**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**FAO No.3804 of 2012 (O&M)
Date of Decision: October 27, 2016.**

Bhimraj and another

..........APPELLANT(s).

VERSUS

Sher Singh and another

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. J.P. Sharma, Advocate
for the appellant (s).

Mr. R.C. Kapoor, Advocate
for respondent No.2.

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<u>SURINDER GUPTA, J.</u>

This is appeal by driver and owner of the vehicle bearing registration No.RJ-02G-3712 (later referred to as 'the offending vehicle') against the award passed by Motor Accident Claims Tribunal, Narnaul (later referred to as 'the Tribunal'), whereby compensation of ₹33,500/- was allowed to claimant Sher Singh. Insurer of the above vehicle i.e. respondent No.2 was directed to pay the compensation amount to the claimant and was allowed right to recover the same from the appellants.

2. As the appellant is challenging only the recovery rights allowed to insurer by the Tribunal, the facts of this case are being skipped for the sake of brevity.

3. Learned counsel for the appellants has argued that the Tribunal

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allowed recovery rights to insurer against insured on the ground that the offending vehicle was possessing permit to ply in the State of Rajasthan, whereas the accident had taken place in the area of village Sherpur, Tehsil and District Mohindergarh, which is in the State of Haryana. While entering the State of Haryana, the driver of the offending vehicle had paid the required taxes of ₹1600/- vide P.T.T.18 receipt (Ex.R4) for the period from 01.10.2009 to 31.12.2009. Once goods tax and road tax are paid, permission was allowed to offending vehicle to ply in State of Haryana, which is in fact a valid permit for the State of Haryana for the period from 01.10.2009 to 31.12.2009 and the Tribunal has wrongly taken this receipt as penalty receipt. He has further argued that P.T.T.18 receipt (Ex.R4) authorises the offending vehicle to enter State of Haryana and the permission allowed was valid for the period mentioned in the receipt. The accident took place in this case on 15.10.2009 during the validity of the period for which the State had charged required taxes and allowed the vehicle to enter the State.

4. Learned counsel for respondent No.2 while referring to the observations of the Tribunal in para 20 of the award, has argued that receipt Ex.R4 was in fact for payment of the penalty and not a permit. Even if, the goods tax and road tax had been paid, still the offending vehicle required permit to ply in the State of Haryana. As the offending vehicle was not having a valid permit, the Tribunal has rightly given the recovery rights to the insurer.

5. The offending vehicle was having a valid permit for the State of Rajasthan. It was going towards State of Haryana and paid the required

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road tax and goods tax for the period from 01.10.2009 to 31.12.2009 vide P.T.T.18 receipt (Ex.R4) at the Tax Collection Point. It was only on payment of required taxes that the offending vehicle was permitted to enter the State of Haryana. The Tribunal appears to have got swayed by the title of the receipt which is described as "Tax Penalty Receipt". Penalty is imposed for violation of some legal provision of Rule and do not allow the commission of legal violation/offence for a continuous certain period. As to whether plying of vehicle beyond the boundaries of State for which the permit has been allowed, amount to violation of terms and conditions of the policy under Section 149(2) of Motor Vehicles Act was a point for consideration in appeal before this Court in appeal bearing ***FAO No.4554 of 2013*** decided on 20.01.2016 and it was observed as follows:-

> "6. The Tribunal considered this submission of learned counsel for the appellant-Insurance Company and while relying upon the observations of this Court in case of ***National Insurance Company Ltd. vs. Rajender Giri and others, 2012 (2) RCR (Civil) 183*** has held that if the offending vehicle involved in the accident was plied outside the permissible area as per the route permit, it does not amount to violation of terms and conditions of the policy under Section 149 (2) of the Motor Vehicles Act."

6. A similar point was considered in ***FAO No.3716 of 2009*** decided on 04.11.2015 along with ***FAO No.1808 of 2010*** and it was observed as follows:-

> "14. The Tribunal allowed right of recovery of compensation awarded to the claimants from owner of the offending vehicle on the ground that offending vehicle

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was having the route permit for plying the vehicle only in the State of Rajasthan and not in the State of Haryana where the accident took place. On the above matter, a Co-ordinate Bench of this Court in the case of ***National Insurance Co. Ltd. vs. Gamdoor Singh and others (FAO No.758 of 2014)*** decided on 06.02.2014, has observed as follows:-

"........Section 149 of the Motor Vehicles Act allows for various defences that could be taken and Section 149 (2) (c) makes a condition excluding of use of the vehicle for the purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, it could be taken as a permissible ground of defence. In effect it means if a transport vehicle has a permit for a particular purpose of use but the permit is flouted and put for some other purpose and a clause of insurance provides for exclusion of such liability, then it shall be permissible to take that in defence. A mere fact that the vehicle was being driven outside the route permit is no defence which is available for an insurer but it only means that the owner will become susceptible for prosecution under Section 192 (a) of the Motor Vehicles Act which is still not a ground for an insurer to exclude the liability......."

15. In another case titled ***Sandeep vs. The Oriental Insurance Company Limited and others (FAO No. 6897 of 2011)*** decided on 29.01.2013, the offending vehicle had permit for plying the same in the State of Rajasthan and the accident had taken place in the State of Haryana and it was observed by a Co-ordinate Bench of this Court that violation of terms of permit means a goods vehicle cannot be seen to carry passengers except to the extent to which Section 147 of the Motor Vehicles Act (later referred to as 'the Act') itself permit. If a vehicle strays from a route to which the permit is granted will result in other consequences for violation of permit conditions at the instance of transport authorities.

16. A permit is usually issued on so many terms and conditions. The violation of all terms and conditions

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> mentioned in the permit does not allow the Insurance Company to avoid its liability. A close reading of Section 149 (2) (i) (a) of the Act would show that it is only the user of 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."

7. In view of the legal proposition as discussed above, the Tribunal has committed grave error while allowing the recovery rights to the insurer of the offending vehicle on the ground that it was not holding a valid permit for plying in the State of Haryana. Firstly, the offending vehicle was having permission to enter the State of Haryana after paying requisite taxes and secondly, it does not amount to violation of terms and conditions of the policy under Section 149(2) of the Motor Vehicles Act giving the right to insurer to have recovery rights against the owner and driver of the offending vehicles.

8. As a sequel of my above discussion, this appeal has merits and is accepted.

(SURINDER GUPTA)
JUDGE

October 27, 2016.
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√
Whether speaking/reasoned: ***Yes/No***
√
Whether Reportable: ***Yes/No***

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