

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

**FAO No.4744 of 2013
Date of decision : 28.03.2016**

ICICI Lombard General Motor Insurance Company Ltd.

.....Appellant

Versus

Vijaya Chhabra and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

- 1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes*
- 2. To be referred to the Reporters or not ? Yes*
- 3. Whether the judgment should be reported in the Digest? Yes*

Present: Mr. Sanjeev Goyal, Advocate for appellant.

Mr. Satish Goyal, Advocate for respondent No.4.

DARSHAN SINGH, J.

CM-19998-CII-2013

There is delay of 07 days in filing the present appeal. The appellant has filed an application under Section 5 of the Limitation Act for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 07 days in filing the present appeal is hereby condoned.

FAO No.4744 of 2013

The present appeal has been preferred by appellant - ICICI Lombard General Motor Insurance Company Limited (respondent No.2 in the claim petition) against the award dated 07.05.2013 passed by the learned Motor Accidents Claims Tribunal, Chandigarh (hereinafter called the 'Tribunal'), vide which respondents No.1 to 3 (claimants in the claim petition) have been awarded compensation to the tune of Rs.33,91,424/- on account of death of Narinder Chhabra in the motor vehicular accident which took place on 07.12.2009.

2. The appellant-Insurance Company has filed the present appeal against the award declining it the recovery rights.

3. Learned counsel for the appellant-Insurance Company contended that the truck in question was being plied by respondent No.4 in violation of the terms and conditions of the permit. He contended that the permit was valid only for the State of Haryana, whereas the accident has taken place near Daria, U.T. Chandigarh. Thus, he contended that as the truck was being plied in the area of U.T. Chandigarh, without any valid permit which is in violation of the terms and conditions of the insurance policy, so the appellant-Insurance Company was not liable for payment of the amount of compensation or at least the appellant-Insurance Company is entitled to recover the awarded amount from the insured. To support his contentions he has relied upon case ***National Insurance Company Vs. Challa Bharathamma and others 2004 ACJ 2094.***

4. On the other hand, learned counsel for respondent No.4 contended that it is an admitted fact that the truck in question had the valid permit on the date of accident for the State of Haryana. The vehicle has only exceeded the jurisdiction/route of the permit which is not a violation of the terms and conditions of the insurance policy and it cannot be put forward a defence by the appellant-Insurance Company. To support his contentions he relied upon case **Anju Bala and others Vs. Mohammad Ahmed and others 2015(5) Law Herald (P&H) 4294.**

5. I have duly considered the aforesaid contentions.

6. This fact is not disputed that the truck in question has got the valid permit at the time of the accident for the State of Haryana only. It is also not disputed that the present accident has taken place near Dariya, U.T. Chandigarh. So, certainly the vehicle had strayed from the route to which the permit was granted. The question for consideration is as to whether if the vehicle strays route mentioned in the permit, whether it will amount to violation of terms and conditions of the insurance policy and will be available as a defence to the Insurance Company. This Court in case **Hans Raj Chaudhary Vs. Smt. Nanhi Devi and others 2013(7) RCR (Civil) 2574** has laid down as under:-

“The counsel appearing on behalf of the insurance company still insist that Sections 66 and 69 of the Motor Vehicles Act set out the various terms of permit and one of the terms is that be that the vehicle could traverse only within the area allowed in the permit. The language used in Section 149 that sets out the permissible defences employs the expression of user of a vehicle "for a purpose not allowed by the permit". The purpose of the permit is not the

same thing as condition in the permit. The legislature has employed a language restricting it only to violation of purpose of permit. The MV Act, being a beneficial legislation, the issue of liability should be interpreted to the benefit of claimant and to the extent to which the owner obtains indemnity, it makes possible the prospect of recovery so much easier.”

7. Similarly in case ***Future General Insurance Co. Ltd. Vs. Smt. Surjo Devi and others 2013(2) RCR (Civil) 564*** this Court has laid down that a violation of any other term than the purpose for which the permit was to operate will not be a defence which will be available in the scheme of the Motor Vehicles Act.

8. In case ***National Insurance Company Ltd. Vs. Rajinder Giri and others 2012(2) RCR (Civil) 183*** the vehicle had a valid route permit for being plied in State of Rajasthan. The accident took place when the vehicle was being operated in the State of Haryana. This Court laid down as under:-

“It would be said that the vehicle had a valid route permit for being plied in the State of Rajasthan but not in Haryana State. The Transport Authority of Rajasthan State had found the vehicle fit for being plied as goods carriage. Therefore, it cannot be said that the vehicle was being plied without a route permit. The violation of bringing the vehicle to the area of State of Haryana without a valid route permit for plying the same in the said State would not amount to violation of the conditions of the insurance policy and would not give the insurer a defence under Section 149(2) of the Act. The case before me is not a case where there is no route permit at all. Therefore, the ratio of the decision in National Insurance Co. Ltd.'s case (supra) would not stand attracted to the facts of this case.”

9. The same ratio of law has been laid down by this Court in

Anju Bala and others Vs. Mohammad Ahmed and others (supra).

10. In view of the consistent ratio of law laid down in the cases referred above, mere this fact that the truck in question was being operated in U.T. Chandigarh, though it has route permit only for the State of Haryana will not constitute the violation of the condition of the permit as the insurance Company has not been able to establish that the vehicle in question was being used for a purpose not allowed by the permit.

11. ***National Insurance Company Vs. Challa Bharathamma and others*** (supra) relied upon by learned counsel for the appellant-Insurance Company is quite distinguishable on facts as in that case the insured has not obtained any permit to ply the vehicle. In this case the insured had a valid permit to ply the vehicle though only for the State of Haryana.

12. Thus, it is not established that the insured has violated the terms and conditions of the insurance policy. Consequently, the appellant-Insurance Company cannot escape the liability. The learned Tribunal has rightly held the appellant-Insurance Company jointly and severally liable for payment of the amount of compensation.

13. Thus, keeping in view my aforesaid discussion the appeal has no merits and the same is hereby dismissed.

28.03.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**