHASHANK, ADVOCATE FOR R2;  
NOTICE TO R1 DISPENSED WITH)

THIS MISCELLANEOUS FIRST APPEAL FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLE ACT, AGAINST THE JUDGMENT AND AWARD DATED: 01.07.2016 PASSED IN MCV NO. 137/2014 ON THE FILE OF THE V-ADDITIONAL DISTRICT AND SESSIONS JUDGE AND MEMBER MOTOR ACCIDENT CLAIMS TRIBUNAL-VI, BELAGAVI, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

**IN MFA NO. 100437 OF 2017 (MV-D)**

**BETWEEN:**

1. SMT. KAJAL W/O. SHAMARAO PATIL,  
AGED ABOUT 21 YEARS,  
OCC: HOUSEHOLD WORK,



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R/O: YALLUR, TALUK AND DISTRICT: BELAGAVI.

2. MUKIND @ MUKINDA SONU PATIL,  
AGED ABOUT 52 YEARS, OCC: COOLIE,  
R/O: YALLUR, TALUK AND DISTRICT: BELAGAVI.
3. SMT.RANJANA W/O. MUKIND @ MUKINDA PATIL,  
AGED ABOUT 47 YEARS,  
OCC: HOUSEHOLD WORK,  
R/O: YALLUR, TALUK AND DISTRICT: BELAGAVI.

...APPELLANTS

(BY SRI. UMESH C. AINAPUR, ADVOCATE)

**AND:**

1. PINTU S/O. BIRA ANUSE,  
AGE: MAJOR, OCC: TRANSPORT BUSINESS,  
R/O: A/P NILUCHA MAL, BELANKI,  
TALUK JATH, DISTRICT: SANGLI,  
STATE: MAHARASHTRA,  
(OWNER OF TRUCK NO. MH-16/Q-1209)
2. THE DIVISIONAL MANAGER,  
NATIONAL INSURANCE COMPANY LIMITED,  
RAMADEV GALLI, BELAGAVI,  
(INSURER OF TRUCK NO. MH-16/Q-1209,  
POLICY NO.27080230036365000090  
VALID FROM 28/05/2013 TO 27/05/2014)

...RESPONDENTS

(BY SMT. PREETI SHASHANK ADVOCATE FOR R2;  
R1 SERVED)

THIS MISCELLANEOUS FIRST APPEAL FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT, AGAINST THE JUDGMENT AND AWARD DATED:01.07.2016 PASSED IN MVC NO.202/2014 ON THE FILE OF THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE AND MEMBER MOTOR ACCIDENT CLAIMS TRIBUNAL-VI, BELAGAVI, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.



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THESE APPEALS, COMING ON FOR ORDERS, THIS DAY,  
**VIJAYKUMAR A. PATIL, J.,** DELIVERED THE FOLLOWING:

### **COMMON JUDGMENT**

1. MFA No.103199/2016 is filed by the Insurance company challenging the liability as well as the quantum of compensation awarded by the tribunal and MFA No.100436/2017 filed by the legal representatives of the deceased Tanaji Patil seeking for enhancement of compensation in MVC No.137/2014.

2. MFA No.103200/2016 is filed by the Insurance company challenging the liability as well as quantum of compensation awarded by the tribunal and MFA No.100437/2017 filed by the legal representatives of the deceased Shamarao Patil seeking for enhancement of compensation in MVC No.202/2014.

3. Brief facts leading to filing of these appeals are, the legal representatives of deceased Tanaji Patil have filed claim petition in MVC No.137/2014 and the legal representatives of deceased Shamarao Patil have filed claim petition in MVC No.202/2014 under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').



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4. It is averred that, on 13.12.2013 at about 9.30 p.m. when both the deceased were proceeding on motorcycle bearing registration No.MH-10/Y-2959 as a rider and pillion rider in a moderate speed and when they came near Chudekhindi village, at that time a truck bearing registration No.MH-16/Q-1209 driven by its driver came in a wrong side in a rash and negligent manner and dashed the motorcycle. Due to the said impact, Sri. Tanaji Patil and Sri. Shamarao Patil fell down and sustained grievous injuries and both of them succumbed to those injuries.

