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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 14th August, 2015

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MAC.APP. 836/2010

ORIENTAL INSURANCE CO. LTD

..... Appellant

Through: Mr. Pradeep Gaur, Advocate.

versus

POOJA SHARMA & ORS

..... Respondents

Through: None.

PRATIBHA RANI, J. (Oral)

1. The appellant i.e. The Oriental Insurance Company Ltd. has preferred this appeal against the award dated 10.08.2010 passed by the learned Tribunal whereby the appellant/insurance company has been directed to pay a compensation of ₹24,65,960/- alongwith interest @ 7.5% per annum from the date of filing the petition to the legal heirs of deceased Mukesh Kumar Sharma.
2. The insurance company did not impugn the award on quantum of compensation awarded to the claimants and restricted the challenge to the extent that recovery rights have not been granted to the appellant/insurance company despite there being breach of terms and conditions of the permit by the driver and owner of the offending vehicle. Notice of the appeal was sent to respondents No.4 and 5 i.e. driver and owner of the offending vehicle i.e. truck bearing No.HR-29-GA-1209. Substituted service was effected on respondents No.4 and 5 through publication but they preferred not to put in appearance.
3. Since this Court was of the view that in case the appellant/insurance

company succeeds in this appeal, it would be entitled to recovery rights against driver/owner of offending vehicle, the amount of compensation awarded by the Tribunal was ordered to be released in favour of the claimants i.e. respondents No.1 to 3.

4. During the pendency of appeal, CM No.22092/2010 has been filed by the appellant/insurance company seeking permission to lead additional evidence, which was allowed by this Court vide order dated 24.07.2013.

5. Sh.Rajveer Singh, Clerk from RTO Faridabad was examined by the appellant as AW-1 and Smt.Bharti Meena, Administrative Officer, Oriental Insurance Company as AW-2.

6. I have heard Sh.Pradeep Garg, Advocate for the appellant/insurance company and carefully gone through the record.

7. Learned counsel for the appellant has referred to the statement made by AW-1 Sh.Rajveer Singh to the effect that the offending vehicle was not holding any valid permit to ply in Delhi on 18.09.2006 i.e. on the date of accident. Since the accident has taken place in Delhi on 18.09.2006, the breach of terms and conditions of permit which was valid only for Haryana during that period, amounts to fundamental breach and that being so, the appellant/insurance company is entitled to have recovery rights against respondents No.4 and 5 i.e. the driver and owner of the offending vehicle.

8. Before appreciating the contentions raised by learned counsel for the appellant/insurance company, it is necessary to refer to the statement made by AW-1 Sh.Rajveer Singh, Clerk from RTO Faridabad.

9. AW-1 Sh.Rajveer Singh has stated that vehicle No.HR-29-GA-1209, which was a commercial vehicle, was registered with RTO, Faridabad. Permit No.5561/NP/02 was issued in respect of vehicle No. HR-29-GA-1209 for the first time on 01.10.2002. He has proved the certified copy of

the relevant entries in permit register as Ex.AW1/1. He has further stated that the validity for the permit was for five years i.e. from 01.10.2002 to 30.09.2007. As a condition of permit, every year the authorisation fee was required to be deposited with the Authority to make it a valid permit. Sh.Rajveer Singh has further stated that in respect of vehicle No. HR-29-GA-1209 the annual authorisation fee was deposited only for the years 2002-2003, 2003-2004, 2004-2005. The authorisation fee has been deposited upto 30.09.2005 and thereafter no authorisation fee has been deposited by the permit holder. He has stated that if authorisation fee for every year is not paid then the vehicle cannot be plied for the respective period for which the permit was issued. Since as on 18.09.2006 the authorisation fee in respect of permit of the vehicle for HR-29-GA-1209 was not deposited, the vehicle was not permitted to be driven in the State for which the permit was issued i.e. Delhi, U.P.and Chandigarh.

10. The reason for seeking recovery rights is that respondents No.4 and 5 were not having valid permit to ply the offending vehicle in Delhi when the accident was caused which amounts to fundamental breach of terms and conditions of permit. This issue has come up for consideration before a Coordinate Bench of this Court in MAC APP.No.282/2007 titled as The National Insurance Co. Ltd. vs. Shashi Goel and Ors. decided on 13.02.2015 wherein it was held as under:-

'7. As far as driving of TSR only by the permit holder being a condition of the permit is concerned, the violation of terms and conditions of the permit not always amounting to violation of Section 149(2)(i)(c) of the Motor Vehicles Act, 1988. This issue was dealt with at great length by me in Mahender Singh vs. Oriental Insurance Company Limited & Others MAC App.430/2010 decided on 10.05.2012. Paras 7 to 10 of the said judgment are extracted hereunder:

“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.

10. Thus, the user of a transport vehicle for the purpose not allowed by the permit would be using a goods vehicle as a passenger vehicle, a passenger vehicle as a goods vehicle, etc. and not each and every contravention of the condition of permit issued by the concerned Transport Authority. Thus, simply because the vehicle was driven by a person other than the permit holder cannot be said to be a user of the transport vehicle for the purpose not allowed by the permit under which the vehicle was used.”’

11. The claim of the appellant/Oriental Insurance Company Ltd. has been examined in the light of above referred legal position, I am of the considered view that the breach said to be proved against respondents No.4 and 5 does not fall in the category of fundamental breach of terms and conditions so as to entitle the insurance company to have recovery rights in the matter.

12. The appeal is dismissed.

13. The statutory amount of ₹25,000/- deposited by the appellant/insurance company at the time of filing the appeal be released in favour of the appellant.

PRATIBHA RANI, J.

AUGUST 14, 2015

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