IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5411 of 2013 (O&M)
Decided on: 19.12.2016

Bajaj Allianz General Insurance Company Limited

....Appellant

Versus

Bimla and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Rajneesh Malhotra, Advocate
for the appellant.

None for respondents No.1 to 6.

Mr. Sandeep Verma, Advocate
for respondent No.7.

REKHA MITTAL, J.

The present appeal directs challenge against the award dated 02.08.2013 passed by the Motor Accidents Claims Tribunal, Panipat (in short 'the Tribunal') whereby compensation has been awarded in favour of Bimla and others in regard to death of Ram Phal in a motor vehicular accident that took place on 12.10.2010 near village Muklan in the area of Police Post Azad Nagar, Hisar.

Counsel for the appellant – insurance company has assailed the award primarily on two grounds. The first submission made is that in the DDR lodged with regard to the occurrence, no negligence has been attributed to driver of the alleged offending vehicle, therefore, statement of Sewa Singh PW3, alleged eye-witness to the occurrence becomes doubtful and unworthy of reliance.

The second submission made by counsel is that the vehicle in question is a light commercial vehicle having seating capacity of 7 +

1, thus, the same required a permit under Section 66 of the Motor Vehicles Act, 1988 (in short 'the Act'). As the insured did not possess a permit to bring the vehicle on road, it amounts to breach of terms and conditions of contract of insurance constituting a valid defence under Section 149 (2) (a) of the Act. To bring home his contention, he has invited attention of the Court towards the insurance policy wherein the vehicle has been described as commercial vehicle – Class C (ii).

Counsel for respondent No.7 has supported findings of the Tribunal that the insured has not committed breach of any of the terms and conditions of the contract of insurance with the submissions that as the vehicle was registered as a passenger carrying vehicle and in view of testimony of Rakesh Kumar, Clerk, Office of RTA, Amabla – RW3, the same did not require a permit under Section 66 of the Act, the insurance company can neither escape its liability to pay compensation to the claimants nor can assert recovery rights against the insured or driver.

There is no representation on behalf of respondent No.8 who was earlier being represented by an Advocate.

I have heard counsel for the parties, perused the paperbook and the records.

The DDR was lodged at the instance of driver of the alleged offending vehicle, therefore, there was no possibility of his saying something against him much less attributing negligence to himself in causing the accident. The DDR is not a substantive piece of evidence and the same at best is a statement made by its author, that can be used for the purpose of corroboration or contradiction. The claimants examined Sewa Singh PW3 and his testimony establishes case of the claimants that the accident took place due to rash and negligent driving of Naresh, driver of the offending vehicle in which Ram Phal along with several others were travelling for visit to a religious place in Rajasthan. Counsel for the appellant has failed to point out any materials elicited in the cross-examination of Sewa Singh, sufficient to prove that testimony of Sewa Singh is not worthy of credence and reliance or he was not present at the spot at the time of occurrence. In view of un-rebutted and unchallenged testimony of Sewa Singh, it is difficult to accept plea of the insurance company that the claimants have failed to discharge onus of issue No.1 or the findings recorded by the Tribunal attributing rashness and negligence to Naresh – respondent No.1 are the result of either misreading of evidence or ignoring any material evidence on record. In this view of the matter, contention of the appellant to assail findings of the Tribunal on issue No.1 is not meritorious and deserves to be rejected.

This brings the Court to plea of violation of Section 149(2) of the Act for want of a permit. Rakesh Kumar, Clerk from the office of RTA, Ambala was examined by the insurance company. A relevant extract from his testimony reads as follows:-

> *"I have brought registration certificate register, in which vehicle bearing registration HR-04N-1379 was registered on 20.03.2008 in the name of Vikas Mittal son of Rajinder Parkash, resident of VPO Kakkar Majra, Tehsil Narayangarh, District Ambala and the class of the vehilce is LMV TATA Magic, passenger vehicle an sitting capacity including driver is 7+1 as per record brought by me. Permit of a vehicle is required if the vehicle is*

registered for transport category. Satnam Singh Clerk is looking after the seat of issuance of permit. I am posted as Registration Clerk. I do not know whether I or Satnam Singh tried to trace out the record of permit of the aforesaid vehicle in our office, however in the summons issued in the name of our office the record of permit has been summoned. Volunteered the vehicle which is registered on payment of one time tax does not require any permit. Under Section 66 of Motor Vehicles Act the permit is required for a transport vehicle only to ply on the road. As per our record the aforesaid vehicle is registered under the category of non-transport vehicle/personal vehicle. If a vehicle is registered under the aforesaid category for personal use then permit is not required to ply the same on the road."

The learned Tribunal has relied upon testimony of Rakesh Kumar to record a finding that no permit was required for the vehicle in question, therefore, absence of permit does not constitute a defence under Section 149(2) of the Act to entitle the insurance company to have an escape from its liability or seek recovery rights against the insured.

Counsel for the insurance company has submitted that the Court is not to be guided by the statement of a Clerk from the office of transport authority concerned. The matter would have been different had such a statement been made by a responsible officer of the transport authority. In addition, it is submitted that in the registration certificate, Class of the vehicle is described as LCV meaning Light Commercial Vehicle.

After amendment in the Act in the year 1994, light goods vehicle and light passenger vehicle come within the purview of transport vehicle for the purpose of issuance of a driving licence. Perusal of the testimony of Rakesh Kumar RW3 leaves no manner of doubt that the vehicle in question was registered as a passenger vehicle on payment of one time tax. He further deposed that as the vehicle was registered under the category of non-transport/personal vehicle and not a transport vehicle, the same did not require any permit under Section 66 of the Act.

Firstly, the witness was examined at the behest of the insurance company. If the witness has deposed either against record or against legal position, the insurance company could make a request for declaring him hostile with a request to ask him questions in the form of cross-examination. Once the insurance company did not opt to cross-examine the witness with regard to the facts deposed by him, it is difficult to accept that the trial Court has committed an error by relying upon his testimony. No doubt, in the registration certificate, class of vehicle is stated to be Light Commercial Vehicle but there is nothing on record suggestive of the fact that the vehicle was registered as a transport vehicle requiring a permit to be obtained. This apart, a light commercial vehicle either for carrying passengers or goods can be plied by the owner for his personal use only and not as a commercial vehicle. There is nothing on record suggestive of the fact that the vehicle in question was being used by the insured for commercial/transport purposes. Under the circumstances, I find myself unable to accept submissions of the insurance company that the insured is guilty of violating the terms and conditions of the contract of insurance for want of a permit.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed.

19.12.2016 **(REKHA MITTAL)**
yakub **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable: Yes/No