

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 4th December, 2012

+ **MAC.APP. 756/2010**

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LTD.

..... Appellant

Through: Ms. Neerja Sachdeva, Adv.

versus

VIBHISHAN MAHTO @ VIBHISHAN PRASAD & ORS.

..... Respondents

Through: Mr. Binod Kumar Jha, Adv. for R-1 to
R-5.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant Bajaj Allianz General Insurance Company Limited impugns a judgment dated 17.08.2010 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of ₹5,75,000/- for the death of Smt. Shanti Devi, the Appellant Insurance Company was made liable to pay the compensation and its plea of exoneration was rejected.
2. The only ground of challenge raised on behalf of the Appellant is that there was breach of the terms and conditions of the permit in as much as the authorization of the driver to drive vehicle was not obtained as per the condition of permit and thus, the Insurance Company was not liable to pay the compensation.

3. It is not in dispute that the driver did possess a licence to drive a transport vehicle. Learned counsel for the Appellant drew my attention to the document Ex.R3W1/5. As per condition No.33 (v) forming part of the permit, a driver was not authorized to drive a transport vehicle unless he carried the proper authorization card. The said condition is extracted hereunder:-

“33 (v) No transport vehicle shall ply unless it carries a proper authorization card, containing the name, photograph and other such particulars of the driver, issued by the State Transport Authority authorizing such driver to drive the vehicle. The authorization card shall be displayed in the vehicle at a conspicuous place.”

4. Thus, the learned counsel for the Appellant argues that since the driver did not possess a proper authorization card containing the name and photograph and other particulars of the driver, there was breach of the condition of the permit. A perusal of the permit conditions shows that there are more than 100 conditions attached to the issuance of the permit which includes the condition No.8, which is extracted hereunder:-

“(8) The permit holder shall ply the bus as per approved time-table and on the assigned route. It shall be ensured that the trip is plied within the time prescribed for a trip and the directions of time-keepers, are strictly followed.

(a) The driver and the conductor shall be required to wear the uniform in grey colour with P.S.V. Badge prominently-displaced on it.

(b) The driver and conductor to be deployed shall bear high moral character and shall be courteous and polite to the commuters.

(c) No driver/conductor who has ever been suspended/dismissed by DTC or any Govt. Organization in his previous service shall be eligible to be deployed in the proposed buses.

(d) The driver/conductor to be deployed in the buses will be required to undergo the test and training as prescribed by STA, Delhi.

(e) Any driver/conductor shall not be appointed or changed without prior intimation to the Secretary, STA, Delhi.”

5. Thus, it would be seen that a trip is to be plied within the prescribed time; the driver and the conductor are required to wear the uniform; the driver and conductor deputed on the bus are required to be of good moral characters and expected to be courteous and polite to the commuters, etc. etc. Would violation of these conditions entitle an Insurance Company to avoid the contract of insurance. To my mind, the Insurance Company cannot avoid its liability merely on ground of violation of any condition of permit. It is Section 149 (2) (a) of the Motor Vehicles Act, 1988 (the Act) which entitles the insurer to defend the action for payment of compensation. Section 149(2)(a)(i)(c) of the Act deals with the condition of permit it states that if the vehicle is used for a purpose not allowed by the permit under which the vehicle was being used, the insurer would be entitled to avoid the policy. To appreciate the contention raised, it would be appropriate to extract Section 149 (2) of the Act, which is extracted hereunder:-

“149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks-

(1).....

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment of award is given the insurer had notice through the Court or, as the case

may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organized racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle,”

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or..”

6. I had the occasion to deal with this similar issue in *Mahender Singh v. Oriental Insurance Company Limited*, MAC APP.430/2010 decided on 10.05.2012 where certain conditions are imposed on the permit holder. Paras 6,7,8 and 9 of the report are extracted hereunder:-

“6. Thus, a perusal of the condition for issuance of permit, inter alia, are that the vehicle shall be kept neat and clean at the time of operation (condition No.16); that the vehicle must be equipped with the First Aid Box; that the driver must display the particulars of his identity and photograph at a prominent place inside the windscreen (Condition No.19); that the driver must be of good character and without any criminal record; the driver shall wear uniform in gray colour with his/her smart card based Public Service Vehicle (PSV) badge prominently displaying on the uniform (Condition No.8).

7. *Can it be said that the Insurance Company would be able to avoid liability if the vehicle is not kept clean or the driver is not wearing the uniform? It is not each and every condition of permit contravention of which would allow the Insurance Company to avoid the liability. On the other hand, a close reading of the Clause (c) to Section 149 (2) (i) (a) would show that it is only the user of the transport vehicle for the purpose not allowed by the permit would enable the Insurance Company to defend the action to satisfy an award in a motor accident where the risk is covered by a policy obtained under Section 147 of the Act.*

