

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

FAO No.1495 of 2015 (O&M)

Date of Decision: 08.04.2016

Bajaj Allianz General Insurance Co. Ltd

.... Appellant

Vs.

Rupinder Kaur and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.Vishal Aggarwal, Advocate
for the appellant.

Mr. Amit Dhawan, Advocate
for respondents No.1 to 4.

Ms. Ravinder Kaur Manaise, Advocate
for respondent No.6.

Amol Rattan Singh, J.

This is an appeal filed by the insurance company that had insured bus bearing No.PB-06-E-2838, owned by respondent No.6 herein.

The appeal impugns the Award of the learned Motor Accident Claims Tribunal, Gurdaspur, dated 01.11.2014, by which a sum of Rs.6,80,000/- has been awarded as compensation to respondents No.1 to 4 herein, who were the claimants before the Tribunal, in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988.

2. The facts leading upto the filing of the claim petition, as taken from the impugned Award, are that Jaswant Singh, i.e. the late husband of respondent No.1, son of respondent No.2 and father of respondents No.3 and 4, was going on his motorcycle from Batala, to his village, Shahpur Goraya,

alongwith one Bashir Masih as his pillion rider, on 01.06.2013.

His brother Jagmit Singh and one Gurbachan, are stated to have been following them on another motorcyle. At about 1:00 PM, when the deceased reached near King Palace, Kalanaur, the "offending vehicle", i.e. bus bearing registration No.PB-06-E-2838, is stated to have come from the side opposite side, driven by respondent No.5 herein (respondent No.1 before the Tribunal), allegedly in a rash and negligent manner, which came on the wrong side of the road and struck against the motorcyle of the deceased, resulting in serious injuries. Both, Jaswant Singh and Bashir Masih, were taken to Civil Hospital, Kalanaur, where Jaswant Singh was declared dead and Bashir Masih was referred to the Civil Hospital at Gurdaspur.

On the statement of Jagmit Singh, an FIR was also registered against respondent No.5.

In the claim petition, it was claimed that Jaswant Singh was 41 years of age and was earning Rs.15,000/- per month by running a dairy farm and by doing agricultural work. A compensation of Rs.15,00,000/- was claimed.

3. The driver and owner of the "offending vehicle" (present respondents No.5 and 6), filed a joint written statement denying the accident completely but further stating that the accident actually took place due to the negligence of the deceased himself, who struck against the bus, by coming to the wrong side on his motorcycle.

4. The appellant insurance company (respondent No.3 before the

Tribunal), file a separate written statement alleging that respondent No.5, i.e. the driver of the bus, was not holding a valid driving licence and as such, there was a breach of the terms and conditions of the insurance policy. Therefore, it was contended that the insurance company is not liable to pay any compensation.

5. The issues on negligence in driving and entitlement of compensation and validity of the driving licence having been framed, the learned Tribunal went on to appraise the evidence led before it.

6. As regards the question of negligence, the learned Tribunal relied upon the statement of PW2 Jagmit Singh, an eye witness of the accident and the complainant in the FIR (Ex.PB) registered against respondent No.5 herein. The testimony of the aforesaid witness was in terms of the manner of the accident given in the claim petition, against which, though respondent No.5 stood in evidence, his testimony was held to be not believable.

In his testimony, the said respondent (RW2 before the Tribunal), first stated that he was not driving the bus at the time of the accident and in any case it had taken place on account of the negligent driving of the deceased.

With no further evidence to rebut the aforesaid statement of the driver of the "offending vehicle", the Tribunal, in the light of the testimony of PW2, as also the fact that respondent No.5 herein was facing a criminal trial, decided the issue of negligence in favour of the claimants and against the respondents.

7. As regards the compensation to be awarded, with no documentary evidence led by the claimants to the effect that the deceased was earning Rs.15,000/- per month, from running a dairy farm and doing agricultural work, with not even any revenue record having been produced to show that he owned any agricultural land, the learned Tribunal assessed his income at Rs.5000/- per month or Rs.60,000/- per annum.

To the aforesaid sum, a deduction of 1/4th was applied by the Tribunal, as per the ratio of the judgment of the hon'ble Supreme Court in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another**, (2009) 6 SCC 121, the deceased having left behind four dependents, i.e. the claimants. Hence, the annual loss of dependent income to the claimants was taken to be Rs.45,000/-. A multiplier of 14 was applied, again in terms of *Sarla Verma's* case (supra), thereby bringing the total loss of income to the claimants to be Rs.6,30,000/-.

