

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

FAO No.5408 of 2013 (O&M)

Date of decision : 09.09.2016

The Hoshiarpur Doaba Transport Company Ltd.

.....Appellant

Versus

The New India Assurance Company Ltd., Hoshiarpur and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Gurcharan Dass, Advocate for appellant.

Mr. Paul S. Saini, Advocate for
respondent No.1-Insurance Company.

Mr. Arun Takhi, Advocate for respondent No.3.

Mr. Swatantar Kapoor, Advocate for respondent No.6.

DARSHAN SINGH, J.

The present appeal has been preferred by the appellant-owner of bus bearing registration No.PB-07M-2495 against the award dated 14.05.2013 passed by the learned Motor Accidents Claims Tribunal, Hoshiarpur (hereinafter called the "Tribunal"), whereby respondent No.2 Surinder Mohan has been awarded compensation to the tune of Rs.90,000/- on account of the injuries suffered by him in this motor vehicle accident which took place on 03.11.2008.

2. The learned Tribunal has passed the award against the appellant, respondent No.1 the New India Assurance Company Limited and respondent No.3 Paramvir Singh the driver of the bus. Whereas,

respondents No.4 to 6 were exonerated from the liability altogether. Respondent No.1 the New India Assurance Company was granted the recovery rights against the appellant. The present appeal has been preferred by the appellant-owner of the bus bearing registration No.PB-07M-2495 to assail the said recovery rights.

3. Along with the appeal, the appellant has also moved an application under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure, 1908 bearing CM No.2295-CII of 2013 to lead the additional evidence in order to produce the report regarding fitness certificate and copy of the route permit. During the course of arguments, learned counsel for the respondent No.1 has produced the verification report with respect to the route permit for the relevant period. So, learned counsel for the appellant has not pressed his application for production of the copy of the route permit in additional evidence. He has only pressed the application for production of the report regarding fitness certificate.

4. No reply to this application has been filed by the respondents.

5. Heard on the application.

6. Learned counsel for the appellant contended that the report regarding fitness of the vehicle is essential for the just decision of the case. The fitness certificate was very much supplied by the appellant to their counsel, who had appeared before the Tribunal but he did not produce the same. Thus, he pleaded that the the report regarding fitness of the vehicle may be allowed to be produced in additional evidence.

7. On the other hand, learned counsel for respondent No.1 Insurance Company contended that the fitness certificate should have been produced by the appellant before the Tribunal. Now they cannot be allowed to fill up the lacuna.

8. I have duly considered the aforesaid contentions.

9. This fact is not disputed that the fitness certificate with respect to the vehicle is essential to arrive at the just conclusion with respect to the liability to pay the awarded amount. In the application for additional evidence moved by the appellant, it has been explained that they have handed over all the documents including the fitness certificate to their counsel in the Tribunal but he has not produced in evidence those documents. Moreover, the report regarding fitness of the vehicle is based on the official record which cannot be manipulated later on. So, the present application bearing CM No.22935-CII of 2013 is hereby allowed. The application moved to the Motor Vehicle Inspector Hoshiarpur and the report of the Motor Vehicle Inspector with respect of fitness of bus bearing registration No.PB-07M-2495 is taken on record in the additional evidence of the appellant. This report shall be read as Ex.CX.

10. While addressing the argument on merits of the main appeal, learned counsel for the appellant further contended that the recovery rights were granted to respondent No.1-Insurance Company simply on the ground that the vehicle in question was not having the fitness certificate and the route permit. But now the position has become clear as the vehicle in question was having the valid permit and fitness certificate on the date of

the accident, so the Insurance Company is not entitled for any recovery rights.

11. In the face of the documents brought on record *i.e.* verification report of the permit by the respondent No.1-Insurance Company itself and fitness report Ex.CX, learned counsel for respondent No.1 Insurance Company could not repel the contentions raised by learned counsel for the appellant.

12. The impugned award shows that the recovery rights have been granted to respondent No.1-Insurance Company only on the ground that the vehicle in question was not proved to be having the valid fitness certificate and the permit. Learned counsel for respondent No.1 has placed on record the verification report of Shri Nishant Gupta investigator/surveyor of respondent-Insurance Company, which shows that the bus in question was having the valid permit with effect from 28.08.2003 and this vehicle was deleted from the fleet of appellant on 16.12.2013. It shows that on the date of accident *i.e.* 03.11.2008 the bus in question was on the fleet of the appellant and was having the valid permit.

13. The report of the motor vehicle Inspector dated 2.8.2013 shows that the vehicle was passed with effect from 23.11.2007 to 22.11.2008. So, the vehicle in question was fit to be applied on the road on the date of accident. In these circumstances, no violation of the terms and conditions of the insurance policy by the insured is established.

14. Consequently, respondent No.1-Insurance Company is not entitled for any recovery rights against the appellant-insured.

15. Thus, keeping in view my aforesaid discussion, the present appeal is hereby allowed. The respondent-Insurance Company is liable to indemnify the insured and will not have any recovery rights to recover the awarded amount from the appellant.

09.09.2016
sunil yadav

(DARSHAN SINGH)
JUDGE

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