5. It is averred that, prior to the accident the deceased Tanaji was hale and healthy and aged about 22 year and working as a Security Guard and was earning monthly salary of Rs.10,000/-, and also he was getting income from agriculture.The claimants are the dependents on the income of the deceased. It is claimed that, deceased Shamarao Patil was aged about 22 years at the time of accident and was doing agricultural activities and also working as a Coolie and was earning Rs.300/- per day and claimed that, he was earning Rs.2,00,000/- per annum from the agricultural work. It is claimed that, the claimants are the legal heirs of the deceased,



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and they are dependent on the income of the deceased sought for award of compensation.

6. The 1<sup>st</sup> respondent owner of the truck bearing registration No.MH-16/Q1209 has filed objections denying the claim averments. It is averred that, the accident has caused due to the rash and negligent driving of the motorcycle bearing registration No.MH-10/Y-2957 by its rider and not due to the negligence of the driver of lorry. It is further averred that, the lorry in question had a valid insurance, driver had a valid driving licence as on the date of the accident. He sought to dismiss the claim petition.

7. The respondent No.2 Insurance company has filed objections denying the claim petition averments, denying the age and avocation of the deceased. It is averred that, the rider of the motorcycle had no experience to drive the motorcycle along with pillion rider and he was riding the motorcycle in a rash and negligent manner and also contributed to the accident in question. It is further averred that, the 2<sup>nd</sup> respondent is liable to indemnify only if the driver of the offending lorry had a valid





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driving licence, RC Book, Fitness Certificate, Permit as per the terms and conditions of the policy.

8. The tribunal has framed the issues in both the claim petitions and recorded the evidence. In MVC No.137/2014 claimant No.1 has examined himself as P.W.1 and in MVC No.202/2014 the claimant No.2 has examined as P.W.2 and got marked Exhibits P.1 to P.18. The respondent examined one witness as R.W.1 and got marked Ex.R.1 to Ex.R.5. The tribunal has conducted common trial and partly allowed both the claim petitions by awarding compensation of Rs.11,97,000/- in MVC No.137/2014 along with 9% interest and awarded Rs.16,21,000/- in MVC No.202/2014 along with 9% interest on different heads.

9. Learned counsel Smt. Preeti Shashank, appearing for the Insurance company submits that, the tribunal has committed an error in fastening the entire liability on the Insurance company as the offending truck bearing registration No.MH-16/Q-1209 was insured with them. Without appreciating the fact that the said truck does not have a Fitness Certificate as required



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under Section 56 of the Motor Vehicle Act, 1988 on the date of the accident. Hence, it is the violation of the conditions of policy. The tribunal has failed to appreciate the evidence of R.W.1, the officer of the Insurance company who has clearly deposed that the offending truck does not have the Fitness Certificate as on the date of the accident and the Insured had obtained the Fitness Certificate only after the date of accident. It is submitted that, the Insurance company is not liable to indemnify the offending vehicle as the vehicle in question was not having the Fitness Certificate on the date of the accident. It is submitted that, the tribunal has committed an error in considering the income of both the deceased at Rs.6,000/- as they have failed to produce any proof of the income or the avocation. It is further submitted that, the tribunal has granted excess compensation on other heads. It is also submitted that the tribunal has committed gross error in awarding 50% under the head of loss of future prospects and as per the decision of the Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and others**, reported in **(2017) 16 SCC 680**, both the deceased being aged about 22 years as on the date of the



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accident are entitle for 40% for loss of future income. It is also submitted that, the tribunal has committed an error in granting 9% interest on the compensation amount. It is submitted that, the tribunal has awarded higher compensation on other heads and she seeks to allow the appeals filed by the Insurance company.

