

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

FAO No.4315 of 2012 (O&M)

Date of decision : 07.09.2016

The Oriental Insurance Company Ltd.

.....Appellant

Versus

Dilbagh Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. D.P. Gupta, Advocate for appellant.

Mr. D.S. Randhawa, Advocate for
Mr. B.S. Sewak, Advocate for respondents No.1 to 5.

Mr. Yogesh Arora, Advocate for respondents No.6 & 7.

DARSHAN SINGH, J.

The present appeal has been preferred by the Oriental Insurance Company Ltd. against the award dated 16.05.2012 passed by the learned Motor Accidents Claims Tribunal, S.A.S. Nagar, Mohali.

2. The present appeal has been preferred by the appellant-Insurance Company to claim the recovery rights.

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

4. Learned counsel for the appellant-Insurance Company contended that the insured has not produced the permit of the vehicle as required under Section 66 of the Motor Vehicles Act, 1988 (for short the “Act”), so it shall be presumed that the vehicle was being operated without

any permit, which is violation of the terms and conditions of the insurance policy and the Insurance Company is entitled for the recovery rights.

5. On the other hand, Mr. Yogesh Arora, Advocate, learned counsel for respondents No.6 and 7 contended that the vehicle in question was not involved in the accident. Even the appellant-Insurance Company has taken the stand in the written statement that the vehicle was not involved in this accident. Once the involvement of the vehicle itself is disputed, no recovery rights can be given to the Insurance Company. He further contended that there was no violation of the terms and conditions of the insurance policy on the part of insured.

6. I have duly considered the aforesaid contentions.

7. The only dispute in the present case is as to whether the appellant-Insurance Company is entitled for the recovery rights or not. The contentions raised by learned counsel for respondents No.6 and 7 that the vehicle was not involved in the accident are totally without any substance and deserve to be rejected out-rightly. The learned Tribunal has given a categorical finding under issue No.1 that the accident has taken place due to rash and negligent driving of TATA 407 by respondent No.1. These findings recorded by the learned Tribunal has attained finality as respondents No.6 and 7, the driver and owner, have not filed any appeal against these findings recorded by the learned Tribunal. Respondent No.7, the owner of TATA 407 bearing registration No.HR-46-8428, has not produced any permit in his evidence. Only the copy of the driving licence of respondent No.6 Ex.R1 and cover note Ex.R2 have been brought on record.

During the pendency of this appeal, respondents No.6 and 7 were granted an opportunity to produce the permit for the relevant period vide order dated 12.02.2016 but no permit has been brought on record by respondents No.6 and 7. It shows that the vehicle was being operated on the date of accident without any valid permit.

8. As per provision of Section 66 of the Act owner of a motor vehicle shall not use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority. Meaning thereby, no transport/goods vehicle can be plied on the road without having the permit as required under Section 66 of the Act. The absence of the permit is clearly a violation of the terms and conditions of the insurance policy. The Hon'ble Supreme Court in case ***National Insurance Co. Ltd. Vs. Chella Bharathamma 2004 (4) RCR (Civil) 399*** has laid down that the violation of the condition of permit is a defence available to the insurer as provided in Section 149(2) of the Act. It is further laid down that a person plying the vehicle without permit cannot be placed at a better pedestal vis-a-vis one who has a permit, but has violated any condition thereof. It was further laid down in that case that in the absence of the permit, the insurer cannot be made liable.

9. Thus, in view of my aforesaid discussion, as the insured has violated the terms and conditions of the insurance policy by plying TATA 407 without any permit so, the appellant-Insurance Company is certainly

entitled for the recovery rights.

10. Consequently, the present appeal is hereby allowed. The appellant-Insurance Company shall be entitled to recover the awarded amount paid by it to the claimants from the insured/owner of the vehicle by executing this very award.

07.09.2016

sunil yadav

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No