8. *The interpretation of contravention of condition of permit envisaged under Section 66 of the Act and the contravention of condition of permit with respect to the purpose for which the vehicle may be used came up for consideration before the Supreme Court in State of Maharashtra and Ors. v. Nanded-Parebhani Z.L.B.M.V. Operator Sangh (2000) 2 SCC 69 albeit in a different context. In the said case, the police had seized certain vehicles for carrying passengers in excess of the numbers permitted by the condition of permit issued by the Transport Authority. The action was challenged by the Association of Transporters by virtue of a writ petition before the Aurangabad Bench of Bombay High Court. The High Court analyzed the different provisions of the Motor Vehicles Act, 1988 and the Rules framed thereunder and on consideration of the same came to the conclusion that it is not each and every violation of the condition of the permit which would authorize the seizure and detention of the vehicle under Section 207 (1) of the Act. It was held that it was only when the condition of permit relating to the route on which or the area in which or the purpose for which the vehicle was used, is violated, the vehicle could be seized by the Authorities. The Appeal filed by the State of Maharashtra was dismissed by the Supreme Court. The contention raised on behalf of the State of Maharashtra that carrying passengers more than prescribed by the permit could be construed to be violation, was rejected. The Supreme Court relied upon the report in Kanailal Sur v. Paramnidhi Sadhu Khan (1958) 1 SCR 360 and held as under:-*

"If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such

construction is more consistent with the alleged object and policy of the Act". The intention of the legislature is required to be gathered from the language used and, therefore, a construction, which requires for its support with additional substitution of words or which results in rejection of words as meaningless has to be avoided. Bearing in mind, the aforesaid principles of construction of statute and on examining the provisions of Section 207 of the Act, which has been quoted earlier, we have no doubt in our mind that the police officer would be authorised to detain a vehicle, if he has reason to believe that the vehicle has been or is being used in contravention of Section 3 or Section 4 or Section 39 or without the permit required under Sub-section (1) of Section 66 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used. In the case in hand, we are not concerned with the contravention of Section 3 or Section 4 or Section 39 or Sub-section (1) of Section 66 and we are only concerned with the question of contravention of the condition of permit. Reading the provisions as it is, the conclusion is irresistible that the condition of permit relating to the route on which or the area in which or the purpose for which the vehicle could be used if contravened, would only authorise the police officer to detain the vehicle and not each and every condition of permit on being violated or contravened, the police officer would be entitled to detain the vehicle. According to the learned Counsel, appearing for the State of Maharashtra, the expression "purpose for which the vehicle may be used" could be construed to mean that when the vehicle is found to be carrying passengers more than the number prescribed in the permit, the purpose of user is otherwise. We are unable to accede to this contention as in our opinion, the purpose would only refer to a contingency when a vehicle having a permit of stage carriage is used as a contract carriage or vice versa or where a vehicle having a permit for stage carriage or contract carriage is used as a goods vehicle and vice versa. But carrying passengers more than the number specified in the permit will not be a violation of the purpose for which the permit is granted. If the legislature really wanted to confer power of detention on the police officer for

violation of any condition of the permit, then there would not have been the necessity of adding the expression "relating to the route on which or the area In which or the purpose for which the vehicle may be used". The user of the aforesaid expression cannot be ignored nor can it be said to be a tautology. We have also seen the Form of permit (From P.Co. T.), meant in respect of a tourist vehicle, which is issued under Rule 72(1)(ix) and Rule 74(6) of the Maharashtra Motor Vehicles Rules, 1989. On seeing the different columns, we are unable to accede to the contention of the learned Counsel appearing for the State of Maharashtra, that carrying passengers beyond the number mentioned in Column 5, indicating the seating capacity, would be a violation of the conditions of permit relating to either the route or the area or the purpose for which the permit is granted. In this view of the matter, we see no infirmity with the conclusion arrived at by the High Court in the impugned judgment and the detention of the vehicles has rightly been held to be unauthorised and consequently, the compensation awarded cannot be said to be without jurisdiction.....”

9. *Although, the interpretation of Section 207 was done by the Supreme Court in a different context, yet, the same would apply to Clause (c) to Section 149 (2) (a) (i) of the Act.”*

7. It is, therefore, evident that the Insurer is entitled to put a condition to avoid the insurance policy as mentioned in Section 149 (2) (a) (i) and 149 (2) (b) of the Act.
8. It was neither the condition in the insurance policy nor the insurer was entitled to put a condition in the contract of insurance that any violation of the permit would entitle it to avoid the insurance policy. The condition that can be put is only that the vehicle was being used for a purpose not allowed by the permit under which the vehicle was being used. Thus, it would cover cases when the owner does not possess a valid permit at all for the area where the vehicle is being plied or the vehicle is used as a

passenger vehicle when it is not a passenger vehicle and it is used as a goods vehicle when it is not a goods vehicle, etc. etc.

9. The filing of the instant Appeal shows total non application of mind by the Insurance Company. The Appeal is frivolous; the same is dismissed with costs of ₹10,000/-.
10. The costs shall be paid to the Claimants through their counsel within four weeks, failing which the same shall be deducted from the statutory amount refundable to the Appellant Insurance Company.
11. In case, the costs are paid, the statutory amount of ₹25,000/- shall be refunded to the Appellant Insurance Company immediately. If the costs are not paid and its proof is not filed within six weeks, the statutory amount shall be refunded after paying cost to respondent No.1.
12. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 04, 2012
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