

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO No.5861 of 2010 (O&M)

Date of decision : 30.09.2016

M/s Sharma Construction Company and another

.....Appellants

Versus

Ajmer Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Ms. Jasmeet Mehra, Advocate for
Mr. L.M. Gulati, Advocate for appellants.

Mr. Vineet Sharma, Advocate for respondent No.3.

Mr. Harsh Aggarwal, Advocate for
respondent No.4-Insurance Company.

DARSHAN SINGH, J.

The present appeal has been preferred by the owner and Special Power of Attorney/Sapurdar of truck bearing registration No.PB-02-AU-9735 against the award dated 28.07.2010 passed by learned Motor Accidents Claims Tribunal, Amritsar (hereinafter called the “Tribunal”) vide which respondents No.1 & 2/claimants have been awarded compensation to the tune of ₹12,88,400/- on account of death of Varinderjit Kaur wife of Ajmer Singh-respondent No.1 in the motor vehicular accident which took place on 26.02.2009.

2. The present appeal filed by the appellants against respondents No.1 & 2/claimants was already dismissed by this Court vide

order dated 08.10.2010 and notice of motion was only issued to the respondent No.4-Insurance Company as the learned Tribunal has granted the recovery rights to the Insurance Company.

3. I have heard learned counsel for the parties and have gone through the record of the case meticulously.

4. Learned counsel for the appellants contended that the truck in question was having a valid permit on the date of the accident. The permit was handed over to the counsel for the appellants in the Tribunal but the same was lost somewhere. Due to that reason, the permit could not be produced on record. She contended that it is not a case where the vehicle was being plied without any permit. Thus, she contended that learned Tribunal has wrongly granted the recovery rights.

5. On the other hand Mr. Harsh Aggarwal, Advocate, learned counsel for the respondent-Insurance Company contended that the appellants have not produced the permit despite the application moved by the respondent-Insurance Company. The appellants have also not led any evidence to show that the permit was lost. They could have brought on file the copy of the said permit, but no evidence at all had been led by the appellants to show that on the date of the accident, the vehicle had any permit. So the learned Tribunal has rightly awarded the recovery rights.

6. I have duly considered the aforesaid contentions.

7. The recovery rights to the respondent-Insurance Company have been awarded against the insured/owner of the vehicle on the ground that the permit of the vehicle was not produced by the appellants.

8. During the pendency of the claim petition, on 17.03.2010 the respondent-Insurance Company has moved an application for giving direction to the driver/owner of the vehicle to supply the copy of the driving licence, registration certificate and the route permit. In response to the said application, learned counsel for the appellants in the Tribunal stated that the documents of the vehicle including route permit have been misplaced due to the accident. Even if this version of the appellants is believed that the permit was lost at the time of the accident, still the appellants could have produced sufficient evidence to show that the vehicle had a valid permit on the date of the accident. The appellants could have summoned the record from the office of the concerned Transport Authority to prove the issuance of the permit. They could also have obtained the duplicate copy of the permit from the office of the concerned Transport Authority and could have produced the same in their evidence. But this course has not been adopted by the appellants. The appellants have not even mentioned the particulars of the permit in response to the application dated 17.03.2010 moved by the respondent-Insurance Company. In their evidence the appellants have only produced the copy of the insurance policy Mark-A. Even no effort has been made by the appellants to adduce any sort of evidence to show the existence and validity of the permit. Thus, the only irresistible inference which can be drawn is that the vehicle in question was being plied without any permit at the time of the accident, which is clearly a violation of the terms and conditions of the insurance policy. Reference can be made to case ***National Insurance Co. Ltd. Vs. Chella Bharathamma 2004 (4) RCR (Civil) 399.***

Thus, there is no illegality in the recovery rights granted by the learned Tribunal to the respondent-Insurance Company against the insured/owner of the vehicle.

9. Thus, keeping in view my aforesaid discussion, the present appeal is without any merits and the same is hereby dismissed.

10. Registry is directed to remit the statutory amount of ₹25,000/- to the learned Tribunal, if not already remitted.

30.09.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No