10. Per contra, Sri. Umesh C. Ainapur, learned counsel appearing for the appellants/claimants submits that the tribunal has committed an error in assessing the income of both the deceased at Rs.6,000/- as they were working as a Security Guard and as a coolie and both the deceased were getting substantial income from the agricultural activities. It is submitted that, the tribunal has awarded meagre compensation towards the funeral expenses and also awarded meagre compensation for the loss of consortium and the tribunal ought to have awarded 12% interest on the compensation amount. He seeks to allow the appeals filed by the claimants by enhancing the compensation amount.



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11. We have heard the learned counsel for the appellant/Insurance company, learned counsel for the appellants/claimants, perused the memorandum of appeals and tribunal records. All the above appeals were heard together with the consent of the parties as the question of facts, law involved in these appeals are common and the appeals are arising out of the same accident.

12. The points that arise for consideration in these appeals are,

- (i) *Whether the tribunal is justified in fastening the liability on the Insurance Company?*
- (ii) *Whether the appellants/claimants are entitle for enhancement of compensation?*

13. Answer to the above points are in the affirmative for the following reasons:

(a) There is no dispute with regard to the fact that in a road accident, Sri. Tanaji Patil and Sri. Shamarav Patil rider and pillion rider of motorcycle bearing Registration No.MH-10/Y-2957 have met with an accident on 13.12.2013 and in the said accident they succumbed to injuries. It is also not in dispute that



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the accident has been caused by the driver of the lorry bearing No.MH-16/Q-1209. It is also not in dispute that the claim petitions have been filed by legal representatives of both the deceased and both the claim petitions are numbered separately and tried commonly by the Tribunal by awarding the compensation. The insurance company in both the appeals has contended that the insurance company is not liable to pay the compensation as the offending vehicle bearing registration No.MH-16/Q-1209 as on the date of accident was not having the fitness certificate and the Tribunal has committed an error instead of fastening liability on the owner of the lorry, has fasten the liability on the insurance company. There is no dispute that the vehicle bearing registration No.MH-16/Q-1209 is involved in the accident in question and as on the date of accident the vehicle was insured by the appellant-insurance company. It is also not in dispute that the fitness certificate was not renewed and it was subsequently renewed by the owner of the offending vehicle. The issue urged by the Insurance Company in their appeals is no more *res interga*. The coordinate Bench of this Court in the case of The Oriental Insurance Company Ltd., Vs.



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Kumara S/o. Late Channegowda and others, vide judgment dated 21.12.2022 in MFA No.7792/2015 connected with MFA No.6449/2015 had an occasion to consider whether the insurance company is required to indemnify the offending vehicle, when the offending lorry was not having valid fitness certificate as on the date of accident. The Hon'ble Division Bench in paragraph No.7, 12 to 24 held as under:

*7. On the other hand, Sri. R. Pramod, learned counsel for the owner of the offending vehicle has contended that as on the date of the accident, the was having valid registration offending vehicle was having certificate and he has also had permit. In respect of fitness certificate is concerned, same has not been renewed. Even if there is no valid fitness certificate as on the date of accident, it is not the defence available for the insurance company under Section 149(2) of the Act and it is not the condition which is mentioned in the policy, but it is only an offence under the Motor Vehicles Act and the Insurance Company cannot escape from the liability.*

*Secondly, Ex.R8-True extract of B-register was not proved by the Insurance Company by examining the author of the said document.*

*Thirdly, it is very clear from the IMV report that the accident was not due to any mechanical defects of the vehicle.*



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*Fourthly, the Hon'ble Supreme Court in the case of Amrith Paul Singh (supra) has held that the offending vehicle was not having valid permit, since it is a defence available under Section 149(2) of the Act. The same is not applicable to the case on hand. Hence, he sought for dismissal of the appeal.*

12. *In respect of liability is concerned, with respect to the fitness certificate, it is worth noticing a few relevant Sections namely, 56(1), 66(1), and 84(a) of the Motor Vehicles 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*



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*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.*





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*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 inaintained as to comply with the requirements of this Act and the rules made thereunder;*

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

*14. 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.*

*15. 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 Motor Vehicles 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.*

*16. From the aforesaid provisions, it can be safely culled out that for the purposes of registration of transport vehicle,*



