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

Date of decision: 18th March, 2015

+ **MAC.APP. 885/2010**

NEW INDIA ASSURANCE CO LTD Appellant
Through: Mr. Kanwal Chaudhary, Adv.

versus

PREM RANI & ORS Respondents
Through: Mr. Ashok Popli, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. (ORAL)

1. The Appellant New India Assurance Company Limited (the insurer) seeks recovery rights against the owner for having paid the compensation of ₹6,18,304/- for the death of Sh. Dayanand Arora, who suffered fatal injuries in a motor vehicular accident which occurred on 09.11.2007.
2. The facts of the case are not very much in dispute. It is amply proved on record that the vehicle involved in the accident was a TSR bearing registration no.DL-1RJ-1812. The permit holder of the TSR was one Manjit Singh, who had been examined as R2W1. The TSR in question was being driven by one Jawahar Mehto at the time of the accident. In

his cross-examination, R2W1, Manjit Singh (the insured) admitted that the TSR was being driven by its driver Jawahar Mehto with his permission. The learned counsel for the Appellant submits that for plying every TSR, a permit is needed for it being a transport vehicle and in the instant case also, a permit was issued. One of the conditions of the permit as taken out from the typed copy of the terms and conditions on page 22 of the paper book are extracted hereunder:-

“v. The auto rickshaw permit shall not be transferable and shall be driven by the permit holder himself. Provided that only in case of the death of the permit holder his widow or minor children shall be allowed to employ an authorized driver with prior approval of the Secretary, STA. Hire purchase lease, hypothecation deed shall be allowed for Nationalized Banks, Schedule Banks & non Banking financial companies duly registered with Registrar of companies.”

3. Referring to the judgment of the Supreme Court in *National Insurance Company Limited v. Challa Bharathamma & Ors.*, (2004) 8 SCC 517, the learned counsel for the Appellant argues that wherever there is a violation of any condition of the permit, there shall be breach of the terms and conditions of the insurance policy and the insurer would be entitled to avoid its liability. The learned counsel particularly, refers to para 12 of the report, which is extracted hereunder:-

“12. The High Court was of the view that since there was no permit, the question of violation of any condition

thereof does not arise. The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed on a better pedestal vis-à-vis one who has a permit, but has violated any condition thereof. Plying of a vehicle without a permit is an infraction. Therefore, in terms of Section 149(2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of the insurer. The High Court was, therefore, not justified in holding the insurer liable.”

4. The Supreme Court in *Challa Bharathamma & Ors. (supra)* had not laid down that violation of each and every condition of permit will entitle the insurer to avoid the contract of insurance. On the other hand, it had been laid down that if there is no permit, a person cannot be in a position better than where there is violation of the conditions of the permit.
5. The learned counsel for the Appellant has referred to a judgment of this Court in *Oriental Insurance Company Limited v. Rakesh Kumar & Ors., MAC APP.329/2010, decided on 29.02.2012*, whereby a batch of appeals with respect to the breach of the terms and conditions of the insurance policy was gone into and it was laid down that even in case of breach of the terms and conditions of the insurance policy, the Insurance Company will satisfy the third party liability.
6. The learned counsel refers to paras 64 & 65 of the report in *Rakesh*

Kumar & Ors.(supra), where a similar question with regard to violation of the terms and conditions of the permit was gone into by this Court (by me) and it was held that the insurer will be entitled to recovery rights. Paras 64 and 65 of the report are extracted hereunder:-

“64. Similarly, as per the General Condition No.5 of the terms and conditions of the permit Ex.R3W3/A proved by the Clerk of the Transport Authority, it was the permit holder only, who was permitted to drive the auto rickshaw (TSR) as on the date of the accident. Since the vehicle was driven by a person other than the permit holder, there was violation of the policy as mentioned in the Insurance Policy Ex.R3W1/C under the head “limitation as to use.”

65. The Appellant Insurance Company has been granted recovery rights by the impugned judgment. Since it was a case relating to the claim made by the third party, the Insurance Company was under obligation to pay and recover the amount of compensation. The Insurance Company was not entitled to be completely absolved.”

