IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6259 of 2012 (O&M)
Date of Decision: February 04, 2015

ICICI Lombard General Insurance Co. Ltd.
...Appellant(s)

Versus

Rajesh Kumar and others
...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the digest? Yes

Present: Mr. Nitin Mittal, Advocate
for the appellant-insurance company.

Mr. Arun Singla, Advocate
for respondent no.3.

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ANITA CHAUDHRY, J.

1. This appeal is by the insurance company disputing the liability placed upon them by the Motor Accident Claims Tribunal, Panipat (here-in-after referred to as the Tribunal) in its award dated 07.09.2012.

2. The submission on behalf of the appellant was that the owner of the vehicle did not possess a valid permit and a registered notice had been given asking the owner to furnish the documents but the same were not supplied and an adverse view should have been taken and it was for the owner driver to prove that a permit was taken for plying a truck. Referring to the

judgment of Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Chella Bharathamma*** 2004(4) RCR (Civil) 399, it was urged that the Act provides a statutory defence to the insurer under Section 149(2) and Section 66 of the Act and if there is a violation then the insurer cannot be made liable. Reference was also made to ***Partap Singh Vs. National Insurance Co. and others*** PLR 2014 page 799.

3. The submission of the respondents was that it was the duty of the insurance company to verify from the Road Transport Authority Office whether the vehicle was running with permit and merely sending a notice was not sufficient as held by the Madhya Pradesh High Court in ***Budhesingh Vs. Amman Khan and another*** II (2012) ACC 198.

4. ICICI Lombard General Insurance Company Ltd. (here-in-after referred to as the insurer) has questioned the liability placed upon them by the Tribunal on the ground that the owner did not have the permit to ply the truck. The main submission was that the vehicle was being plied without the requisite permit and it was a breach of condition of the policy and therefore, the insurer had no liability. Section 149 of the Act deals with the defences available to the insurer. Reference is here made to Section 66 & 149of the Act.

5. Section 149(2)(a)(i) relates to a vehicle not covered by a permit to ply for hire or reward. Section 149(2) reads as follows :

> " 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, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(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 dis-qualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular."

Section 66 of the Act is also relevant. It reads as follows:

"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 authorizing 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, authorize 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, authorize 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, authorize the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2) The holder of a goods carriage permit may use the vehicle, for drawing of any trailer or semi-trailer not owned by him, subject to such conditions as may be prescribed:

Provided that the holder of a permit of any articulated vehicle may use the prime-mover of that articulated vehicle for any other semi-trailer.

(3) The provisions of sub-section (1) shall not apply

(a) to any transport vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise;

(b) to any transport vehicle owned by a local authority or by a person acting under contract with a local authority and used solely for road cleansing, road watering or conservancy purposes;

(c) to any transport vehicle used solely for police, fire brigade or ambulance purposes;

(d) to any transport vehicle used solely for the conveyance of corpses and the mourners accompanying the corpses;

(e) to any transport vehicle used for towing a disable vehicle or for removing goods from a disabled vehicle to a place of safety;

(f) to any transport vehicle used for any other public purpose as may be prescribed by the State Government in this behalf;

(g) to any transport vehicle used by a person who manufactures or deals in motor vehicles or builds bodies for attachment to chassis, solely for such purposes and in accordance with such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(h)omitted

(i) to any goods vehicle, the gross vehicle weight of which does not exceed 3,000 kilograms;

(j) subject to such conditions as the Central Government may, by notification in the Official Gazette, specify, to any transport vehicle purchased in one State and proceeding to a place, situated in that State or in any other State, without carrying any passenger or goods;

(k) to any transport vehicle which has been temporarily registered under section 43 while proceeding empty to any place for the purpose of registration of the vehicle;

(l) omitted.

(m) to any transport vehicle which, owing to flood, earthquake or any other natural calamity, obstruction on road, or unforeseen circumstances, is required to be diverted through any other route, whether within or outside the State, with a view to enabling it to reach its destination;

(n) to any transport vehicle used for such purposes as the Central or State Government may, by order, specify;

(o) to any transport vehicle which is subject to a hire-purchase, lease or hypothecation agreement and which owing to the default of the owner has been taken possession of by or on behalf of, the person with whom the owner has entered into such agreement, to enable such motor vehicle to reach its destination; or

(p) to any transport vehicle while proceeding empty to any place for purpose of repair.

(4) Subject to the provisions of sub-section (3), sub-section (1) shall, if the State Government by rule made under section 96 so prescribes, apply to any motor vehicle adapted to carry more than nine persons excluding the driver."

6. A perusal of the provisions above clearly show that one of the defences available to the insurer is that the vehicle in question cannot be plied without a permit under which the vehicle is used. The issue was examined in ***National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Ors.***, 2002(2) RCR (civil) 464 (SC).

7. The insurance company had sent a notice calling upon the owner-driver to produce the permit. The owner-driver were represented before the Court but they failed to produce the permit and since there was no permit, there was violation of the conditions of the policy as plying a vehicle without a permit is an

infraction. Therefore, in terms of Section 149(ii), the defence was available to the insurer. The statute mandates the requirement of a permit and to urge that the insurer should satisfy itself that a permit had been taken or not is not a valid argument. The owner had been given an opportunity to produce it. It was not produced because no such permit existed, therefore, it would be unfair to the insurer to deny what law specifically empowers it to take in defence. Thus, holding that there was a infraction, the appeal is partly allowed giving the insurance company the right to recover the amount from the owner-driver. If the necessity arises, an execution petition can be filed to recover the amount from them. The appeal is partly allowed.

(ANITA CHAUDHRY)
JUDGE

February 04, 2015
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