A total sum of Rs.50,000/- was awarded "towards funeral expenses and loss of love and affection etc." (as recorded by the Tribunal).

Hence, the total compensation awarded to the claimants (respondents No.1 to 4 herein) was Rs.6,80,000/-. They were also held entitled to interest @ 6% per annum on the aforesaid amount, running from the date of filing of the claim petition till realization of the amount.

8. Before the Tribunal, it had been argued on behalf of the appellant insurance company, that it was not liable to pay compensation, not just because of the non-validity of the driving licence of respondent No.5, but also on account of the fact that the vehicle, i.e. bus bearing

registration No.PB-06E-2838, was plying as a school bus, without a route permit. Hence, it was contended that there was a violation of the terms and conditions of the insurance policy.

The learned Tribunal considered that argument but in the light of a judgment of a co-ordinate Bench of this Court, in **M/s Yadwindra Public School, SAS Nagar, Mohali v. Seema and others**, 2010 (2) RCR (Civil) 50, held that no route permit was required to ply a school bus transporting children on a particular route. Thus, the contention of the appellant insurance company in that regard was rejected and it was held liable to pay the compensation amount aforesaid.

9. When this matter came up for hearing on an earlier date, on 30.03.2016, learned counsel for respondent No.6, i.e. the owner of the bus, had been directed by this Court to show as to why a route permit would not be required, in terms of Section 2(47) of the Motor Vehicles Act, 1988, which defines a transport vehicle to include an educational institution bus. She, however, has not been able to show that a route permit is not required for plying a bus belonging to an educational institution. Nor has she been able to show that the owner of the bus in question, i.e. respondent No.6, actually had a valid route permit to ply the bus for the purpose that it was being plied at the time that the accident took place, on 01.06.2013.

10. Learned counsel for the appellant, therefore, relies upon sub-clause (c) clause (i) of Clause (a) of sub-section 2 of Section 149 of the Motor Vehicles Act, 1988, to submit that the insurer cannot be held liable to pay compensation even to a third party in an accident, if the vehicle

insured was being used for a purpose other than for which a permit had been granted to the owner, to ply that vehicle.

11. Having heard learned counsel for the parties, in view of the fact that actually there is no permit that respondent No.6 either produced before the Tribunal, or even before this Court, to show that the bus in question could be used for the purpose that it was being used for, there is an obvious breach of policy in terms of the aforesaid provision of the Act of 1988, by respondents No.5 and 6 herein, i.e. the owner and driver, specifically the owner of the “offending vehicle”. Hence, I find that the argument of learned counsel for the appellant in that respect is correct and is to be accepted, despite the judgment of a coordinate Bench, in **Yadwindra Schools'** case (supra), to the contrary.

In **National Insurance Co. Ltd. Vs. Chella Bharathamma**, 2004 (4) RCR (Civil) 399, the hon'ble Supreme Court, after considering the aforesaid provision held as follows:-

“8. High Court was of the view that since there was no permit, the question of violation of any condition there of does not arise. The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed at a better pedestal vis-a-vis one who has a permit, but has violated any condition thereof. Plying of a vehicle without a permit is an infraction. Therefore, in terms of Section 149(2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of insurer. High Court was, therefore, not justified in holding the insurer liable.”

This judgment of the Supreme Court, was obviously not brought to the knowledge of the Bench deciding the *Yadwindra School* case, supra, as it is not referred to in the judgment.

This Court is obviously bound by the judgment of the Supreme Court, seen with the fact that a bus of an educational institution is included in the definition of a “transport vehicle”, as per Section 2(47) of the Act of 1988.

Section 66 of that Act further stipulates that:-

(1) No owner of a motor vehicle shall 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 or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used:

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage:

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods carriage either when carrying passengers or not:

Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2) The holder of a goods carriage permit may use the vehicle, for the drawing of any trailer or semi-trailer not owned by him, subject to such conditions as may be prescribed:

[Provided that the holder of a permit of any articulated vehicle may use the prime-mover of that articulated vehicle for any other semi-trailor.]

