

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

FAO No.997 of 2010 (O&M)

Date of decision : 05.09.2016

Oriental Insurance Company Ltd.

.....Appellant

Versus

Kamlesh Kumari and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Navin Kapur, Advocate for appellant.

Ms. Parminder Kaur, Advocate for
Mr. Vishal Gupta, Advocate for respondents No.8 & 9.

DARSHAN SINGH, J.

The present appeal has been preferred by the Oriental Insurance Company against the award dated 16.11.2009, passed by the learned Motor Accidents Claims Tribunal, Ropar (hereinafter called the “Tribunal”) vide which respondents No.1 to 7-claimants have been awarded compensation to the tune of Rs.21,62,000/- on account of death of Prem Singh in the motor vehicular accident, which took place on 31.12.2008.

2. The present appeal has been preferred by the appellant-Insurance Company (who was impleaded as respondent No.3 in the claim petition) to assail the award.

3. I have heard learned counsel for the parties and have gone through the paper-book carefully.

4. Learned counsel for the appellant-Insurance Company

contended that the income of the deceased has been taken to be on higher side. It was not proved that the milk which he was selling to the District Cooperative Milk Producers Union Limited, Milk Plant, SAS Nagar, Mohali, was yielded from his own cattle or he used to purchase that milk. There is also no proof regarding the agricultural income of the deceased. Thus, he contended that the learned Tribunal has wrongly taken the income of the deceased to be Rs.16,000/- per month, which resulted in exorbitant compensation.

5. He further contended that Ex.R4 is the copy of the permit issued by the Himachal Pradesh Government in favour of the vehicle. He contended that there was no permit with the vehicle to operate in the jurisdiction of the State of Punjab where the accident has taken place. Thus, he contended that the vehicle was being operated in the State of Punjab without permit, which is a violation of the terms and conditions of the insurance policy and the appellant-Insurance Company was entitled for recovery rights.

6. On the other hand, learned counsel for respondents No.8 & 9 contended that mere this fact that the truck No.HP-12-9495 was not having the permit for the State of Punjab is no ground to prove the violation of terms and conditions of the insurance policy when it is established that the vehicle in question has a valid permit issued by the State of Himachal Pradesh. She further contended that said permit was even valid up to 16 kilometers from the region of Himachal Pradesh but the accident has taken place just within 12 kilometers from the boundary of State of Himachal

Pradesh. So, there was no violation of the terms and conditions of the insurance policy.

7. I have duly considered the aforesaid contentions.

8. The challenge made by learned counsel for the appellant to the income of the deceased taken by the learned Tribunal has no substance. On appreciation of the oral as well as documentary evidence, the learned Tribunal has come to the conclusion that the income of the deceased Prem Singh was Rs.16,000/- per month from all the sources. The claimants have examined PW5 Jaswinder Singh who was working with the District Cooperative Milk Producers Union Limited, Milk Plant, SAS Nagar, Mohali as Secretary and he has stated that deceased Prem Singh has sold the milk for a sum of Rs.1,49,355/- for the period with effect from 01.01.2008 to 31.12.2008. He has produced the copy of the extract of register Ex.P5. It is also alleged that the deceased was working as an agriculturist. The learned Tribunal has not committed any illegality in considering the income of the deceased to be Rs.16,000/- per month.

9. Moreover, even if the contentions raised by learned counsel for the appellant that the income of the deceased has been taken to be on higher side is accepted and his income is reduced, there will be no substantial difference in the quantum of compensation as the learned Tribunal has not awarded any future prospects to the income of the deceased. The deceased was 40 years of age at the time of the accident and 30% of his income should have been added towards future prospects. Thereafter, the income of the deceased will be approximately the same. So,

there will be no justification to reduce the income of the deceased determined by the learned Tribunal.

10. As far as the plea of the appellant-Insurance Company for recovery rights is concerned, this fact is not disputed that truck bearing registration No.HP-12-9495 was having a valid permit issued by the State of Himachal Pradesh. It is an admitted fact that the said truck had no permit for its operation in the State of Punjab. The accident has taken place near village Bara Pind in the State of Punjab. Learned counsel for the appellant has pleaded that at the time of the accident, the truck in question was being operated in the State of Punjab for which there was no permit, which is violation of terms and conditions of the insurance policy and the appellant-Insurance Company shall be entitled for the recovery rights.

11. The aforesaid contentions raised by learned counsel for the appellant-Insurance Company are without any substance. The vehicle in question had the valid permit for the State of Himachal Pradesh but the accident has taken place in the State of Punjab. It means that the vehicle has strayed the route of the permit, which will not be a valid defence available to the Insurance Company. This Court in case ***Hans Raj Chaudhary Vs. Smt. Nanhi Devi and others 2013(7) RCR (Civil) 2574*** has laid down as under : -

“The counsel appearing on behalf of the insurance company still insist that Sections 66 and 69 of the Motor Vehicles Act set out the various terms of permit and one of the terms is that be that the vehicle could traverse only within the area allowed in the permit. The language used in Section 149 that sets out the permissible defences employs the expression of user of a vehicle "for a purpose

not allowed by the permit". The purpose of the permit is not the same thing as condition in the permit. The legislature has employed a language restricting it only to violation of purpose of permit. The MV Act, being a beneficial legislation, the issue of liability should be interpreted to the benefit of claimant and to the extent to which the owner obtains indemnity, it makes possible the prospect of recovery so much easier."

12. Similarly in case ***Future General Insurance Co. Ltd. Vs. Smt. Surjo Devi and others 2013(2) RCR (Civil) 564*** this Court has laid down that the violation of any other term than the purpose for which the permit was to operate will not be a defence which will be available in the scheme of the Motor Vehicles Act.

13. In case ***National Insurance Company Ltd. Vs. Rajinder Giri and others 2012(2) RCR (Civil) 183*** the vehicle had a valid route permit for being plied in State of Rajasthan. The accident took place when the vehicle was being operated in the State of Haryana. This Court laid down as under: -

"It would be said that the vehicle had a valid route permit for being plied in the State of Rajasthan but not in Haryana State. The Transport Authority of Rajasthan State had found the vehicle fit for being plied as goods carriage. Therefore, it cannot be said that the vehicle was being plied without a route permit. The violation of bringing the vehicle to the area of State of Haryana without a valid route permit for plying the same in the said State would not amount to violation of the conditions of the insurance policy and would not give the insurer a defence under Section 149(2) of the Act. The case before me is not a case where there is no route permit at all. Therefore, the ratio of the decision in National Insurance Co. Ltd.'s case (supra) would not stand attracted to the facts of this case."

14. In view of the consistent ratio of law laid down in the cases referred above, mere this fact that the truck in question was being operated in the State of Punjab, though it has permit only for the State of Himachal Pradesh will not constitute the violation of the condition of the permit as the insurance Company has not been able to establish that the vehicle in question was being used for a purpose not allowed by the permit.

15. Thus, it is not established that the insured has violated the terms and conditions of the insurance policy. Consequently, the appellant-Insurance Company cannot escape the liability. Therefore, I do not find any illegality in fastening the liability upon the appellant-Insurance Company.

16. In view of my aforesaid discussion, the present appeal is without any merits and the same is hereby dismissed.

05.09.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No