IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6606 of 2014 (O&M)
Date of Decision.22.01.2016

Mohinder Singh ....Appellant

Vs.

Lakhwinder Kaur and others ....Respondents

Present: Mr. K.P. Singh, Advocate
for the appellant.

Mr. D.K. Prajapati, Advocate for
Mr. R.S. Madan, Advocate
for respondent No.6.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. There is delay in filing the appeal of 1933 days. The delay is to receive the appeal which is brought by the owner aggrieved as he is aggrieved by the direction of recovery in the motor accident claim. The recovery is granted against the owner on the ground that the vehicle was being run within the State of Punjab without a valid permit. The application for condonation of delay is accompanied with a petition to receive a document to show that there was a permission to ply the vehicle within the State of Punjab as well and it was omitted to be filed at the time of trial. I asked the counsel appearing on behalf of the insurance company to take note of the contentions raised and the document sought to be produced before this Court to say that he had a valid permission from the State authorities to ply the vehicle in the

State of Punjab itself. The counsel would desire an adjudication on the application for condonation and would not want to traverse the contentions on merits. If the appeal would require to be considered on an issue of merit of whether the insurance company would have a right to recovery or not, I will not take much of the fact that there is a delay in filing the appeal. If there is delay, they are for umpteen reasons which are regular features in the court and I will not hesitate to condone the delay if there is a substantial issue for consideration in appeal and there is gross injustice to the party if the delay is not condoned. I believe that there exists a substantial issue for consideration in appeal of whether the insurance company would be entitled to recover the amount from the insured for alleged breach of terms of policy or not. I, therefore, condone the delay and proceed to take up the case on merits with consent of both the parties. The counsel for the insurer says that the appeal itself can be disposed of merits and he will have no objection for the same.

2. The defences which are open to the insurance company are delineated under Section 149 of the Motor Vehicles Act and they include as regards a permit a condition which would exclude the use of the vehicle for purpose not allowed by the permit under which the vehicle is used where the vehicle is a transport vehicle (Section 149 (2)(a)(i)(c). This exclusion contemplates only an misuse of condition for the purpose for which the vehicle is required to put to use. A transport vehicle which is permitted to carry passengers for instance cannot be used for transport of goods alone or vice-a-versa. That is what would constitute a violation of condition where the exception would arise. A temporary

straying away from route permit is not a violation of purpose of permit. A geographic limitation of applicability of policy is also possible but there exists no such limitation of use in the policy of insurance. Indeed, in this case there is even an attempt to prove by the owner of the vehicle itself that he had the necessary permission to ply within the State of Punjab and copy of tax receipt for plying vehicle at the relevant time is also brought before this Court as document in Annexure A1. The owner cannot, therefore, be said to be in breach either with or without the endorsement by the State authority, for what is pleaded now is a defence outside the realm of the admissible defences provided under Section 149.

3. The order passed by the Tribunal providing for right of recovery against the insured under the circumstances cannot be supported in the light of the document produced and in the light of the consideration as rendered above. The award is set aside to the extent to which right of recovery is ordered and the appeal by the owner is allowed to be favoured with full indemnity by the insurer.

(K. KANNAN)
JUDGE

January 22, 2016
Pankaj*