In the High Court of Punjab and Haryana at Chandigarh

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(1) F.A.O. No.4060 of 2013 (O&M)

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Date of decision:10.7.2015

Dalak

.....Appellant

v.

Future General India Insurance Company Limited and others

.....Respondents

....

(2) F.A.O. No.4102 of 2013 (O&M)

.....

Dalak

.....Appellant

v.

Future General India Insurance Company Limited and others

.....Respondents

....

(3) F.A.O. No.4103 of 2013 (O&M)

.....

Dalak

.....Appellant

v.

Future General India Insurance Company Limited and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. B.S. Tewatia, Advocate for the appellant in all the appeals.

Mr. Pardeep Kumar, Advocate for respondent No.1 in all the appeals.

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Inderjit Singh, J.

This order will dispose of the above mentioned three FAOs, as the same have arisen out of the same accident and same award and the dispute is also the same. These appeals have been filed by Dalak-owner of the offending three wheeler against the Future General India Insurance Company Limited (hereinafter referred to as `the Insurance Company') and Samim-driver and Om Parkash, Rahim Bux and Jarina-respondents challenging the award dated 26.2.2013 passed by the Motor Accident Claims Tribunal, Nuh, vide which compensation of ₹1,73,000/-, ₹20,000/- and ₹30,000/- along with interest @ 6% per annum from the date of filing of the claim petitions till its realization, have been granted in favour of claimants-Om Prakash, Rahim Bux and Jarina respectively and against the Insurance Company. However, the Insurance Company has been given right to recover it from Dalak-owner of the offending vehicle (appellant herein).

Notice of motion was issued in these cases. Mr. Pardeep Kumar, learned Advocate has put in appearance on behalf of the Insurance Company and contested these appeals. The record of the Tribunal was also summoned.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that as per the case of the claimants on 26.4.2011, Om Parkash along with his father Nathu Ram and other occupants were travelling in three wheeler bearing No.HR-27J-0756 and the driver of the above said three wheeler drove it rashly and negligently. The petitioner and other occupants requested the driver/respondent No.1 to drive it in a slow and careful manner, but he did not pay any heed to the requests of the petitioner and other occupants and when the three wheeler reached near Sahab Ram Farm, Tauru Sohna road at about 12/12.30 p.m., then the driver of the three wheeler lost his control over it and the same turned turtle. Due to this accident, the father of the petitioner, namely, Nathu Ram and other occupants received serious injuries on their persons. Nathu Ram was taken to City Hospital, Palwal, but due to his serious condition, he died at Palwal City Hospital. FIR was registered against driver/respondent No.1.

The compensation has been granted by the Tribunal to the LRs of the deceased and the injured persons, but the Tribunal gave the recovery right to Insurance Company to recover the same from respondent No.2-owner (appellant herein) on the ground that the driver of three wheeler was though having route permit, but he was driving the vehicle beyond the area of route permit.

Learned counsel for the appellant argued that the finding of the Tribunal by giving recovery right to the Insurance Company is not as per law. In the present case admittedly, the owner of the three wheeler was having route permit, but the driver was driving the three wheeler beyond the authorized area of the route permit. The learned counsel for the appellant has placed reliance on the judgment of this Court in Future General Insurance Co. Ltd. v. Smt. Surjo Devi and others, 2013 (2) R.C.R. (Civil) 564, wherein it is held that violation of terms of permit in plying the vehicle on the place which had been not authorized to ply is not a defence. It is held that violation of any other term than the purpose for which the permit was to operate will not be a defence and the Insurance Company was held liable.

Learned counsel for the appellant on the same point placed reliance on the judgment of this Court in Hanuman Singh and another v. Reliance General Insurance Co. Ltd. and others, FAO No.1495 of 2010, decided on 30.11.2012 and connected appeal, wherein it is also held that a violation of terms of policy would be as regards the permit, be only in instances where the vehicle was used for a purpose other than for which the permit was given. It would mean that it is violation of the purpose of permit which is relevant. For a vehicle which did not have permission to ply in the particular route may give rise to other consequences which are set forth in the Act but will afford no justification for the insurer to plead exoneration of liability.

On this point, the learned counsel for the appellant also placed reliance on the judgment of this Court in Hans Raj Chaudhary v. Smt. Nanhi Devi, FAO No.2213 of 2011, decided on 21.9.2012. I have gone through the law laid down in this judgment also, which also fully applies to the facts of the present case.

On the other hand, learned counsel for respondent No.1 placed reliance on the judgment of Hon'ble Supreme Court in National Insurance Co. Ltd. v. Chella Bharathamma, 2004 (4) R.C.R. (Civil) 399. I have gone through the law laid down in this judgment, which having distinguished facts will not apply in the present case as in that case there was no route permit, whereas in the present case there is route permit with the owner of the offending vehicle.

Therefore, in view of the law laid down by this Court in so many judgments that if the vehicle is plied beyond the authorized area of the route permit, then it will not be a defence under Section 149(2) of the Motor Vehicle Act with the Insurance Company.

Therefore, from the above discussion, I accept all these appeals and the Insurance Company is held liable to indemnify the insured. Consequently, the finding of the Tribunal regarding recovery right given to the Insurance Company is set aside.

July 10, 2015.

(Inderjit Singh)
Judge

hsp