205.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1052 of 2013 (O&M)
Date of decision:19.01.2016

Palwinder Singh and another ... Appellants

versus

Rooro Devi and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Harchand Singh Batth, Advocate, for the appellants.

Mr. R.C. Gupta, Advocate, for respondent No.7-Insurance Company.

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1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. *(Oral)*

1. The appeal is at the instance of owners and driver who are aggrieved about the right of recovery granted to the insurer for alleged violation of terms of permit. There was a plea taken at the time of trial that the driver did not have a valid driving licence, but the Tribunal rejected this contention but allowed for recovery only on the ground that there was a breach of terms of the permit.

2. The counsel for the appellants is aggrieved that there was a recovery made failing to note that the vehicle had a permit to

ply it for carrying passengers on hire but what was admitted at the time of trial was only that the bus had a strayed from the route permit and the accident had taken place at a site through which the vehicle could not normally be expected to ply and for which the permit did not authorize. I have no difficulty in accepting that a temporary straying away from the route permit cannot be a ground for exonerating the Insurance Company, but on a point which was held already in favour of the owner before the court below, there is still a contest by the insurer that the driver did not have an effective driving licence. He would point out to the fact that he had a mere licence for driving a medium vehicle but the licence did not carry an endorsement to drive a transport vehicle in the manner contemplated under Section 3 of the Motor Vehicles Act.

3. The counsel for the appellants would state that the Insurance Company itself has not preferred an appeal against the finding entered by the Tribunal that the driver had a valid driving licence. I would reject this argument, for, the Insurance Company had a favourable order in so far as the award protected the insurer with rights of recovery against the owner. In such a situation, the respondent in an appeal can also support the ultimate decision taken by the Tribunal and point out to any adverse finding rendered against it without preferring an appeal independently. There is no compulsion in law that there should be an appeal against an adverse

finding if the respondent can support the ultimate decision in its favour and point out to any adverse finding as one rendered incorrectly.

4. If the vehicle was admittedly used as a transport vehicle carrying passengers than the requirement of transport vehicle endorsement under Section 3 of the Motor Vehicles Act is unexceptional. The driver did not have the same. There was a breach of violation of terms of policy which is a permissible line of defence available for the insurer under Section 149 of the Motor Vehicles Act. Even while upholding the contention of the appellant that the Tribunal was not justified in finding that there was no permit for plying the vehicle and that it has strayed from the sanctioned route, I will hold the ultimate decision, for, recovery awarded in favour of the insurer is bound to be supported for a proven violation of terms of policy of the driver in not having a valid licence to drive transport vehicle. The appeal is dismissed.

(K.KANNAN)
JUDGE

19.01.2016
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