7. I had the occasion to deal with this question again at great length in a number of judgments including *Mahender Singh v. Oriental Insurance Company Limited & Ors.*, 2013 ACJ 2570 and *National Insurance Company Limited v. Suresh Kumar & Ors.*, 2013 ACJ 2589. Paras 4 to 11 of the report in *Mahender Singh* directly dealt with the question of breach of a specified condition of the policy as given in Section 149(2)(a) of the Motor Vehicles Act, 1988 (the Act) and it was laid down that it will not be each and every violation of the condition of

the permit which will entitle the insurer to avoid indemnification of the insured. Paras 4 to 11 of the report in *Mahender Singh* are extracted hereunder:-

“4. It is urged by the learned counsel for the Appellant that there was no breach of the terms of the policy as envisaged under Section 149(2) of the Act and thus the Claims Tribunal erred in granting recovery rights against the Appellant. It is argued that Section 149(2)(a)(i)(c) entitles the insurer to defend the action for payment of compensation if the vehicle was used for a purpose not allowed by the permit under which the vehicle was being used. The learned counsel urges that the user/driving of the vehicle by a person other than the registered owner cannot be said to be use of the vehicle for a purpose not allowed by the permit. To appreciate the contention raised, it would be appropriate to extract Section 149(2) 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 subsection (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or 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:-

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

a condition excluding the use of the vehicle-

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

for organized racing and speed testing, or

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

5. *I obtained the conditions for grant of a permit for a TSR plying in NCT of Delhi from the transport department, which are also available on the website of the Transport Department, Govt. of National Capital Territory of Delhi. The same are extracted hereunder:-*

“1. The vehicles shall ply as per the rate/tariff approved by the Govt./State Transport Authority from time to time and exhibited in the meter.

2. The fare distance chart as per the notified fares duly approved by the State Transport Authority shall be displayed prominently available at the back of the seat of the driver inside the vehicle as prescribed by the State Transport Authority.

3. Only electronic fare meter duly approved and duly calibrated by the Competent Authority or any other metering device duly approved by the competent Authority shall be installed. The Electronic Fare Meter shall be kept in proper working condition.

4. The number of passengers shall not exceed 3 adults excluding driver. A child of not more than 12 years of age shall be reckoned as a half and a child of not more than three years of age shall not be reckoned.

5. The driver shall not refuse to ply any place within the NCT of Delhi or the area specified from time to time.

6. The driver shall not misbehave with the

passenger/intending passenger.

7. The driver shall extend help and assistance to all senior citizens and disabled while boarding and alighting the vehicles.

8. The driver shall wear the uniform in grey colour with his/her smart card based Public Service Vehicle (PSV) badge prominently displayed on uniform.

9. The driver shall undergo training as may be prescribed by the Commissioner (Transport) from time to time and in the manner prescribed.

10. The vehicle shall display the Helpline No. of the Transport Department on the rear side of the vehicle also name and address of the permit holder.

11. The vehicle shall affix registration number plate in Braille as per design approved by the Department at the space prescribed by Transport Department.

12. The permit holder shall inform any change in his/her residential address in form 33 of CMVR, 1989 within the stipulated period i.e. within 30 days to the Registering Authority.

13. Hire purchase, lease, hypothecation deed shall be allowed for Nationalized Banks. Scheduled Banks and Non-Banking Financial companies duly approved by RBI or any other competent authority notified by Central Govt. in this regard.

14. The permit holder shall exercise such supervision as is necessary to ensure that the vehicle is operated in conformity with the Motor Vehicle Act and the rules made there-under and shall be liable for action for violation of permit condition without prejudice to the action that may be legally permissible to be taken against the driver.

15. The permit holder shall be liable for the suspension/ cancellation of the permit for any violation of the permit condition.

16. The vehicle shall be kept neat and clean at all time during the operation.

17. The vehicle must be equipped with the First Aid Box containing material as specified in DMV Rules, 1993.

18. The vehicle must be equipped with the Fire Fighting equipment as specified in DMV Rules, 1993.

19. The drivers identity/particulars along with his/her photograph to be displayed at prominent place inside the wind screen.

20. A complaint book shall be maintained with serial numbers printed and issued by the Transport Department, will be available at the Complaint Box installed at prominent place.

21. The driver must be of good character without any criminal record.

22. The permit holder shall be responsible for the behavior, reliability of the Auto Drivers and to ensure the proper police verification is done.”

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.

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 Claims Tribunal erred in holding that there was violation of Clause (c) of Section 149(2)(a)(i) of the Act.”

8. The instant case is squarely covered by my judgment in *Mahender Singh (supra)* and *Suresh Kumar & Ors. (supra)*.
9. In view of this, I am of the opinion that the Insurance Company cannot avoid its liability simply on the ground that the permit holder himself was not driving the TSR at the time of the accident.
10. The appeal, therefore, has to fail; the same is accordingly dismissed.
11. Pending applications, if any, also stand disposed of.
12. Statutory amount, if any, shall be refunded to the Appellant.

(G.P. MITTAL)
JUDGE

MARCH 18, 2015

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