

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2173 of 2015 (O&M)
Date of Decision.16.11.2015

The New India Assurance Company Limited and another.....Appellants

Versus

M/s Himachal Shots and Metal (P) Ltd.Respondent

Present: Mr. B.S. Taunque, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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

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K. KANNAN J. (ORAL)

C.M. No.14036-C of 2015

For the reasons stated in the application, order passed by this Court on 02.11.2015 is recalled and the appeal is restored to its original number.

Application is allowed.

RSA No.2173 of 2015

1. The insurance company is on appeal to plead for exclusion of liability on the ground that the driver did not have a valid driving licence. It was an admitted fact that the vehicle had been comprehensively covered for risk including provision for Own Damage to the vehicle for the period between 13.01.2003 to 12.01.2004. The accident had taken place on 20.10.2003 during the currency of the policy. The contention was that the driver Data Ram had merely a licence to drive light motor vehicle but he was driving a vehicle whose

gross weight was 8800 kgs and the driver had not been duly licenced. It was an admitted fact that he had only a learner's licence to drive heavy transport vehicle and there was no proof by the owner that there had been any authorized person sitting alongside in the manner contemplated under Rule 3 of the Central Motor Vehicle Rules. The trial Court and the Appellate Court decreed the suit filed by the insured for damages caused to the vehicle on account of the motor accident.

2. The insurance company is on appeal to contend that the driver did not have a HTV licence at the relevant time and he could not be said to have an effective driving licence to make possible a claim for full indemnity by the insured against the insurer. Rule 3(b) of the Central Motor Vehicle Rules of 1989 mandates that a person who holds learner's licence is accompanied by an instructor holding an effective driving License to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle. If the insurance company was, therefore, taking up a plea that the driver did not have an effective driving licence, the burden was on the insurer to prove that although the driver had a learner's licence, he did not have an instructor accompanying him at the relevant time of the accident. Learned counsel appearing on behalf of the appellants is fair to submit that there was no evidence elicited at the trial of whether there was any person accompanying the driver or not. If the exclusion of liability is sought by the insurer for violation of terms of policy, the burden of proof was on the insurer to prove the breach and if it had not been brought out at the time of trial that the driver was actually driving the vehicle without an instructor then it could not be stated that the insurance company had

discharged the burden of proof.

3. The liability cast on the insurer and the decree providing for recovery of the expenses incurred was under the circumstances justified and I will find no cause for intervention.

4. The counsel for the appellants also wants to make reference about the trial Court's observation of the vehicle being LMV. I find the categorization of light motor vehicle or a heavy motor vehicle loses its significance after the amendment brought out in the Rules and the form of licence which is required to be issued that took effect from 22.02.1999. Category of licence can only be with reference to whether it carried a transport vehicle endorsement or not and I discard any observation made by the Courts below with reference to the vehicle being light motor vehicle or heavy motor vehicle. Granted the fact that it was only a different category of vehicle other than a light motor vehicle, the point that has to be still seen is whether a person who held learner's licence to drive a heavy transport vehicle had committed any breach or not. I have already outlined that the duty to prove the breach was only on the insurer which it did not discharge.

5. The point of law which is involved is against the appellants and there is nothing in their favour for intervention. The second appeal is dismissed.

(K. KANNAN)
JUDGE

November 16, 2015
Pankaj*