

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

Decided on: 22.09.2016

1. FAO No.5581 of 2012 (O&M)

Oriental Insurance Company LimitedAppellant

Versus

Seeta Devi and othersRespondents

2. FAO No.5582 of 2012 (O&M)

Oriental Insurance Company LimitedAppellant

Versus

Ram Kali and othersRespondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. J.S. Chatrath, Advocate
for Mr. Ashwani Talwar, Advocate
for the appellant (in FAO Nos.5581 and 5582 of 2012)

Mr. G.S. Sandhu, Advocate
for respondents No.5 and 6 (in FAO No.5581 of 2012)
and for respondents No.3 and 4 (in FAO No.5582 of 2012)

REKHA MITTAL, J.

By way of this order, I intend to dispose of FAO Nos.5581 and 5582 of 2012 as common questions of law and fact are involved for adjudication. For the sake of convenience, facts are taken from FAO No.5581 of 2012.

The insurance company is in appeal to assail findings of the Tribunal on Issues No.3 and 4, namely:-

Issue No.3. Whether respondent No.1 was not holding a valid driving licence at the time of alleged accident, if so its effect?

OPR3.

Issue No.4. Whether truck bearing No.HR-39-7312 was being ply (sic) without a permit as well as without passing from competent authority, if so its effect? OPR3.

Counsel for the appellant has submitted that report Ex.R3 was received from the concerned transport authority in regard to driving licence bearing No.B-52249 possessed by Babu Singh, driver of the alleged offending vehicle and as per the report, driving licence Ex.R2 was not issued by the said authority. It is further submitted that an application has been filed by the appellant under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure (in short 'CPC') for additional evidence to summon the concerned official of Regional Transport Authority, Cuttack, Orissa along with records pertaining to driving licence Ex.R2. As additional evidence could not be adduced by the appellant despite exercise of due diligence, the insurance company may be permitted to examine concerned official along with relevant records.

Another submission made by counsel is that as the truck in question was permitted to be plied in the state of Haryana and the accident in question has occurred in Punjab, the insured is guilty of violating the terms and conditions of the insurance policy.

Counsel for the contesting respondent has supported findings of the Tribunal with the submission that as the report Ex.R3 has not been proved in accordance with law, mere exhibiting of the document is not sufficient to dispense with its proof. It is further argued that as the insured did not get an opportunity to examine the relevant

records and to assail correctness and authenticity of the report, the Tribunal has rightly refused to rely upon the report in favour of the insurance company. In response to plea regarding permit, it is submitted that as there was a valid permit for plying the truck on the road, the mere fact that the permit was issued for the state of Haryana and the accident has occurred in the state of Punjab is not sufficient to hold that the insured is guilty of violating the terms and conditions of the contract of insurance. For this purpose, he has relied upon judgments of this Court ***“National Insurance Company Limited vs Kamlesh Kaur and others”***, 2006(3) RCR (Civil) 634 and ***“Iffco Tokio General Insurance Company Limited vs Smt. Villa and others”***, 2016(2) PLR 747.

I have heard counsel for the parties, perused the paperbook and the records.

Counsel for the appellant has not disputed that the report Ex.R3 has not been proved in accordance with law, to discharge the onus that driver of the offending vehicle did not possess an effective driving licence at the time of accident. The application has been filed by the insurance company to adduce additional evidence by invoking Order 41 Rule 27 CPC. As per the settled position in law, ignorance of law is no excuse. Hence, plea of the appellant that as the insurance company was under a mistaken impression that information obtained under the RTI Act is an authentic information and once the same is placed on record and duly exhibited, there shall be no requirement for proving the report by examining a witness from the concerned licensing

authority cannot suffice to accept that evidence sought to be adduced by way of additional evidence could not be led despite exercise of due diligence. That being so, the application sans merit and is accordingly dismissed.

This apart, Anil Kumar one of the partners of M/s. Jai Bhole Shanker Rice Mill, registered owner of the offending vehicle appeared in the witness-box and tendered into evidence his duly sworn affidavit Ex.RW1/A. A relevant extract from his testimony reads as follows:-

“That about five years back, the respondent had impleaded Babu Singh as a driver of truck No.HR-39-7312 after examining the driving licence and after satisfying myself regarding skill of driver – Babu Singh”.

Nothing tangible and material was elicited in his cross-examination that he ever got any information from the insurer or any other source that driver was not possessing a valid driving licence requiring the registered owner to seek necessary verification from the concerned licensing authority. In view of the facts deposed by Anil Kumar when examined in the light of judgment of Hon'ble the Supreme Court of India ***“United India Insurance Company Limited Vs. Lehru and others”***, 2003(2) R.C.R. (Civil) 278, contention raised by the insurance company to obtain recovery rights against the insured on the basis of report Ex.R3 is otherwise not tenable.

So far as the plea with regard to the vehicle being plied outside the permissible area as per route permit, this Court in ***“National Insurance Company Limited vs Rajender Giri and others”***, 2012(2)

RCR (Civil) 183 has held that if the offending vehicle 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, 1988 (in short 'the Act'). The same view was reiterated in *Smt. Villa's case (supra)*. Counsel for the appellant has failed to cite any contrary law. In view of the above, I find myself unable to accept the submissions of the insurance company that as the offending vehicle was being plied beyond the permissible area, it amounts to breach of the insurance policy attracting a valid defence under Section 149(2) of the Act either to escape liability or seek recovery rights.

No other point has been raised.

For the foregoing reasons, the appeals fail and are accordingly dismissed.

22.09.2016
yakub

(REKHA MITTAL)
JUDGE

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