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*a fitness certificate as contemplated under Section 56 of the Motor Vehicles Act, 1988 is mandatory and plying of a transport vehicle without a valid fitness certificate amounts to violation of condition of permit.*

*17. 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 36 (1) of the Motor Vehicles 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*



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*(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, falls without reasonable cause, to use the vehicle for the purposes for which the permit was granted, or*

*(1) 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."*

*18. 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 (6), 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.*

*19. In the instant case, it is also not in dispute that the offending vehicle has a valid registration. certificate and as on*



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*the date of the accident it has a valid permit and the same has not been cancelled by the competent authority by exercising the powers under the Motor Vehicles Act. There is no order passed by the competent authority as regards the authority cancellation of the permit after giving an opportunity of hearing to the owner of the truck on the ground that the condition has been violated by the owner of the truck by plying without valid fitness certificate. Thus, in such a situation, it cannot be said that truck was not having a valid permit. It is further useful to notice that Section 149(2)(a)(i)(c) of the Motor Vehicles Act specifies about the breach of condition of the policy where vehicle is used for the purpose not allowed by the permit.*

20. *In so far as the judgment of the Kerala High Court in the case of PAREED PILLAI (supra) relied upon by the learned counsel appearing for the Insurance company is concerned, in the first place, a Division Bench of this Court in the case of UNITED INDIA INSURANCE COMPANY LIMITED SMT.YASMIN BEGUM @ YASMIN passed in MFA No.5159/2016 decided on 19.07.2019 has held as herein below;*

*"17. The controversy is with regard to there being any breach in the terms and conditions of the policy which according to learned counsel for the appellant-insurer would call for exoneration of the insurance company. In this regard, learned counsel for the appellant-insurance company drew our attention to Section 66 of the Act which deals with necessity for permit of vehicle used as a transport*



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*vehicle in any public place and Section 56 of the Act which deals with regard to transport vehicle possessing a certificate of fitness. He contended that both these are mandatory requirements and in the instant case, the offending vehicle, the tipper lorry neither possessed a certificate of fitness nor had a permit to ply the vehicle on Bannerghatta Road. He further drew our attention to column No.7 of the charge-sheet wherein, it has been stated that the vehicle did not possess the fitness certificate as well as the permit.*

*18. Section 56 of the Act states that subject to the provisions of Sections 59 and 60 of the Act, 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 the Act and Rules made thereunder.*

*19. The contention of appellant- Insurer is that vehicle did not possess a fitness certificate, but the fact remains that in the instant case, the vehicle being a transport vehicle, had a valid registration under Section 39 of the Act. Registration of the vehicle under Section 39 of the Act would call for compliance of a condition precedent namely,*



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*possessing of a valid fitness, certificate. In the instant case, since the vehicle in question was validly registered, it implies that it had a fitness certificate. Further, this is not a case where there has been cancellation of the fitness certificate. When once registration of the Vehicle has been made under Section 39 of the Act, it is presumed that the vehicle possesses a valid fitness certificate. There Is no evidence on record to the effect that the fitness certificate of the vehicle had expired and if so, as to on what date it had expired. In the circumstance, we do not find any substance in the contention of learned counsel for the appellant-insurance company on the aspect that the offending vehicle did not possess a valid fitness certificate on the date of the accident. Further, it is noted that this is not a case where the Registration Certificate of the vehicle in question had been cancelled on account of the cancellation of the fitness certificate. No evidence has been let-in in that regard by the Insurance company. Moreover the necessity of the vehicle having a fitness certificate is not a condition of the policy at the time of issuance of the Insurance policy. But before a vehicie could be registered, there is a need for such a vehicle to have a fitness certificate and in the instant case even as per Ex.R.3, the vehicle in question had a valid Registration Certificate."*



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21. *This Court in RAJESH POOJARY vs. RAJESH AND ANOTHER reported in ILR 2019 Kar.2940 following another Division Bench judgment has held that as on the date the policy was in force and that the permit is not cancelled, the insurance company is liable to pay the compensation. It has also opined that even if the insured did not possess the fitness certificate' for the offending vehicle, the Insurance Company cannot be exonerated on that ground.*

