

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

FAO-3862-2012 (O&M)

Date of decision: 12.5.2016

Teja Ram and another

...Appellants

Versus

United India Insurance Co. Ltd. and another

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Parminder Singh, Advocate for the appellants

Mr.RK Sharma, Advocate for respondent No.1.

SNEH PRASHAR, J.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') was filed by Shiv Shankar, a small boy aged 7 years, through his mother, claiming compensation on account of the injuries suffered by him in a motor vehicular accident that took place on 9.4.2010. The accident occurred when the truck bearing registration No. HRL-2949 (hereinafter refer to as the 'offending truck') being driven by Teja Ram (appellant No.1 herein) in a rash and negligent manner had struck against the Activa bearing registration No.HR-05U-6865, on which the claimant was travelling as a pillion rider. Allowing the petition, learned Tribunal awarded the compensation to the tune of Rs.1,19,000/- to the claimant alongwith interest at the rate of 7.5% per annum from the date of institution of the petition, till the date of realization. The appellants being the driver and owner of the offending

truck were held liable for payment of compensation. The offending truck was insured with United India Insurance Company Limited (respondent No.1 herein). Finding that the offending truck was being plied without a route permit when the accident took place, which amounted to breach of an essential condition of the insurance policy, learned Tribunal directed the Insurance Company (respondent No.1) to pay the compensation to the claimant with liberty to recover the amount so paid from the insured-owner of the offending truck. Feeling aggrieved by the said finding of learned Tribunal, the owner and driver of the offending truck preferred the instant appeal.

The submissions made by Mr.Parminder Singh, Advocate representing the appellants and Mr.RK Sharma, Advocate for respondent No.1 have been heard and record perused.

The only argument raised by learned counsel for the appellants is that the offending truck had a valid route permit for the period i.e. 28.3.2005 to 28.3.2010 and subsequently, the route permit was renewed for five years and was valid upto 28.3.2015. It being so, on the date of accident i.e. 9.4.2010, the offending truck was being plied on a valid route permit. Learned Tribunal erred in granting recovery rights to respondent No.1 – Insurance Company against the appellants. To support his arguments, learned counsel relied upon the law laid down in **National Insurance Company Limited vs. Rajender Giri and others 2012(2) RCR (Civil) 183**, **Future General Insurance Co. Ltd. vs. Smt.Surjo Devi and others 2013(2) RCR (Civil) 564** and **Sethunath vs. John Varghese 2011(1) Civil Court Cases (822)**.

The arguments of learned counsel for the appellants were controverted by learned counsel for respondent No.1- Insurance Company. Referring to the statement of RW2 Manish Kumar, Data Entry Operator, Regional Transport Authority, Kurukshetra, he pointed out that the route permit in the name of Smt.Kulbir Kaur (appellant No.2) was issued from Yamuna Nagar and was renewed by Regional Transport Authority, Kurukshetra for the period from 23.3.2005 to 28.3.2010. Subsequently, the permit was renewed on 18.4.2011 to 28.3.2015, whereas the accident took place on 9.4.2010 and on that date, the vehicle was being plied without a valid route permit.

There appears force in the argument of learned counsel for respondent No.1- Insurance Company. The facts in hands are distinguishable from the facts of **Rajender Giri and others, Smt.Surjo Devi and others and Sethunath's** cases (supra). It is not a case where the offending truck was being plied in a State other than the State for which the route permit had been issued. It is also not the case that at the time of accident, the vehicle was not being used as a transport vehicle.

Rather, the testimony of RW2 Manish Kumar goes a long way to establish that on the date of accident, the appellants had no valid route permit to ply the offending truck. The permit was renewed by Regional Transport Authority, Kurukshetra on 23.3.2005 to 28.3.2010 and thereafter, was renewed on 18.4.2011 to 28.3.2015. The accident occurred on 9.4.2010 and on that date, the owner/ insured had no valid route permit to ply the offending truck, which undoubtedly is a transport vehicle.

It was held by Hon'ble Apex Court in **National Insurance Co. Ltd. vs. Chella Bharathamma 2004(4) RCR (Civil) 399** that plying a vehicle without a permit is an infraction. Therefore, in terms of Section 149(2) of the Act of 1988, the defence is available to the insurer on that aspect.

As per the above law laid down by Hon'ble Supreme Court, the defence that there has been violation of the terms and conditions of the insurance policy as the vehicle was being plied without a route permit is in terms of Section 149(2) of the Act of 1988 and in that eventuality the insurer cannot be held liable to indemnify the insured. However, it was observed that considering the beneficial object of the Act of 1988, it would be proper for the insurer to satisfy the award, though in law, it has no liability, but insurer will be at liberty to recover the amount paid from the owner by filing an execution petition, as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal. There being violation of terms and conditions of the insurance policy on part of the appellant learned Tribunal has rightly given recovery right to the respondent- insurance company against the appellants- insured.

In the above premise, there being no merit in the present appeal, it is dismissed.

12.5.2016
gsv

(SNEH PRASHAR)
JUDGE