In the High Court of Punjab and Haryana at Chandigarh

FAO No. 80 of 2013
Date of Decision: 05.9.2016

Jai Maa Banbhori Sewa Mandal (Registered) Tohana and another

---Appellants

versus

Gopi Ram @ Moji Ram and others

---Respondents

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

Present: Mr. Munish Gupta, Advocate
for the appellants

Mr. Subhash Goyal, Advocate
for respondent No. 8

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Rekha Mittal, J.

The present appeal has been preferred by the owner and driver of the offending vehicle in order to assail findings of the Tribunal giving recovery right to the insurer by holding that the insured has committed breach of terms and conditions of the contract of insurance by not possessing the permit and driver of the offending vehicle was not holding a valid driving licence to drive a transport vehicle.

Counsel for the appellant has submitted that Section 66 of the Motor Vehicles Act, 1988 (for short "the Act") provides for 'necessity for permits'. Sub Section (3) of Section 66 says that provision of sub-Section (1) of Section 66 of the Act shall not apply to the transport vehicle as mentioned under clauses (a) to (p) of sub-section (3) of Section 66 of the Act. Clause (i) of sub-section (3) provides that provision of sub-section (1) shall not apply to any goods vehicle, the gross vehicle weight of which does not exceed 3000 kgs.

To assail findings with regard to the driver not holding a valid driving licence, counsel for the appellant has relied upon the judgments **Gansham vs. Oriental Insurance Company Limited and others 2013(1) Law Herald (P&H) 454**, **Balbir Singh and another vs. Ralla Singh and others FAO No. 7138 of 2011 decided on 7.1.2013**, **National Insurance Company Limited vs. Parveen Kumar and others 2005(1) RCR(Civil) 485** and **National Insurance Company Limited vs. Sushila and others 2010 ACJ 2671**. It is argued that the Tribunal committed a serious error rather illegality by giving recovery right in favour of the insurance company.

Counsel for the insurance company has supported the award with the submissions that as the insured did not have any permit for the vehicle in question, used as a goods carrier and the driver did not possess a driving licence to drive a transport vehicle, the insured has committed breach of terms and conditions in regard whereof defence is available to the insured under Section 149(2) of the Act.

I have heard counsel for the parties and perused the paper book particularly the award passed by the Tribunal.

As per registration certificate of the vehicle in question, the un-laden weight of the tractor is 2000 kgs. No specific plea was raised by the insurer that gross weight of the vehicle in question was more than 3000 Kgs. No evidence in this regard has been adduced, therefore, the Tribunal has committed a serious error rather illegality by holding that insured has committed breach of terms and conditions of the contract by not producing the route permit to drive the vehicle in question.

This brings the Court to the findings that driver of the offending vehicle was not holding a valid driving licence. Indisputably, the vehicle in question is tractor bearing No. HR-23B/7356. As weight of the tractor is less than 7500 kgs, the same falls in the definition of a light motor vehicle defined in Section 2(21A) of the Act that says. "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms.".

Hon'ble the Apex Court in **Nagashetty vs. United India Insurance Company Limited, 2001(4) RCR (Civil) 597** dealt with question of validity of driving licence by a driver who was driving a tractor with a trailer. A relevant extract from para 10 of the judgment, reads as follows:-

> "We are unable to accept the submissions of Mr. S.C. Sharda. It is an admitted fact that the driver had a valid and effective licence to drive a tractor. Undoubtedly under Section 10 a licence is granted to drive specific categories of motor vehicles. The question is whether merely because a trailer was attached to the tractor and the tractor was used for carrying goods, the licence to drive a tractor becomes ineffective. If the argument of Mr. S.C. Sharda is to be accepted then every time an owner of a private car, who has a licence to drive a light motor vehicle, attaches a roof carrier to his car or a trailer

to his car and carries goods thereon, the light motor vehicle would become a transport vehicle and the owner would be deemed to have no licence to drive that vehicle. It would lead to absurd results. Merely because a trailer is added either to a tractor or to a motor vehicle by itself does not make that tractor or motor vehicle a transport vehicle. The tractor or motor vehicle remains a tractor or motor vehicle. If a person has a valid driving licence to drive a tractor or a motor vehicle he continues to have a valid licence to drive that tractor or motor vehicle even if a trailer is attached to it and some goods are carried in it. In other words a person having a valid driving licence to drive a particular category of vehicle does not become disabled to drive that vehicle merely because a trailer is added to that vehicle."

The present case stands on a better footing than that of the referred authority because in the instant case, there was no trailer attached with the tractor. In view of enunciation of law laid down in **Nagashetty's case (supra)**, findings recorded by the learned Tribunal that driver of the offending vehicle did not possess a valid driving licence cannot be allowed to sustain and accordingly set aside.

In view of what has been discussed hereinabove, the appeal is allowed and the award passed by the Tribunal to the extent of giving recovery right against the insured and driver of the offending vehicle is ordered to be set aside.

The appeal is disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

05.09.2016
PARAMJIT

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