22. *In so far as the judgment of Kerala High Court in the case of PAREED PILLAI (supra) relied on by the learned counsel for the insurance company is concerned, in the first place the decision of one High Court is not binding as a precedent on another High Court unlike a decision of the Apex Court. The Apex Court in the case of VALLIAMMA CHAMPAKA PILLA VS. SHIVATHANU PILLAI AND OTHERS reported in 1979 (4) SCC 429 has held that a decision of one High Court is not binding precedent on another High Court and that does have a persuasive value. In the second place, the Kerala High Court, while deciding the case, has proceeded on the basis that it is a mandatory requirement that every vehicle must have a route permit and carry valid certificate. of fitness issued under Section 56 of the Motor Vehicles Act at all times, absence of which constitutes technical breach and that vehicle shall not be deemed to have any valid permit, thus there is violation of insurance policy. With great respect to the judgment of the Kerala High Court, in the judgment it is not noticed that provisions of Section: 86(1) of the Motor Vehicles Act which talks about the situation that even if there is a breach of any condition of permit specified in Section 84*



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*of the Motor Vehicles Act, the competent authority is required to give an opportunity of hearing to the holder of the permit.*

23. *In the case on hand, it is not in dispute that as on the date of the accident the offending vehicle was having a valid registration certificate and also valid permit issued under the Act and the same has A not been cancelled by the competent authority as per Motor Vehicles Act.*

24. *In view of the above discussion, the submission of the learned counsel for the Insurance Company that insured has violated policy conditions and the insurer is not liable to pay the compensation, is unsustainable. Accordingly, Insurance Company is held liable to indemnify the insured and Insurance Company is directed to pay compensation awarded along with interest."*

(b). We are in full agreement with ratio laid down by the co-ordinate Bench that, possessing valid Fitness Certificate is not a valid defence available under the provisions of the Act, to deny the liability by the Insurer. The co-ordinate Bench on considering various provisions of the Act, has held that, even if there is no valid Fitness Certificate as on the date of accident, it is not a defence available to the Insurance company and it is not a condition which is mentioned in the policy, but it is only an offence under the provisions of the Act, and the Insurer cannot





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escape from the liability on the ground that Fitness Certificate is not valid on the date of the accident. In view of the law laid down by the coordinate bench of this court referred supra, we are of the considered view that the appellant-insurance company is liable to pay compensation in the instant case and such contention is not available to the Insurance company.

(c). Insofar as quantum of compensation is concerned, the Tribunal has assessed the income of both the deceased at Rs.6,000/- per month, in our considered view the Tribunal has committed an error in assessing notional income of both the deceased. It is not in dispute that the legal heirs of the deceased have made a claim that the deceased were earning substantial amount from their avocation, however, they have not placed any evidence before the Tribunal to substantiate their claim. In the absence of any evidence with regard to income of the deceased, this Court and Lok-Adalath normally rely on the chart prepared by the Karnataka State Legal Service Authority for assessing the notional income of the deceased. In the instant case, the accident is of the year 2013, and as per the chart the notional



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income should be Rs.7000/-, accordingly, we assess the notional income of both the deceased at Rs.7000/- per month.

(d). The Tribunal has committed an error in granting 50% of the assessed income towards future prospects. As per the law laid down by Hon'ble Supreme Court in the case of **Pranay Sethi** (supra) if the deceased was aged below 40 years, the claimants would be entitled for 40% addition to the assessed income under the head of loss of future prospects. In the instant case, both the appellants are aged about 22 years as on the date of accident and as per the decision of Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), the claimants are entitled for addition of 40% to the assessed income of both the deceased under the head of loss of future prospects of the deceased instead of 50% awarded by the Tribunal.

