

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

**FAO No.1702 of 2016 (O&M)
Date of decision : 10.08.2016**

Amrit Paul Singh and another

.....Appellants

Versus

Tata AIG General Insurance Company Company Ltd. and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Rohiteshwar Singh, Advocate for applicants-appellants.

DARSHAN SINGH, J.

CM-10196-CII-2016

This is the application for placing on record document i.e. receipt dated 19.02.2013 (Annexure A-1).

Heard.

In view of the reasons mentioned in the application, same is allowed and document Annexure A-1 is taken on record.

FAO No.1702 of 2016

The present appeal has been preferred by the driver and owner of the vehicle against the award dated 20.11.2014 passed by the learned Motor Accidents Claims Tribunal, Pathankot vide which respondents No.2 to 6-claimants have been awarded compensation to the tune of Rs.15,63,120/- on account of death of Jagir Singh in the motor vehicular accident which took place on 19.02.2013.

2. The present appeal has been preferred by the driver and

owner of the vehicle against the recovery rights given by the learned Tribunal to respondent No.1- Insurance Company against the appellant No.2, the owner of truck bearing registration No. PB-06-6894.

3. Learned counsel for the appellant contended that it was a new vehicle. The appellant has already deposited the necessary fees along with application on 19.02.2013 for issuance of the route permit and the route permit was even issued on 27.02.2013. The accident has also taken place on 19.02.2013 in the evening, whereas the owner of the vehicle has already submitted the documents in the Transport Office for grant of permit along with the requisite fees. So, it cannot be stated that the vehicle in question was being plied without permit. To support his contentions, he relied upon case ***Ashok Kumar Khemaka Vs. Oriental Insurance Company Ltd. And others 2014(3) RCR (Civil) 1018***. He further contended that as the truck was being plied in the State of Punjab, so there was no need of any route permit. To support his contentions he relied upon case ***National Insurance Company Limited Vs. Kamlesh Kaur and others 2006(3) RCR (Civil) 634*** and ***Moti Ram Vs. ICICI Lombard and others 2015 ACJ 1793***. Thus, he contended that the learned Tribunal has wrongly awarded the recovery rights.

4. I have duly considered the aforesaid contentions.

5. But I do not find any substance in the contentions raised by learned counsel for the appellant. As per the admitted facts, the vehicle in question was purchased in September 2012. It was insured on 20.12.2012. The registration certificate was issued on 26.02.2013 and the permit was

issued on 27.02.2013. This accident has taken place on 19.02.2013. So, we have to see as to whether the vehicle in question was having a permit on 19.02.2013 or not. Section 66 Sub Section (1) of the Motor Vehicles Act, 1988 (hereinafter called the “Act”) reads as under:-

“66. Necessity for permits. – (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 good 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.”

6. As per the aforesaid provision of law the transport vehicle can only be used in accordance with the conditions of the permit granted. Thus, the permit is necessary to ply the transport vehicle on the road. The Hon'ble Apex Court in case ***National Insurance Company Ltd. Vs. Chella Bharathamma 2004(4) RCR (Civil) 399*** has laid down as under:-

“High Court was of the view that since there was no permit, the question of violation of any condition thereof 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.”

7. In view of the aforesaid statutory provision as well as authoritative pronouncement of the Hon'ble Apex Court, the permit is necessary to ply the transport vehicle. The absence of the permit is a valid defence to the insurer under Section 149 Sub Section (2) of the Act.

8. In the instant case, the accident has taken place on 19.02.2013. Learned counsel for the appellant has alleged that on that very day before the accident the appellant has already applied for issuance of the permit. To buttress his arguments, he drawn my attention to receipt Annexure-A1 but the said receipt leads us no where to conclude that vide that receipt the application was submitted for issuance of the permit. This receipt has been issued by the Punjab Motor Vehicles Department. It bears the chassis number of the vehicle and name of the owner. In the body of the receipt it has been shown as under:

Sr. No.	Description	Amount	Fine	Total
1.	SCAN FEE RC (Scan Fee)	20	0	20
SOCIETY FEES FORM-RECEIPT				
Total Amount : Rs. Twenty Only				20

9. This receipt nowhere depicts that the said receipt relates to

the submission of the application for issuance of the permit. So, the appellant has not been able to establish that he has submitted the application for issuance of the permit before this accident. Moreover, mere filing of the application will not comply with the provisions of Section 66 of the Act. Section 66 provides that no transport vehicle can be used without permit. Thus, mere submission of the application for issuance of the permit cannot make the owner of a transport vehicle entitled to ply the vehicle. It is the admitted case of the appellant that the permit was issued on 27.02.2013 i.e. after eight days of the accident. So, it is established that on the date of accident i.e. 19.02.2013, there was no permit to ply the vehicle in question, which was clearly a violation of the terms and conditions of the insurance policy and no fault can be found in the findings of the learned Tribunal giving the recovery rights to respondent No.1 Insurance Company against the insured.

10. The cases relied upon by learned counsel for the appellant are quite distinguishable on facts. In cases ***National Insurance Company Ltd. Vs. Kamlesh Kaur and others*** (supra), the Insurance Company has not been able to establish that there was no permit for plying the vehicle and it was held that no route permit is required to operate the vehicle within the State. Similarly in case ***Moti Ram Vs. ICICI Lombard and others*** (supra) this court has held that there is no requirement to possess a route permit. Section 2(31) of the Act provides only for permit and Section 149 of the Act is silent about the route permit. In case ***Ashok Kumar Khemka and another Vs. Oriental Insurance Company*** (supra) also this Court has simply laid

down that there is no requirement of law to possess a route permit. Section 2(31) of the Act talks about the permit only and Section 149 of the Act is silent about the route permit. There is no discussion in the entire judgment that the payment of the taxes by the owner will do away with the requirement of the permit as required under Section 66 of the Act. Para No.2 of the aforesaid judgment quoted by learned counsel for the appellant wherein these facts are mentioned, are only the contentions raised by learned counsel for the appellant and not the findings of the Court.

11. Thus, in view of my aforesaid discussion, as the vehicle in question was being used on the date of accident without any permit as required under Section 66 of the Act, which is a valid defence to the Insurance Company, so, the learned Tribunal has not committed any illegality in granting the recovery rights to respondent No.1 Insurance Company against the insured.

12. Consequently, the present appeal is without any merits and the same is hereby dismissed.

10.08.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No