IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.3114 of 2016 (O&M)

Date of decision : 26.05.2016

Oriental Insurance Co. Ltd.

......Appellant

Versus

Malkeet Kaur 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. Harsh Aggarwal, Advocate for appellant.

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DARSHAN SINGH, J.

The present appeal has been preferred the Oriental Insurance Company Ltd., respondent No.3 in the claim petition, against the award dated 10.02.2016, passed by the learned Motor Accidents Claims Tribunal Kurukshetra, vide which, claimants-respondents No.1 to 4 have been awarded compensation to the tune of Rs.20,12,175/- on account of death of Shish Pal in the motor vehicular accident, which took place on 21.05.2015.

2. Learned counsel for the appellant contended that the learned Tribunal has wrongly awarded the future prospects towards the income of the deceased. He contended that learned Tribunal has treated the deceased to be semi skilled worker but there was no evidence that he was holding any

permanent job, so no future prospects were required to be added to the income of the deceased. The learned Tribunal has wrongly added 30% of the income of the deceased towards future prospects. He further contended that respondent No.2 the insured has violated the terms and conditions of the insurance policy. The route permit of the vehicle was only valid for the State of Himachal Pradesh whereas the accident has taken place in the State of Haryana. Thus, he contended that the liability has been wrongly fastened on the appellant-Insurance Company.

3. I have duly considered the aforesaid contentions.

4. I find no substances in the contentions raised by learned counsel for the appellant. The vehicle in question had the valid route permit for the State of Himachal Pradesh but the accident has taken place in the State of Haryana. It means that the vehicle has strayed the route of the permit, which will not be a valid defence available 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."

5. 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.

6. 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."*

7. 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 the State of Haryana, though it has route permit only for the State of

Himachal Pradesh 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.

8. 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. Thus, I do not find any illegality in fastening the liability upon the appellant-Insurance Company.

9. I also do not find any illegality in awarding the future prospects to the income of the deceased by the learned Tribunal. As per the case of the claimant the deceased was working as a security guard as well as an agriculturist and he has been treated to be semi skilled worker by the learned Tribunal while determining his income. In a latter judgment rendered by three-Judges Bench of the Hon'ble Apex Court in case ***Munna Lal Jain and another Vs. Vipin Kumar Sharma and others 2015(3) PLR 304***, the future prospects were allowed in case of the self-employed person following the observations in ***Rajesh and others Vs. Rajbir Singh and others (2013) 9 SCC 54***, wherein it was laid down as under :-

> "11. As far as future prospects are concerned, in ***Rajesh and others Vs. Rajbir Singh and others (2013) 9 SCC 54***, a three-Judge Bench of this Court held that in case of self-employed persons also, if the deceased victim is below 40 years, there must be addition of 50% to the actual income of the deceased while computing future prospects. To quote:
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>> "8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words,

> in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."
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> The deceased being of the age of 30 years, 50% is the required addition."

10. The deceased in this case was 47 years of age at the time of his death. So, the learned Tribunal has rightly added 30% of the income of the deceased towards the future prospects.

11. Thus, in view of my aforesaid discussion, the present appeal is without any merits and the same is hereby dismissed.

26.05.2016 **(DARSHAN SINGH)**
sunil yadav **JUDGE**