(e). The Tribunal has applied 18 multiplier, deducted 50% towards personal expenses of deceased in MVC 137/2014 and deducted 1/3 in MVC No.202/2014 towards personal expenses of deceased, the same does not call for any modification. All the appellants being the legal representatives i.e. parents, wife and



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children are entitled for consortium at Rs.40,000/- each in both the appeals. The Tribunal has committed an error in awarding 9% interest on the compensation amount, this Court is of the considered view that the claimants appellants are entitled for 6% interest on the compensation amount, keeping in mind the present day rate of interest on the fixed deposit at the Nationalised Bank, we modify the rate of interest. The appellants are entitled for Rs.15,000/- towards funeral and transportation of dead body and Rs.15,000/- towards loss of estate. Thus, the claimants would be entitled for modified compensation on the following heads:

**In MFA No.100436/2017 (MVC No.137/2014)**

**Rs.7,000 + 40% (Rs.2,800) = Rs.9,400/-**

**Rs.9,400/- minus 50% deduction (Rs.4,700) = Rs.4,700/-**

**Rs.4,700 x 12 x 18 = Rs.10,15,200/-**

<b>Sl. No.</b>	<b>Particulars</b>	<b>Amount</b>
1.	Loss of dependency	Rs.10,15,200/-
2.	Transportation of dead body and funeral expenses	Rs.15,000/-
3.	Loss of Estate	Rs.15,000/-
4.	Loss of consortium	Rs.80,000/-
	<b>Total compensation awarded</b>	<b>Rs.11,25,200/-</b>



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	<b>by this Court</b>	
	Compensation awarded by the Tribunal	Rs.11,97,000/-
	Reduction in compensation amount awarded by the tribunal	- Rs.71,800/-

**In MFA No.100437/2017 (MVC No.202/2014)**

**Rs.7,000 + 40% (Rs.2,800) = Rs.9,400/-**

**Rs.9,400/- minus 1/3<sup>rd</sup> deduction (Rs.3,133/-) = Rs.6,267/-**

**Rs.6,267 x 12 x 18 = Rs.13,53,672/-**

<b>Sl. No.</b>	<b>Particulars</b>	<b>Amount</b>
1.	Loss of dependency	Rs.13,53,672/-
2.	Transportation of dead body and funeral expenses	Rs.15,000/-
3.	Loss of Estate	Rs.15,000/-
4.	Loss of consortium	Rs.1,20,000/-
	<b>Total compensation awarded by this Court</b>	<b>Rs.15,03,672/-</b>
	Compensation awarded by the Tribunal	Rs.16,21,000/-
	Reduction in compensation amount awarded by the tribunal	- Rs.1,17,328/-

(f). The appellants/claimants are entitled for total compensation of Rs.11,25,200/- with 6% interest as against Rs.11,97,000/- in MFA No.100436/2017 (MVC No.137/2014) and the appellants/claimants are entitle for total compensation of Rs.15,03,672/- with 6% interest as against Rs.16,21,000/-,



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in MFA No.100437/2017 (MVC No.202/2014) respectively,  
awarded by the Tribunal.

14. For the aforementioned reasons, we pass the  
following:

**ORDER**

- i) All the four appeals are allowed in part.
- ii) The common judgment and award dated 01.07.2014 passed by the V Additional District and Sessions Judge and MACT VI, Belagavi in MVC Nos.137/2014 and 202/2014 is modified and the appellant/claimants in MFA No.100436/2017 are entitle for total compensation of Rs.11,25,200/- at the rate of 6% interest per annum and the appellants/claimants in MFA No.100437/2017 are entitled for total compensation of Rs.15,03,672/- at the rate of 6% per annum from the date of petition till realisation.
- iii) The Insurance company shall deposit the entire award amount along with 6% interest before the Tribunal within six weeks from the date of receipt of certified copy of this judgment.



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- iv) Apportionment, deposit and disbursement of the enhanced compensation shall be made as per the award of the Tribunal.
- v) Registry to transmit the statutory deposit amount, if any to the concerned Tribunal, forthwith.
- vi) Registry to transmit the records to the Tribunal forthwith.
- vii) Draw modified award accordingly.
- viii) No order as to costs.

**Sd/-**  
**JUDGE**

**Sd/-**  
**JUDGE**

BSR/Svh/-  
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