(3) The Provisions of sub-section (1) shall not apply-
(a) to any transport vehicle owned by the

Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise;

(b) to any transport vehicle owned by a local authority or by a person acting under contract with a local authority and used solely for road cleansing, road watering or conservancy purposes;

(c) to any transport vehicle used solely for police, fire brigade or ambulance purposes;

(d) to any transport vehicle used solely for the conveyance of corpses and the mourners accompanying the corpses;

(e) to any transport vehicle used for towing a disabled vehicle or for removing goods from a disabled vehicle to a place of safety;

(f) to any transport vehicle used for any other public purpose as may be prescribed by the State Government in this behalf;

(g) to any transport vehicle used by a person who manufactures or deals in motor vehicles or builds bodies for attachment to chassis, solely for such purposes and in accordance with such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf;

2 [***]

(i) to any goods vehicle, the gross vehicle weight of which does not exceed 3,000 kilograms;

(j) subject to such conditions as the Central Government may, by notification in the Official Gazette, specify, to any transport vehicle purchased in one State and proceeding to a place, situated in that State or in any other State, without carrying any passenger or goods;

(k) to any transport vehicle which has been temporarily registered under section 43 while proceeding empty to any place for the purpose of registration of the vehicle;

3 [***]

(m) to any transport vehicle which, owing to flood, earthquake or any other natural calamity, obstruction on road, or unforeseen circumstances, is required to be diverted through any other route, whether within or outside the State, with a view to enabling it to reach its destination;

(n) to any transport vehicle used for such purposes as the Central or State Government may, by order, specify;

(o) to any transport vehicle which is subject to a hire-purchase, lease or hypothecation agreement and which owing to the default of the owner has been taken possession of by or on behalf of the person with whom the owner has entered into such agreement, to enable such motor vehicle to reach its destination; or

(p) to any transport vehicle while proceeding empty to any place for purpose of repair.

(4) Subject to the provisions of sub-section (3), sub-section (1) shall, if the State Government by rule made under section 96 so prescribes, apply to any motor vehicle adapted to carry more than nine persons excluding the driver.

Thus, no transport vehicle, which includes a bus of an educational institution as per Section 2 (47), can be allowed to ply without a permit.

No notification of the Punjab Government, exempting educational institutions from plying their buses without a valid permit, in terms of Section 66 (3) of the Act of 1988, has been brought to the notice of this Court, despite a query in that regard made to counsel for the school (respondent No.6).

12. Hence, the liability of the insurer in this case, i.e. the present

appellant, in the aforesaid circumstances, would not arise.

As regards the issue of negligence having been erroneously decided by the Tribunal, though that is also an issue raised in the grounds of appeal, it was not, however, seriously pressed by counsel for the appellant.

In any case, the learned Tribunal found that actually the accident was admitted but the stand of the respondents, i.e. the driver, owner and insurance company, was that it took place due to the rash and negligent driving of the deceased himself, who struck his motorcycle against the bus by coming onto the wrong side of the road. However, even respondent No.5, i.e. the driver of bus bearing registration No.PB-06-E-2838, first stated while testifying that he was not driving the bus at all and thereafter stated that the accident was due to the rash and negligent driving of the deceased. Other than the above, it was found that there was no rebuttal to the evidence of the eye witness, PW2, i.e. Jagmit Singh, or to the fact that an FIR against respondent No.5 had actually been registered.

It was further found by the Tribunal that though the eye witness, i.e. PW2, had been subjected to cross-examination, he had successfully withstood it

Thus, respondent No.5 herein was held guilty of negligence, leading to the accident in question.

Nothing to dislodge the above finding, has been shown to this Court. Further, in my opinion, the stand of respondent No.5, i.e. the driver of the bus, first to the effect that he was not driving the bus and thereafter stating that it was the deceased himself who came on the wrong side of the

side and struck his motorcycle against the bus, was obviously a wholly contradictory stand because if he was not driving the bus at all, he, naturally, could not have known that the deceased himself was guilty of negligence. Therefore, the negligence of respondent No.5 becomes only too obvious by his contradictory stand taken, in a clumsy attempt to try and cover his own negligence.

Therefore, I find no reason to upset the finding by the Tribunal, on the issue of negligence.

13. Consequently, in view of the discussion hereinabove, this appeal is allowed to the extent that the appellant-insurance company (respondent No.3 before the learned Tribunal), would be entitled to recover the compensation paid by it to respondents No.1 to 4 (claimants before the Tribunal), from respondents No.5 and 6, i.e. the driver and owner of the bus bearing Regd. No.PB-06-E-2838.

No order as to costs.

April 08, 2016
vcgarg

(AMOL RATTAN SINGH)
JUDGE